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Banking Services for Low-Income Consumers: Is Everyone Receiving their Fair Share?

Cristin Koegen
Western Washington University

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Cristin Koegen

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HONORS THESIS

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Government has a responsibility to treat all its citizens with equal concern.[1] It is an undeniable fact that just as citizens have obligations to the government, such as obeying the laws passed by the legislatures and paying taxes, governments must reciprocate the favor to citizens by showing equal concern for all. One can view the relationship between government and citizens as a web of obligations: citizens must respect and obey the government, and government must respect and protect all citizens. In order for government to remain stable and legitimate, the web must be reciprocal; if citizens fail to pay taxes to the government, for example, then government is unlikely to respect and protect its citizens. Likewise, if government does not show equal concern for all citizens, citizens are unlikely to follow laws or pay taxes, therefore limiting or possibly removing virtually all of the government's power.

Few will deny that government has the right to demand certain levels of respect and obedience from citizens. After all, if government did not have the power to compel citizens to obey laws, society as we know it today would not exist. For example, private property, which plays a major role in the way our society operates, exists the way it does today because people in society respect and follow the laws created by the government. Without general compliance by the polity, private property could disappear. What many people do not consider, however, is that just as the government has a right to demand compliance from citizens, citizens also have a right to demand certain rights from the government and from one another. Because each citizen funds the government though taxes and gives power to the government through consistent obedience, governments owe citizens rights and protection, physical and otherwise.

[1] Ronald Dworkin is known for advocating the notion of 'equal concern'

"Rights cannot be protected or enforced without public funding and support."[2] It costs money to protect rights; police, firefighters, and the court system, for example, are all supported by tax dollars. However, money is not the only thing that secures rights. Although wealthy citizens may pay more taxes than poor citizens (in terms of dollars paid, not percentage of income), poor citizens support the existing government and laws through obedience and respect. Whether a citizen happens to be rich or poor, therefore, a citizen's claim to government protection is the same. All citizens have a right to demand equal concern and protection from the government. As Holmes and Sunstein explain in their book The Cost of Rights, "the American social contract should not be described simply as a rights-for-cooperation exchange, with government serving up rights and citizens answering with cooperation. The American social contract involves a more deliberative and reflective deal among rights-respecting citizens themselves, between the rich and poor..."[3] This notion seems intuitively correct, given that government is not an autonomous body on its own but is instead comprised and representative of society in general.

Given that government and citizens have mutual responsibilities to one another and that citizens have the same right to demand action from the government as the government has to demand action from citizens, it therefore follows that this mutual responsibility should be visible in legislation and social and governmental interaction. Laws and the effectiveness of those laws are the only method citizens have for judging the competency and fairness of government. In most cases, legislation clearly acknowledges this mutual responsibility. When legislation is executed, however, often

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[2] Stephen Holmes and Cass R. Sunstein. The Cost of Rights: Why Liberty Depends on Taxes. W.W. Norton & Company, New York, 1999. 15

[3] Ibid 179

times important elements of mutual responsibility are lost, or purposely left behind. An example of this written yet unpracticed mutual responsibility is in the banking industry.

Although banks are technically private entities, they occupy an unusual position in our society. In *Davis v. Elmira Savings Bank* in 1896, the United States Supreme Court stated that, "the national bank system was devised to provide a national currency secured by a pledge of United States bonds, and national banks are agencies or instruments of the government for that purpose." Congresswoman Maxine Waters (D-CA) expands on this notion: "For more than 100 years it has been a well-understood principle in American democracy that banks have a public responsibility. They are private businesses, but they have a public charter. They are capitalist enterprises, but they benefit from the full faith and credit of the federal government through deposit insurance."[4] People put their money in banks because they know that if the bank fails, the federal government will refund their money. The government is able to offer such protection because of their ability to collect public money, through taxes, and distribute it as they see necessary. Banks would not exist the way they do today unless the federal government offered this protection; if consumers' deposits were not insured, many people would undoubtedly find other places to keep their money.

Additionally, banks can ultimately shape the way a community develops by choosing to lend to certain people or projects and not funding others. Because banks play such a major role in each community, the federal government has a responsibility to

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[4] Congresswoman Waters. "Congresswoman Waters Responds to American Banker Article Supporting ATM Fees." January 4, 2000.
http://wwws.house.gov/search97cgi/s97_cgi?action=View&VdkVgwKey=http%3A%2F%2Fwww%2Ehouse%2Egov%2Fwaters%2Fpr010400%5Fatm%2Ehtm&DocOffset=1&DocsFound=2&QueryZip=congresswoman+waters+responds+to+american+banker+article&SourceQueryZip=&Collection=comms&Collection=members&Collection=other&Collection=coxreport&ViewTemplate=memberview%2Ehts&

ensure that banks are showing equal concern for all communities in which they operate. Thus, banks can be viewed as private entities that have many of the same obligations to citizens as the government, and must therefore not only acknowledge those obligations to provide equal concern in bank policies and programs but also must execute those obligations in practice. It is the government's responsibility to guarantee banks are fulfilling this obligation. If banks were not so closely tied to the federal government, then they would not have this additional obligation. However, given that the banking industry's survival ultimately depends on citizens' faith in the government (people put their money in banks knowing that the federal government will refund their money if the bank fails), and that banks play a pivotal role in community development (by funding community projects), banks must acknowledge their duties to both the government and citizens in their policies and in practice.

