

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)		
Current Reg E	Final Amended Reg E	Comment
<p>§ 205.17 Requirements for overdraft services.</p> <p>(b) Opt-in requirement. (1) General. Except as provided under paragraphs (b)(4) and (c) of this section, a financial institution holding a consumer's account shall not assess a fee or charge on a consumer's account for paying an ATM or one-time debit card transaction pursuant to the institution's overdraft service, unless the institution:</p> <p>*****</p>	<p>§ 205.17 Requirements for overdraft services.</p> <p>(b) Opt-in requirement. (1) General. Except as provided under paragraph (c) of this section, a financial institution holding a consumer's account shall not assess a fee or charge on a consumer's account for paying an ATM or one-time debit card transaction pursuant to the institution's overdraft service, unless the institution:</p> <p>*****</p>	<p>The final amendment removed the reference to paragraph (b)(4). Paragraph (b)(4) (see below) was deleted.</p>
<p>§ 205.17 Requirements for overdraft services.</p> <p>(b) Opt-in requirement.</p> <p>(4) Exception to the notice and opt-in requirements. The requirements of §205.17(b)(1) do not apply to an institution that has a policy and practice of declining to authorize and pay any ATM or one-time debit card transactions when the institution has a reasonable belief at the time of the authorization request that the consumer does not have sufficient funds available to cover the transaction. Financial institutions may apply this exception on an account-by-account basis.</p>	<p>DELETED</p>	<p>The removal of this section was prompted to clarify that there is no exception created for any institution (regardless of overdraft policy or practice) that would permit an institution to charge a fee to a customer for paying an ATM or one-time debit card transaction if the account did not have sufficient funds, unless the consumer opts in to allow such payment.</p>

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<p>Section 205.17—Requirements for Overdraft Services 17(a) Definition</p> <p>1. Exempt securities- and commodities-related lines of credit. Section 205.17(a)(3) does not apply to transactions in a securities or commodities account pursuant to which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.</p>	<p>Section 205.17—Requirements for Overdraft Services 17(a) Definition</p> <p>17(a) Definition</p> <p>1. Exempt securities- and commodities-related lines of credit. The definition of “overdraft service” does not include the payment of transactions in a securities or commodities account pursuant to which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.</p>	<p>For clarification purposes, the definition of "overdraft service" was modified to specifically exclude the payment of transactions in a securities or commodities account in connection with credit extensions by registered broker-dealers.</p>

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<p>Section 205.17—Requirements for Overdraft 17(b) Opt-In Requirement</p> <p>1. Scope.</p> <p>NEW</p>	<p>Section 205.17—Requirements for Overdraft 17(b) Opt-In Requirement</p> <p>1. Scope.</p> <p>iv. Application of fee prohibition. The prohibition on assessing overdraft fees under § 205.17(b)(1) applies to all institutions. For example, the prohibition applies to an institution that has a policy and practice of declining to authorize and pay any ATM or one-time debit card transactions when the institution has a reasonable belief at the time of the authorization request that the consumer does not have sufficient funds available to cover the transaction. However, the institution is not required to comply with §§ 205.17(b)(1)(i)-(iv), including the notice and opt-in requirements, if it does not assess overdraft fees for paying ATM or one-time debit card transactions that overdraw the consumer’s account. Assume an institution does not provide an opt-in notice, but authorizes an ATM or one-time debit card transaction on the reasonable belief that the consumer has sufficient funds in the account to cover the transaction. If, at settlement, the consumer has insufficient funds in the account (for example, due to intervening transactions that post to the consumer’s account), the institution is not permitted to assess an overdraft fee or charge for paying that transaction.</p>	<p>This commentary was added to further clarify that there is no exception created for any institution (regardless of overdraft policy, practice, or cause) that would permit an institution to charge a fee to a customer for paying an ATM or one-time debit card transaction if the account did not have sufficient funds, unless the consumer opts in to allow such payment.</p>

