



Overdraft Programs: Common Violations and Best Practices

Brian M. Shea, CRCM, CAMS

Before we get started...

- Today's presentation slides can be downloaded at www.wolfandco.com/webinars/2016
- The session will last about 45 minutes, and we'll then have time for Q & A.
- Our audience will be muted during the session.
- Please send your questions in using the "Questions Box" located on the webinar's control panel.

About Wolf & Company, P.C.

- Established in 1911
- Offer Audit, Tax, and Risk Management services to over 250 financial institutions
- Offices located in:
 - Boston, Massachusetts
 - Springfield, Massachusetts
 - Albany, New York
 - Livingston, NJ
- Over 200 professionals



As a leading regional firm founded in 1911, we provide our clients with specialized industry expertise and responsive service.

Financial Institution Expertise

- Over 45 Risk Management Professionals:
 - IT Assurance Services Group
 - Internal Audit Services Group
 - Regulatory Compliance Services Group
 - WolfPAC® Solutions Group
- Provide services to over 300 financial institutions:
 - Approximately 85 FIs with assets > \$1B
 - Approximately 40 publicly traded FIs
 - Constant regulatory review of our deliverables
- Provide Risk Management Services in 27 states and 2 U.S. territories

Today's Presenter

Brian M. Shea, CRCM, CAMS

Regulatory Compliance Senior Manager

Phone: (617) 261-8133

Email: bshea@wolfandco.com



Today's Objectives

As part of today's session you will:

- Learn about the major types of overdraft issues being brought up by regulators
- Identify common audit issues and violations noted with respect to overdraft programs
- Discover best practices that institutions utilize to help avoid or reduce issues

Outline

1. Overdraft Requirements, Risks and Environment
2. Examination Issues
3. Common Audit Issues
4. Best Practices
5. Questions?



Overdraft Requirements

Discretionary Overdraft Programs are subject to a wide range of rules including:

- Truth in Savings Act (Regulation DD)
- Electronic Fund Transfers Act (Regulation E)
- Insider Lending rules (Regulation O)
- 2005 Joint Agency Guidance on Overdraft Protection Programs
- FDIC Overdraft Payment Supervisory Guidance
- Unfair, Deceptive and Abusive Acts and Practices (UDAAP)

Overdraft Risks

- Examination and audit violations
- Financial losses
- Customer reimbursement
- Re-disclosure
- Reputation



- Enforcement actions (ex. Regions Bank)
- UDAAP Violations
- CFPB requesting overdraft data from processors
- Possible CFPB regulation in future?

Examination Issues



Memo Post Holds

- Transaction occurs at merchant; merchant places pending hold on account
- Customer subsequently performs additional withdrawal
- Based on hold, there aren't sufficient funds and overdraft fee is assessed
- Original, held transaction then posts, based on new balance there aren't sufficient funds and second overdraft fee is assessed

Regulatory agencies have considered this a UDAAP issue

Example

- \$100 balance
- \$60 transaction presented; hold placed on acct (available balance = \$40; actual balance = \$100)
- Separate \$50 withdrawal posts (available balance = -\$10; actual balance = \$40) **OD fee assessed**
- Original \$60 transaction posts (available balance = -\$10; actual balance = -\$10) **OD fee assessed**

Two overdraft fees have been charged; only one should have been

Collecting Opt-in With No Intent to Pay

- Institution has made decision that it will not pay overdrafts on one-time debit card transactions
- Despite this decision, the institution goes ahead with collecting opt-ins for such transactions under Reg. E
- If a force-placed transaction occurs that overdraws the account, the institution will assess an overdraft fee

Regulatory agencies have considered this a UDAAP issue

Because the institution never intends to pay a transaction, the customer never receives any benefit

Fees on Linked Savings Accounts

- Customer has a savings account linked to their checking account to cover any overdrafts, with a minimal sweep fee assessed for any occurrences
- Checking account becomes overdrawn due to ATM withdrawal or one-time debit card transaction
- No opt-in was ever collected
- The savings account also becomes overdrawn, so the institution assesses its standard one-time overdraft fee *rather* than its sweep fee

Regulatory agencies have considered this a UDAAP issue and violation of Regulation E

Four events **must** all take place in order to assess overdraft fees on ATM withdrawals and one-time debit card transactions:

1. Customer is provided with disclosure in proper format (“A9 model form”)
2. Customer is provided the opportunity to affirmatively consent (opt-in)
3. Customer opts in
4. Institution sends a written confirmation to the customer

Reg. E Opt Ins

Common opt-in violations include:

- Opting in customers who have not been provided the disclosure
- Providing the disclosure, but with technical issues or in the wrong format
- Failing to send the confirmation notice



Fee Limitations

While there is no official standard or rule setting exact limits, ensure your institution considers:

- De minimus thresholds (no fees charged when under certain limit)
- Limitation on daily fees
- Monitoring customers who excessively use program and providing proper contact and assistance

Also ensure that systems and manual processes are properly implementing such limits

Common Audit Issues

Here are some common overdraft related findings that Wolf sees in our audits of community institutions



Transaction Clearing Order

While not expressly illegal, High to Low clearing orders are discouraged and often the subject of lawsuits due to their tendency to cause more overdraft fees

FDIC Supervisory Guidance mandates “neutral” payment order. High to Low is NOT neutral

Agencies not subject to the FDIC should still reconsider if following this practice

Recurring/Daily Overdraft Fees

Issues can arise when an institution assesses a recurring fee for accounts held in overdrawn status. Common issues include:

- Improperly disclosing the circumstances where the fee will be charged
- Not making it clear that the fee is assessed daily
- Assessing daily fees on Reg. E protected transactions without an opt-in (ex. force pay situations)
- Excessive daily fees associated with minimal dollar overdraft

Lack of Sign/Warning

Joint Agency Best Practices state that the customer should be notified that a transaction may result in an overdraft on their account and that the customer be given the chance to opt out of the transaction.