Regulatory Legislation—government's attempt to enforce banks' obligations

Historically, government has not only acknowledged their responsibility to ensure banks' are showing equal concern for all citizens, but has ensured banks' compliance through regulation. One of the most significant, if not the most significant, pieces of banking legislation in the last fifty years is the Community Reinvestment Act, or CRA. Enacted by Congress in 1977, "the Community Reinvestment Act is intended to encourage depository institutions to help meet the credit needs of the communities in which they operate, including low- and moderate-income neighborhoods, consistent with safe and sound banking operations."[5] Although the CRA is aimed primarily at ensuring that banks are fulfilling the credit needs, and not necessarily the daily-banking needs, of the communities in which they exist, it is an example of how the government attempts to

[5] Federal Financial Institutions Examination Council. http://www.ffiec.gov/cra/history.htm May 12, 2003

require banks, through legislation, to fulfill their role in the web of obligations that comprises our society. The CRA is only one example of how the government attempts to regulate the way banks do business; for example, when a bank receives a charter to operate, whether it is a state or national charter, banks are required to "meet the 'convenience and needs' of the communities they are chartered to serve.[6] Another example of a government attempt to enforce banks' obligations is the Dingell Amendment to HR 10, which subsequently did not become law, but required a study to determine "whether adequate services are being provided to low- and moderate-income neighborhoods and persons of moderate means."[7] These types of legislative language prove that the government believes banks are not simply just a business, like a grocery store, for example, and therefore have a greater responsibility to ensure they are fulfilling the needs of their communities. Considering the number of people who do not have a bank account in the United States, along with the fees most banks charge consumers, particularly low-income consumers, it is clear that banks are not fulfilling their part of the responsibility.

Are banks fulfilling their obligations?

Currently, banking fees are driving many consumers to seek other forms of financial services. An increase in fees has led many low- and moderate-income consumers to use check-cashing outlets for their banking needs, although these services are much more expensive than traditional bank services. The banking industry suggests

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[6] Deepak Bhargava, on behalf of The Association of Community Organizations for Reform Now, on Basic Banking and Government Check Cashing. Testimony before the Subcommittee on Consumer Credit and Insurance Committee on Banking, Finance, and Urban Affairs, U.S. House of Representatives. April 28,1994. "Banking Services in Low- and Moderate-Income Communities: A Two-Tiered Financial Services System?" House of Representatives, 103rd Congress, Second Session. 89

[7] Summary of Dingell Consumer Protection Amendment, House Resolution 10. 105th Congress. U.S. House of Representatives. http://www.house.gove/commerce_democrats/comdem/press/summary.htm

that their policies are simply good business practice that maximize profit and minimize fraud. However, an examination of these policies proves that they are not good business practice and are instead a way for banks to eliminate low-income consumers as customers. Additionally, the low-income consumers that are still using banks for their financial needs are charged more fees than any other sector of consumers; essentially, banks have shifted the burden of creating profit from all consumers to a select group of consumers, namely those with low-incomes. Wealthy people pay the least for their basic banking services, while those with low- and moderate incomes pay more than half of all bank fees.[8]

Since the banking industry has an unusually close relationship to the federal government, all consumers have a right to demand equal concern and protection from banks, just as citizens can demand equal concern from the federal government. The banking industry diligently maintains that their practices are nothing more than sound business practice, but under close examination, many practices prove to be questionable. This essay intends to reveal those contradictions: banks say their practices are justifiable, but consumer advocate groups and a growing number of government officials feel differently; banks say they do not discriminate against low-income consumers, yet current practices tell a very different story; banks say their decisions are made based on a desire to generate profit; yet, incorporating check-cashing operations with traditional bank functions would prove much more profitable than current practices. Additionally, examining these areas proves that banks are not fulfilling their role of showing equal concern for all consumers. This in turn means that government is also failing; by

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[8] Alex Berenson. "Banks Encourage Overdrafts, Reaping Profit." *The New York Times.* January 22, 2003. Business/Financial Desk, Section A. 4

allowing banks to skirt their obligations, government is not showing equal concern for all citizens. Much of the information contained in this essay is from confidential sources, and to avoid any compromising situations, bank names and individuals' names will not be used.

Lack of Banking Services for Low-Income Consumers

A significant portion of Americans today do not have a checking or savings account; some estimate the number of households without bank accounts is around ten million[9], while others believe the actual number is closer to 12 million households.[10] Some people unquestionably choose not to establish bank accounts for one reason or another: they may not have any extra money to put in the bank; or they owe child support and are afraid the government will garnish their money; or they have simply managed to control their finances without a bank account and see no benefit in having one. Regardless of the reason, many people have been deterred from opening a bank account, and as a result end up paying exorbitantly large amounts of money for basic financial services.

Having a checking account allows a customer freedom. A bank customer can write checks for their monthly bills instead of buying money orders each month. A bank customer has access to debit cards, therefore alleviating the necessity and danger of always carrying cash. If a debit card is lost or stolen, customers are usually not held liable for any fraudulent activity that may occur. Conversely, if an individual loses cash, the money is gone and an individual has no way to regain their lost dollars. A bank customer

[9] John P. Caskey. "Brining the Unbanked Household Into the Banking System." The Brookings Institute. http://www.brookings.edu/es/urban/capitalxchange/article10.htm
[10] Nicole Duran. "PIRG Assails Rise in Fees for Poorer Customers." *American Banker*. November 2, 2001. The American Banker Online: http://www.americanbanker.com

can cash checks without paying a high fee, assuming the check is from a well-known employer or if the customer has sufficient funds in their account to cover the amount of the check. Perhaps most importantly, a banking relationship can help establish credibility; many rental, loan, and job applications ask for or require bank account information, and the longer a bank account has existed in good standing, the more stable and credible an individual appears. Having a banking relationship also serves as a sense of security for customers by allowing them to have a safe, secure way to save and spend their money.

Opening a bank account is becoming increasingly difficult. An increase in the amount of fraud, such as identity theft, has forced banks to create additional barriers to establishing an account to deter criminals.[11] The problem, however, is that criminals are not the only people that are deterred from establishing a banking relationship; low- and moderate-income consumers are also deterred from opening accounts, and as a result are forced to use check-cashing outlets, commonly referred to as fringe banks, to take care of their financial needs.

