

Frequently Asked Question and Answer

November 16, 2015

Question

Our institution wants to implement a process to accept customer opt-ins for overdrafts on ATM withdrawals and one-time debit card transactions via means other than in-person. As a result, we will be unable to obtain a signature for all opt-in requests. Is this permitted under the regulation?

Short Answer

Yes. The institution is required to follow four steps in order to obtain the customer's opt-in such that it can charge fees for overdrafts on ATM withdrawals and one-time debit card transactions:

1. Provide the customer with an initial disclosure discussing the overdraft services (commonly referred to as the "A9" form)
2. Provide the customer with a reasonable opportunity to affirmatively consent
3. Obtain the customer's affirmative consent
4. Send a confirmation notice

While receiving signed A9 forms is a common way to obtain the customer's opt-in; the institution is not required to obtain the customer's opt-in authorization solely through these means.

Answer Details

Regulation E Section 1005.17(b) imposes requirements on institutions to collect the customer's affirmative consent, or "opt-in", before imposing a fee for overdrawing an account via an ATM withdrawal or a one-time debit card transaction. The Regulation E Official Staff Commentary provides four examples of means by which a customer has been provided with a reasonable opportunity to opt-in: in person, by mail, by telephone and by electronic means.

The Commentary further provides examples of how the customer may opt-in via providing a signature or by checking off a box. The Regulation mandates that if a signature line or check box is utilized for purposes of obtaining an opt-in, it can only be used only for that one purpose. For example, an institution could not include a single check box that is used for both obtaining an opt-in and registering for other services offered by the institution. In addition, the institution cannot use a check box that is automatically populated or preprinted. To constitute an acceptable means of a customer opt-in authorization, the check box must be blank and affirmatively checked off by the customer expressing an affirmative intent to opt-in.

If you are interested in an audit or assistance with your Overdrafts program, please contact Brian Shea at bshea@wolfandco.com or Erica Torres at etorres@wolfandco.com.