

Bridging the divide digest: Positioning purpose and profit through financial inclusion



Regulatory developments in the financial services industry (FSI) on financial inclusion

Leading off

As the world constantly makes way for progress, the future of financial services is rapidly taking shape. Businesses should heed the call to embrace inclusion by acting in more direct, meaningful, personalized, and socially responsible ways. Doing so can help create a more inclusive world, where communities have equal access to financial opportunities, and a more collaborative world, where firms within the industry collaborate with each other and serve the community.

On many counts, progress is being made; however, it will likely take continued focus to reach a sense of equilibrium on the inclusion front. As FSI faces a pivotal point in its evolution, policymakers are encouraging the industry in cultivating a better world with policies that aim to make things easier for the financially underprivileged.

Continuing from our [August 2022 issue](#), we bring forward the latest developments taking place in the industry regarding how discrimination is being brought under the spotlight with reintroduction of bills and other notable regulatory advances.

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Brown, colleagues reintroduce legislation to fight discrimination from financial institutions¹

There are many Black and Brown Americans who experience racial profiling and unequal treatment when trying to access services at banks and other financial institutions, and who don't have anywhere to turn to hold financial institutions accountable.² In order to ensure that all people receive equal treatment when trying to access services at financial institutions, Sherrod Brown (D-OH), chairman of the Senate Committee on Banking, Housing, and Urban Affairs, reintroduced the Fair Access to Financial Services Act that would prohibit banks and other financial institutions from discrimination in the services they offer on the basis of race, color, religion, national origin, or sex (including sexual orientation and gender identity).

According to Senator Bob Menendez, "It is unacceptable that financial institutions can get away with discriminating against Americans on the basis of race, color, religion, national origin, sexual orientation or for any other reason and as our economy continues to recover from the pandemic. It is more important than ever that we ensure as many people as possible can participate in our economy through broad access to financial services such as bank accounts, loans, and mortgages, while also holding financial institutions accountable for any discriminatory practices."³ The bill has been endorsed by several prominent national civil rights and consumer protection organizations including the National Urban League, the Center for Responsible Lending, and the National Consumer Law Center.⁴

Superintendent Adrienne A. Harris announces new guidance prohibiting unfair and deceptive overdraft and non-sufficient fund fees⁵

To help making affordable banking products and services available to underserved communities, including low- and moderate-income individuals, immigrants, and people of color, the New York State Department of Financial Services (NYDFS) is setting clear expectations for New York banks and credit unions to prevent unfair and deceptive overdraft and non-sufficient funds (NSF) fee practices. Additionally, the new NYDFS guidance to New York-regulated banking institutions promotes financial inclusion, thereby encouraging these institutions to address demand for low-cost banking services and to prevent harm to the most vulnerable consumers of banking services.

The NYDFS issued guidance to curb overdraft fees and enable consumers to save more of their hard-earned money for other household needs. Specifically, the guidance informs all regulated depository institutions of the need to avoid the following practices:

- Authorize Positive, Settle Negative (APSN) Transactions: Charging consumers an overdraft fee even though the consumer had a positive account balance sufficient to cover the transaction when it was authorized by the institution.
- Double Fees Arising from Futile Overdraft Protection Transfers: Charging a fee to consumers for an "overdraft protection" transfer from a consumer's other account that is of an insufficient amount to avoid an overdraft, resulting in the consumer being charged both an overdraft fee and a fee for the "overdraft protection" transfer.
- Representment Fees: Charging a consumer more than one NSF fee for the same declined transaction, without adequate disclosures, where the merchant represents the same transaction to the banking institution in a second or third attempt to collect funds.

As NYDFS seeks to build an equitable and transparent financial system for all New Yorkers, it has taken significant steps to achieve this mission. This guidance follows April's guidance to expand access to low-cost bank accounts for New Yorkers,⁶ which encourages state-regulated banks to offer "Bank On" certified accounts to fulfill the state's affordable banking requirements. Bank On accounts eliminate overdraft fees and are critical to attracting individuals from underserved communities into the banking system. More recently, NYDFS undertook a data-driven review of check cashing fees and the methodology used to calculate such fees, knowing that many New York consumers, particularly members of immigrant communities and people of color, depend on check cashers as an essential financial service.

