



Federal Reserve Board's Overdraft Proposal Summary December 2008

The Federal Reserve Board's overdraft proposal provides two main options for how banks will handle ATM and most debit card transactions that overdraft a bank account: Opt-Out and Opt-In. It also contains a provision about debit holds that cause overdrafts. In the summary below, the italicized words and phrases indicate additional policy decisions for which the Fed is seeking commentary.

To comment to the Federal Reserve Board go to: <http://cu.convio.net/OverDraft>

Because the Fed placed the proposal in Regulation E, which implements the Electronic Funds Transfer Act, it cannot address overdrafts caused by check. That would have to be done by a separate rulemaking. For this reason the proposal does not cover checks and ACH payments that overdraft an account. In addition, this regulation does not address services that pay overdrafts by linking a checking account to a credit card, home equity line of credit or other type of account.

Option 1- OPT-OUT

- A bank may not assess a fee for covering an overdraft, caused by an ATM/debit card transaction, without first:
 - Providing notice that it may pay overdrafts for a fee, and
 - Giving the consumer a reasonable opportunity to opt out of this service, and
 - The consumer has not opted out.
- This opt-out requirement does not apply to:
 - Banks with a policy of declining to pay ATM/debit card overdrafts, or
 - Banks that require consumers to affirmatively consent (opt-in) before providing a fee-based overdraft service.
- Exception: A bank may assess a fee, even if the person opts-out, if:
 - The bank has a reasonable belief there are funds in the account to cover the transaction, or
 - The transaction was not preauthorized, because payment was submitted through paper means, rather than a card terminal.

NOTE: *The Fed is seeking comment on whether the following provision should be allowed (may) or prohibited (shall not).*

- The bank (*may or shall not*)
 - Condition overdraft coverage for checks/ACH payments on the consumer's decision to opt-out.
 - Decline to pay check/ACH overdrafts because the consumer opted-out.
- Notice must be provided:
 - For accounts opened after effective date—before any fee is assessed for covering an overdraft

- For accounts where the consumer has not opted out- following assessment of a fee either on the bill which reflects the fee or once per statement on notice sent after covering the overdraft.

NOTE: *The Fed is seeking comment on the following provision, whether banks should be permitted to vary the terms and conditions of an account depending on whether you enroll in a fee-based overdraft program.*

- *Bank should provide consumers with accounts that have the same terms and conditions regardless of consumer's decision to opt out of overdraft coverage.*

OR

- *Bank should provide consumers with accounts that have the same or reasonably comparable terms. The bank may vary terms and conditions for accounts with overdraft coverage and those without, as long as the difference are not so substantial that they would discourage a reasonable consumer from exercising the opt out right.*

Option 2- OPT-IN

- A bank may not assess a fee for covering an overdraft unless the bank:
 - Provides a notice explaining the service, separated from other notices, and
 - Provides reasonable opportunity for consumer to affirmatively consent, and
 - Obtains affirmative consent and provides written confirmation of consent.
- The opt-in requirement does not apply to banks with a policy of declining to pay ATM/debit card overdrafts.

NOTE: *The Fed is seeking comment on whether the following provision should be allowed (may) or prohibited (shall not).*

- The bank *(may or shall not)*
 - Condition overdraft coverage for checks/ACH payments on the consumer's opt-in
 - Decline to pay check/ACH overdrafts because the consumer did not opt-in
- Exception: A bank may assess a fee without consumer's affirmative consent, if
 - The bank has a reasonable belief there are funds in the account to cover the transaction, or
 - The transaction was not preauthorized, because payment was submitted through paper means, rather than a card terminal.
- Notice must be provided:
 - For accounts opened before effective date for which overdraft service is provided;
 - With the first statement sent after effective date, or
 - Following assessment of first fee following effective date
 - For accounts opened after effective date-- before bank has assessed any fee

NOTE: *The Fed is seeking comment on the following provision, whether banks should be permitted to vary the terms and conditions of an account depending on whether you enroll in a fee-based overdraft program.*

- *Banks should provide consumers with accounts that have the same terms and conditions regardless of consumer's decision to opt-in to overdraft coverage.*

OR

- *Bank should provide consumers with accounts that have the same or reasonably comparable terms. The bank may vary terms and conditions for account with overdraft coverage and those without, as long as the differences are not so substantial that they would compel a reasonable consumer to opt-in to overdraft coverage.*

DEBIT HOLD

- A bank may not assess a fee for paying an overdraft if the overdraft would not have occurred but for a debit hold placed on funds in the consumer's account, and the actual amount of the transaction can be determined by the merchant within a short period after the transaction is authorized by the bank.
- Exception: A bank may assess a fee for paying an overdraft cause by a debit hold if the amount of the hold is less than or equal to the actual amount of the transaction.
- Safe Harbor: A bank may assess an overdraft fee if it has procedures in place to release a debit hold within two hours of when the transaction is authorized.

Summary Updated: 1/27/09