

September 24, 2010

Federal Deposit Insurance Corporation

DELIVERED VIA EMAIL: overdraft comments@fdic.gov

Re: Comments on Overdraft Payment Supervisory Guidance (FIL-47-2010)

Dear Sir or Madam,

I am pleased to submit my comments to the proposed Overdraft Payment Supervisory Guidance issued by the Federal Deposit Insurance Corporation (FDIC).

I generally agree with many of the regulatory expectations the FDIC has provided related to the management of automated overdraft payment programs; however, one of my main concerns is that some of the FDIC's expectations may go too far in shifting the responsibility of managing an individual's account from the accountholder to the financial institution.

Comments on Specific Actions Proposed by the FDIC Regarding Automated Overdraft Privilege Programs

Monitor programs for excessive or chronic customer use, and if a customer overdraws his or 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; and***
- ***Giving the customer a reasonable opportunity to decide whether to continue fee-based overdraft coverage or choose another available alternative.***
- ***The FDIC specifically seeks comment on whether an effective way to monitor for excessive use of automated overdraft programs would be for supervised institutions to contact a customer after the six transaction fees trigger and discuss available alternatives. The bank would explain, for example, that it also offers linked savings account, overdraft lines of credit or small dollar loans, each of which may be less expensive than the automated overdraft program. The consumer would then be asked to pick the available option he or she prefers to cover any future overdrafts, including the choice of opting in to the bank's overdraft program.***

Consumer choice and responsibility are strongly endorsed by the recent amendments of Regulation E and DD. Customers who opt-in for ATM and one-time debit card transactions make an informed choice, receive information that highlights the cost of the service, and are free to change their minds and discontinue the service at any time. Customers also receive clear disclosures on periodic statements of all NSF and overdraft fees.

Our customers are made aware of alternatives to overdraft services during account opening, when they are most likely to apply and enroll for such services. Our customers must review the A-9 Model Consent Form for Overdraft Services prior to opting in to our overdraft service for ATM and everyday debit card transactions. This A-9 notice contains details regarding our Standard Overdraft Practices, as well as alternatives to overdraft services.

I do not feel we should be required to suspend overdraft protection services, take away debit card privileges, or close an account based on a regulatory standard that is contrary to customer choice. Our customers should not be denied services they understand, want, and value. Our customers should not be subject to ongoing monitoring and repeated calls that will only embarrass and annoy them when they have made their choice clear through written election and conduct consistent with that choice.

Inundating our customers with redundant information regarding alternatives to overdraft services does not guarantee they will elect to enroll in or apply for alternate products. Enrollment into alternative overdraft products does not guarantee that our customers will have either the necessary funds in the adjoining account or the available credit to avoid NSF/OD fees.

Banks will be forced to expend considerable time and effort to ensure compliance with the “six-in-twelve” guideline for excessive use. The requirements set forth will place severe compliance costs, to include additional staffing, infrastructure, and training without manifesting the intended results. Added compliance cost will ultimately result in fewer products and higher prices for our customers. Any required customer notification should continue to be in written form, or electrically if the customer agrees.

I oppose the requirement that financial institutions obtain opt-in for transactions outside the scope of Regulation E’s requirements. The Federal Reserve Board’s amendment of Regulation E was based on extensive consumer testing that clearly showed consumers expect and want important payments, including checks, ACH, and recurring debit card transactions to be paid.

Unless required, financial institutions are unlikely to adopt a non-profitable product such as Small-Dollar Loans (SDLs). Additionally, as with all loans, SDLs require formal underwriting and processing. Given the fact that customers require immediate accommodations when attempting to draw on unavailable funds, SDLS would provide a poor substitute for existing overdraft services.

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.

I do not feel the FDIC should impose a new regulatory requirement of daily limits on consumer costs. I am concerned about the possible hazard of disclosing an absolute daily limit. Banks should not be required to disclose the daily limit (if they have one) as part of its account agreement or fee schedule.

I appreciate the opportunity to comment on this important matter.

Sincerely,

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