

United States House of Representatives
Committee on Financial Services
2129 Rayburn House Office Building
Washington, D.C. 20515

March 28, 2022

Memorandum

To: Members, Committee on Financial Services
From: FSC Majority Staff
Subject: March 31, Subcommittee on Consumer Protection and Financial Institutions hearing entitled, “The End of Overdraft Fees? Examining the Movement to Eliminate the Fees Costing Consumers Billions”

The Subcommittee on Consumer Protection and Financial Institutions will hold a hearing entitled, “The End of Overdraft Fees? Examining the Movement to Eliminate the Fees Costing Consumers Billions” on Thursday, March 31, 2022, at 10:00 a.m. in room 2128 of the Rayburn House Office Building and on Cisco Webex. There will be one panel with the following witnesses:

- **Jeremie Greer**, Co-Founder/Executive Director, Liberation in a Generation
- **Elyse Hicks**, Consumer Policy Counsel, Americans for Financial Reform
- **Paul Kundert**, President and CEO, UW Credit Union
- **Santiago Sueiro**, Senior Policy Analyst, UnidosUS
- **Todd Zywicki**, George Mason University Foundation Professor of Law, Antonin Scalia Law School, George Mason University

Overview

“Overdraft” refers to when a consumer carries out a transaction of an amount that exceeds the balance in their checking account, and their financial institution allows the transaction to proceed by covering the difference.¹ In many cases, financial institutions charge a fee for this service, which can be as high as \$36, and institutions can repeatedly charge this fee for multiple transactions in the same day.² Similarly, when a consumer does not have enough funds available in their account at the time of a transaction (e.g., a check bounces), a financial institution can reject the transaction and may issue a non-sufficient funds (NSF) fee.³ The Consumer Financial Protection Bureau (CFPB) estimates U.S. consumers paid \$15.47 billion in overdraft and NSF fees in 2019 and \$8.84 billion in 2020.⁴ In recent months, the CFPB has launched an initiative to investigate exploitative fees charged by financial institutions, while several institutions have announced plans to reduce or eliminate the overdraft fees they charge.⁵ This hearing will examine evolving trends regarding overdraft programs and fees, their impact on consumers, alternative products or services available to consumers to help avoid overdraft fees, and policy proposals to improve consumer protections when consumers overdraft.

¹ See CFPB, [Bank accounts key terms](#) (Accessed Mar. 15, 2022).

² See CFPB, [Overdraft/NSF metrics for Top 20 banks based on overdraft/NSF revenue reported](#) (Feb. 2022); see also MyBankTracker, [Compare Overdraft Fees of Top Banks](#) (Feb. 23, 2022).

³ CFPB, [Data Point: Overdraft/NSF Fee Reliance Since 2015 – Evidence from Bank Call Reports](#) (Dec. 2021).

⁴ *Id.*

⁵ CFPB, [Consumer Financial Protection Bureau Launches Initiative to Save Americans Billions in Junk Fees](#) (Jan. 26, 2022). Also see, e.g., Ally Financial, [No overdraft fees. More overdraft coverage](#) (Accessed Mar. 16, 2022); Alliant Credit Union, [You should never pay overdraft fees again](#) (Aug. 12, 2021); American Banker, [Citi poised to become largest bank to eliminate overdraft fees](#), (Feb. 24, 2022); Capital One, [Capital One Eliminates Overdraft Fees for Customers](#) (Dec. 1, 2021).

