

## **Frequently Asked Question and Answer**

**July 1, 2015**

### **Question**

Is our institution permitted to include overdraft funds in an available balance that is disclosed to the customer?

### **Short Answer**

Regulation DD 1030.11(c) prohibits institutions from including overdraft funds if only a single balance is disclosed to the customer via automated systems. The institution is permitted to include overdraft funds in a second, available balance that is disclosed to the customer as long as the institution prominently identifies that the second balance includes overdraft funds and that such additional funds may not be available for all transactions. While non-automated balance disclosures such as a teller line receipt are not subject to the Regulation DD restrictions, institutions will want to ensure compliance with Overdraft Guidance and Best Practices which contain substantially similar guidelines.

### **Answer Details**

Regulation DD imposes restrictions on institutions that attempt to disclose overdraft balances through an “automated system”. An automated system is considered to include, but is not limited to, ATM balances, telephone response machines and online banking platforms. Institutions are prohibited from including overdraft funds in a single balance, but may include such funds in a second, available balance as long as the institution has prominently disclosed that there are additional overdraft funds in the balance. Furthermore, the institution is required to disclose - if applicable - that such funds are not available for all transactions. Considering the Regulation E restrictions that require an opt-in for ATM withdrawals and one-time debit card transactions; there will likely be situations where customers cannot use such funds for all transactions, and hence such language should generally be included. The Official Staff Commentary also clarifies that overdraft funds should not be disclosed when they are not actually available. For example, if a customer has opted out of overdraft protection, the institution should ensure no overdraft funds appear in any balance.

Unlike most overdraft program regulatory requirements and guidelines that are primarily intended for discretionary overdraft programs, the Regulation DD rules also apply to any overdraft funds that are obtained from a line of credit, or from a sweep service that will transfer funds from another account.

The Joint Agency Guidance on Overdraft Protection Programs contains similar guidance within its best practice section; stating that institutions should not include overdraft protection funds when disclosing a single account balance. If the institution provides more than one balance, the Guidance states that the balance without overdraft protection funds should be separately identified in a prominent manner. While the Regulation DD rules are intended for automated systems, institutions should consider these guidelines to apply to balances disclosed through any means.

If you are interested in an audit or assistance with your Overdraft program, please contact Brian Shea at [bshea@wolfandco.com](mailto:bshea@wolfandco.com) or Erica Torres at [etorres@wolfandco.com](mailto:etorres@wolfandco.com).