

August 21, 2018

REGULATORY UPDATE

Overdraft Privilege Compliance Alert: One-time Debit Card and ATM Procedure Considerations

The FDIC Chicago Region's June 30, 2018 edition of the Quarterly Newsletter has an article entitled "Automated Overdraft Program and One-Time Debit and ATM Opt-In Procedure Considerations"

This article describes two procedural areas that may result in regulatory violations or consumer harm as it relates to one-time debit and ATM transaction affirmative opt-ins.

If you are following the PFS best practices and recommended procedures for your ODP program, then you are already aware of the situations presented and have taken steps to mitigate them. We are providing this regulatory update as a reminder, and we are asking that each of our institutions review their procedures to assure they are in compliance after reviewing this clearly presented FDIC guidance.

If your financial institution has a waiting period or specific criteria that must be met before a new account has your overdraft program's limit made available or if you ever remove the overdraft program from an account, then you will want to review the FDIC article.

As a reminder, Regulation E, Section 1005.17 prohibits a financial institution from assessing a fee or charge on a consumer's account for paying an Automated Teller Machine (ATM) or one-time debit card transaction pursuant to the institution's overdraft program. UNLESS

- The institution provides the customer a notice that is substantially similar to Model Form A-9
- Provides a reasonable time for the consumer to affirmatively consent, or opt-in
- Obtains the consumer's affirmative consent, or opt-in
- Provides the consumer with confirmation of consumer's consent

Furthermore, Regulation E, Section 1005.17(g) requires the financial institution to deactivate the consumer's opt-in selection when the financial institution terminates the consumer's overdraft program (such as for excessive use, etc.)

The article points out that even when a consumer has affirmatively opted in, NO overdraft charges should be assessed on one-time debit or ATM transactions when the overdraft program is not available to the consumer. To do so would be a violation of the requirements of Regulation E and may violate the Federal Trade Commission's Section 5 prohibitions against Unfair or Deceptive Acts or Practices.

We recommend you review your overdraft program and ensure your procedures adequately address how to avoid charging fees on one-time debit or ATM transactions that overdraw an account during a new account waiting period or ensuring the Reg E Opt-In status is deactivated when the overdraft program is removed from an account.

These functions may not be fully automated – a review of your system should be performed.

The article also outlines corrective action that should be taken if your review of your program shows fees have been assessed in error.

As always, please feel free to contact your Client Services Manager or Client Care at clientcare@pinnstrat.com for assistance with your program.

For more information on overdraft programs that are fully automated, fully disclosed and fully in compliance, contact us at 800.741.7758 or info@pinnstrat.com



Pinnacle Financial Strategies provides customizable performance measurement programs, overdraft privilege services, streamlined account opening, debit card program optimization, cash back rewards programs and business banking solutions to help institutions gain a competitive edge, attract and retain accountholders, and improve profitability.

©2015 Pinnacle Financial Strategies