To gain better insight into the local banking situation, eight banks in Bellingham were surveyed for this essay. Of the three local banks surveyed in Bellingham, (these three banks are chartered to operate only in the state of Washington), two require only a driver's license or passport to open a bank account. The other five banks, which are larger, nationally chartered banks, and the third local bank, require two forms of identification. The first must be a "primary" form of identification, such as a driver's license or passport, while the second piece of acceptable identification varies greatly from bank to bank. One bank requires only address verification for the secondary ID,

[11] Jan, a market executive at a large, national bank. Jan agreed to speak with me under the condition that her full name, along with her company name, would not be used in this essay.

which can be proven with a utility bill or by having your name and address listed in the local phone book. The other five banks all accept a credit or debit card, school ID card, or work ID that includes a photo. The other acceptable forms range from a Costco card to a Resident Alien card.

Although these identification requirements may seem easy enough to obtain, they can actually be quite difficult for low-income people to acquire. Most people can get either a driver's license or an identification card without much hassle. Obtaining a credit card can be difficult, however, and many lower income people do not have high enough credit scores to be approved for a card. It is possible for people with low credit scores to obtain credit, but it often costs money out of a customer's pocket; customers often must secure their credit card with cash deposits or pay high annual fees in order to obtain credit cards. Additionally, when most lower-income people go to a bank to establish an account, they rarely have accounts at other banks, which means they do not have a debit card to provide as a secondary form of identification. Most people are not students, which eliminates the option of the student ID. Usually only large employers offer identification cards with photos, therefore eliminating work IDs as an option for most people. Some banks accept Costco cards, but to obtain a Costco card a customer must pay a forty-five dollar annual fee, which can be very difficult for someone living on a limited budget. The only other acceptable IDs are "status" based; these forms of IDs are available to certain people depending on their "status," whether it is Native American or Resident Alien. If someone does not have one of these special "statuses," then these additional forms of identification are not available. Thus, surveying the list of secondary identification proves that opening a checking account is more difficult than it may first appear because of the additional identification barriers imposed by the banking industry.

Of the eight banks surveyed in the Bellingham area, only one does not offer a checking account that is free without any stipulations. The other seven banks offer checking accounts that are free of monthly fees and do not require any minimum balance. The eighth bank offers an account that is free of monthly service fees and does not have a minimum balance requirement but requires customers to use the ATM for their routine banking; if customers choose to use a teller to conduct their transactions, they are charged a $3.00 teller fee for each transaction.

While this is a positive development for those individuals who could not maintain the minimum balances banks previously required, it is far from a universal trend. In 2001, only 29% of all banks offered a free checking account.[12] This means that most people end up paying a fee for their checking account unless they are able to maintain the required minimum balance. According to one study, at the 300 largest banks, the average customer who cannot meet monthly minimums paid approximately $266 in fees in one year.[13] This is not surprising considering that one of the nation's largest banks requires a $6000 minimum balance to avoid a monthly service fee.[14] Additionally, a study by Consumer's Union in 1998 found that the vast majority of people who make $50,000 and less a year generally keep $1000 or less in their checking account, while most banks require a minimum balance of anywhere from $750-1500.[15] Thus, although the

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[12] Duran. 1
[13] Duran 1
[14] Although this bank does offer other accounts with lower costs, this is the cheapest account with unlimited check writing and debits—something most banks offer for free anyway.
[15] Consumer's Union. "Rising Bank Fees Create Financial Burdens for Low and Moderate Income Consumers." September, 1998. http://www.consumersunion.org/finance/0918factdc998.htm 1

prevalence of free checking accounts in Bellingham is a good sign for consumers, the fact remains that most banks in the country do not offer such products.

Although an increasing number of banks are not charging monthly service fees to have a checking account, banks have found other ways to make up for the loss of this previous source of revenue. According to a market executive for a large national bank, the emergence of the free checking account, a fairly recent phenomenon in the banking industry, has forced banks to raise fees in other areas, such as ATM and overdraft fees.[16] This has lead to a shift in the burden to generate profit. Previously, almost every customer paid a monthly service fee for his or her checking account, therefore generating revenue for the bank. With the emergence of the "free" checking account, the increase in other fees targets mainly one group: people who keep lower balances.

ATM fees vary from bank to bank and even within a bank. One bank charges its customers a monthly fee to have an ATM card, although debit cards are free of monthly fees. Each time a customer uses the debit card, however, the bank adds $.25 to the purchase total. If a customer has enough money on deposit with the bank, the bank can waive these fees—usually customers need approximately $10,000 on deposit to avoid being charged. Every bank charges their customers fees to use ATMS that are owned by a different financial institution, but, like the bank mentioned above, these fees vary depending on how much money a customer has on deposit with the bank.; usually these fees range anywhere from $.50 to $2.00 per transaction. These fees are in addition to surcharges ATMs may charge, which range from $.50 to $3.00. Examining these fees shows that the banks are clearly targeting people who have the least amount of money to spare: lower income people. By waiving these fees for people who can actually afford to

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[16] Jan

pay them, banks are shifting the burden of creating profit to people who have little power to fight back. People must pay the fees or choose not to use ATMs.

Overdraft and insufficient funds fees have also increased dramatically in the recent years. In 1998, a study conducted by the Consumer Federation of America concluded that the "banking industry collects $5.6 billion from consumers in bounced check charges." This amounted to $5.2 billion in annual profits. A bounced check fee, commonly referred to as an insufficient funds charge, occurs when a customer writes a check but does not have enough money in their account to pay the check. The study also concluded that banks were charging consumers "11 to 32 times what it actually costs them to process bounced checks."[17] According to a study conducted by the United States Public Interest Research Group, "big banks raised their fees for bouncing a check to $26.18 in 2001, from $23.08 in 1999, or an increase of 13%." At small banks, the fees rose approximately 3%. "Overall, bounced check fees for all banks increased 8% to $23.79 in 2001 from $22.01 in 1999." Of the eight banks surveyed in Bellingham, the average bounced check fee is $20.13. Although all customers can be charged overdraft fees, the customers who pay the fees most often are those who live on limited incomes. A simple addition error in one's checkbook register can end up costing a low-income consumer a significant portion of their monthly income. Although the increase in overdraft and NSF fees technically affects all customers, it is particularly troubling for low-income consumers.

