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**To:** Episys Users  
**From:** Credit Union Support  
**Date:** March 31, 2010  
**Topic:** Regulation E Overview

Final rules for Regulation E (with the mandatory effective date of July 1, 2010, for new accounts, and August 15, 2010, for existing accounts) were released by the Federal Reserve in mid-November 2009. At a high level, the rule reads as follows:

*The final rule requires consumers to 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 the account.*

This regulation impacts many credit unions. All institutions with overdraft products—**not just those with courtesy pay programs**—are affected by this regulatory change. Most credit unions are faced with this change because of situations in which the member makes a one-time signature-based transaction with his or her ATM or debit card that does not post immediately.

Regulation E states that you cannot charge a fee for an ATM or one-time debit transaction with the member. This regulation affects virtually all credit unions because of the many scenarios that could result in an overdraft driven by a card transaction. This fee might be called by any number of names at your credit union, including:

- Overdraft fee
- NSF fee
- Paid item fee
- Daily fee
- Continuous overdraft fee
- Negative balance fee
- Protection Plus fee

It is not the name of the fee that is important; it is that the fee was driven by an ATM withdrawal or transfer or by a one-time debit card transaction (such as an electronic purchase or typical POS transaction). The change in Regulation E does not affect checks, ACH, or other transactions like those stemming from bill pay, audio response, and recurring debit card purchases.

## Examples of Non-Courtesy Pay Overdrafts

When the item does make it to your core processor, the funds may no longer be available to allow for proper payment. Many institutions at this point offer a product covered in their Member Application Disclosure to cover this gap with funds that causes a fee:

### Scenario #1

- Michael Member has \$25.00 available in his account.
- He goes to a gas station and uses his card to pay at the pump for gas and does not use his PIN number.
- Although the transaction is authorized for \$1.00 due to Visa's Operating Rules and Regulations, Michael has actually pumped \$50.00 worth of gas.
- A preauthorization hold is only placed for \$1.00.
- Two days later, the merchant posts the \$50.00 transaction, but there are insufficient funds in Michael's account.

### Scenario #2

- Martha Member has \$57.00 available in her account.
- She goes to Olive Garden with friends and the bill for dinner is \$53.00.
- Olive Garden processes the authorization for the amount of the bill and returns the slip to Martha for signature.
- Martha adds a \$8.00 tip to the bill, which brings the total sale amount to \$61.00.
- Olive Garden is not required to run an additional authorization and processes the transaction for the total amount of \$61.00.
- This posting causes an overdraft situation since the amount is \$4.00 greater than the amount available in Martha's account.

## Recurring Debit Card Purchases

Recurring debit card purchases (such as for insurance, a health club, utilities, or card payments) are different from one-time purchases in that they are set up for automatic payment by transfer on a weekly, monthly, quarterly, or other regularly scheduled basis. If your Episys and your ATM/Debit card network can separate these from a one-time transaction, then these items can be subject to an overdraft fee.

We have been notified that Symitar will *not* have a method to fee these recurring transfers until the permanent solution is made available in the Episys 2010.00 release. This release is currently scheduled for July, but any further change would likely push the release out further.

## Collection of Overdraft Fees is Prohibited: The Opt-In Agreement Process

Under this new regulation, you cannot collect any fees on ATM or one-time debit transactions unless you have been given permission to do so by the member. This permission may be gained via electronic means, a phone call, or a written document. For your convenience, the last page of this document contains the Opt-In Form that has been approved by Synergent attorneys.

You must provide reasonable opportunity for the member to opt-in, and provide written confirmation to the member that mentions the ongoing ability of the member to cancel the opt-in of this service.

## Technology Services Approach

To assist you in compliance with this regulation, we will be providing to you the following marketing and compliance tools. With each step in this process, you will also receive from us a Regulation E Assistance Update.

