

From: Cyndi K. Carmichael [Cyndi.Carmichael@cvcb.com]
Sent: Thursday, September 23, 2010 11:13 AM
To: Overdraft Comments
Cc: Cyndi K. Carmichael
Subject: Comments on FIL 47-2010 - Joint Guidance on Overdraft Payment Programs

Attachments: Overdraft programs comments.doc
Attached please find a copy of our comments on the above FIL.
Thank you for the opportunity to submit our input.

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Attachment:

**OVERDRAFT PAYMENT PROGRAMS AND CONSUMER PROTECTION
FDIC Invites Comments on Overdraft Payment Supervisory Guidance
FIL-47-2010**

Highlights: The FDIC expects financial institutions' board of directors and management to ensure the institution mitigates the risks associated with offering automated overdraft payment programs and complies with all protection laws and regulations. The FDIC has published the following actions regarding automated overdraft payment programs:

- **Ensure ongoing and regular board and management oversight of program features and operation. Appropriate steps include an annual review of an overdraft program's features.**
- **Review their marketing, disclosure, and implementation of such programs to minimize potential consumer confusion and promote responsible use.**
 - A review through the Compliance Department of all marketing, disclosures and implementation of overdraft programs is responsible management of any program offered to consumers. We would suggest model language provided by the FDIC or other regulatory agencies ensures all required information is provided to consumers in a clear, concise and consistent manner.
- **Train staff to explain program features and other choices.**
 - Currently all financial institutions are required to train staff, as well as board members, and senior management on all regulations. This training should be included with the documentation and retained for examiners review.

- **Prominently distinguish account balances from any available overdraft coverage amounts. Note also that, as of January 1, 2010, Regulation DD (Truth in Savings Act) prohibits institutions from including overdraft coverage amounts in any account balance information provided by an automated system.**
 - Currently in accordance with Regulation DD all balances do not include the overdraft coverage amounts in any account balance information through automated systems. This was also covered in the guidance issued in 2005 regarding balances posted through automated systems.

- **Monitor programs for excessive or chronic customer use, and if a customer overdraws his/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;**
 - **Giving the customer a reasonable opportunity to decide whether to continue fee-based overdraft coverage or choose another available alternative.**
 - Contacting customers via phone could be very taxing on personnel resources and expensive for community banks, which would increase the costs of an overdraft to the consumer. Contacting the consumer after a specified number of overdraft occasions via a letter or disclosure to inform the customer of less costly alternatives of covering overdrafts is an alternative solution. Six overdrafts is a relatively small number of overdrafts within a 12 month rolling period of time. Six separate occasions within a 12 month rolling period of time is more reasonable. For instance a customer may overdraw their account by a small dollar amount in a single day which may cause 4-5 other checks to overdraw the account. This would create letters and/or phone calls to the customer each time the customer had at least 6 items that overdrew their account. However if the requirements were to contact customers after overdrafts occurred on six different occasions, providing education and alternative solutions in a letter or disclosure would make more sense. This process would be similar to the requirements of Money Market and Savings Account monitoring under Regulation D.

- **Institute 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.**
 - We agree that it is appropriate that daily limits be set for the amount of daily fees or number of times an account may be charged for overdrafts.

- **Consider providing information to consumers about how to access free or low-cost financial education workshops or individualized counseling to learn how to more effectively manage personal finances. If an institution's community based partners do**

not already provide counseling, the FTC’s “Choosing a Credit Counselor” may be one resource to help institutions choose quality credit counseling partners.

- We agree it is appropriate for financial institutions to provide financial education to their communities, which is prescribed through the Community Reinvestment Act (CRA) also. Financial institutions often partner with community based organizations or trusted community partners to provide financial education. There are various programs available, including the FDIC’s Money Smart Program, VISA’s online programs, ABA’s Teach Children to Save and Get Smart About Credit programs.

- **Review check-clearing procedures to ensure they operate in a manner that avoids maximizing customer overdrafts and related fees through the clearing order. Examples of appropriate procedures include clearing items in the order received or by check number.**
 - We agree that it makes good business sense to clear checks/debit items in the order that is the most beneficial to customers. Through the use of the model disclosure forms outlining various costs and programs available to customers, the customer will be able to better compare the true costs of owning a checking account and understand the check/debit clearing process.

- **Monitor, and where necessary, mitigate credit, legal, reputational, safety and soundness, and other risks as appropriate. Legal and compliance risks associated with the overdraft payment programs include: Section 5 of the FTC Act, the Equal Credit Opportunity Act, the Truth in Savings Act, the Electronic Fund Transfer Act, as well as related implementing regulations and any changes to those regulations or statutes.**
 - Currently, as a part of the annual enterprise risk assessment due diligence performed by financial institutions, all programs should be thoroughly assessed for all risks associated, including regulatory, credit, reputation, safety and soundness risks.