

OCC and FDIC Issue Guidance on Overdraft Fees

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On April 26, 2023, the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC) (collectively “Agencies”) each individually released supervisory guidance to ensure that each respective agency’s supervised institutions are aware of the consumer compliance risks associated with assessing overdraft fees on a transaction that was authorized against a positive balance but settled against a negative balance (APSN). Both sets of guidance expand on previously issued guidance by each respective agency.

Generally, financial institutions process transactions by a ledger balance method or available balance method for the purpose of assessing overdraft-related fees. Available balances may be impacted by pending debit or credit transactions. Financial institutions vary when assessing overdraft fees on debit card transactions that authorize when a customer’s available balance is positive but later post to a customer’s account when their balance is negative. Even though the customer’s balance was sufficient to cover the transaction when the customer initiated the debit card transaction, a customer can be assessed an overdraft fee when the transaction settles because of one or more intervening transactions. In addition to assessing an overdraft fee on the APSN transaction, some banks also assess overdraft fees on intervening transactions that exceed the customer’s account balance. Further, some institutions also charge representment fees when a bank receives a check or ACH transaction that is presented for payment from a customer’s deposit account and the account does not have sufficient funds to pay the check or transaction.

The [OCC Guidance](#) specifies that overdraft protection programs present a variety of compliance, operational, reputational, and credit risks; emphasizes effective board and management oversight of such programs; and states that a bank should consider its controls and risk management practices. The OCC Guidance proposes practices that may assist banks in dealing with these risks and also encourages banks to consider adopting overdraft risk management practices. These include, but are not limited to: eligibility; opt-in status; consumer disclosure; overdraft protection product analysis; periodic account analysis; account monitoring; grace amounts and grace periods; online access and timely automated alerts; single daily fee; timing of fee collection; and complaint management. The OCC Guidance also encourages banks to have processes in place to identify “risk management weaknesses” and to take corrective action where appropriate.

The [FDIC Guidance](#) also provides risk mitigation practices. These include institutions reviewing practices for charging overdraft fees on APSN transactions that customers may not anticipate or otherwise avoid, ensuring any third parties involved in the payment processing are in compliance with all applicable laws and regulations, making sure the institution understands the risks presented from any third party arrangements as part of payment processing, and encouraging financial institutions to ensure that their consumer-facing disclosures describing transaction processing and charging fees on overdrafts are clearly and accurately communicated in a

consistent manner. The FDIC Guidance also details its concerns with available and ledger balance methods used by institutions, as described above, when assessing overdraft fees, and clarifies that disclosures describing transaction processing may not mitigate these concerns.

Both sets of guidance share the theme that there are heightened risks for unfair, deceptive, or abusive acts or practices (UDAAP) violations when overdraft-related fees result from payment processing in which transactions are authorized on positive balances but settled on negative balances. While taking different approaches, the Agencies encourage their respective supervised financial institutions to evaluate their current risk management programs and payment processing systems in order to ensure customers are treated fairly and provided fair access to financial services in addition to compliance with all applicable laws and regulations.

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