

# RESCINDED

Transmittal – See OCC 2020-11

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## Truth In Savings Act (TISA) - Regulation DD: Final Rule: Disclosure of Overdraft Fees

The Board of Governors of the Federal Reserve System published the attached final rule in the *Federal Register* on May 24, 2005.<sup>1</sup> The final rule amends Regulation DD and the Official Staff Interpretations, and is designed to improve the uniformity and adequacy of information to consumers about certain services provided by banks to their deposit customers. These services are commonly referred to as "bounced-check protection" or "courtesy overdraft protection" services (overdraft services). The amendments become effective on July 1, 2006.

The amendments require banks to disclose information about overdraft fees on periodic statements and account-opening disclosures, and to include certain disclosures in advertisements for overdraft services. The principal changes made by the amendments include:

### Advertisements

Before the final rule, Regulation DD defined "advertisement" in a manner that generally excluded communications with existing customers about existing accounts. The final rule expands this definition for certain purposes to include communications with existing customers. First, "advertisements" include communications that are misleading or inaccurate, or misrepresent the deposit contract. Second, "advertisements" include any communications about overdraft services.

Advertisements that promote the payment of overdrafts must include certain disclosures about the service. In particular, banks must clearly and conspicuously disclose: the applicable fees for the payment of overdrafts, the categories of transactions for which an overdraft fee may be imposed, the time period consumers have to repay or cover an overdraft, and the circumstances under which the bank will not pay an overdraft.

The final rule also sets forth a number of situations in which some or all of these specified disclosures would not be required. Banks do not need to provide these additional disclosures, for example, in certain educational materials; on an ATM receipt; on television, radio, or billboard advertisements; or in response to a consumer-initiated inquiry.

### Periodic Statement Disclosures

Regulation DD generally requires that if an institution mails or delivers a periodic statement, the institution must disclose fees imposed in connection with the account during the statement period. Under the final rule, if a bank promotes the payment of overdrafts in

To

Chief Executive Officers and  
Compliance Officers of All  
National Banks, Department and  
Division Heads, and All  
Examining Personnel

an advertisement, the bank must separately disclose on each periodic statement the total dollar amount of fees imposed:

- On the deposit account for paying overdrafts and
- For returning items unpaid.

These disclosures must be provided both for the statement period and for the calendar year to date. Banks that do not promote the payment of overdraft services would not be required to provide the new periodic statement disclosures.

The final rule also specifies a number of customer communications that do not trigger these new disclosure requirements, such as providing certain educational materials, responding to a consumer-initiated inquiry, and having in-person discussions.

### **Account Opening Disclosures**

Regulation DD generally requires that banks disclose the amount of any fee that may be imposed in connection with the account and the conditions under which a fee may be imposed. The final rule amends the Official Staff Interpretations to state that, in satisfying this requirement with respect to fees for overdraft services, a bank must specify the categories of transactions for which an overdraft fee may be imposed. An exhaustive list of such transactions is not required. It is sufficient for an institution to disclose that a fee may be imposed for covering overdrafts "created by check, in-person withdrawal, ATM withdrawal, or other electronic means," as applicable. Simply disclosing a fee "for overdraft items would not be sufficient." This account-opening disclosure requirement applies to all banks, including those that do not promote overdraft services in an advertisement.

You may direct any questions to your supervisory office or OCC Compliance Division (202) 649-5470.

Ann F. Jaedicke  
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<sup>1</sup> 70 FR 29582 (May 24, 2005). The rule does not replace the interagency Joint Guidance on Overdraft Protection Program issued on February 24, 2005, which addressed safety and soundness considerations and legal risks raised by, and best practices for, overdraft protection programs. 70 FR 9127 (February 24, 2005).

### **Related Links**

- [Final Rule 70 FR 29582](#)