From: Charlie Maddy [cmaddy@summitfgi.com]
Sent: Thursday, September 23, 2010 8:26 AM
To: Overdraft Comments
Subject: Overdraft Payment Supervisory Guidance

I appreciate the opportunity to comment on Financial Institution Letter FIL-47-2010 ("FIL"), *Overdraft Payment Programs and Consumer Protection*, dated August 11, 2010. I agree with several aspects of the guidance including the suggestions that a bank should train its staff on the features of its overdraft program and alternatives to writing checks that will result in overdrafts and make sure its customer has the proper disclosures and description of the overdraft program. I also agree that in some cases it may be a good idea for certain customers to seek credit counseling. However, the proposed guidance raises significant operational and cost issues for community banks that I would like to focus on.

First, the "Monitoring" section of the FIL includes a very troubling requirement -- a bank must make personal contact with every customer who incurs more than six overdrafts in a rolling twelve month period. Although well-intended, this requirement will result in a tremendous increase in expense to banks, the magnitude of which I cannot even begin to estimate. The proposal assumes that picking up the phone and calling a customer is a quick, easy and inexpensive task. Nothing that requires manpower is inexpensive, which is why this process was automated in the first place. Second, many customers will be difficult to reach and require a bank employee to make multiple attempts to reach him or her. The guidance would also give banks the "option" of contacting a customer "in person". With all due respect, I am curious what the regulatory intent is-- bank employees making a home visit to the customer or calling to inform the customer that federal regulations require that they stop by the bank for a counseling session?

Obviously, some type of statement stuffer, e-mail or other "low cost" alternative suggesting credit counseling is available is the preferable method of contact, but I genuinely question the effectiveness of such communications. The potential futility of these efforts is pointed out in the next to last paragraph of the comment letter you received from Ms. Angela Castro, in which she says "And, please, legislating that banks counsel those of us who experience this problem won't help. The banks will tell us to keep ample funds in overdraft protection. Duh! I'm not an idiot – if I had thousands of dollars in funds in a savings account I wouldn't have had the problems!"

An equally troubling part of the FIL is the concept that lines of credit, small dollar loans, etc. may be a less expensive or better way of managing this process. Obviously, each bank has a different program, but our bank's program establishes a level of overdraft protection that is commensurate with the income level of the customer. As a community bank operating in West Virginia, our experience is that in many cases, customers regularly using overdraft protection typically have overdraft limits of just a few hundred dollars. We strongly believe that making loans to these customers, which would be outstanding over a period of months or even years, would be unsafe for the bank and would result in levels of debt that would not be in the best interest of the customer. Overdrafts should be managed as short term situations that are resolved in a month or two at most. Loans or lines of credit are simply not structured to take into account the special nature of overdrafts and the need for a shortened timeframe.

Finally, the establishment of the Bureau of Consumer Financial Protection under Dodd-Frank calls into question the wisdom of the FDIC's proposal. Congress established the Bureau to implement and enforce Federal consumer financial laws to ensure that markets for consumer financial products and services are fair, transparent, and competitive. We are concerned that the FDIC's efforts to implement far-reaching new policy with respect to bank overdraft protection programs as proposed by the FIL will duplicate or even conflict with similar efforts by the CFPB. Further, the FIL would establish requirements that go well beyond the recent amendments to Regulation E enacted by the Federal Reserve Board, effectively putting state-chartered nonmember bank at a competitive disadvantage with state-chartered member and nationally-chartered institutions.

In summary, the FIL is a well-meaning attempt to address a social issue and not a bank issue. There are two primary social issues involved. First, there are a lot of folks out there spending more money than they make. Many simply don't make enough money to make ends meet. This is very sad and problematic -- but it is a social issue -- not a bank regulatory issue. We do not require other private businesses to address essentially social issues. The government does not mandate that Wal-Mart provide free food and diapers to those in need. Nor do we question Wal-Mart about their profit margins on their sales. Second, some customers don't manage their money very well. This should not surprise us. Some folks smoke, others eat too much. People are different. It shouldn't be the banks' responsibility to address these behaviors any more than it is a convenience store's responsibility to discourage smoking when they are selling cigarettes or McDonald's responsibility to monitor the caloric intake of its customers. Why isn't there a proposal requiring a Seven-11 store to "personally contact" every customer that buys more than six packs of cigarettes each month?

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