

CFPB to Eliminate Overdrafts

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FRESH

Ideas to Reinvent and
Reimagine the
Future of Credit Unions

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LEARNING OBJECTIVES

- Current Reg. E & OD Rules
- CFPB's Jurisdiction and Findings
- OD Rules on Prepaid Cards
- Ordering of Transactions & Marketing OD Services
- Being Proactive & Making the Best Case for OD
- Fee Replacement Solutions (Round Table Session)



Overdraft Protection – Reg. E

Member must opt-in before overdraft fee can be assessed for:

- ATM transaction
- One-time Debit Card Transaction
- Eff. Jan. 19, 2010; Compliance Mandatory July 1, 2010

OPT-IN

CU explains ODP program in writing

CU gives reasonable opportunity for member to opt-in

Member opts-in

CU sends written confirmation of opt-in

CU can assess fee for transaction incurring ODP

Explaining Program in Writing

- FRB provides model form
- Can be electronic notice if member agrees
- Brief description of ODP program
- State the amount of the fee
- State the maximum # of fees assessed per day (or state that there is no limit)
- Explain right to opt-in and how
- If applicable, state alternatives of covering overdrafts

Brief Description of ODP Program

- Include the type of transaction for which fee is imposed
- “Additional Communication” is prohibited
- If the ODP fee varies, must state that:
 - Fee varies by amount of overdraft
 - Fee varies by # of times overdrawn

Prohibited Additional Communication – Can't Say:

If you don't opt in, you won't have ability to write checks or recurring debit transactions

If you don't opt in, ATM & 1-time debit transactions won't be paid even if you have sufficient funds

If you don't opt in, ATM & 1-time debit transactions that are declined will result in additional fees

Must state alternatives to ODP

Must state alternatives only if the CU provides them

Lines of credit

Account transfer services

Member's credit card? Not making the purchase?
(Sarcasm font)

Written Confirmation of Opt-in

Section 1005.17(b)(1)(iv)

Provide a copy of completed opt-in form

OR

Send letter/notice acknowledging opt-in

Either way, must state that Member can revoke opt-in at any time

Confirmation can go in statement, but can't assess ODP fee until sent

Written Confirmation

Copy of Opt-in form given at time that they opt-in

– Only feasible if they opt-in in person

Send them letter

Electronic confirmation if member agrees

Include it in the Statement

Fees

If Overdraft solely b/c of ATM/ 1-time debit, no fee (unless opt in)

If Overdraft attributed in whole **OR IN PART** to check, ACH, recurring debit, can charge fee

No Opt-in, then Fee Only Based on ACH/check transactions on OD Act

Example: Member's Negative Balance of \$30 b/c debit card transaction overdrew account AND b/c \$10 check later cleared.

Can CU charge ODP fee (Member not opted-in)?

If CU can charge ODP fee, based on what?

Daily / Sustained Overdraft

Prohibition on ODP fees applies to all types of fees based on overdraft, including daily / sustained OD fees

Can issue daily / sustained OD fee if OD is due in whole or part to check, ACH, or recurring debit card transaction

Sustained OD Fee Example

CU pays debit card transactions that cause overdraft, even if member does not opt-in.

CU charges one-time Sustained OD fee of \$20 on 5th day overdrawn.

CU posts ATM & debit card transactions before other transactions.

Other Account Terms

Accounts must have same terms, conditions & features, regardless if opt-in

- Can't condition payment of OD checks on opting-in
- Interest rates paid & fees assessed
- Type of ATM/debit used. PIN only v. PIN & signature debit
- Minimum Balance Required
- Features = on-line bill pay

Can Offer Acts w/ Different Features

Different accounts must not be based on whether they opt-in

You can offer accounts w/o ODP

No opt-in Notice if CU has policy & practice of not paying ATM/ 1-time Debit that overdraw

CFPB's WORK TO-DATE

Feb. 2012, CFPB announced inquiry into OD programs. Its focus:

- How FIs order transactions
- How OD terms are disclosed
- FIs' Marketing Materials for OD programs
- FDIC's prior study showing impact on low-income & young

June 2013, CFPB issued whitepaper

July 2014, CFPB issued Report

CFPB'S JULY 2014 REPORT

Sample Accounts at Large Banks: Assets More than \$10B, and excluding CUs and Thrifts

18-month period from Jan. 2011 – June 2012

Collected Data on About 2 Million Accounts

Accounts Must be Active Accounts to be included.

