

**From:** Jan Weiberg [JCWeiberg@lnbparis.com]  
**Sent:** Wednesday, September 22, 2010 3:52 PM  
**To:** Overdraft Comments  
**Subject:** FIL47-2010 Comments

Our bank has assets of approx. \$250,000,000 and we have offered our eligible consumer checking account customer an overdraft privilege program with an automatic OD limit of \$300 to \$500 since 1999. The program design was provided by a 3<sup>rd</sup>-party vendor who specialized in providing a plan that balances reasonable service to our customers with risk of loss to the bank. Our customers appreciate the “cushion” that the OD limit provides which covers inadvertent errors made in their check balance record or an unexpected expense that might result in a returned check. They appreciate that the overdraft fee charged, which is the same fee charged for a returned check at our bank, saves them the embarrassment of having a returned check as well as saving them the additional merchant fees that are charged when a check is returned.

In addition to fully disclosing how our program works, current fees, limitations, payment order of checks, in our Overdraft Privilege Policy disclosures we cover alternatives for consideration that are available that might be more cost effective, their right to Opt out of overdraft privilege, and the importance of maintaining good records and practicing good account management. Our program includes daily limitations on fees incurred, and our decisions for payment order of items was based on mitigating risk to the bank, not on how to increase fee income (i.e. payment of bank-initiated items first, then debit/ATM card items per time stamps, ACH items, on-us checks, not-on us checks in serial number order which is how they were issued by customer). Our policy also includes a letter to chronic users encouraging them to examine other lower-cost alternatives and encouraging good financial account management to prevent OD costs. We also offer “interest free” repayment plans for those customers who cannot bring their accounts back to a positive condition in a reasonable time so that they avoid incurring more fees and/or charge off of account.

Although many of the proposed guidance factors are already in practice by prudent bankers like ourselves, we believe that some of the guidance proposals are totally unrealistic and out-of-touch with customer expectations and with banks abilities to comply because of their limited staff and resources. For example, defining “excessive” overdraft use as six per rolling 12-month period of time could not possibly be based on consumer’s habits. And however “excessive” is finally defined, to require the bank to call or meet with these customers in person to counsel and discuss less-costly alternatives or opting out of program would be extremely difficult. Even if the bank had sufficient staff and could assign this monumental task, reaching customers by telephone or arranging a meeting in person during the day would be almost impossible. Have you ever tried to call someone during the day? They are at work, school, or out running errands – not sitting at home waiting for their bank to call them. In most instances, you will not be able to reach them, and leaving a message may or may not get a response. Sending a letter outlining the bank’s alternatives and giving them the opportunity to “opt out” if they think it would help them manage better is a much more reasonable method of contact.

The recent Reg E changes which required banks to have their customer’s “opt in” decision before allowing OD fees on ATM/Debit card transactions, which have not even had time to see the effects of the change, reflected that many of our ATM/Debit card customers do want their OD limits available to them for their ATM/Debit card transactions, and they understand that should an overdraft occur, a fee will be incurred. In fact, when we first implemented our OD privilege OD limits, we did not make OD limits available for ATM transactions, but after much customer feedback requesting the availability, we did make the limits available for ATM/Debit card transactions and, in accordance with best practice guidelines, we do not include the amounts in the balances shown on inquiry or receipts.

In conclusion, community banks like ours are not “predatory lenders”, but have tried to provide a service to our customers that the majority manage and appreciate. For the customers who cannot manage, most programs provide alternatives and work-out plans, something that real “predatory lenders” do not. In fact, without the OD limits, many of these same consumers will likely continue to write their checks, their checks will be returned, an NSF fee will be incurred, the merchant will charge them a return fee, and credit reports will be negatively impacted. It is my hope that while guidance is helpful, the guidance will not become an added regulatory burden, and that the agencies deal individually with financial institutions whose programs are abusive.

Thank you for the opportunity to comment on this proposed guidance.

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