



Noncustomer Check Fees Reinforce Financial Divide

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Consumers Union is a nonprofit membership organization chartered in 1936 under the laws of the state of New York to provide consumers with information, education, and counsel about goods, services, health and personal finance, and to initiate and cooperate with individual and group efforts to maintain and enhance the quality of life for consumers.

Earlier this year the Texas legislature passed a law that required that banks cash their own checks at their face value (the “par value” law). In other words, if someone walked into a bank with a check drawn on that bank, and proper identification, the bank could not charge a fee to cash the check.

On August 17, two weeks before the effective date, the largest banks in Texas filed suit and a Federal District court judge granted a temporary injunction halting implementation of the new law.

But the recent actions are part of a more complicated history that shows the “split personality” banks have on the issue. On one side is the decades-old pattern of banks abandoning low-income and minority communities in Texas. On the other is an industry

trend that recognizes there is a profit in “fringe banking”— check cashing and other non-depository services. Banks are now returning to the communities they once abandoned, hoping to cash in on the revenue from high fees once the exclusive territory of the check cashers, pawn shops, and payday lenders.

Who is affected by non-customer check cashing charges?

Those most likely to be affected by non-customer check cashing fees are individuals often referred to as the unbanked, individuals without their own bank account, who go to banks to cash their paychecks. A study of the Survey of Consumer Finances found that more than half of families without checking accounts are non-white or Hispanic, and 85 percent have incomes of less than \$25,000.¹ The rising costs of having a bank account combined with the lack of access to a local bank and branch offices have made keeping an open bank account difficult for some families.

During the 1980s, 36 percent of nationwide bank failures took place in Texas.² A Texas A&M University study found that between 1985 and 1993, the availability of banks in low income, high poverty, and high minority areas decreased. The study revealed that the average number of branches in zip codes in the lowest income quartile decreased 11 percent and areas below poverty experienced a decline of 13 percent. In contrast, the number of branches in the highest income quartile remained the same. Predominately white areas actually had an increase of four percent, though minority zip codes saw their branches decrease by 10 percent.³

As traditional banks abandoned low income and minority neighborhoods, check-cashers and fringe

banking emerged with a profitable business. The check cashing industry now cashes nearly 180 million checks annually, charging \$1 billion in fees.⁴

How are banks "cashing" in?

In 1977 Congress enacted the Community Reinvestment Act to encourage banks to serve low income and minority communities.

By 1999, Guaranty Federal Bank touted to regulators that it provided a Dallas-based check cashing company \$20 million in loans as part of its community investment responsibilities.⁵ And other banks are also entering the check cashing market. In 1998, Wells Fargo teamed up with Cash America International, a pawn shop chain, and created Innoventry, a check cashing company.⁶

In an effort to increase profits, banks are looking for other revenue sources. In addition to directing resources into check-cashing operations, banks are tapping into a new market of low income and minority consumers – this time directly – by charging check-cashing fees, even for checks drawn against their own customer's accounts. Mark Ferrulo, a public interest advocate for Florida PIRG, noted, "that used to be part of the package. This fee really just serves to add to the income stream. It's almost pure profit."⁷ The banks counter that non-customers can avoid such fees by opening an account with them. But for many low-income families, the minimum balance required for a free checking account makes it impossible to open one.

Randall S. James, the commissioner of the Texas Department of Banking states, "There's a lot of money involved in this. In their pleadings, banks estimate the check-cashing fees represent in Texas alone \$80,000 to \$100,000 per month for each."⁸

