Financial Institution Letter
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August 11, 2010

Overdraft Payment Programs and Consumer Protection
FDIC Invites Comments on Overdraft Payment Supervisory Guidance

Summary: The FDIC expects the institutions it supervises to closely monitor and oversee any overdraft payment programs they offer to consumers. Such oversight should include appropriate measures to mitigate risks, incorporating the best practices outlined in the attached 2005 *Joint Guidance on Overdraft Protection Programs*, and effective management of third-party arrangements. Management should be especially vigilant with respect to product over-use that may harm consumers, rather than providing them the protection against occasional errors or funds shortfalls for which the programs were intended. The FDIC is seeking comment on these supervisory expectations.

Distribution:
FDIC-Supervised Institutions

Suggested Routing:
Chief Executive Officer
Compliance Officer
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Related Topics:
Joint Guidance on Overdraft Protection Programs
Federal Trade Commission Act Unfair or Deceptive Acts and Practices provisions and Regulation AA
Guidance For Managing Third Party Risk
Truth in Lending Act and Regulation Z
Truth in Savings Act and Regulation DD
Electronic Fund Transfer Act and Regulation E
Equal Credit Opportunity Act
Community Reinvestment Act

Attachment:
Supplemental Information
Joint Guidance on Overdraft Protection Programs
Guidance For Managing Third-Party Risk

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Highlights: The FDIC expects financial institutions' boards of directors and management to ensure that the institution mitigates the risks associated with offering automated overdraft payment programs and complies with all consumer protection laws and regulations. Institutions are reminded to:

- Provide clear and meaningful disclosures and other communications about overdraft payment programs, features and options; and
- Demonstrate compliance with new overdraft fee disclosure requirements and, upon the effective date, new regulations that mandate providing a notice and reasonable opportunity for customers to affirmatively choose fee-based overdraft coverage of ATM withdrawals and one-time point-of-sale debit card transactions.

In addition, the FDIC expects financial institutions to:

- Promptly honor customers' requests to decline coverage of overdrafts (*i.e.*, opt out) resulting from non-electronic transactions;
- Give consumers the opportunity to affirmatively choose the overdraft payment product that overall best meets their needs;
- Monitor accounts and take meaningful and effective action to limit use by customers as a form of short-term, high-cost credit, including, for example, giving customers who overdraw their accounts on more than six occasions where a fee is charged in a rolling twelve-month period a reasonable opportunity to choose a less costly alternative and decide whether to continue with fee-based overdraft coverage;
- Institute appropriate daily limits on overdraft fees; and

Paper copies of FDIC financial institution letters may be obtained via the FDIC's Public Information Center (1-877-275-3342 or 703-562-2200).	• Not process transactions in a manner designed to maximize the cost to consumers. Institutions using a third-party vendor for their overdraft payment programs must exercise careful oversight, as discussed in the FDIC's 2008 *Guidance for Managing Third-Party Risk*. The FDIC will take supervisory action where overdraft payment programs pose unacceptable safety and soundness or compliance management system risks or result in violations of laws or regulations, including unfair or deceptive acts or practices and fair lending laws. Positive CRA consideration will continue to be provided for responsible transaction accounts, and affordable small-dollar loan programs or other lower cost credit alternatives, particularly for low- and moderate-income consumers.