If this is not technically feasible, a sign or posted notice warning of the possibility of overdraft and the assessment of a fee can be used.

Lack of Sign/Warning

Common issues include:

- No sign or opt out option at the ATM
- Not including a message or opt out option at other possible overdraft avenues such as online banking or telephone banking (if overdrafts permitted)



Overdraft Fee Table

The Truth in Savings Act sets forth formal rules on overdraft fee totals to be included on statements.

Common issues include:

- Not using the proper format (missing box, not using “Total Overdraft Fees” language)
- Not all overdraft or returned fees appear in total (ex. manually assessed fees not appearing)
- Fees appear in incorrect time period
- Improperly classifying uncollected fund fees or daily overdraft fees in wrong section

Advertising

Rules apply to any advertisement “promoting the payment of overdrafts”, a very vague phrase. Even small references (ex. “overdraft options available”) can trigger advertising disclosures

Common issues include:

- Failing to include all proper disclosures
- Referencing word “Free” when discussing overdrafts

Alternative Arrangements

Institutions should make consumers aware of alternatives, such as line of credit product or savings sweep product

Common issues include:

- No reference to alternatives in documentation, marketing material
- Failure to include reference to all alternatives in Reg. E Opt-in (A9) form



Charge off Timeframes

Per Joint Agency Guidance, institutions should charge off overdrawn funds no later than 60 days (45 for federal credit unions) after the overdraft occurs. Common issues include:

- Failure to charge off accounts in timely manner
- Charging off only certain account types (ex. consumer only)
- Calculating charge off timeframes based on business days instead of calendar
- Failure to charge off when only an “informal” repayment agreement is in place

Daily Notification

Joint Agency Guidelines recommend providing notification to consumers when overdrafts occur and including certain information on such notices. Common issues include failure to provide information on matters such as:

- Transaction type (especially for non-checks)
- Time period to repay overdraft
- Consequences if overdraft not repaid

Institutions should consider whether such language is in other notifications (ex. collection letters)

Other Common issues

- The institution does not provide a reasonable opportunity to opt out or does not process the customer's opt out in a timely manner and continues to assess them overdraft fees
- Lack of a formal report to the Board when mandated under FDIC Supervisory Guidance
- Inconsistencies among policies, disclosures, advertising and other material
- Failing to properly disclose on what transactions overdraft fees are and are not assessed
- Charging fees for transactions in excess of disclosed overdraft limit

Best Practices



Disclosures/Marketing

- Does disclosed material appropriately explain nature of the overdraft program?
- Is material easy for consumers to understand and for your staff to explain?
- Do you market the program? If so how much?
- Are alternative products provided an equivalent amount of attention in marketing material?

Remember that prohibited practices cannot simply be disclosed away

Training

- Is your institution's staff appropriately trained to explain the nuances of the overdraft program?
- Do you provide educational information to your customers (ex. educational brochures, availability of financial workshops, etc...)?

Monitoring

- Is your institution periodically monitoring performance so as to proactively identify any possible concerns?
- Is your institution monitoring news items and developments relating to overdrafts?

Limits

- Are you comparable to your peers in matters such as:
 - One-time overdraft fee amount
 - Daily limit
 - De minimus
- When imposing daily limits, do you have appropriate controls in place to ensure the limitations are actually being adhered to?
- Are the overdraft fees that the customer is being assessed equitable, compared to the value they have received?

Complaints

- Is your institution receiving a lot of overdraft-related complaints?
- Do you take this as an opportunity to assess your program for possible consumer harm and UDAAP concern?
- Do you take into consideration fee reversal requests and circumstances?

Account Activity		Details
Date	Payment type	
7 Sep 07	Direct Debit	BALANCE BROUGHT
10 Sep 07	Charge	LOANS DIRECT
10 Sep 07	Charge	100050195788
10 Sep 07	Charge	O/DRAFT INTEREST
10 Sep 07	Fixed Serv Charge	O/DRAFT EXCESS FEE
12 Sep 07	Deposit	ACCOUNT CHARGE
12 Sep 07		INTL SVCS CTR
		BALANCE CARRIED FORWARD

Corrective Action

- When issues are identified, do you take them seriously and correct in a timely manner?
- Do you test systems to make sure that they properly fix any issues relating to overdraft fees?
- When fixing issues, do you consider whether reimbursement is necessary, especially when relating to cases of insufficient opt-ins?

Other

- Are policies and procedures sufficiently covering all aspects of the program (especially manual processes)?
- If a third party is involved, has appropriate oversight been done?

Questions?

Brian M. Shea, CRCM, CAMS

Regulatory Compliance Senior Manager

Phone: (617) 261-8133

Email: bshea@wolfandco.com



Today's Presentation can be downloaded at:

www.wolfandco.com/webinars/2016