Non-Customer Check Cashing Fee Survey				
Houston Banks	Cash Checks?	Fee?	Amount	Notes:
Bank of America	Yes	?		transfers to 800 Number
Bank of West University	Yes	No		
Coastal Banc	Yes	No		
Comerica Bank	Yes	Yes	\$5	
Compass Bank	Yes	No		
First Bank of Texas	Yes	Yes	\$5	
Guaranty Federal Bank	Yes	No		
Heritage Bank	Yes	No		
Laredo National Bank	Yes	No		
Metro Bank	Yes	No		
Moody National Bank	Yes	No		
Omni Bank	Yes	No		
Southwest Bank of Texas	Yes	No		driver's license required
Sterling Bank	Yes	No		2 forms of ID required
The State Bank of Texas	Yes	No		
Washington Mutual	Yes	No		
Whitney National Bank	Yes	No		
World Savings Bank	No			
Austin Banks				
	Cash Checks?	Fee?	Amount	Notes:
Bank of America	Varies	Yes	\$3 (national)	two ID and thumbprint required
Bank of Texas	Yes	No		
Bank One	Yes	Yes	\$3	
Chase Bank	Yes	Yes	not disclosed	fees are at branch's discretion
Comerica Bank	Yes	Yes	\$5 checks > \$100	
Community State Bank	Yes	No		proper identification required
Compass Bank	Yes	No		
First Texas Bank	Yes	No		
Franklin Bank	Yes	No		
Frost Bank	Yes	No		proper identification & thumbprint
Guaranty Federal Bank	Yes	Yes	\$5 checks > \$100	
Liberty Bank	Yes	No		
Regions Bank	Yes	No		
Washington Mutual	Yes	No		2 forms of identification required
Wells Fargo Bank	Yes	No		
*Chase required a check for verification and to determine fees. For payroll checks, if the employer has an arrangement with Chase the fee may be waived.				
Dallas Banks				
	Cash Checks?	Fee?	Amount	Notes:
Bank Of America Branch	Yes	No		may charge fees in the future
Bank of America In-Store	No			in-store locations don't cash checks
Bank of the Southwest	Yes	No		
Bank One	Yes	Yes	\$3	waive \$3 for some employers
Chase Bank	Yes	Yes	1.5%/min. \$5	fee waived for checks < \$50
Comerica Bank of Texas	Yes	Yes	\$5	
Compass Bank	Yes	No		DL license required
Dallas National Bank	Yes	No		
First State Bank of Texas	Yes	No		DL & thumbprint required
Frost Bank	Yes	No		
Legacy Bank of Texas	Yes	No		
Lone Star Bank	Yes	No		
Pavilion Bank	Yes	No		proper identification required
Reunion Bank	Yes	No		
Texas Capital Bank	Yes	No		
Town North National Bank	Yes	No		
Washington Mutual	Yes	No		2 forms of identification required
Wells Fargo Bank	Yes	No		

Which banks charge non-customer fees?

In September 2001, Consumers Union surveyed 56 branches of 37 different banks in Austin, Houston, and Dallas to see which banks charged fees to non-customers for checks drawn from their customer's accounts. The banks surveyed include a variety of large national banks as well as smaller regional banks. Only where bank representatives said fees were set at the branch level did Consumers Union survey multiple branches in the same city (Bank of America and Chase).

Among the survey's key findings:

- Of the thirty seven different banks surveyed by Consumers Union, the banks that charge a check cashing fee included some of the major banks who filed suit to halt the new "par value" statute (Bank One, Chase Manhattan, Comerica), plus Guaranty Federal and First Bank of Texas.

- Of the fifteen banks surveyed in the Austin area, four charged non-customer check cashing fees. Bank One charges \$3.00, Comerica charges \$5.00, Guaranty Federal Bank charges \$5.00 for checks larger than \$100.00, and a Chase Manhattan teller acknowledged a fee but would not disclose the amount.

- Of the eighteen banks surveyed in Houston, two charged non-customers and one (World Savings Bank) did not cash checks for non-customers. Comerica Bank and First Bank of Texas both charge non-account holders \$5.00.

- Of the seventeen banks surveyed in Dallas, three charged fees. Bank One charges \$3.00, Comerica charges \$5.00, and Chase Manhattan Bank charges \$5.00 or 1.5% of the check, whichever amount is larger.⁹

- The nation's largest bank, Bank of America, cur-

rently charges different fees depending on the branch and state, according to a customer service representative. Consumers Union surveyed eight Texas branches and found none currently charge a fee. The national customer service representative stated there was a flat fee of \$3.00 for non-customers' payroll checks. This fee is part of a program that the bank started phasing in during June 2001 in Arizona and Nevada, and will probably extend to additional bank branches in the future.¹⁰ In its complaint filed in court, Bank of America stated that it intends to charge such fees in Texas as soon as possible.¹¹

Some of these banks are among the banks Consumers Union found to be under-represented as lenders in minority and low income census tracts compared to their own market penetration—one measure of service to underserved communities under the Community Reinvestment Act. For example, Chase, which charges Dallas non-customers the larger of \$5.00 or 1.5%, had a relatively low marketshare of mortgage loans in Dallas minority census tracts. Guaranty Federal, which will charge non-customers in Austin \$5.00 for checks larger than \$100, had a relatively small share of mortgage loans in Austin's low income census tracts.¹²

The Federal Reserve has found that over the last ten years, there have

been "sharp increases in the cost of banking services." With the help of the Office of the Comptroller of Currency (OCC), large national banks have been able to avoid state consumer protection laws by asserting that state laws are preempted and not applicable to nationally-chartered banks. In fact, the OCC filed a brief in support of the banks' preemption claims in the Texas "par value" case.¹³ Without the help of a consumer oriented federal regulator, "consumers have been left at the mercy of an increasingly consolidated, costly, and sometimes abusive industry," comments advocate Stacy Mitchell of the Institute for Local Self-Reliance.¹⁴

