



## The President's Pen

Well we have officially wound down the fourth quarter, also known as the most wonderful time of the year for professionals. We simply tried to stay afloat as we worked late hours to meet major deadlines, finalize the details of next year's strategies and update the Amazon wish lists that our holiday gift-buying relatives were demanding in the midst of the madness.

Time certainly doesn't slow down. I am fond of saying, "we all want more time, but we already have all there is." This time of the year is a great reminder about managing your most valuable asset--your time. It's easy to get caught up in thoughts that lead one to question is it all worth it. I assure you it most certainly is. If you feel like you are drowning in fourth quarter madness, you may think at times there is seemingly little room to breathe so it's important to just take a moment to quietly reflect on recent victories. Without further ado, here is my list of gratitude:

1. Our company and the credit unions we serve are filled with passionate, creative professionals who want to make a difference and help grow their organizations. I am grateful that I work with these kind of people.
2. I appreciate my Conmar team. It's really not a cliché, but it's not work when you are having fun. My colleagues make busy days easier.
3. On a personal note, we lost a long-time member of our Conmar family who retired a few years ago. I am grateful to have known her and called her friend.

What does your list of gratitude look like?

Mark Staley  
President

## Compliance Corner

### Credit Cards – Late Fee Safe Harbor

The CFPB announced effective **January 1, 2020** the dollar amount thresholds will change. For credit card accounts under the Credit Card Accountability Responsibility and Disclosure Act, the CFPB increased the amount for both first violation and subsequent violation penalty fees by \$1.00. The safe harbor will now be \$29 for a first late payment and \$40 for subsequent late payments.

**Form Updates:** This is not a required change. If your late fees are set to amount lower than the safe harbor then its business as usual. However, if you set your late fees based on the safe harbor amounts and want to take advantage of this increase.

Contact your Representative to discuss your changes or if you need any further information.

### Regulation CC – Funds Availability

The Consumer Financial Protection Bureau and the Board of Governors of the Federal Reserve System issued a final rule in 2019 amending parts of Regulation CC, which implements the Expedited Funds Availability Act and makes changes required by the Dodd-Frank Wall Street Reform and Consumer Protection Act.

**Effective Date:** The mandatory compliance date is **July 1, 2020**. However, early compliance is permitted. An institution choosing to comply early will need to send the change notice within 30 days after they implement the change.

**The Final Rule:** The final rule is limited to implementing changes based on the 2018 proposal, which includes the COLA adjustments required by the Dodd-Frank Act as well as certain amendments made by the Economic Growth, Regulatory Relief, and Consumer Protection Act.

Under the final rule, cost of living adjustments are based on the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). The dollar amounts will be adjusted every five years beginning July 1, 2020. The next adjustment of the dollar amounts will

occur on July 1, 2025 and on July 1 of every fifth year after 2025.

**Required Updates to your Funds Availability Disclosure:** The current adjustment impacts a number of dollar amounts incorporated into Subpart B of the Regulation including:

- The \$200 rule (formerly the \$100 rule) under Sec.229.10(c) – now **\$225.00**
- The \$400 rule under Sec. 229.12(d) – now **\$450.00**
- The \$5,000 new account threshold under Sec. 229.13(a) – now **\$5,525.00**
- The \$5,000 large deposit threshold under Sec. 229.13(b) – now **\$5,525.00**
- The \$5,000 threshold for determining a repeat overdraft threshold under Sec. 229.13(d)(2) – now **\$5,525.00**

The civil liability amounts for failing to comply with the EFA Act's requirements will be set at no less than **\$100** (same as the current amount) to no more than **\$1,100** (up from \$1,000) for an individual action and no more than **\$552,500** (up from \$500,000), or 1% of the net worth of the depository institution, in a class action.

The amendments being made to Regulation CC that are coming out of the Economic Growth, Regulatory Relief, and Consumer Protection Act include extending coverage of the Expedited Funds Availability Act, which is implemented by Regulation CC, to American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam.

**Member Notices:** Regulation CC requires credit unions to send change notices to holders of consumer accounts. However, since these changes actually expedite the availability of funds (i.e., they make more money available to the consumer sooner) the change notices do not need to be given out prior to the effective date of the change. Instead, the change notices can be provided to the consumer not later than 30 days after the effective date.

