



What You Need to Know About Promoting Overdraft Protection

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In May 2005, the [Federal Reserve Board](#) published its much-anticipated final amendments and official staff commentary to [Regulation DD](#), which implements the Truth in Savings Act.

Following this release, the National Credit Union Administration ([NCUA](#)) unanimously approved an interim final rule on the disclosure of courtesy overdraft programs. It takes into account the unique nature of credit unions and the limitations under which they may pay dividends on member accounts.

On Oct. 1, all credit unions were expected to be in compliance with the NCUA Rule 707.

Rule addresses four areas

NCUA Rule 707 is an effort to improve the uniformity and adequacy of information provided to consumers when they overdraw their share draft accounts pursuant to a courtesy overdraft protection program. The Fed's rules for Reg DD and NCUA's final rule on overdraft programs address four areas, two applicable to all credit unions and two applicable only to credit unions that "promote" the payment of overdrafts.

The four areas are misleading advertisements, nonsufficient funds and overdraft fee requirements, advertisement disclosures, and periodic statement disclosures for financial institutions.

Applicable to **all** credit unions is the prohibition against using misleading statements in an advertisement (including advertisements to current members), and the requirement that account-opening disclosures clearly state which transaction channels an overdraft fee could occur.

Applicable to only those credit unions that "promote the payment of overdrafts" are the advertising and periodic statement disclosures. However, when defining "promotion" of overdraft programs, it's not always clear to which credit unions the amendment applies. That's because rule 707 doesn't clearly define "promoting" the payments of overdrafts in an advertisement.

Be warned: If a credit union includes overdraft limit amounts in **any** communication, it has the potential of being perceived as promoting the payments of overdrafts. Under the amendments, credit unions can't safely disclose their courtesy overdraft program to members without it being considered promoting the payment of overdrafts.

Safe harbor actions

Addressing concern and ambiguity, the Fed and NCUA provided "safe harbor" actions that would not be considered promoting the payment of overdrafts, such as:

- **Promoting** in an advertisement a service for paying overdrafts where the institution's payment of overdrafts will be agreed upon in writing and subject to Regulation Z;
- **Communicating** about the payment of overdrafts in response to a member-initiated inquiry;
- **Engaging** in an in-person discussion with a member;
- **Making** disclosures that are required by federal or other applicable law;
- **Providing** a notice about or including an overdrawn item in a periodic statement or notice;
- **Including** in a deposit agreement a discussion on the credit union's right to pay overdrafts;
- **Providing** a notice (including at automated teller machines) that completing a transaction may trigger a fee for overdrawing; and
- **Providing** informational or educational material concerning the payment of overdrafts, if the materials do not specifically describe the institution's courtesy overdraft service.

Credit unions should carefully evaluate their programs to determine whether their overdraft program communication methods and content **could** be considered promoting the payment of overdrafts.

To err on the side of caution, credit unions should assume that communication, outside of the listed "safe harbor" actions within the amendments, fall into a subjective "gray area," which could possibly be interpreted as promoting the payments of overdrafts.

CU options

If evaluation shows aspects of the program could be considered promoting the payment of overdrafts, credit unions will need to take one of the following courses of action:

- **Discontinue** disclosing the program to members, except for the required standard explanation of overdrafts in the member's account agreement.
- **Continue** with the current disclosed program and provide the periodic statement and advertising disclosures required for credit unions that are deemed to promote the payment of overdrafts.
- **Continue** disclosing the program, but modify the promotion so it will not be considered to promote the payment of overdrafts.

Although credit unions already in compliance with the final guidance on overdraft programs set forth in February 2005, should have already addressed many of the issues and concerns regarding disclosing and promoting overdrafts now outlined in Rule 707, credit unions that continue to disclose their courtesy overdraft programs—even under compliance with the final guidance—should take these measures:

- **Work** with their core processor/overdraft program provider to ensure they can adhere to the periodic disclosure requirements.
- **Review** all communication material relating to their courtesy overdraft program (which may be construed as promoting the payments of overdrafts) to ensure they address the requirements.
- **Review** periodic disclosure procedures with member service personnel so they can answer any member questions or concerns regarding the new disclosures.

Members use overdraft programs because of inadvertent errors or temporary cash flow needs. Such programs are a service, not an inconvenience, for members. Credit unions should provide daily notices when members overdraw, as well as the required periodic statements to account for any overdraft fees incurred.

As more members come to expect this service, credit unions must be ready, not only to answer member questions, but to also stay in compliance with regulatory inquiries. By providing the required periodic statements as an extension of a responsibly managed overdraft program, credit unions offer full disclosure to members.

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