Target Date	Marketing or Compliance Tool
April 5 and 8	“Reaching Courtesy Pay Users: From Data File to Target Marketing” webinars
April 5	NTMC online banking broadcast message
April 15	Target marketing reporting for members utilizing Courtesy Pay
April 15	Target marketing reporting for members utilizing traditional NSF services
June 8	Tracking record implementation for member opt-in/out/no-response tracking
June 8	SymForms to capture member consent to the service
June 8	NTMC online banking member opt-in
July 1	Confirmation notices begin for members who have enrolled

Each of these tools is described beginning below.

### “Reaching Courtesy Pay Users: From Data File to Target Marketing”

Synergent will be offering a webinar that provides an overview of how to use the Episys system to create a data-file listing of your current courtesy pay members. This listing can then be forwarded to Synergent Print & Creative Services to provide target marketing to these members.

After attending this webinar, you will be able to:

- View the Episys reports and data files generated by Synergent
- Generate an on-demand report and data file
- Import the data file into Microsoft Excel

You will also learn about customizing a targeted direct-mail package for these members. You will see samples of letters, an opt-in form, reply envelopes, statement inserts, newsletter/web article with TIS disclosure, and a confirmation letter.

The webinar will be held on two dates for your convenience, and is offered at **no charge** to you.

### NTMC Broadcast Message Enhancement

To be released on April 6 as part of the Synergent enhancement process, this enhancement enables you to send a broadcast message to your members who use online banking. This new functionality can assist you with the enrollment of your membership in your overdraft program, and is the most effective method for you to implement enrollments as it is fully automated from a credit union perspective. With this enhancement, you may begin to alert online banking users about the pending change with any information you deem appropriate. This functionality will be provided free of charge to all credit unions using NTMC online banking.

Also included with this enhancement is optional functionality for a notification to the member to display on the Account Summary page to indicate that there are new messages from the credit union.

Target Marketing Reporting for Members Utilizing Courtesy Pay

This new report, called the *Courtesy Pay Users Report*, will be generated monthly (beginning at March month end) by Synergent and will also be available for you to run on demand whenever you need it. Each month-end, Synergent will generate three iterations of the *Courtesy Pay Users Report* and associated data files:

- Month to date, sorted in decreasing numeric order by the value in the **Courtesy Pay MTD** column
- Year to date, sorted in decreasing numeric order by the value in the **Courtesy Pay YTD** column
- Prior year, sorted in decreasing numeric order by the value in the **Courtesy Pay Last Year** column

The data files are sorted in account number order, but you can sort them in any way you like when you import them into Excel. The data files also include address information so that you can use them in Excel to generate target marketing lists. The report itself will appear in both Print Control and CU Archives; the data file will appear only in Print Control.

Both the report and the data files provide the account number, share ID, member name, phone number, counters for courtesy pay month to date, year to date, and prior year, and counters for NSF items month to date, year to date, and prior year.

