

New FDIC and OCC Guidance on Overdraft Programs

by,
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On April 26, 2023, the FDIC and the OCC issued separate guidance on Overdraft Programs.

FDIC Guidance

This was issued as **FIL-19-2023** and addressed the charging of overdraft fees for items that are authorized when the account is positive but settle when the account is negative (APSN). While this is a new FDIC directive, it is not a new regulatory consumer protection directive. This was previously issued by the **CFPB on October 26, 2022**, in the CFPB **“Consumer Financial Protection Circular 2022-06 - Unanticipated Overdraft Fee Assessment Practices.”**

OCC Guidance

This was issued as **OCC Bulletin 2023-12 | April 26, 2023**, and it is a much broader and more inclusive directive. From the consumer protection perspective, it joins the FDIC in its consideration and potential treatment of **Re-Presentation items as Unfair or Deceptive Acts or Practices (UDAP) under FTC**. Please refer to our Regulatory Update of November 2022 for more details and suggested corrective action on these two issues.

Additionally, the OCC guidance, as evidenced by its title, “Overdraft Protection Programs - Risk Management Practices” goes much further into safety and soundness issues. Before delving deeper, it is important to note that the description appears to deviate from the Federal Reserve’s earlier interpretation and differentiation of overdraft programs – one being Overdraft “Protection” programs and one being courtesy Overdraft “Payment” programs. As the Fed alluded to when it presented Reg E, overdraft protection programs are covered under Reg Z, and prevent the account from going negative. Overdraft payment programs pay into the negative outside Reg Z. With that aside, one may begin to look at the numerous safety and soundness issues raised for courtesy overdraft payment programs.

Looking at the guidance, we find the level of detail and variety of issues and decisions presented for a bank by this OCC circular are too numerous to go into detail within this regulatory update with its compliance focus. We must endorse, however, the OCC document as it provides an excellent framework for not only an OCC bank but any bank or credit union with indifference to the primary regulator to review and evaluate the financial institution’s overdraft program and performance with regard to the consumer’s benefits vs. cost. We should evaluate the balance between revenue generated for the financial institution vs. the consumer cost and benefits, as well as regulatory and legal risk under FTC and the Dodd-Frank Act. Many of these recommendations are key components and considerations of Pinnacle’s best practices.

Please contact your Client Services Manager or email us at clientcare@pinnstrat.com for additional information or assistance with your risk assessment of your overdraft program.