Federal Deposit Insurance Corporation
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Financial Institution Letter
FIL-40-2021
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Supervisory Guidance on Multiple Re-Presentment NSF Fees

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Attachment:
Supervisory Guidance on Multiple Re-Presentment NSF Fees

Related Topics:
Consumer Compliance/Protection

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FIL-40-2022 was rescinded and replaced by FIL-32-2023 on June 16, 2023.

Summary:
The FDIC is issuing guidance to FDIC-supervised institutions to address certain consumer compliance risks associated with assessing multiple non-sufficient funds (NSF) fees arising from the re-presentment of the same unpaid transaction. Additionally, the FDIC is sharing its supervisory approach when a violation of law is identified, as well as expectations for full corrective action.

See the attached Supervisory Guidance on Multiple Re-Presentment NSF Fees for more information.

Statement of Applicability: **The contents of, and material referenced in, this FIL apply to all FDIC-supervised financial institutions.**

Highlights:

- Many financial institutions charge NSF fees when checks or Automated Clearinghouse (ACH) transactions are presented for payment, but cannot be covered by the balance in a customer's transaction account. After being declined, merchants may subsequently resubmit the transaction for payment.
- Some financial institutions charge additional NSF fees for the same transaction when a merchant re-presents a check or ACH transaction on more than one occasion after the initial unpaid transaction was declined. In these situations, there is an elevated risk of violations of law and harm to consumers.
- The FDIC has identified violations of law when financial institutions charged multiple NSF fees for the re-presentment of unpaid transactions because disclosures did not fully or clearly describe the financial institution's re-presentment practice, including not explaining that the same unpaid transaction might result in multiple NSF fees if an item was presented more than once.
- Practices involving the charging of multiple NSF fees arising from the same unpaid transaction results in heightened risks of violations of Section 5 of the Federal Trade Commission (FTC) Act, which prohibits unfair or deceptive acts or practices (UDAP). Third parties, including core processors, often play significant roles in processing payments, identifying and tracking re-presented items, and providing systems that determine when NSF fees are assessed. Such third-party arrangements may also present risks if not properly managed. There may also be heightened litigation risk. Numerous financial institutions, including some FDIC-supervised institutions, have faced class action lawsuits alleging breach of contract and other claims because of the failure to adequately disclose re-presentment NSF fee practices in their account disclosures.
- Financial institutions are encouraged to review their practices and disclosures regarding the charging of NSF fees for re-presented transactions. The FDIC has observed some risk-mitigation practices financial institutions implemented to reduce the risk of consumer harm and potential violations.
- The FDIC will take appropriate action to address consumer harm and violations of law when exercising its supervisory and enforcement responsibilities regarding re-presentment NSF fee practices.