Background

During the Great Recession following the 2008 global financial crisis, financial institutions' revenue from overdraft fees soared as consumers lost jobs and experienced disruptions in income.⁶ In response, Rep. Carolyn Maloney introduced the Overdraft Protection Act, and federal banking regulators began examining overdraft practices and fees.⁷ In November 2009, the Board of Governors of the Federal Reserve System (Federal Reserve) issued a final rule on overdraft programs.⁸ The rule, also known as the "Opt-In Rule," requires certain consumer notifications and prohibits financial institutions from issuing fees associated with "overdrafts on automated teller machine (ATM) and one-time debit card transactions unless a consumer consents, or opts in, to the overdraft service for those types of transactions."⁹ In 2010, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which created the CFPB and granted the new agency authority over many consumer protections in banking, including the Opt-In Rule.¹⁰

Overdraft and NSF Fee Data and Trends

Traditionally, banks and credit unions generate revenue by taking deposits and lending the deposits out in the form of home mortgages, business loans, or other forms of credit. Banks then collect interest on those loans.¹¹ Beginning in the 1980s, non-interest revenue, such as fees associated with customer accounts, started to grow and has since become a sizable portion of overall revenue for financial institutions.¹² While evidence suggests banks have become less reliant on non-interest revenue in the years following the financial crisis, one analysis found that "banks have increased their revenues from service charges to make up for interest income lost in the low-interest rate environment."¹³

Since 2015, federal regulators have required banks and credit unions with more than \$1 billion in assets to report revenue collected specifically from overdraft and NSF fees, totaling between \$11 billion and \$12 billion annually. However, the true fee total is likely higher since smaller depository institutions are exempt from the reporting requirement.¹⁴ In December 2021, the CFPB published research suggesting many financial institutions rely heavily on overdraft and NSF fees for revenue.¹⁵ The CFPB reported that "overdraft and NSF fees made up close to two-thirds of reported fee revenue, emphasizing banks' heavy reliance on such fees."¹⁶ According to the same research, total NSF and overdraft fees collected by financial institutions reached an estimated \$15.47 billion in 2019 before declining to \$8.84 billion in 2020.¹⁷ The CFPB's research indicates the primary drivers of lower overdraft fees in 2020 were Economic Impact Payments (EIPs) and lower consumer spending during the pandemic.¹⁸

Impact on Consumers

According to the CFPB, fewer than 9 percent of consumer bank accounts make up nearly 80 percent of all overdraft fees, with this portion of consumers averaging more than ten overdrafts per year.¹⁹

⁶ See CNN, [Bank overdraft fees to total \\$38.5 billion](#) (Aug. 10, 2009).

⁷ [H.R.3904](#), (111th Congress); see also Reuters, [U.S. lawmakers attack bank overdraft fees](#) (Oct. 30, 2009); and CRS, [Overdraft: Payment Service or Small-Dollar Credit?](#) IF11460, (Mar. 16, 2020).

⁸ Federal Reserve, [Federal Reserve announces final rules prohibiting institutions from charging fees for overdrafts on ATM and one-time debit card transactions](#) (Nov. 12, 2009).

⁹ *Id.*

¹⁰ CRS, [Overdraft: Payment Service or Small-Dollar Credit?](#) IF11460, (Mar. 16, 2020).

¹¹ *Id.*

¹² See Figures 1 and 2.

¹³ Federal Reserve Bank of Cleveland, [Trends in the Noninterest Income of Banks](#) (Sept. 24, 2019).

¹⁴ CRS, [Overdraft: Payment Service or Small-Dollar Credit?](#) IF11460, (Mar. 16, 2020).

¹⁵ CFPB, [CFPB Research Shows Banks' Deep Dependence on Overdraft Fees](#) (Dec. 1, 2021).

¹⁶ *Id.*

¹⁷ CFPB, [Data Point: Overdraft/NSF Fee Reliance Since 2015 – Evidence from Bank Call Reports](#) (Dec. 2021).

¹⁸ *Id.*

¹⁹ CFPB, [Data Point: Frequent Overdrafters](#) (Aug. 2017).