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<p>Section 205.17—Requirements for Overdraft Services 17(b) Opt-In Requirement 1. Scope. iv. Application of fee prohibition</p> <p>7. Written confirmation. A financial institution may comply with the requirement in §205.17(b)(1)(iv) by providing to the consumer a copy of the consumer's completed opt-in form or by sending a letter or notice to the consumer acknowledging that the consumer has elected to opt into the institution's service. The written confirmation notice must include a statement informing the consumer of his or her right to revoke the opt-in at any time. To the extent the institution complies with the written confirmation requirement by providing a copy of the completed opt-in form, the institution may include the statement about revocation on the initial opt-in notice.</p>	<p>Section 205.17—Requirements for Overdraft Services 17(b) Opt-In Requirement 1. Scope. iv. Application of fee prohibition</p> <p>7. Confirmation. A financial institution may comply with the requirement in § 205.17(b)(1)(iv) to provide confirmation of the consumer's affirmative consent by mailing or delivering to the consumer a copy of the consumer's completed opt-in notice, or by mailing or delivering a letter or notice to the consumer acknowledging that the consumer has elected to opt into the institution's service. The confirmation, which must be provided in writing, or electronically if the consumer agrees, must include a statement informing the consumer of the right to revoke the opt-in at any time. See § 205.17(d)(6), which permits institutions to include the revocation statement on the initial opt-in notice. An institution complies with the confirmation requirement if it has adopted reasonable procedures designed to ensure that overdraft fees are assessed only in connection with transactions paid after the confirmation has been mailed or delivered to the consumer.</p>	<p>The final amendment commentary clarifies that confirmation can be provided by: (1) mailing or delivering to the consumer a copy of the consumer's completed opt-in notice; or (2) mailing or delivering to the consumer a letter or notice that the consumer has elected to opt in to the institution's service.</p> <p>The final amendment commentary allows for the confirmation to be delivered electronically (if the consumer agrees) but makes clear in the section analysis that electronic delivery extends only to the delivery of a written confirmation, for example via email or website, and does not allow for confirmations to be provided telephonically or verbally in any form.</p> <p>The final amendment also clarifies that the institution must complete its confirmation responsibility before it can charge overdraft fees. Further clarification was provided that permits the institution to only charge fees on transactions paid after the mailing or delivery date of the confirmation. In effect, this prevents an institution from looking back to transactions before the mailing or delivery date and then imposing fees on those transactions after the confirmation has been sent.</p> <p>Litigation risk is minimized by adopting reasonable procedures that prevent overdraft fees from being imposed on transactions before the confirmation is sent.</p>

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<p>Section 205.17—Requirements for Overdraft Services 17(b) Opt-In Requirement 1. Scope. iv. Application of fee prohibition</p> <p>NEW</p>	<p>Section 205.17—Requirements for Overdraft Services 17(b) Opt-In Requirement 1. Scope. iv. Application of fee prohibition</p> <p>8. Outstanding Negative Balance. If a fee or charge is based on the amount of the outstanding negative balance, an institution is prohibited from assessing any such fee if the negative balance is solely attributable to an ATM or one-time debit card transaction, unless the consumer has opted into the institution’s overdraft service for ATM or one-time debit card transactions. However, the rule does not prohibit an institution from assessing such a fee if the negative balance is attributable in whole or in part to a check, ACH, or other type of transaction not subject to the prohibition on assessing overdraft fees in § 205.17(b)(1).</p>	<p>The final amendment clarifies that fees based on the amount of the outstanding balance cannot be imposed if the sole reason for the negative balance is the result of an ATM or one-time debit card transaction, and the consumer has not opted in to the institution's overdraft service for ATM and one-time debit card transactions.</p> <p>Institutions may charge fees resulting from a negative balance if it is caused in whole or in part by transactions other than an ATM or one-time debit card transaction, or if the consumer has opted in to the institution's overdraft service for ATM and one-time debit card transactions.</p>

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<p>Section 205.17—Requirements for Overdraft 17(b)(3) – Same Account Terms, Conditions, and Features</p> <p>2. Limited-feature bank accounts. Section 205.17(b)(3) does not prohibit institutions from offering deposit account products with limited features, provided that a consumer is not required to open such an account because the consumer did not opt in (see comment 17(b)(3)–2). For example, §205.17(b)(3) does not prohibit an institution from offering a checking account designed to comply with state basic banking laws, or designed for consumers who are not eligible for a checking account because of their credit or checking account history, which may include features limiting the payment of overdrafts. However, a consumer who applies, and is otherwise eligible, for a full-service or other particular deposit account product may not be provided instead with the account with more limited features because the consumer has declined to opt in.</p>	<p>Section 205.17—Requirements for Overdraft 17(b)(3) – Same Account Terms, Conditions, and Features</p> <p>2. Limited-feature bank accounts. Section 205.17(b)(3) does not prohibit institutions from offering deposit account products with limited features, provided that a consumer is not required to open such an account because the consumer did not opt in. For example, § 205.17(b)(3) does not prohibit an institution from offering a checking account designed to comply with state basic banking laws, or designed for consumers who are not eligible for a checking account because of their credit or checking account history, which may include features limiting the payment of overdrafts. However, a consumer who applies, and is otherwise eligible, for a full-service or other particular deposit account product may not be provided instead with the account with more limited features because the consumer has declined to opt in.</p>	<p>Deletes reference to comment 17(b)(3)–2</p>