SYNERGENT FCU		COURTESY PAY USERS REPORT			03/17/10 at 03/18/10 07:42		Seq 7630	Page 1	
Account Number	Member ID	Member Name	Phone Number	Courtesy Pay MTD	Courtesy Pay YTD	Courtesy Pay Last Year	NSF MTD	NSF YTD	NSF Last Year
0000401294	71	THEODORE REYNOLDS	207-555-1212	0018	0038	0124	0000	0000	0004
0000350475	72	ANNE M TUCKER	207-555-1212	0017	0031	0048	0003	0005	0009
0000340533	71	ROBERT A ROWE	207-555-1212	0016	0035	0148	0000	0005	0013
0000346428	71	RALPH EDWARDS	207-555-1212	0015	0038	0083	0000	0000	0005
0000520268	71	KATHRYN P ORDWAY	207-555-1212	0013	0045	0028	0000	0005	0020
0000353810	71	MICHAEL R SMITH	207-555-1212	0012	0039	0029	0000	0003	0000
0000515511	71	JEANNETTE P ADAMS	207-555-1212	0011	0025	0062	0002	0003	0007
0000519737	71	SUSANNE L...	207-555-1212	0010	0001	0000	0000	0000	0000
0000520451	71	ANNE M LAWSON		0001	0006	0000	0000	0000	0000
0000600487	71	CONSTANCE P WILLS	207-764-3719	0001	0001	0006	0000	0000	0000
Total Courtesy Pay MTD: 1,031									
Total Courtesy Pay YTD: 2,982									
Total Courtesy Pay Last Year: 9,754									
Total NSF MTD: 103									
Total NSF YTD: 404									
Total NSF Last Year: 1,650									
Total Selected Records: 307									
** Parameters used to create this report **									
-----									
Account Type(s): ALL									
Account Warning(s) excluded: None									
Share Type(s): ALL									
Share Warning(s) excluded: None									
Courtesy Pay field used for selection: Courtesy Pay MTD									
Low Range: 0001									
High Range: 9999									
Overdraft Tolerance > \$0.00 No									
Sort Option Chosen: (1) Courtesy Pay MTD									
-----									

### Target Marketing Reporting for Members Utilizing Traditional NSF Services

This new report, called the ATM NSF Summary report, provides a summary of ATM NSF fees that were withdrawn from members' accounts during the month. The report, which is run during normal end-of-month processing (beginning with March month-end), provides the account number, share ID, member name, number of NSFs that month, and the total amount of fees withdrawn from the account. At the bottom of the report is the number of accounts that had ATM NSF fees, the total number of ATM fees withdrawn from members' accounts, and the total dollar amount of the fees. The report is sorted in account number order and is available in both Print Control and CU Archives. A sample of the report is shown below:

SYNERGENT CU      ATM NSF SUMMARY: MARCH 2010      03/20/10 at 03/22/10 08:08      Seq 0521      Page 1				
ACCOUNT NR	ID	NAME	NR NSF	TOTAL FEES
24514	71	DOUGLAS, RICHARD B	1	25.00
26828	71	NEWCOMB, MARILYN A	1	25.00
27432	71	MATTHEWS, GRETA	1	25.00
29497	71	GEPPERT, MARCIA L	2	50.00
30433	71	WILLIAMS, FRANCES	3	75.00
		WALKNER, JOSEPH P	1	
		WEDGEARDE	4	
66768	71	...		75.00
68794	71	HAWKINS, S...		25.00
68833	71	DALY, ROBIN D	1	25.00
69463	71	WARD, BRIAN M	1	25.00
69653	71	GIBSON, SETH W	3	75.00
211315	71	CLAWSON, REBECCA	1	25.00
Total Accounts:		35	57	1,425.00

### Tracking Record Implementation for Member Opt-In/Out/No Response Tracking

Symitar's plan is to provide two Share tracking types: one for functional authorization and fee logic, and the other to track member correspondence. These tracking types will be set up for you by Synergent; if desired, you can use Screen Definitions to specify the order and placement of the fields in the Share tracking record to organize the look of the screen to your liking.

Overdraw tolerance service will be controlled separately by transaction type. For example, you can control ATM and one-time debit transactions (such as POS and/or signature-type transactions) with User Code fields, and then specify source codes in corresponding User Char fields that enable the system to identify the type of transaction.

Along with full details on how the new functionality works, you will receive a step-by-step job aid that provides instructions on how to enroll members.

### Two Consent SymForms

On pages 7 and 8 are samples of two SymForms that are currently in development at Synergent. The first is to be used through June 30, 2010, and the second is to be used from July 1, 2010, and beyond. The wording of both forms originated with the Federal Reserve Board and was subsequently reviewed and approved by Synergent legal counsel. Although similar paper consent forms have already been sent to credit unions, the final versions will be provided as SymForms and may be somewhat different from the paper versions.