- Active = More than 1 consumer-initiated debit transaction per month

Fee Type	Overall	Accounts Opted In	Accounts Not Opted In
ATM & Account Usage	\$1.66	\$2.08	\$1.61
Maintenance	\$1.28	\$1.53	\$1.24
Transfer	\$0.54	\$0.85	\$0.50
Other	\$1.18	\$3.02	\$0.93
Overdraft & NSF	\$5.21	\$21.61	\$2.98
Total	\$9.87	\$29.09	\$7.26

TAKE-AWAY POINTS

14.3 % of account holders were opted in under Reg. E

Generally, those who opted in paid 7 times as much in OD & NSF as those who did not opt in under Reg. E

Those **not** opted in only paid \$3 in OD & NSF fees

- OD checks
- OD recurring debit transactions
- OD ACHs

“Other Fees” included SPOs and Return Deposit Items

COMPOSITION OF GROSS OVERDRAFT AND NSF FEES

Fee Type	Share
Overdraft Fees	71.9%
NSF Fees	18.9%
Sustained Negative Balance Fees	9.2%

TAKE-AWAY POINTS

Most transactions are paid and incur OD, versus returned and incur NSF

Depending on how FIs define “sustained” negative balance, many consumers are curing overdraft quickly

Not all FIs charge SNB fees; these results are for those that do

Possible Fee Replacement is SNB fee; such fee is more likely to withstand scrutiny

DISTRIBUTION OF ACCOUNTS AND GROSS OVERDRAFT FEES BY OVERDRAFT FREQUENCY

Annualized #	Accounts	OD Fees	Annualized OD fees paid
None	69.8%	0.0%	\$0.00
1 to 3	12.5%	8.6%	\$29.62
Over 3, up to 10	9.4%	17.7%	\$81.67
Over 10	8.3%	73.7%	\$380.40

TAKE-AWAY POINTS

Possible to limit the number of Overdrafts per year to 10? After 10th overdraft, CU will return item?

Will this cause greater harm to member?

Small % of members use more than 10 ODs/year (8.3%)

Marketing Should not indicate that OD program should cure repetitive/continual ODs from members

PEW RESEARCH 2012 SURVEY

Survey of consumers who paid OD in previous year

75% said they would want transaction declined if funds were not available

18% said they would want to incur the OD fee if funds were not available
(7% said they were unsure)

This is at odds with fact that 31.7% in CFPB study who opted in had more than 3 ODs

CHECKING ACCOUNT OVERDRAFT

	18-25	26-45	46-61	62&+
ODs	OD Fees	OD Fees	OD Fees	OD Fees
None	0.0%	0.0%	0.0%	0.0%
1 to 3	9.6%	7.2%	8.8%	13.3%
3+ to 10	21.9%	16.0%	17.6%	21.5%
Over 10	68.4%	76.8%	73.5%	65.2%

Transaction Type	Median Transaction Value
ACH	\$94
ATM	\$100
Check	\$100
Debit Card	\$24
Other	\$76
Teller	\$150
Overall	\$50

CFPB's JURISDICTION AND FINDINGS

EFTA – governs OD protection of ATM & POS debit-card transactions

TILA – requires costs disclosures for fees associated with OD protection

TISA – governs notice & advertising for deposit accounts

ECOA – governs how FIs can target consumers for OD protection & denials

UDAAP – prohibits deceptive, abusive, unfair acts or practices

OD RULES ON PREPAID CARDS

Reading the Tea Leaves and Boiling the Frog

OD is credit for Reg. Z purposes

Ability to Repay Inquiry

Application of Usury Laws

Establishing Reasonable Fees

Checks: Where OD prepaid rules analogy meets its match

OD is credit for Reg. Z purposes

Overdrawing a Prepaid Card is an oxymoron from the get-go

- Open-end not home secured credit
- Reasoning: Reg. Z's Definition of credit & open-end credit

- 1 – matches TILA’s purpose; allow consumer to shop terms
- 2 – Prepaid cards don’t have deposit account OD history
- 3 – Prepaid cards marketed specifically to avoid costs associated with overdrawing a deposit account
- 4 – Prepaid customers are “unbanked,” with limited education, more likely unemployed & receiving public benefits
- 5 – Unlike checks and deposit accounts, there is no existing regulatory scheme of dealing with OD for prepaid & treating Prepaid like credit will not be “significantly disruptive”

“The Bureau sees significant differences in the underlying accounts and transaction types, the history of marketing and market segmentation, and the transaction costs and other disruptions that would be involved in shifting to a different regulatory framework with respect to checking accounts.”

