



CURRENT STATE OF NSF/COURTESY PAY PROGRAMS

Jim Vilker, NCCO, CAMS
AuditLink VP of Profession Services CU*Answers

AuditLink

WHAT'S BEEN GOING ON SINCE 2012

 Search

CreditUnionTimes

 Sign In

REGISTER

CREDIT UNION TOPICS ▾

RESOURCE CENTER ▾

MARKETPLACE DIRECTORY ▾

CU TECH HUB ▾

COVID-19

CAREERS

SUBSCRIBE

MORE ▾

 **The difference is in**  **THE DETAILS**
For more info visit StateNational.com

News

American Airlines FCU to Pay \$1.5 Million to Settle Overdraft Fee Dispute

California woman who filed the class action lawsuit will be paid a \$15,000 service award.

By **Peter Strozniak** | August 11, 2021 at 02:08 PM

ADVICE GIVEN OVER A DECADE CURRENTLY BEING UPDATED BUT NOT REWRITTEN

Template For Evaluating Transaction Risk

Addressing Recent Law Suits Associated With Overdraft Protection Processing

Presented by **AuditLink**
CUANSWERS Management Services
Information compiled May, 2012

This document was designed to assist credit unions with evaluating the risk associated with posting transactions to member accounts, specifically as it pertains to the effect the posting order has on overdraft and NSF fees. Class action lawsuits have been filed in a number of states

auditlinksuite.com/assessing-transaction-risk-related-to-overdraft-fees-and-posting-methodology/

<https://cusomag.com/2022/02/23/overdraft-class-actions-what-credit-unions-need-to-know-in-2022/>

The screenshot shows the CUSO Magazine website interface. The header includes navigation links: CUSO Magazine, NEWS SECTIONS, SUBSCRIBE, SUBMIT A STORY!, ADVERTISE WITH US, PRESS CENTER, and ABOUT. Below the header is a row of category tags: ALL RECENT ARTICLES, Education, TO KNOW, INTERNET DETAILING, LENDING, MARKETING, NEWS, OPINION, STRATEGY, and TECHNOLOGY. The main article is titled "Overdraft Class Actions: What Credit Unions Need to Know in 2022" and is dated February 23, 2022. It has 85 views and 4 likes. The article text begins with: "Overdraft class action lawsuits remain one of the most serious risks facing credit unions. Overdraft class action lawsuits are relatively easy to file and can create multimillion-dollar payouts for law firms. Credit unions should not assume a small membership size or remote location is protection against these lawsuits. Because they are so lucrative, law firms advertise to consumers on their websites, touting multimillion-dollar settlements and frequently demonizing banks and credit unions alike as engaging in illegal or unfair practices."

FOR THE MOST PART IT IS ALL ABOUT UDAAP AND DISCLOSURES

Howard & Howard
law for business®

Ann Arbor

Chicago

Detroit

Las Vegas

Peoria

direct dial: 248.723.0521

Steve Van Beek
Attorney and Counselor

email: svb@h2law.com

Sample Examples for Overdraft Programs

IT'S NOT JUST ABOUT LEGAL LIABILITY

A GLIMPSE OF WHAT'S TO COME: "THE WRITING IS ON THE WALL"

CFPB Research Shows Banks' Deep Dependence on Overdraft Fees

Overdraft and Non-Sufficient Fund Penalties Made up Two-Third of Reported Fee Revenue

DEC 01, 2021

SHARE & PRINT



consumerfinance.gov/about-us/newsroom/cfpb-research-shows-banks-deep-dependence-on-overdraft-fees/

Previous CFPB research has shown that overdraft presents serious risks to consumers, with under 9% of consumer accounts paying 10 or more overdrafts per year, accounting for close to 80% of all overdraft revenue. Yesterday, the Federal Deposit Insurance Corporation released data revealing that insured banks earned \$69.5 billion in the third quarter of 2021, up 36% from the prior year. Banks are on pace to surpass their pre-pandemic profitability.