The CFPB also found consumers who frequently overdraft are more likely to be credit constrained, have lower credit scores, and are less likely to have credit cards.²⁰ With limited access to affordable short-term liquidity, some consumers use overdraft as a source of credit. In a 2017 survey from Pew Charitable Trusts, 32 percent of consumers viewed overdraft as a way “to borrow when you are short on cash.”²¹ Consumers who frequently overdraw on their checking accounts also tend to earn lower incomes and pay a greater portion of their income to pay for overdraft. In 2016, the Pew Charitable Trusts found that seven in ten customers who frequently overdraft earned less than \$50,000 a year, and nearly 25 percent of those customers paid overdraft fees equal to one week or more of wages.²² According to one consumer’s response to a 2017 overdraft programs survey, “\$35 is a lot of money for a person that doesn’t have any.”²³

In some cases, consumers face challenges with unclear or confusing overdraft policies or are charged fees simply because of a delay in when their paycheck deposits are made available or when other transactions are settled in their account.²⁴ A report from the Center for Responsible Lending found the following:

Frequently, customers incur overdraft fees despite carefully attempting to avoid them and often believing they have. One practice, in particular, has garnered increased attention recently: charging overdraft fees on debit card transactions that were authorized when the consumer had sufficient funds in the account but then settled, often a few days later, when the account no longer had sufficient funds. The Federal Reserve has recently cited this practice as an unfair practice, and the Consumer Financial Protection Bureau (CFPB) has highlighted this practice with concern. But many banks continue to employ it.²⁵

Overdraft and NSF fees also disproportionately affect people of color. According to one study, banks with main branches in predominantly Black communities, on average, charge more for an overdraft in addition to charging more for other fees, like an account maintenance fee, than in predominantly White communities. The study noted that while the difference is small, by being a recurring fee for many consumers, the fees add up to a substantial amount over time. Additionally, another study found that Black customers are overrepresented among those who reported paying more than \$100 in fees in the past year.

Consumer responses to the CFPB’s recent Request For Information on various kinds of fees consumers are charged, including overdraft and NSF fees, show that students may be adversely affected. For example, one student wrote, “I’m a low income, [first] generation student who is trying to earn a college degree. Needless to say, money is tight. My bank being unexpectedly overdrawn made it so I couldn’t afford necessities such as toothpaste and toilet paper in the past. The fees on my credit card simply didn’t make sense.”²⁶ Another student wrote, “As a disabled student whose only income is via SSI, overdraft fees and other junk fees disproportionately affect me and those like me who have low or inconsistent [income].”²⁷ In the worst cases, students face food insecurity due to the economic burden of overdraft fees. One student described going hungry for weeks due to three overdraft charges that hit their account the day before their student loan was disbursed into their account.²⁸

Fees associated with overdraft and NSF also may contribute to higher rates of unbanked and underbanked households. According to a 2019 FDIC survey of U.S. households, two of the common

²⁰ *Id.*

²¹ Pew Charitable Trusts, [Overdraft Does Not Meet the Needs of Most Consumers](#) (Dec. 20, 2017).

²² Pew Charitable Trusts, [Heavy Overdrafters: A financial profile](#) (April 20, 2016).

²³ CFPB, [Consumer Voices on Overdraft Programs](#) (Nov. 2017).

²⁴ Aaron Klein, [Real-time payments can help combat inequality](#) (Mar. 6, 2019).

²⁵ CRL, [Overdraft Fees: Banks Must Stop Gouging Consumers During the COVID-19 Crisis](#) (June 2020).

²⁶ CFPB, [Comment submitted by Jasmine Kasper](#) (Feb. 14, 2022) (Document (CFPB-2022-0003-0001)).

²⁷ CFPB, [Comment from Abell, Jenna](#) (Feb. 9, 2022) (Document (CFPB-2022-0003-0001)).