Overdraft fees have become a major source of banks' revenue as they have adopted more liberal overdraft policies. Many people believe that if they write a check

[17] Consumer Federation of America. "Banks Charge Consumers Excessive Bounced Check Fees." June 25, 1998. http://www.consumerfed.org/bounceckpr.pdf

and they do not have enough money to cover it, the bank will not honor the check. Additionally, many people believe that their debit card will not authorize purchases if there are not sufficient funds in their account to cover the purchase total; people assume, that like a credit card, a debit card will stop working once a customer has reached their "limit", i.e. has run out of money. The truth is that neither is necessarily the case and banks have found it to be extremely profitable to have more liberal overdraft policies.

Every bank surveyed in Bellingham had a different policy regarding overdraft fees. One bank automatically allows every client to overdraw their accounts up to $100, but charges the customers a $22 fee for each check or purchase the bank pays after the account is overdrawn, with the maximum penalty for fees in one day being $110. One bank will not allow clients to overdraw their accounts at all. Most banks, both in Bellingham and nationally, fall somewhere in the middle and allow their customers to overdraw their account usually up to $25 but charge their clients a fee for each item paid into overdraft. Although $25 does not seem like much, it can end up costing the consumer quite a lot.

Consider an average college student who lives on a limited budget. Because the college student has been so busy with school, he has neglected to balance his checkbook. Nevertheless, college students must eat, so the student goes to McDonalds and spends $5 on lunch, not realizing the purchase overdrew his checking account by $1. Later on that day, the student decides to purchase a soda for $1.50. After an intense study session, the student realizes he forgot to buy a bluebook for his exam the next day, so he purchases a bluebook for $.50. Although his daily purchases only totaled $7, his bank fees would average $60.39 at a Bellingham bank, which is a significant amount of money for someone living on a limited budget. Banks previously claimed that they had to charge high fees to customers who overdrew their accounts to encourage people to use their accounts responsibly. The bank executive interviewed for this research believes that banks have an obligation to ensure that the people they provide with checks and a debit card are using their accounts in an honest way; otherwise, community businesses have the potential to lose large amounts of money due to "bad check writers."[18] The executive believes that imposing large fees on customers who are irresponsible forces people to pay for their mistakes in the hope that they will act more responsibly next time. It is interesting to note that the banking industry seems to feel a strong sense of obligation to the community businesses by ensuring banks provide only responsible consumers with checks, yet do not seem to feel any obligation to ensure all consumers are treated with equal concern.

All banks offer some sort of overdraft protection on their checking accounts. Some banks allow customers to link a savings account to their checking account to serve as overdraft protection while other banks use a credit card or credit line as overdraft protection. Although simply having overdraft protection is free at most banks, there are still fees banks assess when the overdraft protection is used, which range from $3 per day the overdraft protection is used to $5 per item paid with the overdraft protection. Overdraft protection undoubtedly saves consumers money because they do not incur overdraft or bounced check charges. The problem, however, is that the people who usually need overdraft protection the most, people with limited incomes, often do not qualify because they do not have any extra money to put in a savings account or they do

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[18] Jan

not have good enough credit to qualify for a credit card. Therefore, the people who pay most of the overdraft fees are the people who can least afford it.

In an article published in the *New York Times* in January 2003, author Alex Berenson reports that "at least 1,000 banks are encouraging customer with low balances to overdraw their checking accounts, allowing the banks to skirt credit laws and collect billions of dollars in new fees."[19] This is contrary to the statement made by the bank executive about the responsibility banks have to the community which they serve, but for good reason: banks are relying more and more on these fees for their profits, and charging overdraft fees is an easy way for banks to make money. "In 2001 fees represented 50% of income at banks..."[20] Berenson reports that the new overdraft program essentially guarantees that banks will honor most checks, even if a customer does not have sufficient funds to cover the item, usually with a maximum overdraft limit of $300. The average fee for this service, however, is $35 per check. The banks claim the program was implemented to help consumers; by honoring checks that customers write even when there is not enough money to pay the check, banks are helping customers to avoid costly merchant fees. Most merchants charge consumers anywhere from $15 to $40 if they write a check and it bounces, and the merchant fees are in addition to fees imposed by the consumers' own bank.

Industry analysts see the program in a much different light, however. "'The purpose of this is not, in my opinion, to help the consumer,' said J. Philip Goddard, deputy director of the Indiana Department of Financial Institutions. 'These programs are

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[19] Berenson. 1.
[20] Lavonne Kuykendall. "Scrutiny Having Little Impact on Fees." *American Banker*. March , 2002. CITE WEBSITE

only to increase fee income.'"[21] Part of the reason such programs have come under fire is that customers are automatically enrolled. Additionally, banks are promoting the service without clearly explaining the fees involved. By claiming that the overdraft protection is not a traditional loan product, banks do not have to conform to legal standards specifying maximum interest rates and fees. One of the most prominent banks to take part in the program advertises it in a brochure as follows: "Overdraft Protection: Did that last check catch you off-guard? Don't worry, we've got you covered." Nowhere in the brochure are fees mentioned. A bank representative said the fees are disclosed only when a customer chooses to open an account.[22] Consumer advocates claim it is precisely this sort of advertising that causes approximately 4% of bank customers to pay 50% of the total fees.[23] Banks are often unclear about how fees are assessed, and automatically enrolling customers in a program that allows them to overdraw their account up to $300 leads many low-income consumers to become victims of such programs.

Although these fees may seem excessive, banks claim there are very simple ways to avoid paying for your bank account: use your checking account responsibly. If an account holder maintains the required minimum balance and never overdraws their account, then theoretically the customer should not pay any bank fees. However, it can be very difficult, if not impossible, for a person living on a limited budget to achieve this. Additionally, once a low-income consumer overdraws their checking account, it can be extremely difficult to bring the account to a positive status. Fees can quickly snowball to an unmanageable amount, and many times banks are forced to close the account and send the owed balance to a collection agency.

