

From: Andrew Kloeckner [AKloeckner@mbvt.com]
Sent: Friday, September 24, 2010 9:09 AM
To: Overdraft Comments
Subject: Comment on FIL 47-2010

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

Thank you for the opportunity to comment on the Overdraft Payment Supervisory Guidance issued 8/11/2010. Merchants Bank takes its responsibility to educate our customers on proper financial management procedures very seriously. We are proud of our Overdraft Assurance service as it incorporates or goes beyond many recommended Best Practices set forth in the Joint Guidance on Overdraft Protection Services issued in 2005. We firmly believe that the financial institution and the customer share in the responsibility for good, sound financial management and practices. We also agree with and conform to many of the statements made in this newest guidance. However, we feel the need to comment on some of the other provisions of the proposed guidance with which we are not in agreement.

Requirement for personal contact after six overdraft occasions

The requirement for personal contact with all customers who exceed this threshold is an unworkable and unwarranted requirement. First, the volume of customers would be unmanageable from a personal contact standpoint. Bank staff would be unable to reach most customers during the day while they are at work and the Bank would not have sufficient staff to perform and track the task. Banks already send overdraft notices each time an account is overdrawn and, as required by the Truth in Savings regulation, their overdraft activity and associated fees are detailed on their monthly account statement. Customers at almost all banks also have direct access to their account balances and activity through free internet banking, toll free telephone banking, and directly through a toll free call center if desired. Bank staff does make personal contact with customers where possible, but mandating such contact is unreasonable. All transfer options for avoiding overdrafts are provided to customers at account opening, are available on our web site, and are communicated with statement stuffers.

Reference to ‘fee based overdraft coverage or other alternatives’

A misconception in the proposed guidance is that an overdraft payment service creates a cost to the customer. Absent the cost of card-based overdrafts to which a customer has opted in, general overdrafts, whether paid or returned by an automated system or whether paid or returned by discretionary review, incur the same overdraft fee. The fee is a function of becoming overdrawn, i.e. spending more money than the customer has, not a function of whether the transaction was paid or returned by a bank’s service. As noted above, all customers are already presented with overdraft transfer options when opening their account, on the web site, and certainly by Bank staff if they are contacted about an overdraft issue with their account.

Inconsistent application of waivers of overdraft fees

An overdraft payment service is not a lending program. It is unreasonable and unwarranted for the FDIC to hold over banks’ heads the arguably subjective provisions of ‘fair lending’ regarding the processing of transaction account activity. If fees are waived or rebated, there are legitimate reasons behind those decisions. To mandate a process whereby regulators would be researching and second guessing why an officer waived a particular fee for one customer vs. another in two different situations is not a productive use of the regulator’s time and has nothing to do with providing credit. There is no basis to apply fair lending rules to overdraft payment services which are used to streamline check processing on transaction accounts and to provide a discretionary service to a bank’s customers. Bank officers are sensitive to customer circumstances and waive fees out of concern for a customer’s particular situation. If such an application of lending regulation were applied to fees on transaction accounts, a sure consequence would

be a significant increase in cost to bank customers as banks would likely be unwilling to waive overdraft fees for fear of the punitive consequences of fair lending regulations.

We will continue to provide all objectively qualified customers with access to our overdraft payment services while adhering to the existing best practices outlined in previous FDIC requirements and the proposed guidance. However, we feel that the above referenced portions of the proposed guidance will not have the desired effect and will have unintended negative consequences, as noted above, to both banks and their customers.

Andrew T. Kloeckner | Deposit Compliance Officer
Merchants Bank | PO Box 1009 | Burlington, VT 05402
P: 802-865-1970 | F: 802-865-1677
www.mbv.com

Please Note:

Privileged/Confidential Information may be contained in this message. If you are not the addressee indicated in this message (or responsible for delivery of the message to such person), you may not copy or deliver this message to anyone. In such case, you should destroy this message and kindly notify the sender by reply email.

Please advise immediately if you or your employer does not consent to Internet email for messages of this kind. Opinions, conclusions and the information in this message that do not relate to the official business of my firm shall be understood as neither given nor endorsed by it.