²⁸ CFPB, [Comment submitted by Alicia Hart](#) (Feb. 14, 2022) (Document (CFPB-2022-0003-0001)).

reasons consumers cited for not having a bank account were because they did not have enough money to meet a bank account's minimum balance requirements or because they were concerned about account fees.²⁹ According to a Federal Reserve report last year, 5 percent of adults were unbanked, and 13 percent of adults were underbanked in the U.S.³⁰ This problem is worse for minority households; approximately 13% of Black households and 9% of Hispanic households had no bank accounts at all in 2020.³¹ More than one-fourth of those with less than a high school degree and 16% of those with incomes less than \$25,000 were unbanked.³²

Proposals and Challenges to Improving Consumer Protections when Consumers Overdraft

Proposals to improve consumer protections around overdraft and NSF fees generally focus on enhancing disclosures and information about overdraft provided to consumers; capping the number of fees a consumer may be charged in a defined period of time; reducing the cost of each fee, or encouraging or incentivizing financial institutions to offer small-dollar loans with streamlined underwriting and affordable interest rates or repayment plans to provide an alternative for consumers who typically rely on overdraft.³³ Another potential improvement in the market would result from adopting a faster payments network. The FedNow Service, which the Federal Reserve is targeting for launch in 2023, would allow payments to settle and clear faster, allowing consumers to access paychecks and other income more quickly and helping prevent overdrafts that result from consumers engaging in transactions when their account balance is showing as positive, prior to other transactions settling in their account.³⁴ However, it would also mean withdrawals and other outflows would occur faster, making the overall effect on overdrafts and NSF fees unclear.³⁵

Additional restrictions on such fees may prove challenging for financial institutions that are reliant on account fees.³⁶ Providing checking accounts creates expenses for banks and credit unions. While costs vary across the market, some estimate it costs depository institutions “between \$250 to \$450 a year” to maintain a checking account.³⁷ These costs are typically placed on those with the least amount of money; monthly maintenance fees for bank accounts are assessed on those who do not meet minimum balances, while those with sufficient funds in their accounts can have fees waived.³⁸ For some banks, specific account user fees such as overdraft or NSF may represent a way to recoup the operating costs of providing bank accounts without requiring monthly maintenance fees for those with low balances. On January 26, 2022, the CFPB announced an “initiative to save households billions of dollars a year by reducing exploitative junk fees charged by banks and financial companies” and requested public comment on fees related to bank accounts, credit cards, and other financial products.³⁹ The announcement specifically highlighted overdraft and NSF fees.⁴⁰

²⁹ See Figure 2 in Appendix; FDIC, [How America Banks: Household Use of Banking and Financial Services, 2019 FDIC Survey](#) (2019), p. 3-4.

³⁰ Board of Governors of the Federal Reserve System, [Report on the Economic Well-Being of U.S. Households in 2020](#) (May 2021).

³¹ *Id.*

³² *Id.*

³³ Pew Charitable Trusts, [Overdraft Does Not Meet the Needs of Most Consumers](#) (Dec. 20, 2017).

³⁴ Federal Reserve, FedNowSM Service: Frequently Asked Questions (Updated Mar. 22, 2021).

³⁵ CRS, [Overdraft: Payment Service or Small-Dollar Credit?](#) IF11460, (Mar. 16, 2020).

³⁶ See Brookings Institution, [A few small banks have become overdraft giants](#) (Mar. 1, 2021).

³⁷ American Banker, [Free Checking Isn't Cheap for Banks](#) (Dec. 9, 2011).

³⁸ See, e.g., Bank of America, [Bank of America Advantage Banking](#) (showing that monthly fees are waived when a bank account owner is enrolled in the bank's Preferred Rewards program, which requires a three-month combined average daily balance of \$20,000 or more in qualifying Bank of America deposit accounts and/or Merrill investment accounts).

³⁹ CFPB, [Consumer Financial Protection Bureau Launches Initiative to Save Americans Billions in Junk Fees](#) (Jan. 26, 2022).