FILENE RESEARCH WORTH THE READ (HANDOUT)



The screenshot shows the CUtoday.info website. At the top, there is a search bar and navigation links: LOGIN, CONTACT US, ABOUT US, COLLABORATORS, THE GIG, and ADVERTISE. The main header is green with the CUtoday.info logo and the tagline "FOR BETTER CREDIT UNIONS TOMORROW". A sign-up prompt says "SIGN UP FOR FREE! to receive CU Today Daily News Bulletins". Below the header is a navigation menu with links: THE news, From Frank, THE corner, THE market, THE neighborhood, THE 'tude, THE vault, and Web Seminars. The main content area displays the headline "New Filene Report Urges a Rethinking Around Non-Interest Income and Overdraft Programs". At the bottom, a timestamp reads "01/17/2022 04:57 pm".

Search

LOGIN | CONTACT US | ABOUT US | COLLABORATORS | THE GIG | ADVERTISE

WEDNESDAY
JANUARY 26, 2022

CUtoday.info
FOR BETTER CREDIT UNIONS TOMORROW

SIGN UP FOR FREE!
to receive CU Today
Daily News Bulletins

THE news | From Frank | THE corner | THE market | THE neighborhood | THE 'tude | THE vault | Web Seminars

New Filene Report Urges a Rethinking Around Non-Interest Income and Overdraft Programs

01/17/2022 04:57 pm

Is this in your 2022 strategic plan? What's your percentage?

cutoday.info/Fresh-Today/New-Filene-Report-Urges-a-Rethinking-Around-Non-Interest-Income-and-Overdraft-Programs

As the report notes in the slide below, margin compression in net interest income drives the need for noninterest income. Among credit union respondents to the Filene survey, overdraft protection revenues accounted for 13% of noninterest income on average.

YOU ARE NOW COMPETING WITH THIS IN 2022 AND BEYOND

News

United FCU Joins Growing Number of CUs Eliminating Fees

The fifth largest Michigan credit union announces new fee eliminations going into effect in April.

By Michael Ogden | January 25, 2022 at 03:04 PM



**Alpena
Alcona
Area
Credit Union**

FOR IMMEDIATE RELEASE
November 16, 2021

AAACU Helps Members Save Over \$675,000.00 By Slashing Overdraft Protection Program Fees


Alpena Alcona Area Credit Union announces that it has once again reduced its non-sufficient fund (NSF) and overdraft protection service fee (ODP) to \$13.75 effective on December 1, 2021

“Our motivation for eliminating and reducing fees associated with overdraft is simple – it’s the right thing to do,” United FCU President/CEO Terry O’Rourke said. “These fee changes are consistent with our core value as a credit union of people helping people. Those who rely on courtesy pay are often the ones least able to afford it. We’re taking a stance to support our members’ financial wellness and provide options that help them avoid fees.”


“Our members should not have to worry about paying an excessive overdraft fee just to buy food for their family or to put fuel in their automobile,” said Donald J. Mills, AAACU President & CEO. “Taking action to lower or eliminate service fees is not what most financial institutions would do, but we are not most financial institutions.”

MANAGING REPUTATIONAL AND GROWING LEGAL RISKS ASSOCIATED WITH FEES

Do you have a Tracker Memo type to log complaints from members about fees?




Session 0 - Memo Type Definition


Tracker type **MB** 

Memo type **MC** Memo type description **MbrFeeComplaint**

☐ Used for links to external documents ☐ Used for permanent underwriting comments

☐ Used to monitor loan account daily for specific transaction activity (e.g., promise to pay)

Memo type for note when transaction occurs ☐ 

Memo type for note when transaction does not occur ☐ 

Delete

← → ↑ || 🖨️ 🔗 ⓘ ? @

FR (2886)

MITIGATING STEPS AND CONFIG REVIEW



CU*BASE DOES DEBIT CARD PROCESSING IN ORDER RECEIVED

- Credit unions on the CU*BASE platform have debit card transactions processed in the order they are received
- It is not possible for a credit union to modify this processing, and therefore credit unions cannot be sued for high-to-low debit card transaction processing