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[21] Berenson. 3
[22] Berenson. 2
[23] Berenson 4

Check Cashing Requirements and Fees

Because of the minimum balance requirements and fees associated with many bank accounts, a sizable portion of society has chosen not to open a bank account. Although these "unbanked" may believe they are escaping bank fees, banks have found a new way to make money: non-customer check cashing fees. Traditionally, anyone could go to a bank and cash a check if the check was drawn off an account held at that bank. Although banks are still cashing these checks, some banks are now charging consumers a fee to cash a check if they do not have a deposit account at the bank, even when the check is from one of the bank's own customers. These fees currently range from $3.00 to 1.5% of the value of the check.[24] Banks claim that people can avoid the fees by opening an account or cashing the checks elsewhere, and claim that the fees are not solely to drive non-customers away but are an effort to provide their own customers with better service. By having fewer non-customers in the bank, the time their customers spend waiting in line to see a teller will be reduced, therefore increasing customer satisfaction.[25] Again, these fees target mainly one group: low-income consumers. Most Americans who do not have bank accounts have low or moderate incomes, and by charging these consumers a fee to cash a check, (even when there is little or no risk, from the bank's perspective, because the bank can verify whether the check is forged, has sufficient funds, etc) banks are driving these potential customers to seek other forms of financial services.

None of the banks surveyed in Bellingham had a formal policy of charging a non-customer check-cashing fee, although one bank did admit that particular branches reserved the right to implement the fee if they wanted, which is $5. Another Bellingham

[24] Nicole Duran. "Judge Blocks Texas Ban on Noncustomer Fee." *American Banker.* September 5, 2001. The American Banker Online. http://www.americanbanker.com 1
[25] Jan

bank does not currently charge non-customers to cash a check, although a bank representative admitted that branches in other states have started to implement a check-cashing fee, so it is likely that they would soon implement the fee as well. Again, the situation in Bellingham seems optimistic but is clearly the exception, not the rule.

In addition to not wanting to pay a fee to cash a check, many people choose not to cash their checks at a bank because they cannot provide acceptable identification. Most banks require the same forms of identification to cash a check that they require to open a checking account. As previously discussed, these forms of identification can be difficult for low-income consumers to produce. Since many people do not want to or cannot cash their checks at banks, check-cashing outlets have become a staple financial service for many consumers.

Check-Cashing Outlets

Although the "unbanked" are not utilizing traditional financial services, they still need a place to cash their paychecks. Check-cashing outlets, or CCOs, have emerged as a viable alternative to banks to fill the void banks are unable, or perhaps unwilling, to fulfill. CCOs, commonly referred to as fringe banks, cash all types of checks but charge a fee of anywhere from 1%-6% of the value of the check.[26] Some CCOs also charge a transaction fee.[27] CCOs are able to charge such high fees because they are scarcely regulated; only a few states have limits on what CCOs can charge consumers, and currently Washington state has no such regulation. CCOs do not offer traditional banking products, such as checking or savings accounts, but do offer products many banks do not, such as prepaid phone cards, payday loans, and stamps. CCOs are primarily concentrated

[26] Gregory D. Squires and Sally O'Connor. Color and Money: Politics and Prospects for Community Reinvestment in Urban America. State University of New York Press, 2001. 148
[27] Moneytree homepage. www.moneytreeinc.com

in low-income and non-white communities, which coincidentally are the neighborhoods which also have the highest numbers of "unbanked" consumers, ie. consumers who do not have bank accounts.[28] Between 1986 and 1992, the number of CCOs listed in the yellow pages more than doubled, and the check-cashing industry is currently one of the fastest growing businesses in the country.[29]

CCOs currently serve an important role for many consumers' finances. As Mike Shelton, an owner of five check-cashing stores in Atlanta says, "If there wasn't a need we wouldn't be here. These people aren't served by banks. Where are they going to go?"[30] Although CCOs clearly fill the void left by banks, they are far from being beneficial for consumers. If a CCO charges 2.9% to cash a payroll check, which is average in Bellingham, then a person who makes $30,000 a year would pay approximately $870 in fees in one year to cash their checks, in addition to any fees they may incur to purchase money orders to pay bills. This is far more than the average checking account at a bank. If a consumer pays a monthly service fee for their account, the most they would pay at any Bellingham bank would be $180 a year, and that account would include free checks, free money orders, free travelers checks, and a free safety deposit box. Moreover, although banks are charging their customers more fees than ever before, in 1990 CCOs collected $700 million in fees from consumers.[31] With the explosion of CCOs across the nation, one can safely assume this number has more than doubled in the last ten years.

If CCOs are so much more expensive than banks, then why do so many people choose to use them? There are various answers. First, although banks may be cheaper

[28] Squires and O'Connor. 144
[29] Squires and O'Connor. 142
[30] Kane. 53
[31] Squires and O'Connor. 143

than CCOs, CCOs are not as intimidating as banks. Surveys have revealed that many of the unbanked do not feel comfortable dealing with banks because they feel that banks do not take a personal interest in them as a client.[32] One does not have to look to surveys to understand why certain people feel more comfortable cashing their checks at a CCO rather than dealing with a bank, however.

Advertising is a clear example of why CCOs are not as intimidating as banks. Take, for example, the television ads produced by Moneytree, one of the most prominent CCOs in the western United States. The commercials feature two adults dressed up in caterpillar costumes sitting in a cartoon like tree talking about where they can get a loan or where they can cash their paycheck. Although it may seem like an odd choice for a marketing campaign, it is actually quite effective. After viewing the commercial, it is impossible to think of Moneytree in the same light as a bank. In fact, the viewer gets the sense that Moneytree is quite the opposite of a bank and is instead a friendly, down-to-earth business that helps people get their cash quickly so they can go on with their lives. It would be virtually impossible to be intimidated by a business that advertises their services with adults dressed up in caterpillar costumes.

