



bankers' compliance group®

Federal Reserve Final Rule Limits Fee Assessments for Overdrafts on ATM and One-Time Debit Card Transactions

On November 12, 2009, the FRB issued a final rule under Regulation E that will prohibit financial institutions from charging fees to consumers for paying overdrafts on ATM and one-time debit card transactions, unless a consumer opts in, or affirmatively consents to, the overdraft service for those types of transactions.

Under the final rule, notice of the opt-in right must be provided, and the consumer's affirmative consent obtained, before fees or charges may be assessed on the consumer's account for paying such overdrafts. The opt-in requirement applies to both existing and new accounts. The notice must detail the financial institution's overdraft services, including the consumer's choices and fees related to those services. The FRB has issued a model notice form in connection with this requirement, which will be included in Appendix A-9 to Regulation E (12 CFR Part 205). For consumers who choose to opt in, they may revoke their consent at any time.

The final rule prohibits financial institutions from discriminating against consumers who do not opt in. Specifically, the final rule prohibits institutions from conditioning the payment of overdrafts for checks, ACH transactions, or other types of transactions on the consumer also affirmatively consenting to the institution's payment of overdrafts for ATM and one-time debit card transactions. Under the final rule, institutions cannot decline to pay check, ACH transactions, or other types of transactions that overdraw the consumer's account because the consumer has not opted into the institution's overdraft service for ATM and one-time debit card transactions. The final rule does not require financial institutions to pay overdrafts on checks, and does permit them to offer consumers a choice regarding overdraft services for checks.

For consumers who choose not to opt in to the institution's overdraft services for ATM and one-time debit card transactions, the final rule requires institutions to provide those consumers with the same account terms, conditions, and features as they provide to consumers who *do* opt in (except for the overdraft service for ATM and one-time debit card transactions).

The final rule will become effective 60 days after publication in the Federal Register, which is expected in the near future. The final rule carries a mandatory compliance date of July 1, 2010. The announcement and final rule may be accessed through the FRB website, at: **www.federalreserve.gov/newsevents/press/bcreg/20091112a.htm**.

We plan to cover this topic for BCG Members at the December BCG Chapter Meeting, to be held on December 18, 2009.

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