Other notable regulatory developments

Governor Hochul signs legislation to continue commitment to affordable banking in New York State⁷

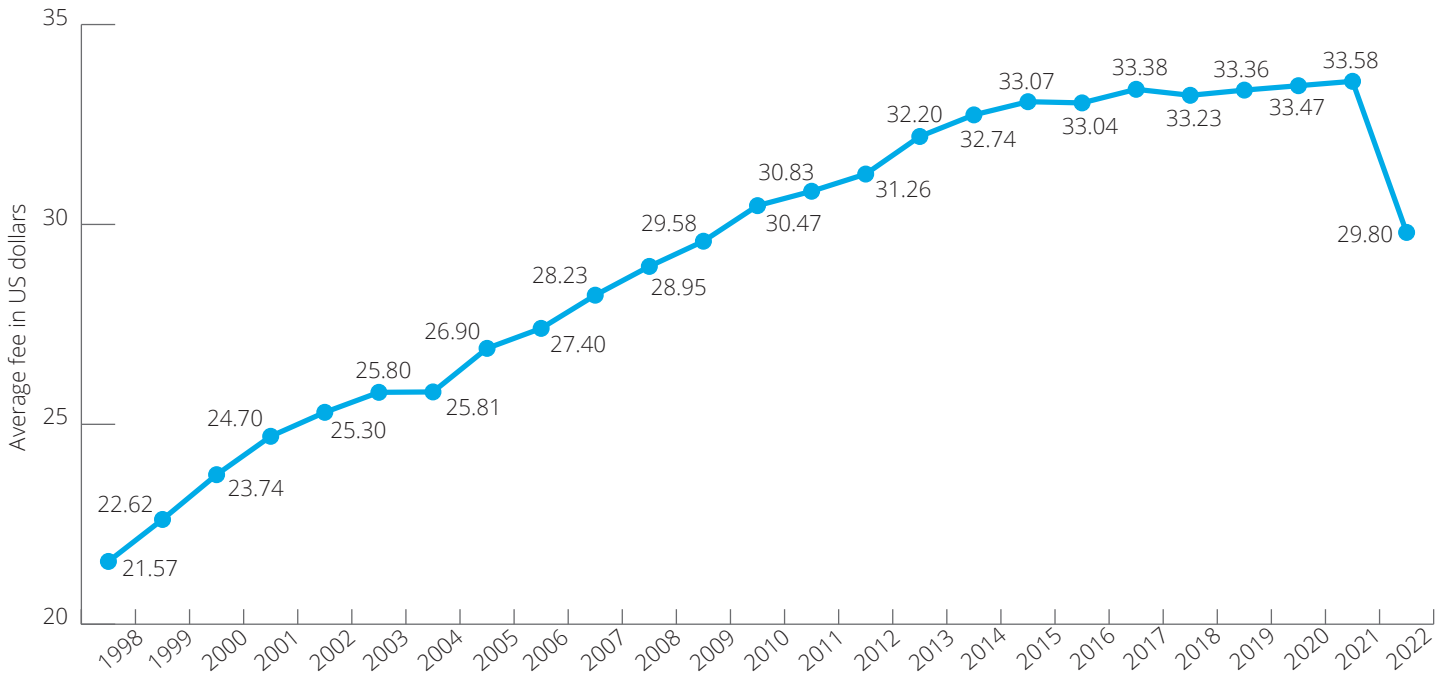
In a move to help low-income New Yorkers access affordable banking options that protect and grow hard-earned savings, NYDFS will conduct a study on bank overdraft fees in New York State. The report will inform the state's ongoing efforts to address excessive finance fees.

This law directs NYDFS to conduct a study on overdraft fees in New York State and examine:

- The total amount of overdraft fees paid in New York
- Geographical distribution of such fees
- Whether any communities have high rates of overdraft fees and the possible reason for such high rates
- The percentage of overdraft fees reduced through direct or indirect negotiation
- How institutions disclose consumer rights relating to fee negotiation

As shown in the following graph, in the United States, the average bank overdraft or NSF fee reached a high in 2021 of nearly \$35, after several years of growth. In 2022, it has decreased to just under \$30.

Figure 1: Average bank overdraft fee in United States



Source: Statista, "Average bank overdraft fee in the United States from 1998 to 2022," accessed November 30, 2022.

Assembly member Patricia Fahy commented, "Far too many New Yorkers, especially those with lower incomes and those from disadvantaged communities, grapple with predatory overdraft fees that are obstacles to personal financial stability. By directing the NYDFS to study overdraft fees and their impacts on New Yorkers, we'll have a clearer idea of how best to alleviate this growing financial burden."⁸

National Credit Union Administration (NCUA) charters People Trust Community Federal Credit Union⁹

To build more secure financial futures with safe, fair, and affordable financial products and services, NCUA granted a federal charter and Share Insurance Fund coverage to People Trust Community Federal Credit Union in Arkansas, effective September 16, 2022.

