

From: Lori Graham [lgraham@fm-bank.com]
Sent: Thursday, September 23, 2010 2:46 PM
To: Overdraft Comments
Subject: FIL-47-2010 Overdraft Payment Programs and Consumer Protection

Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429

Re: FIL-47-2010 Overdraft Payment Programs and Consumer Protection

Ladies and Gentlemen:

In response to the invitation for comments on this proposed guidance I respectfully submit the following comments:

First, I wholeheartedly agree that consumers should be able to decide whether they want Overdraft Services and that clear and accurate disclosures should be provided so that they may make an informed choice. However, once the customer has made their informed choice it should be respected, not restricted or reversed by government intervention.

The recent changes to Regulation E have enforced the right of consumers to choose. The recent changes to Regulation DD have provided consumers additional information regarding fees they have paid to assist them in making decisions that are best for them. These regulations apply to all banks. To have additional restrictions imposed only by the FDIC will create a disparity among financial institutions and cloud the transparency and consistency that the Federal Reserve was trying to achieve with the recent changes to Regulations E & DD. All banks should have the same standards for overdraft programs to foster consumer understanding and expectations.

The point in the proposed guidance which I disagree the most is the monitoring for excessive or chronic usage. To begin with, ATM and Debit Card transactions under Regulation E already require a customer to Opt-in to Overdraft coverage before a fee may be accessed. Because customers have already been informed of available alternatives of covering overdrafts and have made an informed decision, which they can freely change at any time, their choice should be honored. For that reason, all fees incurred due to a Regulation E covered transaction should be omitted from the monitoring requirement. A monitoring requirement where a customer has a free choice, which can be changed at any time, is unnecessary.

Additionally, checks or ACH transactions that overdraw an account are generally charged the same fee by a financial institution whether an item is paid or returned. If the bank covers an overdrawn item the consumer may avoid late charges or returned item fees from merchants. NSF fees for checks and ACH transactions were addressed by the Federal Reserve during the Regulation E proposal and comment period and their testing showed that customers generally prefer their checks and ACH transactions to be paid because these are frequently their most important payments. If a customer prefers not to have Overdraft Services for any type of transaction they may opt-out of this service altogether at my bank and at most banks. Because overdrafts and how consumers prefer to have them handled are entirely up to the consumer I feel that it is unnecessary to counsel them if they incur several overdraft fees within a set time period. Customers are already made aware of the amount of overdraft and NSF fees they pay each month and the total for the year on their account statement; additional reminders are tantamount to treating them as children who need constant reminding.

For the above reasons I recommend removing the monitoring requirement as unnecessary due to the availability of consumer choice to accept or reject Overdraft coverage and change their mind as frequently as they want.

However, if this burdensome requirement is retained in the final guidance “excessive or chronic usage” should be clearly defined as should what constitutes “6 occasions where a fee is charged”. Is it 6 transactions, 6 overdraft fees, 6 NSF fees or 6 days overdrawn? Does the six include a situation where a customer has one item that causes an overdraft and then incurs 5 daily overdraft fees before they are able to bring their account to a positive balance? Does the 6 include both overdraft and NSF fees, what about daily fees? Is the 6 requirement limited to the first 6 occurrences or is contact and counseling required for every occurrence thereafter in excess of 6 in a 12 month period or is it an annual requirement? Without a specific definition this will be left to examiner interpretation and will result in disparate treatment during examinations.

What constitutes appropriate daily limits on the number and dollar amount of overdraft fees is another very vague definition and as such would also be subject to individual examiner opinion. If this provision is retained a quantified example of what is considered “appropriate” would be critical in ensuring banks are able to comply and are that they are not subject to individual examiner interpretation. Standards such as excessive, chronic and appropriate leave too much room for individual interpretation for both banks and examiners making compliance and enforcement practically impossible and definitely inconsistent.

Additionally, requiring customer contact in person or by phone for excessive or chronic use is not a reasonable expectation because it would be extremely difficult to contact many customers who do not keep their phone numbers updated with the bank or who may not have a phone. Would a bank be expected to go to their residence to counsel them? How much time after the 6th occurrence would this customer contact be expected, a day, a week, a month? If retained, I recommend the contact method be expanded to include contact by letter as acceptable similar to how Regulation D violations are managed. Another consideration is that many people work during banking hours. To contact them by phone or in person would present an undue burden on banks. Not only is personal contact difficult, it is costly. Additional staff would have to be added or overtime paid to work during the evening and weekend hours when most consumers are available for contact. How would phone or in person contact be documented to prove compliance? Written correspondence would provide better documentation records and would be less intrusive to customers, many of whom do not appreciate their family time interrupted.

I am also concerned about state specific Do Not Call Laws which do not allow an exception for a current business relationship for calls of this nature; Indiana is one such state. If the requirement to call is maintained in the final guidance, please address how these calls would be viewed in light of state specific do not call laws. Alternatively, permitting contact by letter would negate the need for guidance in light of Do Not Call Laws.

The importance of providing cost effective products to all customers is and always has been a focus of community banks such as ours. Small dollar loans, savings transfers and lines of credit are viable options for some customers but these products have their limitations as well.

The one option that works for customers across all income levels and walks of life to avoid overdraft fees is encouraging them to practice good account management. This is the first item on the list of ways the Federal Reserve promotes in their Consumer Education Website.

Quote from the Federal Reserve’s website consumer publication “Protecting Yourself from Overdraft and Bounced Check Fees”

“The best way to avoid overdraft and bounced-check fees is to manage your account so you don’t overdraw it.”

Consumers should manage their finances in a responsible manner and most do with only a small percentage of people incurring overdraft or NSF fees at all. Imposing additional onerous burdens on banks will raise overall banking costs for all. Should the majority, who responsibly manage their accounts, be forced to bear the cost of the minority who mismanage their finances or just can’t be bothered to monitor their own accounts? I think not.

Imposing this additional onerous guidance on FDIC supervised banks will have unintended negative consequences for the very consumers that this guidance intends to protect.

I encourage the FDIC to withdraw this proposed guidance for now and allow time for the impact of the recent changes to Regulations E & DD to take effect. Those changes encompassed a broad spectrum of items and included the results of much consumer testing. Consumers now have more choices and more information about how they can and have been handling their accounts under these changes; please allow time for their voices to be heard.

Respectfully,
Lori A Graham

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