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**Compliance Corner Cont.**

**Lobby Literature, Posters and Placards:** Any placards or counter notices that set forth the credit unions' funds availability time periods applicable to a consumer account will need to be updated.

**DP and LOS System Updates:** At this point Credit Unions should be working with their deposit platform provider to ensure they will be ready by the effective date. If you plan to adopt the new allowances prior to the effective date, you need to expedite this testing to adhere to the new adjustments and take the necessary steps to formally adopt the revised Funds Availability Policy before it goes into effect.

**Form Updates:** Conmar will be updating all forms for licensed clients accordingly prior to the effective date and releasing files to data processors early in June 2020 to ensure plenty of time for updating and release on **July 1, 2020**.

**Overdraft Fee Lawsuits Continue**

While most credit unions were not part of these lawsuits there were quite a few unfortunate souls who were. We are proud to say none of them were our clients. However, being a company whose sole existence is credit union based, one credit union is one to many! These lawsuits regarding overdraft fees seem to be never ending dating back to early 2012.

*Digital Federal Credit Union recently agreed to pay \$1.8 million to resolve claims that they improperly charged overdraft fees to their customers.*

*The settlement will benefit individuals who had a checking account with Digital Federal Credit Union and were charged (a) an overdraft fee on any transaction between June 15, 2012 and June 15, 2019. Digital Federal Credit Union members who were charged an overdraft fee on an ATM or debit card transaction between June 15, 2017 and Sept. 1, 2018 also qualify for the settlement.*

*Plaintiff Brandi Salls filed a class action lawsuit against Digital Federal Credit Union in June 2018, claiming that the credit union had confusing overdraft policies which resulting in unnecessary fees. Salls was allegedly charged several overdraft fees when she had a sufficient balance in her account.*

*The credit union attempted to have the overdraft class action dismissed but they were not successful. In November 2018, the presiding federal judge determined that the Digital Federal Credit Union class action could move forward based on a lack of information included in the credit union's overdraft disclosure.*

*Digital Federal Credit Union has not admitted any wrongdoing but agreed to pay \$1.8 million to resolve the class action allegations against them. Additionally, the credit union will forgive around \$766,000 in improper overdraft fees which have not yet been collected.*

*Source: <https://topclassactions.com/lawsuit-settlements/closed-settlements/924687-digital-federal-credit-union-overdraft-class-action-settlement/>*

Now, we find ourselves amidst a new batch cropping up. The primary issue, improperly charged fees based

on available balances rather than on actual balances. For example, check holds and debit card authorizations cause delays that can trigger an overdraft fee even when the member's actual balance hasn't gone negative. However, these lawsuits go beyond the clarification of balances with some clients named in lawsuits and several examine audits being cited for not providing members with the required Regulation E opt-in consent disclosure for overdraft fees.

As of today, there is no regulation that specifically governs how a credit union should assess fees on the available balance or the actual balance and as such, your documents as provided, comply with the current regulations. We're always researching and tailoring our forms to ensure your documents accurately depict your operations. This means going above and beyond what is required by the regulations and expanding our language to further clarify how a member's account is affected.

**How can Conmar help reduce your exposure?**

- By including language in your account agreements to provide a clear explanation of available vs actual balance and providing examples of these calculations
- Structure your account agreements to clearly state how fees are being calculated
- Adding language to your account agreements to explain how transactions clear the account, and whether transactions are sequenced in a particular order. In general, avoid any sequencing of transaction amounts from high to low
- Providing members with an affirmative consent to charge overdraft fees as required by the opt-in rules of Regulation E using our Consent to Overdraft Fees form. What's that? You don't have this form. Give us a call and add it to your forms library

**What can you do?**

- Be certain written policies and procedures accurately describe your practices
- Verify that your practices accurately follow your disclosures
- Make certain members are aware of available balance information whenever balances are disclosed
- Make sure, if fees are calculated on available balance, that you provide members the available balance information whenever balances are disclosed (via online and mobile banking, audio response, ATM, etc.)
- Ensure affirmative consent was received to charge overdraft fees using our form

**Form Updates:** This is not a required change. While these changes are recommended based solely on case law, we strongly believe they will assist you in keeping those ambulance chasing attorneys at bay. Conmar always tailors your forms to fit your needs and provide you with peace of mind your forms always contain the most recent updates.

Contact your Representative to discuss your changes or if you need any further information.

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