The credit union, sponsored by the People Trust Community Loan Fund (a nonprofit Community Development Financial Institution [CDFI] offering loan products), will serve and open new doors to low- and moderate-income communities in central Arkansas. The primary focus will be on serving the people in Pulaski and Saline counties with deposit-related products and enabling services that CDFI cannot provide.¹⁰

The credit union will be commencing operations in early 2023, offering basic saving and lending services such as share accounts, share draft accounts, share certificates, new and used auto loans, unsecured loans, direct deposit, online access, debit and credit cards, and ATM access.¹¹

Federal Housing Finance Agency (FHFA) proposes changes to help low-income populations in Texas, New Mexico, Arizona, and California (colonias)¹²

To remove barriers to the FHFA's Duty to Serve (DTS) activities in high-needs rural regions, FHFA is proposing to amend its Enterprise Duty to Serve Underserved Markets regulation in which it proposes to add a definition of "colonia census tract," which would act as a census tract-based proxy for a "colonia," and to amend the definition of "high-needs rural region" in the regulation by substituting "colonia census tract" for "colonia."

The proposed change would also update how "rural area" is defined, so that all colonia census tracts are included, no matter their location.

According to FHFA Director Sandra L. Thompson, "FHFA is committed to promoting affordability, equity, and sustainability in the nation's housing finance markets, especially in underserved communities. With this rule, we seek to remove barriers that have hindered the Enterprises' Duty to Serve activities for people living in colonias."¹³

As a result of these modifications, the activities of the Federal National Mortgage Association (Fannie Mae) and the Federal Home Loan Mortgage Corporation (Freddie Mac), commonly referred to as the Enterprises, in all colonia census tracts would be eligible for DTS credits.

Note: This is a brief spotlight on current industry ongoings and not Deloitte's point of view.

Key takeaways

While financial inclusion efforts have increased significantly over recent years, regulators continue to take critical steps to make the financial services industry more equitable and resilient and to correct discrimination, increase access to financial services, and promote equality with consumer protection. In this issue, we've noted several aspects of the ongoing wave of regulatory initiatives to address potential inequities, including:

- Brown and colleagues reintroduced the Fair Access to Financial Services Act – a legislation to **prohibit banks and other financial institutions from discrimination** in the services they offer based on **race, color, religion, national origin, or sex (including sexual orientation and gender identity)**.
- The NYDFS has made it a priority to **fight against “junk fees,” overdraft fees, NSF fees, and credit card late fees**.
- Governor Hochul signed legislation to direct the NYDFS to **study overdraft fees and their impacts on New Yorkers**, to have a clearer idea of how best to alleviate this growing financial burden.
- The NCUA granted a federal charter to the brand new People Trust Community FCU – a nonprofit Community Development Financial Institution that offers **certain loan products to low- and moderate income communities in central Arkansas**.
- The FHFA proposed to **amend its Duty to Serve Underserved Markets regulation** to facilitate Fannie Mae and Freddie Mac's activities related to serving colonias.

Additional Deloitte perspective on financial inclusion

For additional insight, please see our ongoing series on financial inclusion and the impact it has on FSI and the broader economy:

- [Driving purpose and profit through financial inclusion](#)
- [Advancing social and economic goals with global financial inclusion](#)
- [Accelerating toward greater financial inclusion](#)
- [The Consumer Financial Protection Bureau \(CFPB\) underscores the application of anti-discrimination law throughout the credit life cycle](#)
- [Deloitte Financial Services industry Financial Inclusion campaign](#)

Endnotes

1. US Senate Committee on Banking, Housing, and Urban Affairs, "[Brown, colleagues reintroduce legislation to fight discrimination from financial institutions](#)," press release, July 26, 2022.
2. Maxwell Young and Lex Suvanto, "[Financial firms are still falling short at serving communities of color](#)," *Fortune*, January 21, 2022.
3. US Senate Committee on Banking, Housing, and Urban Affairs, "[Brown, colleagues reintroduce legislation to fight discrimination from financial institutions](#)."
4. Ibid.
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6. NYDFS, "[Governor Kathy Hochul announces new guidance to expand access to low-cost bank accounts in recognition of National Financial Literacy Month](#)" and others, press release, April 15, 2022.
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8. Ibid.
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10. Ibid.
11. Consumer Financial Protection Bureau, "[CFPB Issues Guidance to Help Banks Avoid Charging Illegal Junk Fees on Deposit Accounts](#)," press release, October 26, 2022.
12. Federal Housing Finance Agency, "[FHFA proposes rule to help enterprises better serve colonias](#)," press release, September 28, 2022.
13. Ibid.

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