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DEPARTMENT OF ENERGY

10 CFR Parts 429 and 430

[EERE–2021–BT–TP–0030]

RIN 1904–AF29

Energy Conservation Program: Test Procedure for Central Air Conditioners and Heat Pumps

Correction

In rule document 2022–22257, appearing on pages 64550–64607, in the issue of Tuesday, October 25, 2022, make the following correction:

■ Appendix M to Subpart B of Part 430 [Corrected]

On page 64588, in Appendix M to Subpart B of Part 430, in the third column, the equation in the 6th line down is corrected to read as set forth below.

$$X^{k=2}(T_j) = BL(T_j)/Q_n^{k=2}(T_j)$$

[FR Doc. C1–2022–22257 Filed 11–4–22; 8:45 am]

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BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Chapter X

Consumer Financial Protection Circular 2022–06: Unanticipated Overdraft Fee Assessment Practices

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Consumer financial protection circular.

SUMMARY: The Consumer Financial Protection Bureau (Bureau or CFPB) has issued Consumer Financial Protection Circular 2022–06, titled, ''Unanticipated Overdraft Fee Assessment Practices.'' In this Circular, the Bureau responds to the question, ''Can the assessment of overdraft fees constitute an unfair act or practice under the Consumer Financial Protection Act (CFPA), even if the entity complies with the Truth in Lending Act (TILA) and Regulation Z, and the Electronic Fund Transfer Act (EFTA) and Regulation E?''

DATES: The Bureau released this Circular on its website on October 26, 2022.

ADDRESSES: Enforcers, and the broader public, can provide feedback and comments to *Circulars@cfpb.gov.*

FOR FURTHER INFORMATION CONTACT: Sonya Pass, Senior Legal Counsel, Legal Division, at 202–435–7700. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov.*

SUPPLEMENTARY INFORMATION:

Question Presented

Can the assessment of overdraft fees constitute an unfair act or practice under the Consumer Financial Protection Act (CFPA), even if the entity complies with the Truth in Lending Act (TILA) and Regulation Z, and the Electronic Fund Transfer Act (EFTA) and Regulation E?

Response

Yes. Overdraft fee practices must comply with TILA, EFTA, Regulation Z, Regulation E, and the prohibition against unfair, deceptive, and abusive acts or practices in section 1036 of the CFPA.[1] In particular, overdraft fees assessed by financial institutions on transactions that a consumer would not reasonably anticipate are likely unfair. These unanticipated overdraft fees are likely to impose substantial injury on consumers that they cannot reasonably avoid and that is not outweighed by countervailing benefits to consumers or competition.

As detailed in this Circular, unanticipated overdraft fees may arise in a variety of circumstances. For example, financial institutions risk charging overdraft fees that consumers would not reasonably anticipate when the transaction incurs a fee even though the account had a sufficient available balance at the time the financial institution authorized the payment (sometimes referred to as ''authorize positive, settle negative (APSN)'').

Background

An overdraft occurs when consumers have insufficient funds in their account to cover a transaction, but the financial institution nevertheless pays it. Unlike non-sufficient funds penalties, where a financial institution incurs no credit risk when it returns a transaction unpaid for insufficient funds, clearing an overdraft transaction is extending a loan that can create credit risk for the financial institution. Most financial institutions today charge a flat per-transaction fee, which can be as high as $36, for overdraft transactions, regardless of the amount of credit risk, if any, that they take.

Overdraft programs started as courtesy programs under which financial institutions would decide on a manual, ad hoc basis to pay particular check transactions for which consumers lacked funds in their deposit accounts rather than to return the transactions unpaid, which may have other negative consequences for consumers. Although Congress did not exempt overdraft programs offered in connection with deposit accounts when it enacted TILA,[2] the Federal Reserve Board (Board) in issuing Regulation Z in 1969 created a limited exemption from the new regulation for financial institutions' overdraft programs at that time (also then commonly known as ''bounce protection programs'').[3]

Overdraft programs in the 1990s began to evolve away from this historical model in a number of ways. One major industry change was a shift away from manual ad hoc decision-making by financial institution employees to a system involving heavy reliance on automated programs to process transactions and to make overdraft decisions. A second was to impose higher overdraft fees. In addition, broader changes in payment transaction types increased the impacts of these other changes on overdraft programs. In particular, debit card use expanded dramatically, and financial institutions began charging overdraft

[1] CFPA section 1036, 12 U.S.C. 5536.

[2] Public Law 90–321, 82 Stat. 146 (May 29, 1968), codified as amended at 15 U.S.C. 1601 *et seq.*

[3] 34 FR 2002 (Feb. 11, 1969). *See also, e.g.,* 12 CFR 1026.4(c)(3) (excluding charges imposed by a financial institution for paying items that overdraw an account from the definition of ''finance charge,'' unless the payment of such items and the imposition of the charge were previously agreed upon in writing); 12 CFR 1026.4(b)(2) (providing that any charge imposed on a checking or other transaction account is an example of a finance charge only to the extent that the charge exceeds the charge for a similar account without a credit feature).