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Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429-9990

Re: FIL-47-2010

To Whom It May Concern:

I appreciate this opportunity to comment on the Federal Deposit Insurance Corporation's proposed guidance on Overdraft Payment Programs and Consumer Protection, as found in FIL-47-2010. Automated Overdraft Privilege (AOP) programs, subject to Regulation DD and Regulation E, have been the recent topic of much examiner, media and consumer scrutiny. While I thoroughly understand and agree with the need for increased regulatory guidance in this area, it is my belief that the FDIC should delay implementation of a small portion of this guidance, specifically that which enforces new requirements and goes beyond existing guidance, until the FFIEC, or other appropriate agency, issues an agreed upon, industry-wide standard which applies to all financial institutions, not just those regulated by the FDIC.

While the vast majority of this proposed guidance appears to only reiterate and reinforce existing guidance on AOP programs and should be nothing new for regulated institutions, the proposed guidance does appear to go a step further and impose greater expectations on FDIC-regulated institutions. It is my belief that these expanded expectations do not effectively implement the intended result and will create an unnecessary burden for FDIC banks. By implementing this new, expanded guidance, the FDIC risks the following:

1) Placing unnecessary hardships on regulated organizations in the event an "all-industry" guidance is released which contradicts the guidance provided by the FDIC, and
2) Placing FDIC-regulated institutions at a disadvantage, through increased burdens, as compared to institutions which are regulated by another governing agency.

That said, the FDIC, along with the other regulatory agencies, have an excellent opportunity to enhance guidance relating to AOP programs through a consolidated, industry-wide effort.

My concern relates to the following portion of the proposed guidance:

- *Monitor programs for excessive or chronic customer use, and if a customer overdraws his or her account on more than six occasions where a fee is charged in a rolling twelve-month period, undertake meaningful and effective follow-up action, including, for example:*
    - *Contacting the customer (e.g., in person or via telephone) to discuss less costly alternatives to the automated overdraft payment program such as a linked savings account, a more reasonably priced line of credit consistent with safe and sound banking practices, or a safe and affordable small-dollar loan;4 and*

- *Giving the customer a reasonable opportunity to decide whether to continue fee-based overdraft coverage or choose another available alternative.*
- *The FDIC specifically seeks comment on whether an effective way to monitor for excessive use of automated overdraft programs would be for supervised institutions to contact a customer after the six transaction fees trigger and discuss available alternatives. The bank would explain, for example, that it also offers linked savings accounts, overdraft lines of credit or small dollar loans, each of which may be less expensive than the automated overdraft program. The consumer would then be asked to pick the available option he or she prefers to cover any future overdrafts, including the choice of opting in to the bank's overdraft program.*

While I do understand the intention of this proposed guidance, it does not appear this guidance would be an effective way to monitor for excessive use of AOP programs. My specific comments regarding this are as follows:

"Excessive or Chronic Customer Use" Definition

In my opinion, the FDIC should abstain from including a defined number in the definition of "excessive or chronic customer use." Merriam-Webster defines the word excessive as "exceeding what is usual, proper, necessary, or normal," and the word chronic is defined as "marked by long duration or frequent recurrence." The proposed guidance, however, appears to be an attempt to create a "one-size-fits-all" number which would apply to all applicable institutions. Existing guidance has intentionally excluded a specific number and left that number to the determination of the depository institution. In my opinion, this approach appears more appropriate as each unique depository institution, which contains a unique customer base, could self-define this number by performing an internal statistical analysis to uncover normal overdraft activity for those which use the AOP program. Then, the institution would be able to determine an appropriate cut-off number which defines "excessive or chronic customer use" for their unique organization.

Since guidance on "excessive or chronic customer use" does not currently exist, it is my opinion that the regulatory agencies should consider defining "excessive or chronic customer use" as a calculation, such as, for example, the top 10% of customers who use overdraft protection, rather than define a specific number such as "more than 6." Furthermore, I believe that the FDIC will discover "more than 6" to be far more conservative than only "exceeding what is usual, proper, necessary, or normal" and fall very short of being "marked by long duration or frequent recurrence" for most institutions. For this reason, I believe a calculation approach to the guidance would be more appropriate than a specific number, which would not be appropriate for every unique institution regulated by the FDIC.

