

From: Sheldon Hendrix [shendrix@fcbot.com]
To: Overdraft Comments
Sent: Fri 9/3/2010 5:51 PM
Subject: OVERDRAFT PAYMENT PROGRAMS AND CONSUMER PROTECTION - FIL-47-2010

Attached are the comments First Community Bank would like to submit on the proposed Guidance.

Thanks,
-Sheldon

Sheldon Hendrix, CCBCO
Compliance Officer
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Attachment:

Sheldon Hendrix
Compliance Officer
First Community Bank
416 N. Water St.
Corpus Christi, TX 78401

September 2, 2010

To Whom It May Concern
Federal Deposit Insurance Corporation
550 17th Street NW, Washington, D.C., 20429-9990

Re: OVERDRAFT PAYMENTS AND CONSUMER PROTECTION (FIL-47-2010)

I am writing on behalf of First Community Bank to address inconsistencies and areas of vagueness we have noted in the proposed Overdraft Payment Supervisory Guidance¹ (hereinafter "Guidance"). I would like to preface this letter by explaining that we are a community bank, with approximately \$250 million in assets. We operate and serve customers within our Community Reinvestment Act (CRA) Assessment Area and strive to meet the financial needs of our local community. Like many of our peers, we have been proactive by implementing several initiatives designed to protect our consumer customers from

¹ FIL-47-2010.

abusing their overdraft privileges; some initiatives going well beyond the 2005 *Joint Guidance on Overdraft Protection Programs*², and recent amendments to Regulation DD³ and E⁴.

We feel that we are above our peers in resource availability, but are limited in our ability to afford compliance expenses and still remain profitable. We believe that most other institutions within our peer group share similar resource-related restrictions that would make it difficult to comply with all the recommendations set forth in the guidance. For example, the ability to implement several of the recommendations suggested in the Guidance is contingent on whether or not our third-party data processor makes these services available to us. Our experience has been that most third-party data processors will not program their platforms to accommodate issues such as the items the FDIC has suggested in the Guidance until they become law or regulation. Specifically, in speaking with our data processor, they currently have no plans to program the system to provide us with the capability to monitor accounts that have been overdrawn more than six (6) times in a rolling twelve-month period. Finalizing this as is in the Guidance will impose significant unavoidable administrative enforcement liabilities on First Community Bank because we lack complete control of our data processing system.

The proposed Guidance also contains inconsistencies with current Regulations. For example, Regulation DD currently requires disclosure of aggregate overdraft and insufficient fund charges from a year-to-date range on consumer periodic statements⁵. However, the guidance expects monitoring of overdrafts for more than six (6) instances on a “rolling twelve-month period.” This will make the monitoring of these overdrafts difficult for my Bank as we’ve already had our data processing system programmed to comply with tracking overdrafts as required by Regulation DD. This recommendation from the proposed Guidance would be easier to implement and more transparent for disclosure purposes if it stated that the monitoring could be conducted on a year-to-date basis, as currently required for related disclosures by Regulation DD.

Lastly, the proposed Guidance calls for “[instituting] appropriate daily limits on customer costs by, for example, limiting the number of transactions that will be subject to a fee or providing a dollar limit on the total fees that will be imposed per day.” Making such a recommendation without defining a specific amount or range of amounts makes this part of the guidance unduly vague, thus making it difficult for my Bank to implement. It will also increase our administrative enforcement liabilities because individual examiners will most likely have differing individual interpretations of what would be a reasonable amount of fees to assess per day. This recommendation from the proposed Guidance would be easier to implement if the FDIC would clarify what they consider to be an acceptable amount of fees to assess for overdraft items per day.

In closing, I would like to express that I appreciate the opportunity to comment on the proposed Guidance, and that I hope that our recommendations for improvement are taken into consideration when issuing a final version.

Sincerely,
Sheldon Hendrix

² 70 *Fed. Reg.* 9127 (Feb. 24,2005).

³ 12 CFR §230.11.

⁴ 12 CFR §205.17.

⁵ 12 CFR §230.11(a)(2).