



# COMPLIANCE BRIEF

April 2022



## AGENDA

- Overdraft & NSF Fees
- Computer Incident Notification Contacts
- FDIC Crypto Notice Request



## Regulatory Focus: Overdraft & NSF Fees

- [FDIC Compliance Supervisory Highlights](#) - March 2022
- Recent CFPB Blogs on Overdrafts
  - [Comparing Overdrafts Fees and Policies](#) – Feb 2022
  - [Overdraft fees price people out of banking](#) – March 2022
  - [Consumers on course to save \\$1 billion in NSF fees](#) – April 2022
- March 30 House Hearing on Overdrafts
  - HR 4277 – Overdraft Protection Act of 2021
    - Limit the number of overdraft fees that can be charged monthly & annually and prohibits re-ordering payment to increase fees
  - Expanding Access to Afford Bank Accounts Act
    - Require large banks to offer account with no OD or NSF fees
- Increase in litigation related to overdrafts

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## NSF Fees

- The Issue:
  - Consumers do not understand checks can be presented for payment more than once if returned unpaid
  - Disclosures do not adequately explain NSF fees can be charged per item, PER PRESENTMENT
  - Consumers do not receive timely notice of returned items to allow time to resolve NSF balance before representation
- The Regulatory Conclusion
  - Failure to disclose “material information” about fees may be deceptive
  - There is likelihood for material injury to consumers which cannot be avoided resulting in an unfair practice if multiple fees are assessed before consumer can bring their account to a positive balance

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## Mitigating Your Risk

- Review fee disclosures
  - Fee amount, when fees is assessed, the fact fee may be assessed more than once per item, max number of fees charged on one item
- Re-evaluate customer notification practices
  - Can you notify more quickly to give customers time to bring account balance positive?
  - Are available balance communications clear?
- Review policies & procedures
  - Train staff on procedures and how to communicate to customers
  - Monitor complaints related to NSF & OD fees
- Work with vendors
  - How represented items be flagged so only one NSF fee is assessed

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## Overdraft fees - Force Pay Transactions

- The Issue
  - FI authorizes debit card transaction based on sufficient funds at time of authorization, but when transaction settles, insufficient funds are available and OD fee is assessed
  - Consumer Compliance Supervision Bulletin (FED – 2018)  
<https://www.federalreserve.gov/publications/2018-july-consumer-compliance-supervision-bulletin.htm>
  - FDIC Regional Newsletters (KC and Dallas - 2022)

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## Overdraft fees - Force Pay Transactions

- The Regulatory Conclusions
  - Charging for authorized item is “unfair” as consumer has little control over when item is presented for payment
  - “No pay” banks that solicit Reg. E opt-in may be considered “deceptive” as there is no program to opt in to
    - Force-pay transactions are paid regardless of consumer opt in
  - Consumers who have opted in may be treated “unfairly” if program is not made available to them
    - Due to qualifying waiting period, suspension of privileges or consumer decision to revoke opt in

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## Mitigating Your Risk

- Work with vendors to waive fees on preauthorized items presented for payment against insufficient funds
- Review disclosures to ensure they:
  - Reflect FI practices – e.g., qualifying waiting periods for ODP program
  - Explain discretionary nature of payment of overdrafts
  - Don't offer Reg. E opt-in if no ODP is available/offered
- Re-evaluate customer notification practices
  - Clearly disclose OD payment practices & how fees are assessed
  - Timely notification to consumer if ODP privilege is revoked
  - Timely notice of overdraft and fee assessment
  - Confirmation of customer revocation of opt-in & what it means
- Monitor consumer complaints

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## Overdrafts fees - Dynamic Limits

- The Issue
  - FDIC Consumer Compliance Supervisory Highlights  
<https://www.fdic.gov/regulations/examinations/consumer-compliance-supervisory-highlights/index.html>
  - FI changing from “static” to “dynamic” OD limits
  - Dynamic OD limits vary by customer and change periodically based on algorithms or rules
  - Customers are not notified of change or their OD limit
- The Regulatory Conclusions
  - Failure to disclose change from static to dynamic OD limits is deemed a “material” omission and is “deceptive”
  - Consumer cannot reasonably avoid fees because they lacked sufficient information which is “unfair”

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## Mitigating Your Risk

- Review & revise account disclosures to ensure they reflect FI practice
- Enhance customer notification
  - Changes from static to dynamic limits
  - Disclose changes in OD limits in real time
- Training
  - Ensure customer service understand and can explain FI's overdraft practices
- Monitor complaints related to overdrafts

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## Computer Incident Notification Contacts

- Effective May 1, 2022
- Requires banks to notify their federal regulator within 36 hours of knowledge of computer security “notification incident”
- Regulatory Points of Contact announced:
  - OCC – send notice via BankNet.gov or call 800-641-5925
  - FDIC – notify case manager or member of FDIC exam team or if not available, email [incident@fdic.gov](mailto:incident@fdic.gov)
  - Fed – email [incident@frb.gov](mailto:incident@frb.gov) or call 866-364-0096
- State chartered banks are also asked to notify IDOB
- More information – [Jan. 2022 Disclosure](#)

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## FDIC Crypto Notice

- [FIL-16-2022](#) issued April 7
- Requests that all FDIC supervised banks considering engaging in crypto-related activities to:
  - Notify FDIC of their intent
  - Provide necessary information to allow FDIC to identify related risks
- Already engaging in crypto activities, notify FDIC ASAP
- State chartered bank should also notify IDOB due to reputation risk to the bank



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## Got Compliance Questions?

- On IBA website:
  - [Compliance Tools & Resources](#)
  - [Publications](#)
    - Disclosure, Iowa Banking Guide, Check Handling Guide, Record Retention Manual & more
  - [Training](#)
    - Compliance Briefs, On-demand training & more
- Compliance Hotline
  - [compliance@iowabankers.com](mailto:compliance@iowabankers.com)
  - 844-REGS411 (or 844-734-7411)