Second, CCOs are more convenient. CCOs are open later hours and are present in neighborhoods where banks are scarce. Banks have recently abandoned many low-income and minority neighborhoods, and the branches they do keep in low-income neighborhoods are still open only because the bank wants to receive a positive CRA review. Among other things, the CRA requires that banks have branches in low-income neighborhoods and make loans to low-income people. Although banks are required to maintain branches in low-income neighborhoods, the branches rarely pass profitability

[32] Caskey. 1

thresholds so banks have closed as many of these branches as they can while still remaining CRA complaint.[33] Even though consumers could save more money by driving to a bank, convenience often takes precedence over other things. CCOs are often compared to mini-marts like 7-11; even though people know it costs more to buy groceries at 7-11 than it does at a grocery store, many people still choose to buy their groceries at 7-11 because it is more convenient. Moreover, many low-income consumers do not have cars and thus cannot drive to a bank, even if they preferred banks to CCOs.

A third reason, and perhaps the most prevalent reason, many people choose to use CCOs for their financial needs instead of banks is consumers fear that bank fees will spiral out of control. Consider the example of the college student. In one day, the college student received approximately $60 in fees for $7 in purchases. Coupled with the new liberal overdraft policy many banks are adopting, allowing customers to overdraw their accounts up to $300, many people would rather use a CCO. At a CCO, the fees are charged up front. At a bank, customers can potentially be charged many unanticipated fees. Although CCOs are more expensive, they are also more predictable.

Good Business Practice or Discrimination?

Many consumer advocate groups claim that the fees and identification requirements banks charge and require are a way for banks to discriminate against low-income people. Because of these reportedly discriminatory practices, low-income consumers are driven to CCOs for their financial services, which end up costing consumers much more than banks. Although an increasing number of banks are now offering free checking accounts, many consumers still do not want to have a bank account because they fear that other fees, such as overdraft and ATM fees, will be too

[33] Jan

expensive. This is a legitimate concern because low-income consumers pay more fees than any other consumers do. Additionally, many low-income people do not have the option of opening a checking account because they do not have the proper identification. As discussed above, banks that require two forms of identification require very specific IDs, such as a credit card or a Costco card. Many low income people do not have credit cards, either because they cannot afford them or their credit score is too low, and getting a Costco card costs $45 a year—a hefty sum for someone living on a limited budge.

The market executive interviewed for this article was very clear about the impact of the free checking on the banking industry: although it is technically free for the consumer, banks still need to collect revenue from their customers in order to remain profitable. She also stressed that banks are not non-profits. They are instead for-profit corporations that have a primary obligation to their stockholders to ensure they are a profitable business. Although banks do hold some obligations to their community, the market executive claims that banks are no different from any other business that seeks to earn a profit. Every business, whether it is a retail store or an insurance company, chooses to market its product to specific consumers. Some businesses want to attract the business of young female consumers; others aim to attract middle-class, middle-aged consumers. She claims that the identification requirements and fees that banks charge are often indicative of the consumers individual banks are seeking. A bank with high minimum balance and identification requirements is probably targeting wealthy consumers, while a bank that offers free checking and only requires a driver's license and $50 to open a checking account is probably targeting the average consumer.

The market executive also claims it is absurd to assert that what banks are doing is discriminatory. She claims that most of a bank's decisions regarding identification requirements and fees come from a desire to make the most money and have the least amount of fraud, not out of spite because banks do not want to have low-income consumers as their customers. She claims that a large portion of banks actually seek to have the largest market share, meaning they want to have the most accounts, and do not care if the consumers are millionaires or making $30,000. Some banks want all consumers' business.[34]

Some of what this market executive claims is undisputable. Banks are not non-profits. Like any other business, one of their sole functions is to make a profit. It also makes sense that since banks have started to offer free checking accounts, banks have been forced to make up the previous source of revenue in new ways, and increasing other fees, like overdraft fees and ATM fees, is a simple way to accomplish it. It is also true that banks are a business, and as a business, have certain rights to primarily target whichever consumers they choose.

Profit vs. Image

One clear contradiction, however, is the emphasis banks place on profit with the simultaneous abandonment of low-income consumers. If a bank's sole aim were to make a profit, then it would make more sense to incorporate some of the CCO functions with traditional bank functions so a bank could better serve low-income consumers while increasing fee income. In 1990, CCOs collected approximately $790 million in fees from consumers, and since the number of CCO has increased dramatically in the last decade,

[34] Jan

one can assume CCOs are now collecting more fees than ever.[35] Additionally, the money that CCOs collect is primarily profit; between 1988 an 1991, the average rate of return on equity for national banks was 9%, while CCOs reported returns of 109%.[36] Therefore, if profit is truly a bank's primary goal, it makes sense for banks to venture into these markets.

John P. Caskey, an Economics Professor at Swarthmore College, outlines several services that banks should introduce to help bring the unbanked back into the banking system. First, he believes banks should provide fee-based check cashing services similar to those provided by CCOs. Caskey says these do not have to be like a traditional banking center and even recommends calling them bank outlets to distinguish the two. He says they should provide low-cost money orders and sell envelopes and stamps so people can pay bills while they are at the bank, much like CCOs currently do, but should also offer traditional checking and savings accounts.[37] He also says that these bank outlets should have "starter" accounts that encourage savings and cannot be overdrawn.[38] Additionally, Caskey says these outlets should provide "deposit-secured emergency loans to individuals whose credit histories make them ineligible for traditional mainstream credit."[39] Finally, these banking outlets should provide financial literacy programs to help people understand the benefits of a sound financial plan.[40]

Although these suggestions may seem far-fetched, they are actually viable options for banks to adopt. Not only would they be extremely beneficial to the millions of people

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[35] Kane. 53
[36] Squires and O'Connor. 143
[37] Caskey. 4
[38] Caskey. 5-6
[39] Caskey. 6
[40] Caskey. 7

who do not currently have a bank account, but they would also be profitable for banks. If banks started to compete directly with the thousands of CCOs that currently service the unbanked, they would easily be able to attract consumers by offering competitive check cashing fees and additionally offer traditional banking products. Consumers would save money in the end by establishing bank accounts, therefore alleviating the check-cashing fees they currently pay each week, and banks would make money by collecting check-cashing fees and having more deposit accounts. Additionally, banks would be better servicing the needs of the their communities than they currently are; by providing check-cashing and traditional bank services, all consumers could be bank customers, not just consumers who have extra money to keep in a bank account.

