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September 24, 2010

Federal Deposit Insurance Corporation
550 17th Street NW
Washington, D.C. 20429-9990
OverdraftComments@fdic.gov

RE: Overdraft Payment Programs and Consumer Protection (FIL-47-2010)

Thank you for the opportunity to comment on the recent Overdraft Payment Supervisory Guidance and, specifically, monitoring for excessive use of overdraft programs and contacting a customer after six transaction fee triggers. We hope that our input will be of service to you in evaluating the feasibility in implementing this guidance for banks and the value of this contact to the customer.

Overdraft Services at Bankers Trust

At Bankers Trust, when an account is opened, the consumer is provided with:

- A one-time debit card and ATM withdrawal overdraft opt-in form, as directed by Regulation E, which describes the bank's overdraft services, alternatives to the overdraft services, fees associated with the services, etc.
- A terms and conditions of the account disclosure, which advises when and how an overdraft occurs and that there are fees associated with overdrawing an account.
- A service fee schedule, which details the fees associated with overdraft and returned items.
- Information about free Internet banking and automated telephone services the bank offers, providing consumers 24-hour-per-day access to their account balances and transaction histories.

Recognizing that many consumers—particularly younger consumers—no longer carry checkbooks and transaction registers, Bankers Trust provides a debit-card-sized transaction register for consumers to record debit and ATM transactions as they occur.

After account opening, Bankers Trust provides consumers the following on periodic statements:

- A form to assist consumers in reconciling their account records to those of the bank.
- A telephone number and address for consumer inquiries.
- A month-to-date and year-to-date tally of any overdraft and return-item fees incurred, as directed by Regulation DD.

When an overdraft occurs on an account, the consumer receives timely notification providing details about the items that were presented, the disposition of the items, any fees that were assessed, and the final resulting balance. Moreover, the notice states how long the consumer has to rectify the account

deficiency and that the account could be reported to credit reporting agencies if not paid in full by a specified date.

Consumers are fully informed about account management services and overdraft services when they open their accounts, about their periodic statements, and about the notices they receive when an overdraft does occur.

Bankers Trust's Experience with Frequently Overdrawn Customers

In response to your request for specific comments on the proposed guidance to monitor for excessive or chronic customer use and to contact the customer after six transaction fee triggers and discuss available alternatives, Bankers Trust's experiences have been as follows:

- ***It would be of little value to consumers who frequently overdraw their accounts.*** The alternatives to overdraft services are already provided on the Reg E Opt-In form and in the literature and materials that accompany the account opening materials. The typical consumer who frequently overdraws his or her account rarely has savings or a credit score sufficient to qualify for alternatives to overdraft services. Indeed we have found that frequent users of overdraft services come from all demographics and income brackets, with the only common denominator being low credit score and/or carelessness in reconciling to bank records, in most cases.
- ***It is difficult to reach consumers—particularly overdrawn customers—by telephone.***
- ***Consumers who frequently overdraw their accounts likely would not value a telephone call such as this.*** They would likely interpret it as a debt collection call and would not appreciate receiving this type of a call, particularly at their place of employment or on their cellular telephones.
- ***It would be confusing to a consumer who has opted in, and would appear to be condescending.*** Follow up telephone calls to consumers who use a service they have expressly opted in to would not be well received or valuable to customers.

Bankers Trust's Comments on Telephone Calls to Frequently Overdrawn Consumers

- A follow up telephone call to frequently overdrawn consumers would not be meaningful or valuable to our customers.
- Bankers Trust provides consumers with the tools and information they need to successfully manage their accounts.
- Requiring banks to place a telephone call to frequently overdrawn customers takes the responsibility of properly managing the account off the consumer and places it on the bank.
- Imposing a greater regulatory burden on FDIC-supervised banks puts Bankers Trust at a competitive disadvantage.
- Monitoring for "excessive use" and making personal contact, by telephone or in person, with each frequently overdrawn consumer places a significant burden on bank resources.

We believe that by complying with other aspects of your guidance—such as providing clear and meaningful disclosures about overdraft services; complying with the fee disclosure and opt-in requirements already mandated by law; and allowing consumers to opt out of all overdraft services and promptly honoring such requests, to name a few—we provide consumers with adequate information to

successfully manage their accounts and make informed decisions about how they would like their overdrafts handled.

Further Considerations

Recent regulatory changes. Bankers Trust has committed tremendous resources to complying with new overdraft rules which have been—in some cases—only effective for a few weeks. The effects of the new rules have not been given enough time to be measured or evaluated. Adding more rules at this time seems premature.

Consumer choice. The new overdraft rules promulgated in Regulations DD and E promote informed consumer choice. The proposed FDIC guidance runs contrary to the objectives of the regulations.

FIL format. It is inappropriate to promulgate new rules, to which only FDIC-supervised banks will be subject, through a Financial Institution Letter. Similar to the 2005 Interagency Guidance, supervisory guidance on overdraft services should come unanimously from all of the supervisory agencies and should apply to all banks regardless of regulator.

If the guidance is adopted with the monitoring program included, we respectfully suggest the FDIC:

- Permit banks to use their discretion in defining frequent users of overdraft services, rather than defining frequent use as six occurrences in a 12-month period.
- Acknowledge that once a consumer has been contacted, he or she should be free to continue using the service if the consumer so chooses.
- Clarify that once a frequent user has been identified and contacted, banks are no longer obligated to continue monitoring the frequent user.
- Clarify that banks have no duty to stop excessive use of the program by, for example, closing accounts or restricting debit card access to frequent users.
- Allow banks to send written correspondence to frequent users containing the same information proposed in the guidance in lieu of placing a telephone call.
- Remove the requirement for annual board of director approval of overdraft programs and features. This is, and should remain, a function of bank management.

Thank you again for the opportunity to comment on the recent guidance. We trust that working together, banks and your agency will arrive at solutions that are fair, meaningful, and valuable to consumers who use bank overdraft services.

Sincerely,



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