⁴⁰ *Id.*

Recent Market Shifts Reducing or Eliminating Fees

Several non-bank fintech companies have focused on providing services aimed at helping consumers avoid overdraft and NSF fees by notifying consumers when balances are low or enabling consumers to make other decisions relating to transactions. Some of these companies also have partnerships with financial institutions to offer accounts without such fees.⁴¹ Other fintechs offer “earned wage access” products allowing consumers to access wages they have earned but have not yet been paid.⁴² These programs provide advances on those wages ahead of the consumer’s payday for a fee that is paid by the consumer or by the employer, with some charging additional fees for multiple advances within a certain period or for immediate transfers of wages into an account.⁴³ Some advocates believe these products should be subject to lending laws, since the consumer is obligated to repay the amount advanced, and express concern about how these fees, while small, may add up for consumers.⁴⁴ Additionally, some depository institutions have either announced plans to or have already eliminated overdraft and NSF fees,⁴⁵ while others have announced plans to reduce overdraft and NSF fees, including reducing the size of the overdraft fee or reducing the number of fees the bank can charge you each day.⁴⁶ According to the CFPB, since September 2021, among the top 20 banks based on overdraft or NSF revenue reported, nearly half announced they will eliminate NSF fees, and several already had limited overdraft fee programs in place, such as not charging overdraft fees on debit card purchases or ATM withdrawals or extended overdraft fees.⁴⁷ Acting Comptroller Michael Hsu of the Office of the Comptroller of the Currency (OCC) wrote a recent oped urging more banks to make pro-consumer reforms to their overdraft programs.⁴⁸

Additionally, about 200 banks and credit unions offer “Bank On” certified accounts which do not have overdraft or NSF fees.⁴⁹ The Bank On initiative is a partnership between the Cities for Financial Empowerment Fund (CFE Fund), financial institutions, and local governments with the goal of providing low-cost basic bank accounts to unbanked and underbanked households.⁵⁰ Modeled after the FDIC’s Model Safe Accounts Template, under this initiative, the CFE Fund sets Bank On National Account Standards and then provides public certification to bank accounts meeting those standards.⁵¹ In addition to disallowing overdraft fees, the standards also cover terms related to minimum opening deposit, monthly account fees, and other features.⁵² Not all participating financial institutions report the use of Bank On-certified accounts they offer. Among the 17 financial institutions that do report this data to the St. Louis Federal Reserve Bank’s data hub, nearly eight million Bank On-certified accounts have been opened since the program began, and 3.8 million remain open as of 2020.⁵³

⁴¹ See Doublecheck Solutions, [Financial Institutions](#) (Accessed Mar. 16, 2022); Chime, [Fee-Free Overdraft with SpotMe](#) (Mar. 16, 2022). Dave, [Deposit Agreement](#) (Accessed Mar. 16, 2022).

⁴² Forbes, [How Earned Wage Access Can Upend Predatory Lending And Build Employee Financial Wellness](#) (Feb 5, 2021).

⁴³ Aite, [Employer-Based Loans and Early Pay: Disruption Reaching Scale](#) (Apr. 2019).

⁴⁴ House Financial Services Committee, Testimony of Lauren Saunders, [Buy Now. Pay More Later? Investigating Risks and Benefits of BNPL and Other Emerging Fintech Cash Flow Products](#) (Nov. 2, 2021).

⁴⁵ See Ally Financial, [No overdraft fees. More overdraft coverage](#) (Accessed Mar. 16, 2022); Alliant Credit Union, [You should never pay overdraft fees again](#) (Aug. 12, 2021); American Banker, [Citi poised to become largest bank to eliminate overdraft fees](#) (Feb. 24, 2022); Capital One, [Capital One Eliminates Overdraft Fees for Customers](#) (Dec. 1, 2021).

⁴⁶ Bank of America, [BoFA Announces Sweeping Changes to Overdraft Services in 2022, Including Eliminating Non-Sufficient Funds Fees and Reducing Overdraft Fees](#) (Jan. 11, 2022); See also, CFPB [Comparing overdraft fees and policies across banks](#) (Feb. 10, 2022).