Given the potential profitability for banks, it is unclear why banks have not capitalized on this growing market. One possibility is that banks do not want to damage their image of being a sound financial institution. By venturing into low-income markets and incorporating CCO functions with traditional bank functions, banks run the risk of being perceived like CCOs are currently perceived: as an expensive but quick way to handle financial transactions. Banks could easily avoid a faulty reputation by giving a different name to "branch outlets", as Caskey calls them, so people would know that not all banks provide CCO services. Additionally, banks could use a different company name for "branch outlets," therefore making no public connection between the traditional bank and the branches that provide CCO functions.

Another related reason banks may not want to venture into the CCO business is that it would bring a different demographic of people into banking centers that currently cash checks at CCOs, such as the unemployed or those on welfare. Banks strive to make their banking centers a friendly, comfortable yet professional environment, and having poor people in the lobby, for example, might "tarnish" the illusion that banks strive to create. It also may make some customers uncomfortable; many wealthy people do not frequently encounter economic diversity when conducting their financial business.

The market executive interviewed for this research had a very different reason for banks not venturing into the CCO business: it is not what banks do. Banks make a profit by creating life-long relationships with consumers. A bank's goal is to have all of its customers' financial business: they want to have their checking accounts, credit cards, car loans, mortgages, and retirement accounts. To provide check-cashing services would go against what banks do. Banks do not simply want to make a quick profit. They want to make a profit over a customer's lifetime.[41]

However, looking to recent legislative attempts to further deregulate banks, it is clear that banks frequently try to move into areas that are not traditionally bank business, such as insurance. House Resolution 10, presented in the 105th Congress, aimed at further bank deregulation to allow banks to merge with investment companies, insurance companies, and other commercial companies.[42] The proposed legislation shows that banks do not eliminate certain areas of business because they are not "what banks do." Banks want to make a profit, and if adopting new practices and merging with new companies creates profit, then banks are generally in favor of such action.

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[42] Prepared Statement of John G. Heimann, Chairman of Global Financial Institutions, Merrill Lynch & Co., Inc, on behalf of the Financial Services Council. Hearing before Committee on Banking, Housing & Urban Affairs on HR 10. U.S. Senate, 105th Congress, 2nd session. June 18, 1998.

Bank Rights vs. Consumer Rights

Banks claim they are simply a business, and as such have a right to target whichever consumers they choose. Although banks are for-profit businesses, they are chartered and insured by the government. Almost all banks are members of the Federal Deposit Insurance Corporation, which insures consumers' deposits up to $100,000. Additionally, when a bank receives a charter to operate, whether it is a state or national charter, banks are required to "meet the 'convenience and needs' of the communities they are chartered to serve."[43] By alienating a large portion of their communities, banks are hardly fulfilling the terms of their charters. The fact that banks are so closely linked to the federal government also proves that they are not like any other business; most businesses to do not have their assets insured by a special federal corporation. Banks operate successfully because they benefit from their close relationship to the federal government, and therefore have an obligation to ensure they are treating all consumers with equal concern, just as government must do. They cannot alienate low-income consumers and say their practices are just.

To reiterate, just as government has a right to demand action from citizens, citizens have rights to demand action from government and, because of their unusual relationship to government, banks. Since banks are closely related and strictly regulated by the federal government (although they are currently less regulated than they once were because of the bank deregulation that occurred in the early 1980s), banks cannot be viewed as "just another business" that chooses to market their services to particular sectors of society. Banks play a large role in the community and can ultimately affect how a community develops by choosing to lend money to certain projects while

[43] Bhargava, 89

excluding others, therefore occupying an unusual role in the community. Banks are not comparable to most community businesses, like a grocery store, for example, and therefore should be closely regulated to ensure that the control they have over the development of a community is properly and fairly applied.

Although banks are justified in attempting to find new ways to make profit since the emergence of the free checking account, the shift in the burden to create profit is not justifiable. Previously, banks generated revenue by collecting monthly fees from virtually all their client. Now, banks are waiving fees for their wealthy clients and instead targeting low-income customers, collecting half of all fees from only 4% of customers.[44] If similar tactics were used in other areas, society would find it highly offensive; society would never allow 4% of the population to pay 50% of all taxes. In banking, however, this gross injustice continues as banks fail to fulfill their obligations to society by targeting only certain consumers, namely higher-income consumers, for their services and charging ridiculously unequal fees to low-income consumers who continue to use banks for their financial services.

Legislative Attempts—is government fulfilling its responsibility?

Both sides of this argument present convincing arguments, and it is difficult to say definitively that the identification requirements and fees banks charge are discriminatory or whether they are simply good business practice. Looking to the history of legislation attempting to regulate the fees banks charge consumers, however, proves there is growing support in Congress to closely regulate the way banks do business. Since the early 1990s, various bills have been proposed that attempt to limit the fees that check-cashers and banks can charge and to require that banks provide low cost or free checking accounts for

[44] Berenson 4

low-income people. In 1993, Representative Cleo Fields introduced HR1448, which sought to limit the amount anyone could charge for cashing a check. The same year, HR 2350 was introduced, which required banks to offer low-cost or free checking accounts that did not require minimum balances, direct deposit, and allowed customers to use a human teller for free instead of an ATM for their transactions.[45] Neither pieces of legislation ever got of out committee, however. [46]

During the 105th Congress, Congresswomen Waters (D-CA) proposed the Bank Fee Accountability Act, which "would have included an institution's bank fee performance as part of the service test of its Community Reinvestment Act (CRA) evaluation." She also introduced the Bank Fee Reduction Act, "which would have rewarded banks who reduced their fees with higher deposit insurance, subject to a safety and soundness approval by the appropriate regulator." During the 106th Congress, Representative Waters introduced HR 3503, which would provide low-cost basic accounts and would eliminate ATM surcharges. [47] In 1998, Representative DeLauro sponsored HR 4811 which would prohibit banks and credit unions from charging customers to use a human teller to conduct their transactions.[48] All three of these pieces of legislation were also abandoned in committee.

