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Banks try self-regulation

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Many of the country's largest banks moved last month to get out in front of lawmakers' plans to curb the piling on of overdraft loan fees that critics say are usurious and prey on those who can least afford them.

Bank of America, Wachovia and JPMorgan Chase & Co. — three of the largest banks in Bergen County by deposit market share — said they will limit the number of fees they charge and make it easier for customers to refuse overdraft protection.

"They saw the handwriting on the wall," said Gerard Cassidy, banking analyst at RBC Capital Markets in Portland, Maine. "They were too aggressive with the fees, and unless they made changes, it would be harder for industry lobbyists to fight new regulations."

Overdraft fees are expected to deliver more than \$38 billion in revenue for U.S. banks this year, up from \$19.9 billion in 2000, according to the research firm Moebs Services, and have overtaken ATM surcharges as the fees that consumer advocates love to hate. The fees also have become a central issue in the national debate on bank re-regulation.

The growth in recent years of overdraft fee collection is "a classic example of regulatory failure," said Phyllis Salowe Kaye, executive director of consumer watchdog New Jersey Citizen Action. She is part of a growing movement urging lawmakers to limit overdraft fees. Federal regulators have allowed banks to provide the lucrative overdraft protection service without applying truth-in-lending laws that would require that banks provide customers with more disclosure, and put a lid on the amounts that could be charged.

Sen. Christopher Dodd, D-Conn., unveiled legislation Monday — similar to a bill under consideration in the House of Representatives by Rep. Carolyn Maloney, D-N.Y. — that would require that banks let people choose whether they want to participate in overdraft protection.

"At a time when many can afford it least, American consumers are being hit with

hundreds of dollars in penalties for overdrawing on their account by just a few dollars," Dodd said in a statement.

The Dodd measure would limit the number of fees to one a month and six per year; require that customers be notified by e-mail, text or traditional mail when they overdraw their account; and that they be warned if an ATM or teller transaction will overdraw their account.

On Oct. 22, the House Financial Services Committee voted 39-29 to approve the establishment of a Consumer Financial Protection Agency, overcoming opposition from the banking industry. The agency would regulate credit-card and banking fees.

T.J. Crawford, a Bank of America spokesman, said the recently announced changes to that bank's fee structure "are part of our effort to provide our customers with more choice, especially in this challenging economy." A Chase executive said in a statement that the bank changed its policies "to be more consistent with the way [customers] use their accounts today."

The way a typical overdraft protection service works is the bank automatically covers overdrawn checks, ATM withdrawals and debit-card purchases, up to a limit, and charges a fee — typically \$30 to \$35 — per overdraft, regardless of how small the amount. Those who do not carefully track their balances can get hit with multiple fees. Customers get no warning when they receive the protection loans. At many banks, checking-account customers cannot refuse the service. Many lenders arrange the order in which transactions are posted from the largest amount to the smallest. More fees kick in when loans are not paid within a few days. Banks often collect the fees and get the loan repaid by taking the money out of a customer's direct deposit as soon as it comes in.

Banks say customers appreciate the service because it can help them avoid bounced-check fees and the embarrassment at a store checkout should a debit-card payment fail to clear.

Nonetheless, the big banks are moving to ease the rules.

As of Oct. 19, Bank of America, with about 50 branches in Bergen County, will no longer charge for some small overdrafts and will levy no more than four overdraft fees in one day on an account, instead of 10. Customers who now have no choice will be given the ability to drop the service. Beginning in June, new customers will no longer automatically be enrolled in overdraft protection but will get the service only if they "opt in." No changes were made in the way the bank orders the transactions. The lender will continue to put deposits first and then subtract payments and withdrawals from largest to smallest, spokesman Crawford said.

"The largest [payments] often are the most important in a customer's life: the

mortgage payment, the rent, college tuition, insurance premiums," Crawford said. "We want to make sure those are taken care of first."

Beginning early next year, JPMorgan Chase, with more than 50 Bergen branches, will provide overdraft protection for debit cards only for those customers who opt in. Also, the lender will change the order in which ATM withdrawals and debit-card purchases are subtracted from accounts. Instead of posting them from largest to smallest, they will be debited in the order in which they were made.

Wachovia, owned by Wells Fargo, will eliminate overdraft fees for customers when they overdraw accounts by \$5 or less, and will charge no more than four a day. The bank did not say when the changes take effect.

Consumer watchdogs said the changes do not go far enough.

Jean Ann Fox, director of financial services for the Consumer Federation of America, said the largest banks did not cut their per-transaction fees and none dropped fees added on if the customer does not cover the overdraft within a few days.

"The smaller banks tend to charge somewhat smaller fees," Fox said. "But even so, compared to the size of the loans, it still is extremely expensive."

At least one New Jersey community bank is reviewing its overdraft protection policies and may make changes. Raymond Hallock, chief executive officer of Columbia Bank, said the Fair Lawn-based lender is considering eliminating the \$32 per-transaction fee for overdrafts of \$5 or less, to be more in line with the bigger banks.

Columbia orders checking-account transactions from smallest to largest to minimize the number of fees levied, he said.

Thomas Shara, CEO of Lakeland Bank in Oak Ridge, said Lakeland offers the service and orders transactions chronologically.

"I think the program we have is very fair," said Shara, who is not contemplating changes. "We never thought that [ordering postings from largest to smallest] was appropriate or fair to the customer. A majority of people appreciate the fact that we generally will cover a check."

Andrew Gully, spokesman for Sovereign Bank, said the bank is evaluating its policies but has made "no changes yet."

A federal lawsuit filed last year in Trenton by Sovereign customer Cortney D. Hassler claimed Sovereign's arranging postings from largest to smallest was not part of the account agreement and that it violated the state's consumer fraud law.

The case was dismissed, with the judge ruling that the policy was adequately disclosed in a deposit account agreement. Hassler filed an appeal earlier this month.

Nicholas J. Ketcha Jr., executive managing director of community bank consulting firm Finpro Inc. in Liberty Corner, said it was only in the past few years that the most objectionable fee-gathering methods have become widespread.

"I've been telling people overdraft protection was a time bomb waiting to explode," said Ketcha, a former director of the state department of banking. "Too many [banks] saw the fee income that could be made and didn't follow the best practices."

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