



November 29, 2010

## **ICBA Regulatory Alert**

### **Federal Deposit Insurance Corporation**

### **Final Overdraft Payment Supervisory Guidance**

On November 24, 2010, the Federal Deposit Insurance Corporation (FDIC) issued its final guidance on overdraft payment programs (FIL-81-2010). The final guidance sets forth the FDIC's expectations regarding FDIC-supervised institutions' management of overdraft payment programs.

#### **Scope of Guidance**

According to the guidance, the FDIC "is particularly concerned about the risks posed by automated overdraft programs, which are established programs, often partially or fully computerized," used to extend overdraft coverage using pre-determined criteria. The guidance states that "ad hoc overdraft payment services are not the focus of this guidance" but fails to specifically exempt these programs. The guidance describes ad hoc overdraft programs as those "involv[ing] irregular and infrequent occasions on which a bank employee exercises discretion in a specific instance about whether to pay an item or not, as a customer accommodation and not on pre-determined or formulaic basis."

#### **Highlights of Guidance**

The FDIC expects its supervised institutions to:

- Ensure appropriate board of directors' oversight, including an annual review of an overdraft program's key features.
- Monitor programs for excessive or chronic customer use triggered by six occasions where a fee is charged in a rolling twelve-month period and take appropriate follow-up action, to include:
  - contacting the customer in person or via telephone to discuss less costly overdraft coverage alternatives;<sup>1</sup>
  - providing a reasonable opportunity for the customer to continue the fee-based program or choose another alternative.

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<sup>1</sup> Less costly alternatives to automated overdraft payment programs include linked accounts, a more-reasonably priced line of credit, or a safe and affordable small-dollar loan consistent with the FDIC's template.

- Allow customers to opt-out of overdraft coverage for checks and ACH transactions similar to the Regulation E requirements for ATM and debit card transactions.
- Remind excessive and chronic users of overdraft services of their right to opt out of ATM and debit card overdraft coverage if they have opted in for such coverage.
- Review marketing, disclosure and program implementation to minimize potential customer confusion and promote responsible use.
- Train staff on program features and other alternatives.
- Institute appropriate limits on daily customer costs by limiting the number of transactions subject to a fee or establishing a daily dollar cap on total fees.
- Prominently distinguish account balances from any available overdraft coverage amounts as required by Regulation DD (Truth in Savings).
- Review check-clearing procedures to avoid maximizing customer overdrafts and related fees through the clearing order. Examples of appropriate procedures include clearing items in the order received or by check number.
- Monitor and mitigate credit, legal, reputational, safety and soundness, and other risks as appropriate.
- Consider:
  - eliminating fees for de minimis overdraft amounts and instituting fees reasonable and proportional to the overdraft amount.
  - using technology (text messaging, email, telephone or cell phone) to alert customers regarding overdrafts.
  - providing financial literacy education and individual counseling on effective management of personal finances.

## **Compliance and Examination**

The FDIC expects banks to have appropriate policies and procedures in place to comply with the guidance by July 1, 2011, and to prepare accordingly for the review of overdraft payment programs at each examination.