
From: Timothy S. Avery [mailto:tsavery@scottvalleybank.com]
Sent: Wednesday, August 18, 2010 7:02 PM
To: Overdraft Comments
Subject: Re: Comment period on FIL-47-2010

To Whom It May Concern:

Let me first begin by offering some background and perspective related to my comments pertaining to FIL-47-2010 that follow.

Our bank has never engaged in "overdraft privilege" or structured "overdraft allowance" programs. We have simply provided the long-standing services of a consumer-requested overdraft line of credit, or an alternative (linked) account funds transfer, both of which are designed to make funds available to a consumer to cover overdrafts (either inadvertent or intensional) at an acceptable cost and under non-usurious-like terms. We have always considered the pro-active nature of the consumer applying for a credit instrument or account transfer of this nature to be the equivalent of "opting-in, as is now the buzz term of this topic.

During the protracted regulatory overhaul of Reg "E" it appears that these services have become synonymous with the fee-producing "privilege" products that have driven the non-interest income side of banking for the last two plus decades. We have, perhaps unintelligently, foregone said income, in favor of provision of a cost-effective service to our customers, should they make a simple mistake in their account handling or have an emergency need for cash beyond their immediate resources. Even with that said, not all customers have established such safeguards to facilitate an unintended error in their account handling, leaving the bank to exercise its judgment in granting an overdraft to a valued customer. I was somewhat satisfied that the **Joint Guidance on Overdraft Protection Programs**, in its final form, cited clearly on the first page "More recently, some depository institutions have offered "overdraft protection" programs that, ***unlike the discretionary accommodation traditionally provided to those lacking a line of credit or other type of overdraft service (e.g., linked accounts),*** . . ." (emphasis added)

Throughout my monitoring of the progress of the regulatory overhaul, I had begun to believe that the differences in these services had been lost in the process and lumped into one "greed-based" pile. I was relieved to read, what I thought was an acknowledgment, of the survival of one of the fundamentals of consumer banking.

It would appear, however, that the FDIC is now attempting to supplement the recently overhauled Reg "E" by introducing "additional guidance" not addressed in the final revision of the regulation. Changes to Reg "E" did not impose opt-out requirements pertaining to non-electronic items (checks or physically delivered drafts/authorizations). The first bullet point under "Program Features and Operations, within the Best Practices portion of the Joint Guidance refers to opt-out of service and refers to "overdraft protection". Again, this is where a distinction between "protection", "privilege", "program" or simply a "discretionary accommodation" is critical. Pro-active enrollment in a service should suffice as (but would obviously include) an opting-in. The discretionary accommodation, specifically related to non-electronic items, should not. Not all banking software systems possess the ready ability to distinguish between, and/or process opt-out elections differently for electronic and non-electronic items. Many (especially elderly) consumers already consider the non-electronic items to be largely items presented "with intent", while fearing the possibility that an electronic item may be an attempt to abuse their identity or abscond with their funds. Adding a "dual opting" dynamic to the overdraft topic will only prove problematic and may not protect or serve the consumer. In many instances the consumer and bank will be stripped of their long-standing ability to "do the right thing" because of the fear of electronic invasion of ones bank account. Further, satisfying this issue for the customer will likely result in the appearance of "inconsistent application of waivers of overdraft fees" which presents another judgment-based interpretation by a regulatory official.

I believe the Joint Guidance and the newly defined terms of the regulation should be left to stand on its own and not be supplemented by the FDIC's preferences or interpretation of intent.

Thank you for your attention.

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