

Client Alert

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FDIC Enters Consent Order with Bank Regarding Prepaid Card Disclosures

By Rick Fischer, Obrea O. Poindexter, and Trevor Salter

On March 7, 2018, the Federal Deposit Insurance Corporation (FDIC) entered into a [consent order](#) with The Bancorp Bank for allegedly making inaccurate disclosures concerning the amount of transaction fees assessed on certain cardholders. Specifically, the FDIC alleged that the actual amount charged to cardholders for signature transactions exceeded the amount the bank disclosed that cardholders would be charged. The FDIC concluded that this practice violated the prohibition against unfair or deceptive acts or practices under Federal Trade Commission Act Section 5, as well as the Electronic Fund Transfer Act (and its implementing Regulation E), the Truth in Savings Act (and its implementing Regulation DD), and the Electronic Signatures in Global and National Commerce, or E-SIGN, Act.

According to the accompanying [press release](#), as part of the consent order, the bank was ordered to pay restitution of nearly \$1.3 million to affected cardholders, although the language of the consent order suggests that a portion of this amount had already been refunded by the bank. The consent order also requires that the bank pay a civil money penalty of \$2 million.

This consent order is the latest in a series of consent orders from federal agencies in recent years regarding allegedly inadequate or misleading account disclosures. Although the Consumer Financial Protection Bureau's Prepaid Accounts Final Rule does not take effect until April 1, 2019, prepaid issuers and program managers should continue to monitor operational aspects of their prepaid programs to ensure that cardholder experiences are consistent with any related disclosures. The consent order is also a reminder that despite the current focus on deregulation, federal agencies continue to monitor bank compliance with consumer protection laws and are ready to bring enforcement actions to address violations.

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