⁴⁷ CFPB, [CFPB Overdraft Chart](#) (Feb. 2022).

⁴⁸ Acting Comptroller Michael Hsu, [Don't be the last banker to update your overdraft program](#), American Banker (Mar. 28, 2022).

⁴⁹ Testimony of David Rothstein before the Committee, [Banking the Unbanked: Exploring Private and Public Efforts to Expand Access to the Financial System](#) (July 21, 2021); See also [Bank On National Account Standards \(2021-2022\)](#) (Accessed March 13, 2022).

⁵⁰ See Bank On, [About](#) (Accessed March 13, 2022); See also The Clearing House et al., [Delivering Financial Products and Services to the Unbanked and Underbanked in the United States – Challenges and Opportunities](#) (May 2021), p. 23.

⁵¹ *Id.*; Bank On and Federal Reserve Bank of St. Louis, [The Bank On National Data Hub: Findings from 2019](#) (June 28, 2021).

⁵² Bank On, [Bank On National Account Standards \(2021-2022\)](#) (Accessed July 7, 2021).

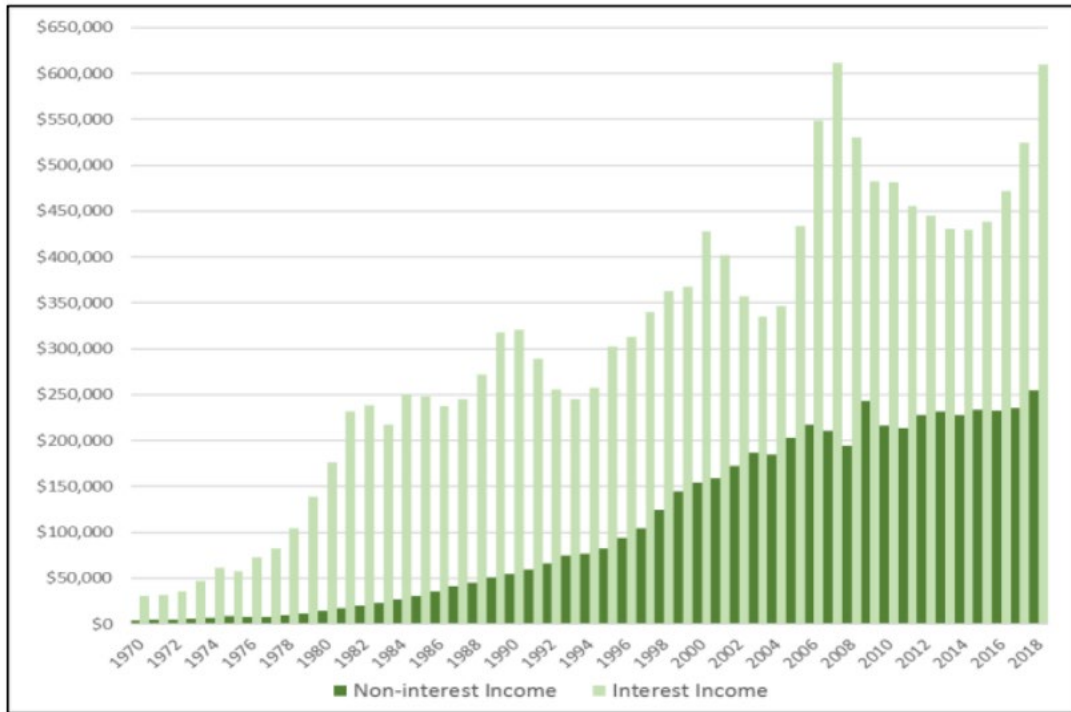
⁵³ Bank On and Federal Reserve Bank of St. Louis, [The Bank On National Data Hub: Findings from 2020](#) (Dec. 22, 2021), p. 10.

