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CONSUMER ALERT

OVERDRAFT FEE COVERAGE: SCAM OR NECESSARY?

Overdraft fees, especially from overdraft opt-in programs, are some of the most expensive fees that financial institutions charge. When you are already low on funds, overdraft fees make a tough situation even worse. In an effort to assist customers running low on funds, banks began opting customers into overdraft protection. Overdraft protection programs aid bank customers who have over drafted their account. However, overdraft fee protection has turned out to be overly [burdensome and costly](#) for consumers and earns a significant amount of fees for the banking industry.

Overdraft fees are charged by banks when you spend more money than you have in your checking account. Instead of declining the charge, your bank will cover the payment and charge a fee through an overdraft protection program. The fee varies across financial institutions. According to a [Bankrate study](#), the average overdraft fee is \$29.80 and can run as high as \$38.00. The fee is fixed regardless of whether you overdraw \$5 or \$500.

Overdraft fee coverage is always optional. If you don't opt-in to overdraft coverage, ATM and debit card transactions will be declined by your bank if there's not enough money in your account to cover them, and you won't be charged a fee. If you do opt-in, banks charge a fee for every transaction made when there are insufficient funds in customer's account.

Additionally, the Electronic Fund Transfer Act, also known as EFTA, provides guidelines for financial institutions to follow regarding overdraft protection. It prohibits banks from charging an overdraft fee without the account holder's permission as well as sets clear guidelines on disclosure of the overdraft fee protection program. EFTA requires banks to provide

consumers with initial disclosures about their overdraft protection program. The disclosure or notice must be clear and provide a readily understandable explanation of its overdraft service. This includes specifying how the overdraft fees are calculated and defining the relevant terms in the disclosure, so consumers are not deceived by the language describing the bank's overdraft practice. These initial disclosures should be provided to consumers before they decide on their enrollment. This permits consumers to make an informed choice that best suits them and their financial needs.

EFTA and its implementing regulations are enforceable by consumers because it provides a private right of action to consumers whose banks have acted in violation of EFTA and its requirements.

One other thing to watch out for is how the overdraft fees are assessed if you make multiple purchases close together, especially if your bank balance is showing that you have enough money to cover the purchase. The Federal Deposit Insurance Corporation ("FDIC"), which regulates banks, has issued guidance against so called "authorized positive settle negative", also known as ASPN transactions, which occur when a consumer has an account balance that displays available funds to cover a given transaction, yet due to intervening authorizations, there are insufficient funds to cover the transaction at the time the debit settles, resulting in an overdraft fee. Thus, the overdraft fee is initially charged and authorized against a positive balance but settled against a negative balance.

ASPN transactions make it difficult for consumers to determine when fees will be assessed and how they may be avoided. Consumers have no control over the



overdraft processing systems, making it nearly impossible to avoid this type of injury. The FDIC encourages institutions to review their practices regarding the charging of overdraft fees on APSN transactions. In particular, the FDIC recommends reviewing disclosure and account agreements to ensure the institution's practices for charging fees on deposit accounts are communicated [accurately, clearly, and consistently](#).

Here's what to look for in deciding to enroll in an Opt-In program:

How are the fees disclosed: Research your financial institution to make sure they are complying with EFTA and that you have received appropriate disclosures of the overdraft fee policy.

Pay attention to your account balances: You may be charged overdraft fees even if your online account is showing you have enough money to cover them, if you have previously made transactions that will lower your balance. You can review your bank's EFTA disclosures to learn more about how transactions are calculated.

Cheaper options: Aside from overdraft coverage protection programs, some institutions offer overdraft protection transfers. These are opt-in programs that link a second account to your checking account. In the case an overdraft occurs, a transfer from the second account would be triggered to cover the transaction.

Institutions with low or no overdraft fees: Several financial institutions offer banking services with no overdraft fees and free overdraft protection. Enrolling in a free overdraft program is a good option so long as it is EFTA compliant.

If you have been charged with an overdraft fee, you have some options:

1. Reach out to your financial institution and ask whether they will waive it if you don't have a history of negative transactions.
2. Ask about forgiveness programs. Many financial institutions have a forgiveness program for customers in good standing.
3. Ask about "rewind" programs, some institutions will waive your overdraft fee if your next deposit arrives soon after the overdraft fee is charged.

In conclusion, overdraft fee protection programs may be doing more financial harm than good. While overdraft protection ensures transactions process even when there isn't enough money in the bank account which can be helpful in emergency situations, it is important to read the fine print before opting in. Understand the overdraft fee protection program at your financial institution and decide whether it makes sense for you to opt in based on your personal preference, lifestyle, and spending habits. Financial institutions must make every effort to comply with EFTA regulations and be held accountable with respect to violations of EFTA. It is crucial that customers are aware of the potential risks associated with overdraft fee protection programs.

Labaton Keller Sucharow's lawyers are available to address any questions you may have regarding these developments. Please contact the Labaton Keller Sucharow lawyer with whom you usually work or the contacts below.

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