

REGULATORY ALERT

NATIONAL CREDIT UNION ADMINISTRATION
1775 DUKE STREET, ALEXANDRIA, VA 22314

DATE: August 2010 **NO:** 10-RA-12
TO: Federally Insured Credit Unions
SUBJ: Member Notice Requirements for Overdraft Services

Dear Board of Directors,

Effective August 15, 2010, financial institutions are prohibited from charging consumers fees for paying overdrafts on automated teller machine (ATM) transactions and one-time debit card transactions – unless consumers “opt in” to overdraft services for those types of transactions. Your credit union’s overdraft program must comply with these changes.

To assist you in this process, NCUA has posted the Federal Reserve Board’s sample opt-in notice: *What You Need to Know about Overdrafts and Overdraft Fees.*

The Fed’s easy-to-understand notice was created to raise consumers’ awareness of overdraft fees, as well as options available to reduce those fees. The sample notice is available online through the following link:
<http://www.federalreserve.gov/newsevents/press/bcreg/bcreg20091112a3.pdf>

While credit unions are not required to use this sample notice, it is a convenient way to provide the required notice to members.

The Fed’s recent changes to Regulation E enable consumers to limit the costs of overdraft services by providing consumers and financial institutions with several choices:

- **Consumer Opt In** – As highlighted above, this provision requires that consumers opt in, or affirmatively consent, to the institution’s overdraft service for ATM and one-time debit card transactions, before overdraft fees may be assessed on an account.
- **Opt-in/Out Notice** – Prior to opting in, a consumer must be provided a notice explaining the financial institution’s overdraft services. This should include the fees associated with the service and the consumer’s choices.

If institutions do not use the Fed's sample notice, Regulation E includes language that the notice should substantially follow.

- **Consumers Covered** – The opt-in right applies to all consumers, including new and existing account holders.
- **Revocation Option** – Consumers also have an ongoing right to revoke consent after they opt in.
- **Same Account Terms, Conditions and Features** – Institutions must provide consumers who do *not* opt in with the same account terms, conditions and features -- including prices -- as consumers who do opt in.
- **Prohibition from Charging Overdraft Fees for Overdrafts Paid** – Institutions are prohibited from charging overdraft fees for any overdrafts they pay on ATM and one-time debit card transactions for consumers who do *not* opt in.
- **Mandatory Compliance Dates:**

July 1, 2010 – for new accounts opened after July 1, 2010

August 15, 2010 – for accounts existing before July 1, 2010

The final rule and recent clarifying amendments are available through the following links:

Final Rule: <http://frwebgate3.access.gpo.gov/cgi-bin/PDFgate.cgi?WAISdocID=gdH1LZ/2/2/0&WAIAction=retrieve>

Amendments Clarifying the Final Rule:
<http://edocket.access.gpo.gov/2010/pdf/2010-13280.pdf>

If you have any questions regarding this Regulatory Alert, please contact your district examiner, regional office, or state supervisory authority.

Sincerely,

/s/

Debbie Matz
Chairman