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<p>Section 205.17—Requirements for Overdraft 17(c) Timing</p> <p>2. Permitted fees or charges. Fees or charges for ATM and one-time debit card overdrafts may be assessed only for overdrafts paid by the institution on or after the date the financial institution receives the consumer's affirmative consent to the institution's overdraft service.</p>	<p>Section 205.17—Requirements for Overdraft 17(c) Timing</p> <p>2. Permitted fees or charges. Fees or charges for ATM and one-time debit card overdrafts may be assessed only for overdrafts paid on or after the date the financial institution receives the consumer's affirmative consent to the institution's overdraft service. See also comment 17(b)-7.</p>	<p>Added cross reference to 17(b)-7</p> <p>Paragraph 2 seems to be in conflict with the rules in 17(b)-7. Paragraph 2 allows institutions to assess fees after receiving a consumer's affirmative consent. Whereas, paragraph 17(b)-7, permits the institution to only charge fees on transactions paid after the mailing or delivery date of the confirmation. Based on the lack of analysis regarding paragraph 2 and the added reference to 17(b)-7, we believe the Board's intention is to only charge fees on transactions paid <u>after</u> the mailing or delivery date of the written confirmation.</p>
<p>Section 205.17—Requirements for Overdraft 17(d) Content and Format</p> <p>NEW</p>	<p>Section 205.17—Requirements for Overdraft 17(d) Content and Format</p> <p>3. Opt-in methods. The opt-in notice must include the methods by which the consumer may consent to the overdraft service for ATM and one-time debit card transactions. Institutions may tailor Model Form A-9 to the methods offered to consumers for affirmatively consenting to the service. For example, an institution need not provide the tear-off portion of Model Form A-9 if it is only permitting consumers to opt-in telephonically or electronically. Institutions may, but are not required, to provide a signature line or check box where the consumer can indicate that he or she declines to opt in.</p>	<p>The final amendment clarifies that the Model Form A-9 notice should only include the methods by which a consumer may affirmatively consent and therefore an institution would be permitted, for example, to eliminate the tear-off portion of the form if it only allows consumers to telephonically or electronically consent.</p> <p>In addition, institutions are not required to include a line on the form indicating that they have declined to opt in.</p>

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<p>Section 205.17—Requirements for Overdraft 17(d) Content and Format</p> <p>NEW</p>	<p>Section 205.17—Requirements for Overdraft 17(d) Content and Format</p> <p>4. Identification of consumer’s account. An institution may use any reasonable method to identify the account for which the consumer submits the opt-in notice. For example, the institution may include a line for a printed name and an account number, as shown in Model Form A-9. Or, the institution may print a bar code or use other tracking information. See also comment 17(b)-6, which describes how an institution obtains a consumer’s affirmative consent.</p>	<p>The final amendment clarifies that institutions can use any reasonable method to identify the account that the consumer desires to opt in.</p>
<p>Section 205.17—Requirements for Overdraft 17(d) Content and Format</p> <p>NEW</p>	<p>Section 205.17—Requirements for Overdraft 17(d) Content and Format</p> <p>5. Alternative plans for covering overdrafts. If the institution offers both a line of credit subject to the Board’s Regulation Z (12 CFR part 226) and a service that transfers funds from another account of the consumer held at the institution to cover overdrafts, the institution must state in its opt-in notice that both alternative plans are offered. For example, the notice might state “We also offer overdraft protection plans, such as a link to a savings account or to an overdraft line of credit, which may be less expensive than our standard overdraft practices.” If the institution offers one, but not the other, it must state in its opt-in notice the alternative plan that it offers. If the institution does not offer either plan, it should omit the reference to the alternative plans.</p>	<p>The final amendment clarifies that institutions must include in the model form a reference to both its line-of-credit <u>and</u> account link services to cover overdrafts, if it offers both.</p> <p>If the institution offers neither service, then the reference should be omitted from the model form entirely.</p>