MITIGATING STEPS AND CONFIG REVIEW



REVIEW YOUR MEMBERSHIP AGREEMENT

- Be sure that the process of the credit union for overdraft fees matches what is found in the Membership Agreement
- It could be considered deceptive and unfair if the Membership Agreement or other disclosures are silent on how fees are collected, or if the credit union's practices do not match what the agreement states

MITIGATING STEPS AND CONFIG REVIEW

REVIEW FEE DISCLOSURES

- Ensure all marketing with respect to overdraft fees is consistent and accurate with credit union practices
- Add disclosure information either by configuring text in CU*BASE or adding a link to a separate URL
 - Tool #569 Online/Mobile/Text Banking VMS Configuration > choose the first option from the list and update the member instructions next to the Regulation E section

☒ Allow member to change Reg E Opt In/Out choice

Member Instructions



MITIGATING STEPS AND CONFIG REVIEW



REVIEW FEE DISCLOSURES

- Understand the disclosure requirements for both an in-person request and a remote request
- On all other disclosures make sure these words appear:

“Your fee will be assessed based upon your available balance at the time the transaction posts.”

MITIGATING STEPS AND CONFIG REVIEW



REVIEW OVERDRAFT PROTECTION CONFIGURATIONS

- Another menu option is **Tool #558 NSF/OD Transfer Configuration**
 - Review fees charged, which balance the fee is based upon, fee tolerances, maximum daily fee setting, the fee itself relative to safe harbor amount, and all overdraft protection configurations
- If you have ODP fees (generally behavioral due to Reg D), review those as well for amount
 - Transaction limits on non-transactional accounts is not coming back

MITIGATING STEPS AND CONFIG REVIEW

REVIEW SHARE PRODUCT CONFIGURATIONS

- ANR (Courtesy Pay) settings can be reviewed via **Tool #777 Share Product Configuration**
- Review ANR settings on conditions for granting activation, deactivation, qualifiers, and of ANR limit
- Do they match what your disclosures say?

MITIGATING STEPS AND CONFIG REVIEW

REVIEW OPT IN/OPT OUT CONFIGURATIONS

- Be careful of Opt Out preferences
 - Tool #1004 Workflow Controls: Open Mbrships/Accts
- Default should be set to “No default but selection is required”

Reg E opt in/out functionality ☐ Default all new members to opt in ☐ Default all new members to opt out ☒ No default but selection is required



TOPICS FOR DISCUSSION

- What are we doing different today in the toolset?
- What are plans relative to the fee amount?
- Are you counseling those paying excessive fees (is it in your policy)?
 - Tool #774 Sample Checking Account Activity
- Thoughts around replacing income
 - Skip a pay
 - One clicks
 - Overdraft club accounts
- Is it time to go back to the old school methods?
 - Overdraft lines of credit for every checking account, etc.

SO, I DO NOT FORGET

NCUA EXPRESS



Registration Open for March 23 NCUA [Overdraft Protection Programs Webinar](#)

[ALEXANDRIA, Va. \(March 8, 2022\)](#) – Overdraft protection programs are important to credit unions and their members, and the market landscape is changing. Credit unions can learn more about these programs and what market changes can mean on a March 23 webinar hosted by the National Credit Union Administration.

[Online registration](#) for the webinar, “Overdraft Programs: Searching for New Solutions,” is open now. The webinar is scheduled to begin at 2 p.m. Eastern and run approximately 60 minutes. Participants will be able to log into the webinar and view it on their computers or mobile devices using the registration link. They should allow popups from this website.

Luis Dopico, chief economist for the consulting service CU Collaborate, and Taylor Nelms, senior director of research for the Filene Research Institute, will cover a variety of issues and concerns credit unions should understand, including:

- Types of overdraft protection programs;
- How credit unions and banks compare;
- Fee structures;
- How members, consumer advocates, and regulators view programs; and
- Market changes, including the impact of fintech.