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[45] House Resolution 2350, 103rd Congress, 1993. http://thomas.loc.gov/cgi-bin/query/z?c103:H.R.2350:
[46] Testimony of Congressman Cleo Fields before the Subcommittee on Consumer Credit and Insurance of the Committee on Banking, Finance, and Urban Affairs on H.R. 1448, April 29, 1994. "Banking Services in Low- and Moderate-Income Communities: A Two-Tiered Financial Services System?" House of Representatives, 103rd Congress, Second Session. 40-41
[47] Congresswoman Waters. "Congresswoman Waters Responds to American Banker Article Supporting ATM Fees." January 4, 2000.
http://wwws.house.gov/search97cgi/s97_cgi?action=View&VdkVgwKey=http%3A%2F%2Fwww%2Ehouse%2Egov%2Fwaters%2Fpr010400%5Fatm%2Ehtm&DocOffset=1&DocsFound=2&QueryZip=congresswoman+waters+responds+to+american+banker+article&SourceQueryZip=&Collection=comms&Collection=members&Collection=other&Collection=coxreport&ViewTemplate=memberview%2Ehts&
[48] HR 4811, 105th Congress, 1998. http://thomas.loc.gov/cgi-bin/bdquery

Perhaps the most significant piece of legislation presented in Congress in recent years is HR 10, the Financial Services Act of 1998. The act had numerous components, but the most significant components for present purposes are the following: "To ensure compliance by depository institutions with the provisions of the Community Reinvestment Act of 1977 and enhance the ability of depository institutions to meet the capital and credit needs of all citizens and communities, including underserved communities and populations" and "To enhance the availability of financial services to citizens of all economic circumstances and in all geographic areas."[49] In essence, the Financial Services Act attempted to regulate the things many people find despicable about banks: the lack of accessibility for low-income consumers and the exorbitantly high fees. HR 10 was debated in the House for over a year and eventually passed. In the Senate, however, Senator Lott continued to offer amendments to the Act and it eventually died.

It is interesting to note that HR 10 also included provisions that further deregulated banks by allowing them to merge with insurance companies, as previously discussed. Many of the banks that supported the deregulation wanted the low-cost checking account provisions eliminated from the bill, claiming that such accounts already existed in 90 percent of all banks.[50] If these accounts were as prevalent as the American Bankers Association claimed, then banks would have little reason to oppose legislation mandating a product they already offered. Statistics prove that not even half of all banks offer low cost or free checking accounts, however. This is a clear example of why it is

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[49] HR 10, 105th Congress, 1998. http://thomas.loc.gov/cgi-bin/query/F?c105:1:./temp/~c105oHm2DO:e861:
[50] Prepared Statement of William T. McConnell, Chairman and CEO of Parks National Corporation, Newark, OH; President of American Bankers Association. Hearing before Committee on Banking, Housing & Urban Affairs on HR 10. U.S. Senate, 105th Congress, 2nd session. June 18, 1998. 189

difficult to pass legislation such as HR 10: bank lobbyists often distort the facts in such a way as to make the legislation appear unnecessary when the facts clearly show low-income consumers need such protection.

This list of legislation is by no means exhaustive, but it does prove one thing: there is growing support in Congress to ensure that banks are fulfilling their obligation to treat all consumers with equal concern. Although these particular pieces of legislation did not pass one or both houses of Congress (and in some cases never made it out of committee), the fact that the number of such pieces of proposed legislation has increased in recent years shows there is growing support for such regulation.

Conclusion

Are banks fulfilling their obligations to consumers by showing equal concern for all? Given the evidence, the answer is obviously no. Not only are a growing number of low-income consumers forced to use CCOs for the financial needs instead of banks, the low-income consumers who do continue to use banks for their financial services pay more fees than any other sector of consumers. Moreover, banks have added additional barriers to opening a checking account, such as requiring two specific forms of identification, that make it difficult, if not impossible, for low-income consumers to become bank customers. Coupled with the liberal overdraft policies many banks have recently adopted, low-income consumers have no other choice than to frequent CCOs instead of banks.

This unequal treatment is without justification. From a profit perspective, it would be more profitable for banks to incorporate CCO functions with traditional bank functions. Banks could then directly compete with existing CCOs by offering competitive check-cashing fees, and would undoubtedly acquire a substantial number of new checking accounts by having more consumers in the banking center. This would lead to more profit for banks, and better banking services for low-income consumers.

From the perspective of the citizens and the governments, banks' actions are wholly unjustifiable. Banks directly benefit from the strength of the government and the trust citizens place in the government. Because they benefit from their relationship to the government (who is in turn comprised of citizens), banks have a responsibility to ensure they are showing equal concern for all consumers. The relationship must be beneficial for all parties, banks and citizens. Currently, banks are clearly profiting much more than citizens.

Because banks play such an integral role in the community, they do not have a right to target certain consumers for their services; they cannot, for example, serve only wealthy clients, as an upscale fitness club may choose to do. Banks benefit from all citizens' consistent obedience and faith in the government, and thus have an obligation to ensure they are providing for all citizens, not only citizens who have the most investable assets. It is clear that banks are not going to fulfill this responsibility unless they are forced by legislation to do so.

Although banks are clearly not fulfilling their societal obligation of showing equal concern for all citizens, they are not the only faulty player in this game. The government holds the ultimate responsibility to ensure that banks are fulfilling their obligations. Legislation such as the CRA plainly shows that government believes this responsibility exists; otherwise, they never would have passed legislation mandating equal lending requirements for all consumers. An increasing number of Congressmen are also acknowledging this failure by attempting to pass new legislation mandating banks show equal concern for all consumers. It is clear that banks will not address this issue unless they are forced to do so, therefore leaving the fate of banking services for low-income consumers in the hands of the federal government. Unless new legislation is passed soon, low-income consumers can expect to pay increasing bank fees or resort to CCOs for their financial services, neither of which are desirable outcomes.