Understanding Compliance with FDIC Automated Overdraft Guidance

THE FOLLOWING APPLIES TO YOU:

- If you are FDIC supervised and
- You have an Automated Overdraft Protection Program

New Rule for Automated Overdraft Protection

- Develop monitoring programs for Overdraft Protection usage
- Identify excess or chronic users within rolling 12-month time period
- Conduct customer outreach to educate and inform on alternatives

OVERVIEW

The FDIC has issued final guidance, effective July 1, 2011, that requires banks to establish monitoring programs to identify “chronic users” of automated overdraft services, and develop and track customer communication to ensure these users understand program alternatives and the fees involved in the programs. Economic research firm Moebs Services reported that 3 out of 4 Americans with checking accounts have signed up for overdraft protection since November 2009*. In addition, 98% of consumers who overdraw on their accounts 10 times or more a year have agreed to overdraft protection*. Industry regulators will expect banks to employ measurable steps to demonstrate that they are actively assessing overdraft protection usage and conducting appropriate communication and follow-up.

Your response to this guidance has personnel, process and technology components. The time and cost of developing these processes falls directly to your checking account profitability and compliance bottom line – and you risk loss of fee income.

This White Paper explains your obligations related to this new guidance and how Deluxe can help you comply with the communication requirements in a cost-effective manner.

* Minneapolis Star Tribune, 2011
DEVELOPING YOUR COMPLIANCE PROGRAM

Compliant programs will require the implementation of an end-to-end solution. In addition to Regulation E requirements that took effect July 1, 2010, the new FDIC guidance establishes new baseline compliance requirements within your DDA checking account program. Automated Overdraft Protection requirements will require ongoing functions for your compliance program including:

- Preparing a risk assessment for your bank’s overdraft programs.
- Closely monitoring and overseeing all overdraft protection programs offered to consumers.
- Implementing systems and databases to track and identify chronic and excessive users.
- Defining specific and targeted customer communication messages.
- Reviewing current account processing procedures to ensure appropriate and transparent rules for payment processing.
- Providing clear and meaningful disclosures and other educational communications about overdraft payment programs, fees, and account features/options.
- Demonstrating compliance with new opt-in requirements for automated teller machine (ATM) withdrawals and one-time, point-of-sale debit card transactions.
- Conducting Executive Management/Board of Directors reviews.

System requirements will focus on two main activities: account level monitoring and end-to-end payments tracking to properly understand overdraft protection utilization, fee-based rules, and identification of the chronic users. While your organization is focused on developing a monitoring process and the identification of chronic users of overdraft protection, you can rely on trusted service providers to help you manage the ongoing customer communication aspects of your program.

FDIC EXPECTATIONS – SYSTEM PREPARATION AND CUSTOMER COMMUNICATION

Operational Readiness Considerations

- Ensure that your Board of Directors approves an ongoing oversight program with a formal annual review of the overdraft protection program’s features and terms.
- Train staff to explain program features and alternative choices.
- Establish systems to prominently distinguish account balances from any available overdraft coverage amounts.
- Review your check-clearing procedures, and any third-party vendor, to ensure they operate in a manner that avoids maximizing customer overdrafts and related fees through the clearing sequence (e.g., clearing items in the order received or by check number).
- Consider employing technology to alert the customer when their account balance is at risk of generating a fee for NSF.
- Consider whether your fee structure imposes reasonable fees proportional to the size of the original transactions.

Ongoing Oversight and Communication

- Create a customer contact/communication plan.
- Review and update account holder agreements, terms or disclosures.
- Review and communicate overdraft program marketing, disclosure and other program elements to minimize potential consumer confusion and promote responsible use.
Automated Overdraft Guidance

- Monitor programs to identify chronic customer use, defined as six occasions when a fee was charged within a rolling 12-month period.
- If chronic overuse occurs, undertake meaningful and effective follow-up action with the customer, including the following activities:
  - Contact to discuss less costly alternatives to the automated overdraft payment program.
  - Promptly honor customers’ requests to decline coverage of overdrafts (i.e., opt-out) resulting from non-electronic transactions.
  - Institute and communicate appropriate daily limits on customer fees.
  - Recommend financial counseling or personal finance education.

DELUXE – A PARTNER IN CUSTOMER COMMUNICATION

Deluxe can help:
- Fulfill your required steps for customer notification.
- Segment your customer base and create unique communication alternatives.
- Enable tracking and reporting of your communication plan results for records retention.
- Capture customer requests to decline coverage.
- Provide point-of-service education mailings

In addition, Deluxe can support your organization’s follow-up communication to obtain Reg E overdraft consent to meet ongoing compliance program requirements. Deluxe services enable you to pursue consent election through multiple touch points and varied channels. Deluxe can also provide reporting and required consumer confirmation on each election received.

To preserve customer satisfaction, and to meet the FDIC’s requirement for customer outreach where a fee is charged to customers who overdraw their accounts on more than six occasions in a rolling twelve-month period, institutions should also consider:
- Providing information about financial counseling.
- Distributing educational materials about effectively managing personal finances.
- Follow-up communication about consumers’ rights related to Regulation E.

DELUXE – SUPPORTING YOUR CUSTOMER COMPLIANCE COMMUNICATION NEEDS

Once you have defined and implemented your monitoring program to identify the chronic users of overdraft protection, you are expected to create customer communication contact plans to provide trustworthy, understandable automated overdraft program-related information. Deluxe is positioned to help you address your communication obligations by providing multiple communication options including:

Direct Mail and Printed Materials
- Excessive user communication (ongoing communication programs).
- Informational packets with overdraft disclosure.
- Statement inserts.
- Tri-fold financial educational brochure.
- Tri-fold overdraft program brochure.
- Automated Overdraft Program disclosure.
- Financial acumen documentation.
- Reg E rights disclosure.

Deluxe has assisted more than 150 financial institutions with their compliance-related communication. Success comes from having a strategically segmented, multi-channel communication program that fits the unique needs of your institution.
Electronic and Telephonic Communication Options

- Email messaging
- Outbound calling programs

In-Branch Materials

- Point-of-Service education training packets
  - Deluxe White Paper
  - Program disclosures
  - Tri-fold financial educational brochures
  - Tri-fold overdraft program brochure
  - Financial acumen documentation
  - Automated Overdraft Program customer FAQs
- Counter displays
- Lobby posters

OVERDRAFT CONSENT SOLUTIONS – ONGOING OPPORTUNITY

Opt-in consent programs expertly managed by Deluxe can include a variety of communication components including the required notification, model consent forms, outbound calling, electronic messaging with secure consent response form, and ongoing response tracking and reporting. Campaigns are available for DDA accounts for different types of transactions including checks, recurring debit and ACH.

For more information about these and other Deluxe regulatory solutions, contact your Deluxe sales representative or call 866.413.5087.

This information does not constitute legal advice. It is provided for informational purposes only.