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eNews Headline: What is an ‘incidental overdraft?’

Question: What is an ‘incidental overdraft?’ Are there restrictions on overdrafts for bank employees?

Answer: Let’s take the second question first.

There is no prohibition or rules for employee overdrafts provided that employee is not also an ‘executive officer’ or a ‘director’ as defined by Regulation O. The decision to pay overdrafts of an employee and to charge or not charge that employee normal overdraft fees are an internal policy decision of the bank.

Back to the first question - if that employee is also an ‘executive officer’ or a ‘director’ as defined by Regulation O, the bank is not prohibited from paying inadvertent or ‘incidental overdrafts.’ An overdraft of an ‘executive officer’ or a ‘director’ is an inadvertent or ‘incidental overdrafts’ if all three of the following conditions are met:

- 1) The aggregate amount of the overdraft is not more than \$1,000;
- 2) The overdraft is repaid within 5 days; and
- 3) The bank charges its normal overdraft charge for each item that overdraws the account.

...snip

(e) *Overdrafts.*

(1) No member bank may pay an overdraft of an executive officer or director of the bank or executive officer or director of its affiliates on an account at the bank, unless the payment of funds is made in accordance with:

This prohibition does not apply to the payment by a member bank of an overdraft of a principal shareholder of the member bank, unless the principal shareholder is also an executive officer or director. This prohibition also does not apply to the payment by a member bank of an overdraft of a related interest of an executive officer, director, or principal shareholder of the member bank or executive officer, director, or principal shareholder of its affiliates.

(i) A written, preauthorized, interest-bearing extension of credit plan that specifies a method of repayment; or

(ii) A written, preauthorized transfer of funds from another account of the account holder at the bank.

(2) The prohibition in paragraph (e)(1) of this section does not apply to payment of inadvertent overdrafts on an account in an aggregate amount of \$1,000 or less, provided:

(i) The account is not overdrawn for more than 5 business days; and

(ii) The member bank charges the executive officer or director the same fee charged any other customer of the bank in similar circumstances.

[Reg. O, 59 FR 8837, Feb. 24, 1994; 59 FR 37930, July 26, 1994, as amended at 61 FR 57770, Nov. 8, 1996; 62 FR 13298, Mar. 20, 1997]

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