Appendix - Legislation

- **H.R. 4277, the Overdraft Protection Act of 2021 (Maloney)** would strengthen protections and disclosures for consumers with respect to overdraft fees, under the Truth In Lending Act (TILA). It would limit the number of overdraft fees a bank may charge on a monthly and annual basis, prevent financial institutions from re-ordering transactions to increase overdraft fees, and codify Federal Reserve requiring financial institutions to provide consumers with the opportunity to opt-in to overdraft coverage for all transactions.
- **H.R. _____, the Expanding Access to Affordable Bank Accounts Act** would require large depository institutions and encourage small depository institutions to offer at least one account option that does not charge consumers certain fees, such as overdraft and NSF fees, and otherwise meet the standards for certification as a BankOn-certified account. It would also commission a study that includes a review of how expanding access to low-fee accounts could change banking outcomes for historically unbanked communities, analysis of the effectiveness of BankOn-certified accounts, identify barriers consumers may have in opening such accounts as well as challenges small financial institutions may have in offering them, and provides recommendations for government and industry action to improve access to affordable bank accounts.

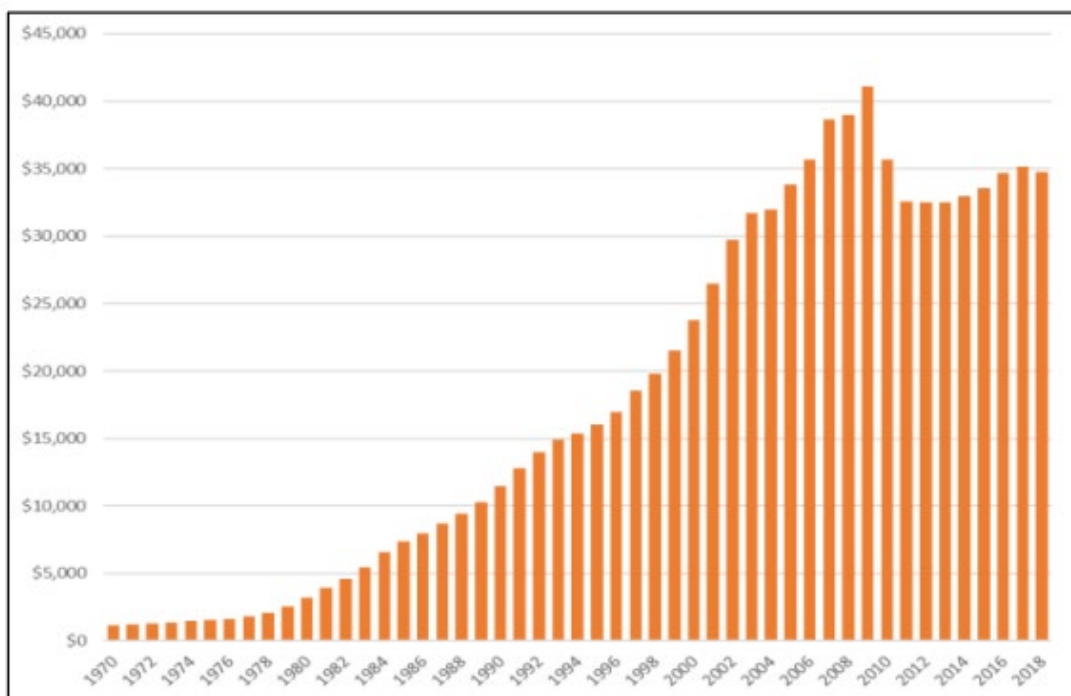
Appendix

Figure 1. Annual Interest and Noninterest Income of U.S. Commercial Banks, 1970-2018, (in millions).



Source: CRS, [Overdraft: Payment Service or Small-Dollar Credit?](#), IF11460, (Mar. 16, 2020).

Figure 2. Service Charges on Deposit Accounts U.S. Commercial Banks, 1970-2018 (in millions)



Source: CRS, [Overdraft: Payment Service or Small-Dollar Credit?](#), IF11460, (Mar. 16, 2020).