### NTMC Online Banking Member Opt-In

This project will enable credit unions to solicit member consents electronically via NTMC online banking. It provides members the flexibility to opt in or opt out of the overdraft tolerance services for ATM and one-time debit card transactions, as defined by the credit union via the use of a menu option in NTMC online banking. Note, however, that the release of this functionality is dependent on Symitar's completion of the enhancement.

### Confirmation Notices for Members

Synergent will also be developing an automated consent form in self-mailer format for all members. These self-mailer consent forms will be generated nightly and sent directly to the members who have enrolled in the program. The wording of the notice will be similar to the following:

*We have received your request to opt-in to our overdraft service for the ATM withdrawals and debit card purchases you make. Please note that you have the right to cancel this opt-in request at any time.*

*Prototype SymForm for Use through June 30, 2010*



**What You Need to Know About Overdrafts and Overdraft Fees**

An **overdraft** occurs when you do not have enough money in your account to cover a transaction, but we pay it anyway. This service saves you the embarrassment and inconvenience of a returned item, a returned item fee, as well as a fee normally merchants may charge you for items returned to them.

Our standard overdraft practices are outlined below. **CREDIT UNION CUSTOMIZE:** We also offer overdraft protection plans, such as a link to a savings account, and overdraft lines of credit, which may be less expensive than our standard overdraft practices. To learn more about these plans, please contact the credit union.

**Under our standard overdraft practices:**

- 1) **We automatically authorize and pay overdrafts for the following types of transactions:**
  - Checks and other transactions made using your checking account number
  - Automatic bill payments
- 2) **After August 15, 2010, we will not authorize and pay overdrafts for the following types of transactions unless you authorize us to:**
  - ATM transactions
  - Everyday debit card transactions

We pay overdrafts at our discretion, which means we **do not guarantee** that we will always authorize and pay any type of transaction. If we do not authorize and pay an overdraft, your transaction will be declined.

- 3) **Below are the overdraft fees when the credit union pays for your overdraft:**
  - We will charge you a fee of up to **\$30** each time we pay an overdraft.
  - If your account is overdrawn for 5 or more consecutive business days, we will charge an additional \$5 per day.
  - There is no limit on the total fees we can charge you for overdrawing your account.

**If you want us to authorize and pay overdrafts on ATM and everyday debit card transactions, you may call us at 1-800-xxx-xxxx, or complete the form below, mail it to ABC CU, Address, or present it at an ABC CU branch.**

-----  
 I want ABC CU to authorize and pay overdrafts on my ATM and everyday debit card transactions.

Printed Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Date: \_\_\_\_\_ Account Number: \_\_\_\_\_

*Prototype SymForm for Use July 1, 2010 and Beyond*



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**Under our standard overdraft practices:**

**1) We automatically authorize and pay overdrafts for the following types of transactions:**

- Checks and other transactions made using your checking account number
- Automatic bill payments

**2) You must authorize us to pay overdrafts for the following types of transactions:**

- ATM transactions
- Everyday debit card transactions

We pay overdrafts at our discretion, which means we **do not guarantee** that we will always authorize and pay any type of transaction. If we do not authorize and pay an overdraft, your transaction will be declined.

**3) Below are the overdraft fees when the credit union pays for your overdraft:**

- We will charge you a fee of up to **\$30** each time we pay an overdraft.
- If your account is overdrawn for 5 or more consecutive business days, we will charge an additional \$5 per day.
- There is no limit on the total fees we can charge you for overdrawing your account.

**If you want us to authorize and pay overdrafts on ATM and everyday debit card transactions, you may call us at 1-800-xxx-xxxx, or complete the form below, mail it to ABC CU, Address, or present it at an ABC CU branch.**

-----  
 I want ABC CU to authorize and pay overdrafts on my ATM and everyday debit card transactions.

Printed Name: \_\_\_\_\_ Signature: \_\_\_\_\_

Date: \_\_\_\_\_ Account Number: \_\_\_\_\_