The new law protects the vulnerable

Representative Joseph Deshotel (D-Port Arthur) amended SB 314, the banking Sunset bill, to require banks to cash checks drawn on their own accounts at face value.¹⁵ Unlike standard check cashing outlets, the bank knows exactly how much money a customer has in his or her account and withdraws the funds directly. And, bank customers expect that when they present a check to another person, that check can be cashed at the bank on which it is drawn. This is part of the service that people buy when they pay normal account fees. To safeguard against identity theft, the new statute allowed banks to require reasonable identification, just as any one else



would when presented with a check.

The legislature specifically directed the Banking Commission to enforce this new law, and drafted it carefully to avoid the problem of federal preemption that might be asserted by nationally-chartered banks. Even so, the nation's largest banks filed suit—with the help of the OCC—to protect their check cashing fee revenues and continue to charge this fee while the courts sort out the preemption questions. Banks who keep low income consumers at a distance should be prohibited from finding new ways to make money off them. The question remains whether policymakers will be permitted to address this imbalance.

Footnotes

¹ Kennickell, Arthur B. et al, "Family Finances in the U.S.: Recent Evidence from the Survey of Consumer Finances," *Federal Reserve Bulletin* (January 1997), p7.

² Robinson, Kenneth J., "The Performance of Eleventh District Financial Institutions in the 1980s: A Broader Perspective," *Financial Industry Studies*, Federal Reserve Bank of Dallas (May 1990), pp20-21. More accurately, 36 percent occurred in the Eleventh Federal Reserve District, which is primarily Texas but also includes portions of New Mexico and Louisiana.

³ Bierman, Leonard, Donald R.

Frasier, Javier Gimeno, and Lucio Fuentelsaz, "Regulatory Change and the Availability of Banking Facilities in Low-Income Areas: A Texas Empirical Study," *SMU Law Review* (Volume 49, Number 5, July-August 1996), pp1438-1439.

⁴ Fricker, Mary, "Any Day Can Be Payday As Check-Cashing Stores Proliferate...", *The Press Democrat*, August 26, 2001.

⁵ Guaranty Federal Bank FSB, "Community Reinvestment Act Performance Evaluation" March 1999, p10-11.

⁶ Armendariz, Yvette "Check Cashing Machines How Among The Unbanked" *The Arizona Republic* August 12, 2001.

⁷ "Bank of America Adds Check-Cashing Charge", *The Seattle Times Company*, August 28, 2001.

⁸ Buggs, Shannon "Banks Fight Ban on Fee; New Law Would Prohibit Charge for Cashing Check" *Houston Chronicle*, August 29, 2001.

⁹ Buggs, Shannon, "New check-cashing fees not warranted," *Houston Chronicle*, April 9, 2000.

¹⁰ Bruce, Laura, "Noncustomer check cashing charges," June 12, 2001, www.bankrate.com/blm/news/chk/20010612a.asp.

¹¹ Wells Fargo et al, vs. Randall S. James Texas Banking Commissioner, NO.A01CA 538 JN, "Complaint", August 17, 2001.

¹² Consumers Union SWRO and

Austin Tenants' Council, *Access to the Dream 2000*, April 2000, tables on pp. 19, 22. Also, *Access to the Dream, Austin Focus 2000 (Supplement)*, p. 8 and table pp. 6-7.

¹³Buggs, Shannon "Banks Fight Ban on Fee; New Law Would Prohibit Charge for Cashing Check" *Houston Chronicle*, August 29, 2001.

¹⁴ Mitchell, Stacy, "Rogue Agencies Gut State Banking Laws" *New Rules*, Fall 2001.

¹⁵ SB 314, 77th Texas Legislature, SECTION 20. Subchapter A, Chapter 4, Business & Commerce 7 Code, is amended by adding Section 4.112 to read as follows:

Sec. 4.112. PAYMENT OF CHECK AT PAR.

(a) Except as otherwise provided by Chapter 3 or this chapter, a payor bank shall pay a check drawn on it against an account with a sufficient balance at par without regard to whether the payee holds an account at the bank.

(b) This section does not prohibit a bank from requiring commercially reasonable verification of the payee's identity before settlement of the check.

(c) In addition to any remedy provided by law, the banking commissioner, in coordination with the Finance Commission of Texas, shall ensure that payor banks comply with the requirements of this section.

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