

THE AUDITOR'S REPORT

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COMPLIANCE CORNER

Truth In Savings Act

In May 2005, the Board of Governors of the Federal Reserve system released their final rule of the Truth In Savings Act. The Truth In Savings Act requires NCUA to create regulations substantially similar to those enacted by the Federal Reserve within 90 days of the effective date of the Federal Reserve's rules. The final rule incorporates amendments that address the uniformity and adequacy of information provided to members when they overdraw their share accounts. The mandatory compliance date for the final rule of the Truth In Savings Act is October 1, 2006.

Many credit unions offer services referred to as "bounced-check protection" or "courtesy overdraft protection." Courtesy overdraft protection allows the payment of a check or debit transaction that would otherwise be rejected for non-sufficient funds (NSF). Payment of the item overdraws the member's account, and a fee is charged for paying the NSF item. Under courtesy overdraft protection programs, there is no written agreement between the member and credit union to pay NSF items. Instead, payment is made at the discretion of the credit union, and a fee is charged for each item paid.

Credit unions that provide courtesy overdraft protection, but do not advertise it, must disclose fees debited from a share account on their members' periodic statements. If fees of the same type are imposed more than once in a statement period, then the fees may be itemized separately or grouped together and the total disclosed. Credit unions that advertise courtesy overdraft

protection programs must separately disclose the total fees charged to an account for paying items when there are NSFs and the total fees for returning items unpaid for both the statement period and calendar year to date. Credit unions that do not provide courtesy overdraft protection or advertise the payment of overdrafts would not be required to provide the new periodic statement disclosures under the final rule.

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Credit unions must also be aware there are account opening disclosure requirements associated with courtesy overdraft protection. All credit unions that have a courtesy overdraft protection program must specify in account-opening disclosures the categories of transactions for which an overdraft fee may be imposed. However, an exhaustive list of transactions is not required. It is sufficient to state that the fee is imposed for overdrafts created by checks, in person withdrawals, ATM withdrawals, or by other electronic means, as applicable.

There are advertising requirements instituted by the new final rules under the TISA. There was concern that there might be confusion between courtesy pay programs and other line of credit lending products. To avoid confusion with traditional lines of credit, credit

unions that promote the payment of overdrafts must include the following in their advertisements about the service:

- The applicable fees or charges.
- The categories of transactions covered.
- The time period members have to repay or cover any overdraft.
- The circumstances under which the credit union would not pay an overdraft.

Stating the available overdraft limit or the amount of funds available on a periodic statement would be considered an advertisement triggering the required disclosures.

In addition, the final rule provides safe harbors from the advertising requirements similar to those for the periodic statement disclosure requirements. The advertising disclosure requirements would not apply to credit unions when they:

- Promote a traditional line of credit.
- Respond to a member-initiated inquiry.
- Engage in an in-person discussion with a member.
- Make disclosures required by federal or other applicable law.
- Notify a member about a specific overdraft in their account.
- Discuss their right to pay overdrafts in a share account agreement.



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- Provide a notice to a member that items overdrawing an account may trigger a fee.
- Provide educational materials.

Credit unions should be aware advertising disclosures are not required on ATM receipts or for advertisements using broadcast media, billboards, or telephone response systems. However, limited advertising disclosures are required on ATM screens, telephone response machines, and indoor signs. For example, a sign in a credit union lobby advertising courtesy overdraft protection must state that fees may apply and direct members to contact a credit union employee for more information.

Marketing materials in all formats should be reviewed closely to determine if a credit union is actively promoting its overdraft or courtesy pay programs. If your credit union is promoting its overdraft program, then the marketing and advertising materials, as well as the members' periodic statements, should be reviewed to ensure the required disclosures are included.

~Information obtained from NCUA's final rule 12 CFR Part 707 issued April 20, 2006.

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