Identification of Excessive or Chronic Usage Accounts

Upon initial review of how we would implement the proposed, it appears that our organization, and others we have talked with, would have a difficult time identifying a specific number of overdrafts, such as 6, in "a rolling twelve-month period." As you know, most financial institutions rely heavily upon third-party vendors to provide support for these such requirements. Upon review, it does not appear that our software is capable of this calculation and thus the implementation of a manual process would be required in order to comply with the guidance. Additionally, while vendors often upgrade their software to address changes in regulation, it is my fear that this specific change will not be addressed by applicable vendors as this guidance does not pertain to the entire industry, just a small portion of the industry. Therefore, many financial institutions regulated by the FDIC will most likely be forced to implement a manual process which could prove to be fairly cumbersome, creating an unnecessary new burden for these organizations.

It is my hope that the FDIC will take these potential challenges into consideration and look toward more practical alternatives when defining "excessive or chronic customer use." For example, it is my understanding that our current software will only generate a "month-to-date" or a "year-to-date" report on the number of overdrafts by specific customers. If the FDIC were to alter its time period for calculating excessive or chronic use from a "rolling twelve-month period," which our software does not currently support, to a more commonly recognized period, such as "month-to-date" or "year-to-date," this new burden for FDIC regulated institutions could be significantly reduced.

Contacting the Customer

The proposed guidance states that FDIC-regulated institutions must include contacting the customer by phone or in person to "discuss less costly alternatives to the AOP program," as part of undertaking meaning and effective follow-up action. Per existing guidance, applicable banks already place these alternatives within the program disclosures, which are provided to all customers at the time they are enrolled in the AOP program, and these disclosures, as is the case in our organization, are often again delivered upon the first use of the program. This transition to requiring financial institutions to contact customers "in person or via telephone" could place a new unnecessary burden on organizations, especially if the current definition of "excessive usage" remains as "six occasions where a fee is charged in a rolling twelve-month period."

To my knowledge, disclosure requirements in most regulations, beyond just those specific to AOP guidance, can be satisfied through written disclosures, which must be in a form the consumer can keep. Your proposed guidance, however, appears to be setting a new precedent in requiring banks to include "contacting the customer…in person or via telephone," as part of undertaking meaningful and effective follow-up action. In my opinion, this requirement appears to be excessive and a deviation from typical regulatory disclosure standards.

As I have found from my experience, many customers who do use an AOP product usually do not qualify for, nor want to discuss, the alternatives. Banks who do try to contact customers via phone for similar situations, such as late payments on loans, run into a common problem; customers tend to avoid these types of calls. Thus, it is my fear that this proposal would not prove to be an effective approach and would cause an unnecessary burden upon applicable institutions.

Additionally, this guidance appears to possibly contradict our Indiana state laws regarding telephone solicitations and the IN Do-Not-Call list. While I understand the intent of the call is to lessen the burden for the consumer, the ultimate purpose of the call would be to set the consumer up with a *new* product, which is strictly prohibited in our state. This is something which should be addressed with our Attorney General, and other states with similar laws, prior to enactment of the final rule. As an alternative, the regulatory agencies could consider revising the guidance to include "delivering a letter which clearly explains the excessive use of the AOP program by the customer, and all potential alternatives available to the customer which could reduce the amount of fees the customer pays to the financial institution on an annual basis."

Finally, the current proposal appears to need further explanation of the expectations for contacting a customer. While the guidance implies that a bank would need to contact a customer upon "more than six occasions where a fee is charged in a rolling twelve-month period," the guidance does not address recurring occasions of qualification. For example, would a bank need to contact the customer only once, only once in a rolling twelve-month period, or each time the customer exceeds six overdrafts in a rolling twelve-month period? Further clarification on this would help increase the overall effectiveness of the proposed guidance.

In conclusion, I am grateful for the opportunity to comment on the proposed guidance for Overdraft Payment Programs and Consumer Protection. While I believe the guidance proposed in FIL-47-2010 warrants improvement, I feel the best approach for changes to existing guidance is to release it as a consolidated effort among regulatory agencies; guidance for the entire industry rather than imposing new burdens on only those institutions governed by one regulatory body. In summary, it is my opinion that the proposed guidance is not an effective way to monitor for excessive use of AOP programs. However, I do believe a few minor changes to the proposed guidance, coupled with joint interagency implementation, would benefit the overall effectiveness of AOP guidance and reduce the associated burden for applicable institutions.

Thank you in advance for your time and consideration.

Respectfully Submitted,

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