



September 2, 2010

Federal Deposit Insurance Corporation

Re: Request for Comments on Overdraft Payment Supervisory Guidance

The Kansas Bankers Association appreciates the opportunity to comment on the above-referenced guidance. The KBA is a non-profit trade organization representing 309 of the 313 Kansas chartered banks. While overdraft protection methods have certainly evolved over the years, the underlying premise for the coverage has not: whether it serves the customer better to provide the coverage and avoid returned check fees and embarrassment; or whether the customer is better served by returning the check in order to encourage better management of his or her checking account.

In an attempt to provide meaningful comments, our letter will respond to the bullet points provided in the FIL-47-2010 as Highlights:

Institutions should provide clear and meaningful disclosures and other communications about OD payment programs, features and options. We agree that it is in the best interest of customers and banks alike that the disclosures be in a form that is readily understood. Perhaps the requirement should be on the customer to actually read what is provided. Many of our members observe that most customers do not read what is placed before them. They find disclosures in the trash can or in the bushes by the front door. We would support any effort by the regulators to simplify the disclosures in a manner that would yet still meet the requirements of accuracy.

Institutions should demonstrate compliance with the new OD opt-in requirement for ATM withdrawals and debit card transactions. Guidance on what will be required of each institution to demonstrate compliance with these provisions would be most helpful. Kansas banks are used to having to show a paper trail when it comes to compliance, and would very much like to know what the regulators will be looking for come examination time.

Institutions should promptly honor customers' requests to decline coverage of ODs resulting from non-electronic transactions. Once again, the industry would respectfully request more guidance on what will be required by regulators to demonstrate compliance with a customer's opt-out request.

Institutions should give consumers the opportunity to affirmatively choose the OD payment product that overall meets their needs. Many community banks, due to cost restraints, only offer one OD payment product. They are already required to offer the choice between accepting that product, or declining to use it. We would strongly oppose a mandate that every bank must offer more than one OD payment product. Having a menu of such products may make sense for larger banks, but it is extremely costly for most community banks. We would like some clarification of this statement.

Institutions should monitor accounts and take meaningful and effective action to limit use by customers as a form of short-term, high-cost credit, including giving customers who overdraw their accounts more than 6 occasions in a 12-month period, an opportunity to choose a less costly alternative and decide whether to continue with fee-based OD coverage. This would be an incredible burden to place on banks. We agree that bank customers should be made aware of OD protection programs available to them, but is it really the responsibility of the bank to monitor each customer for excessive or chronic customer use of the program? Should not the customer bear responsibility to him or herself to recognize his or her own habits and to monitor his or her own account by checking bank account statements? The proposed guidance suggests that the bank should contact the customer after he or she had six transaction fees in a 12-month period. How would the bank effectively monitor this for each and every customer? How would that contact be made? By posting a note on the customer's monthly statement? It would be unrealistic to propose that a bank could call or send an e-mail to every customer that falls under this trigger. This proposed guidance assumes that the customer is not aware of his or her own habits and would welcome an intervention by the bank. We do not believe that this proposed guidance presents a workable solution to the problem of excessive or chronic OD fees for consumers. Rather, the focus should be on consumer financial education which our industry supports.

Institutions should institute appropriate daily limits on OD fees. We believe that financial education, so that consumers make better choices on a daily basis, is the key to reducing the number and amount of OD fees. It really boils down to a choice made by the customer with regard to his or her account – including where he or she chooses to keep that account. Many banks currently do limit the OD fees that can occur on a given account daily, and consumers are free to place their funds wherever they choose. A bank cannot charge fees that it does not contract for with the customer in the deposit agreement. The guidance does state that banks should consider providing information to consumers about financial education and we would encourage that as well.

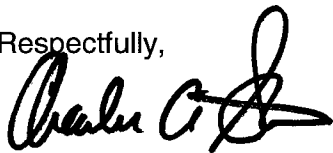
Institutions should not process transactions in a manner designed to maximize the cost to consumers. The Kansas Uniform Commercial Code currently allows a bank to choose which order checks can be processed. It is unfortunate that most consumers believe that it is in their best benefit to process checks in any particular order, as sometimes, it may benefit them to have larger checks for rent or mortgage payments processed first, and others, it is better to have the smaller dollar checks processed. Perhaps guidance on which order the regulators believe is best would be helpful. Chronological order based on when the check is received seems to be a workable middle ground.

The Proposed Guidance also states that overdraft payment programs will become a part of the safety and soundness examination. There is also a warning that inconsistent application of waivers of OD fees will be evaluated in light of all applicable fair lending statutes and regulations. These factors, combined with the fact that some programs may be examined under the Unfair or Deceptive Acts or Practices (UDAP) FIL 26-2004, may lead many institutions to discontinue offering OD protection programs. And so, we are back to the underlying premise stated above.

In conclusion, we respectfully request that the final guidance reflect a responsibility for correcting prior abuses attributed to both parties in the equation. We believe that most banks act responsibly toward their customers, and that many customers have benefitted from OD protection programs in the past. There are those instances where the programs could have been implemented so as to provide customers with a clearer choice between having the coverage and not having it. We also believe that financial education for the customer could help prevent much of the chronic or abusive use of such programs by the customer. We hope the comments above help lead to a reasonable result for both parties.

Thank you for the opportunity to make comments on this very important matter.

Respectfully,



Charles A. Stones
President



Kathleen A. Olsen
General Counsel



Terri D. Thomas
Director of Legal Dept.