From: manca@hushmail.com
Sent: Friday, September 24, 2010 1:14 PM
To: Overdraft Comments
Subject: Comment period for Overdraft Payment Supervisory Guidance in FIL-47-2010

September 24, 2010

OverdraftComments@fdic.gov

Attention: Comment period for Overdraft Payment Supervisory Guidance in FIL-47-2010

Overdraft reform is a matter best left up to the free market. Guidance is appropriate only for clarifying existing regulations – not for creating new ones. To my knowledge, there is no legislation addressing any of the following, and therefore guidance is inappropriate for:

o The proposed ability to "opt-out" of non-electronic transactions
o The proposed advance consumer consent for Overdraft Protection products
o The proposed requirement to "monitor accounts" and take action about frequent use
o The proposed restrictions on posting order
o The proposed tool of using the Equal Credit Opportunity Act to review payment or return of overdraft items, or charging or waiving overdraft fees

I request that the FDIC clarify whether FDIC guidance is voluntary or mandatory, so that it is not left up to interpretation from one FDIC employee to another. Guidance is not law, and no one at the FDIC or elsewhere should have any lack of clarity about that. Other concerns with such guidance include:

1. Any such issuance should be interagency (FDIC, OCC, OTS, NCUA), not just FDIC, to ensure fairness and consistency across all, not just some, financial institutions.

2. Given the current regulatory environment, an appropriate comment period would be 12 months, rather than 6 weeks, to give the industry and the public time to react. Moderation and a reduced pace for changes is called for in this time when there are nearly 20,000 pages of new regulations, commentary, and guidance per year.

3. The guidance should clarify that it applies to consumers – and define consumers as natural person(s) using accounts for primarily personal, family, or household reasons – and should specifically exempt any other types of customers.

4. The FIL's Supplemental Information page states that ad hoc programs are not the focus of the FIL; thus, this should be clarified through a specific exemption.

5. The FDIC appears to suggest that the banks are causing, or improperly tolerating, overdrafts. The proposal contains a bizarre requirement to "monitor accounts and take meaningful and effective action" about repeated overdraft use, which will only increase the underbanked population, and drive more people to exorbitantly-priced payday lenders. This unreasonable requirement should be eliminated entirely.

6. Daily limits on fees would also lead to more account closures, and more underbanked people.

7. A 12-month monitoring period with a 6-fee threshold is not practical and will likewise result in underbanked status for consumers who frequently rely on overdrafts. This timing would mean calling the

same consumers as often as weekly, since the time period "rolls." This requirement – both the 12 months and the 6 fees - should also be eliminated entirely. If you should proceed with a similar requirement, I suggest 12 calendar months (not rolling), and 50 overdraft fees (counting only overdraft item fees, not the daily fees that apply to the number of days the account remains overdrawn).

8. The FDIC suggests that personal consumer contact, by telephone or in person, be mandatory for consumers with ongoing overdraft use. This requirement should be eliminated, because:

o The method of consumer contact should not be dictated. It is inadvisable to require particular methods of contact for a consumer population that increasingly wants and responds to email and online contact.

o It also should be clarified that under no circumstances is the FDIC suggesting that "in person" contact should involve visiting a consumer's home or worksite. Frequently overdrawn customers don't want to hear the phone ring with a bank on the other end, much less hear a knock at the door.

o Look at the big picture: at the national level, the suggestion to call consumers would mean millions of additional phone calls, which is unfeasible and ill-advised. Regulations are designed to protect consumers from telemarketing, not require that consumers be bombarded with calls.

o Consumers do not want to receive these kinds of phone calls.

o Some people have instructed their bank not to call them for any reason.

o Consumers may be otherwise unavailable for phone calls, and may not have time to return messages.

o Consumers will also be at work during the times that banks are trying to reach them by phone. Surely the FDIC has not intentionally suggested that banks need to start making more calls to their customers' places of employment.

o A timely written notification is more than sufficient.

9. The requirement to offer a "less costly alternative" should be eliminated, because:

o If the consumer had the funds available to set up a linked savings account, then the consumer probably would not have overdrawn 6 times in the first place.

o Obviously, a consumer that overdraws 6 times in a 12-month period is equally unlikely to be credit-qualified for an overdraft line of credit or small dollar loan.

o Banks are not required to even offer overdraft lines or linked savings in the first place.

o Consumers always have "less costly alternatives" available; namely, keeping track of amounts credited to and deducted from accounts, so that overdrafts do not occur.

o The proposal that banks must monitor and prevent what the FDIC deems to be "chronic customer use" is paternalistic.

o Non-accidental overdrafts – which includes all instances of excessive usage of overdrafts - are the result of consumer choice, and the FDIC need not seek to reduce consumers' access to the services they need.

o For consumers who are ineligible for any “less costly alternative,” or who refuse to establish and adequately maintain sufficient funding in a linked savings account, or who fail to take any affirmative opt-in action, it should always be acceptable for the bank to continue to serve the consumer, and continue to assess overdraft fees.

10. Any given posting order method may cause more fees (and problems regarding unpaid items returned NSF) for one consumer than for another. One can’t please all of the people all of the time. The small-item overdrafter complains that a cup of coffee supposedly “cost 40 bucks,” while the large-item overdrafter wants to know why a cup of coffee caused a mortgage payment to be returned unpaid. Posting order is irrelevant to this guidance, despite current “case law” to the contrary, which is the still the subject of appeals. The new suggestion that posting order should be restricted flies in the face the uniform Commercial Code that specifically allows paying items in any sequence.

11. Further consumer harm will occur if banks are restricted from making fee income based on the expense, and risk of loss, that banks accept when paying an overdraft item. This proposed guidance would lead to an increase in the amount of items returned NSF (instead of paid into overdraft) and would therefore harm consumers. Overdraft services save consumers money. An overdraft check can mean not having to pay a reconnection fee for the light bill or phone bill, or not having to pay a returned check fee to a credit card company or retail store. Why would we eliminate the bank fees, but keep the merchant fees? If all fees are removed, businesses will have to assume that any given check could be worthless.

12. Overdraft fees create a necessary consequence to spending money that a person doesn’t have. Remove the consequences, and abuses and fraud will increase while individual responsibility decreases. The guidance implies that the costs of the decisions of a very small percentage of consumers should be borne by all consumers. Savers should not pay for the spending habits of frequent overdrafters.

I appreciate the opportunity to comment on the FDIC’s proposed changes and sincerely hope that these comments will be useful to the FDIC as it considers withdrawal of or significant revisions to the guidance.