



American
Bankers
Association

New Overdraft Regulations

A Guide to Understanding Changes Affecting Debit Cards





Basics of Overdraft Rule

- **General rule:**
Banks may not impose an overdraft fee for ATM or one-time POS (point-of-sale) debit overdrafts **UNLESS** the customer expressly consents (“opts in”).
- **Effective date:**
 - **July 1, 2010** – New customers
 - **August 15, 2010** – Existing customers



Basics of Overdraft Rule con't.

- The new rules address concerns that some bank customers did not understand that approved debit card transactions could cause an overdraft and imposition of an overdraft fee.
- New rules put consumers in the driver's seat. Consumers must expressly agree (“opt-in”) to pay a fee to ensure debit card overdrafts are covered.



Covered Transactions and Fees

If the customer has NOT opted in:

- The bank may not impose ANY fee for paying a transaction when there are insufficient or unavailable funds in the account. This includes transaction fees and daily fees.
- The bank may choose to pay the overdraft (and may be unable to avoid covering some) but it may not impose a fee.



What transactions are covered?

The opt in requirement applies to:

- ATM and one-time debit card transactions ONLY.

Customers do not have to opt in for overdraft protection on:

- Checks
- ACH transactions (includes single electronic payments and automatic payments customer has set up for mortgage, utility, rent, and other recurring bills.)
- Recurring debit card transactions (automatic payments customer has set up using a debit card)



Why checks, ACHs, and recurring debit card transactions are NOT covered

In 2008, Federal Reserve Board consumer focus groups * found:

- Overwhelmingly, people want important payments paid and are willing to pay a fee for it.
- Eight of the nine participants indicated that they would keep the overdraft coverage because they wanted to ensure that important transactions went through. (Page 8.)
- Almost all indicated they would want their cable bill covered and that having this bill paid would be worth paying an overdraft fee. (Page 9.)


* Study may be accessed at:

<http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20081218a6.pdf>



Why checks, ACHs, and recurring debit card transactions are NOT covered

- “Participants generally indicated that the overdraft coverage described in the disclosure was a positive feature for those who needed it, or for particularly important transactions.” (Page 14.)
- “Most participants were not surprised by the fact that a depository institution would offer this type of overdraft coverage, and had some previous exposure to similar types of coverage.” (Page 14.)



Customers who opt in are treated the same way as customers who do not.

- Banks may not vary account terms, conditions, or features for customers who do not opt-in. For example, it may not vary:
 - Interest rates
 - Fees
 - Option or type of debit card
 - Minimum balance requirements
 - Features such as online banking
 - Different posting order
 - Different hold policies



No Opt-in, No Opt-in Fees, No Exceptions

- A bank may **not** impose a fee if the customer didn't opt-in - even if it paid an overdraft that it could not avoid paying, for example, if the overdraft was due to:
 - Unauthorized debit card transactions
 - Returned deposits
 - Stand-in transactions when system has gone down, but transactions up to a certain amount are approved

Consumers should not assume that because a debit card transaction was approved, that there was money in the account. The bank must cover the transaction, but they cannot charge an overdraft fee.



Requirements to impose fee on covered debit card overdrafts

Before imposing a fee on covered transactions, a bank must:

1. Provide a written opt-in notice to the customer using model language.
2. Receive consent from the customer.
3. Send written confirmation to the customer.



Model Notice

Consumer opt-in notices must:

- Explain “standard overdraft practices” and other overdraft protection options that may be less expensive, such linking the checking account to a savings account.
- Contain the amount of overdraft fees (cost).
- Explain whether or not there are daily limits on the total fees.



Overdrafts ARE avoidable.

Consumers can control whether they pay overdraft fees by:

- Keeping track of account balance and transactions, which is easier to do with today's numerous electronic options to review account activity.
- Keeping a “cushion” of extra funds in the account.
- Setting up low balance alerts by email or text message.
- Linking the account to a savings account, overdraft line of credit, or credit card.



For more information:

- <http://edocket.access.gpo.gov/2009/pdf/E9-27474.pdf>
- <http://edocket.access.gpo.gov/2010/pdf/2010-3719.pdf>
- <http://edocket.access.gpo.gov/2009/pdf/E8-31183.pdf>