Ability to Repay Inquiry

Application of Usury Laws

Establishing Reasonable Fees

Checks: Where OD prepaid rules analogy meets its match

Merchants traditionally charge fee. Therefore more likely that members will want the check paid even if it incurs OD fee

Still possible to “bounce” a check

If merchants charge fee, why can't FIs charge for avoiding merchant fee?

UCC historically governs check collection process

If CU returns check, no loan balance, no APR

Predictions are Free and Worth Every Penny

CFPB will **not** prohibit OD fees on checks. This would cause more harm to the consumer than good, due to increased merchant fees, criminal statutes regarding “uttering worthless check,” etc.

CFPB will require fee-neutral ordering of transactions

Your next audit/ exam will include heightened scrutiny on OD policies & procedures as part of effort to appease CFPB

Possible that CFPB will prohibit OD incurred by ACH or recurring debit card transactions without opt-in

More Possibilities:

CFPB may establish required *de minimus* OD in order to incur fee

CFPB may limit total # of fee-inducing ODs in one billing cycle or one year, etc.

CFPB may establish minimum # of days account overdrawn before FI can assess fee

ORDERING OF TRANSACTIONS

Joint OD Guidance (2005): FIs should explain ordering; did not state that what order should be

Final OD Payment Supervisory Guidance (2010): “best practices” should not manipulate ordering to maximize fees

Wells Fargo paid \$203M penalty for high-to-low ordering – May 2013

Chase & TD Bank large settlement costs for high-to-low reordering (2013)

Regions stopped high-to-low ordering Oct. 2014

MARKETING OVERDRAFT SERVICES

Pew Charitable Trust – Disclosure Summary for Checking Accounts

- Pentagon FCU
- NC State Employees’ CU
- Navy FCU
- Eastman CU
- Suncoast Schools FCU
- U of Illinois Employees CU
- UW CU

Pew’s Big Point: OD fees should be proportional to CU’s actual cost

Marketing Considerations

Should not market the use of OD for intentionally overdrawing account

If you market it as an alternative to payday loan, it could trigger ECOA

Clearly explain that OD is optional, that CU is not required to approve all OD transactions

Don't advertise "free" accounts with OD program info, which could confuse members into thinking OD program has no fees

BEING PROACTIVE & MAKING YOUR BEST CASE IN FAVOR OF CONTINUED OD

Review your policy and procedures

Test and re-train staff on explaining OD program and alternatives

Target marketing for financial literacy to younger members, since data show younger members more likely to incur OD fees

Don't reorder transactions high-to-low

Review Policies & Procedures

Helping Credit Unions
Serve, Grow and Remain Strong

- “Teller withdrawal” to trigger OD fees, without cuation?
- Seasoned accounts required before OD access = less like a loan
- Accountholder must be age of majority before OD available (again, showing not targeting youngsters)
- Avoid buzz words such as “credit” “lending” “credit risk”
- In determining whether to waive OD fees on case-by-case, CU will treat all members fairly
- CU’s collections policies for recovering OD should not call for written repayment plan of more than 4 installments, unless it complies with Reg. Z

Review Policies & Procedures

Helping Credit Unions
Serve, Grow and Remain Strong

- State that CU will market OD programs in a fair way & in way that avoids misleading members. State that marketing will clearly disclose fees, limitations, qualifications for OD services.
- State that payment order will be communicated and that payment order will not be manipulated to maximize OD fees
- State (& confirm true) that management and Board reviewed Supervisory Guidance

FEE REPLACEMENT SOLUTIONS

Line of Credit Solution: Automation is Key

Other Account Maintenance Fees

Increase Business NSF Fees

Other ideas?

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