

From: Karen Ruckle [krruckle@bankozarks.com]
Sent: Friday, September 24, 2010 10:23 AM
To: Overdraft Comments
Subject: FIL 47-2010 Comment

September 24, 2010

[Name]

[Name]

FDIC

550 17th Street NW

Washington, DC 20429-9990

RE: Financial Institution Letter 47-2010
Overdraft Payment Programs and Consumer Protection

I am commenting on behalf of Bank of the Ozarks (Little Rock, Arkansas) which is a subsidiary of Bank of the Ozarks Inc (a one-bank holding company). Bank of the Ozarks has assets of \$2,863 million as of June 30, 2010 and 92 full service offices in seven states as of today.

I am writing in response to FIL 47-2010 which invited comments on supervisory guidance and FDIC expectations related to overdraft payment programs. In particular, I am commenting on the details of the expectation to monitor programs for excessive or chronic customer use. The FIL defines "excessive or chronic" use as an account that is overdrawn on "more than six occasions where a fee is charged in a rolling twelve-month period." Meaningful and effective follow-up action includes personally contacting the customer (in person or by telephone) to discuss alternatives.

We feel the definition of excessive and chronic is overly broad and the expectation of an in-person or telephone conversation is unduly burdensome for both the bank and the consumer.

Based on our experience, there are a small percentage of customers who are frequent users of overdraft payment services. Using the FIL 47-2010 definition of excessive or chronic, 2,800 of our customers are excessively or chronically overdrawn. Calling on and making contact with each of those individuals would be a time consuming task and in all likelihood would require additional personnel and an evening staff to telephone customers during non-business hours. We believe customers would become annoyed with these calls and personal contacts and view them as an interruption to their dinner and family time. We feel that customers will not change their banking habits – but will change their banking relationships.

If the expectations remain unchanged, we would expect to require more training for all retail staff (not only the additional personnel) to review scripts or talking points and to teach employees how to provide financial education to the customer during the required face-to-face or telephone meetings.

The Financial Institution Letter and expectations do not address the following questions and concerns:

1. Would the bank be required to maintain a record of attempts to contact customers?
2. Would the bank be required to call on customers each month as the rolling 12-month period renews each month? (What do we say to the customer who made his wishes known during the first monthly call? That we are simply calling because the FDIC expects us to and does he still want ODP, rather than a link to another account that he may not have or a loan for which he may not qualify?)

3. If a customer has one or two months with excessive overdrafts, would the bank be required to continue to call each month for the rest of the rolling 12-month period?
4. What is the bank's responsibility if we cannot reach the customer in person or by phone? Would we be criticized for failure to meet this FDIC expectation? Would we be required to discontinue the service for this customer?
5. What will be required next to protect the consumer from his own fiscal irresponsibility? Will the bank be required to allow certain overdrafts (mortgage, rent, and utility payments) while declining other overdrafts (liquor store, smoke shop, tanning salon)? Where does personal responsibility fit in?

It is our opinion that a periodic letter is much better received by the customer as it is less intrusive. Including a form the customer can complete to direct the bank to handle overdrafts in the manner of his choosing (e.g., overdraft protection, transfer from another deposit account, or return of NSF items), seems reasonable.

We believe the customer knows he is overdrawing his account and understands the financial impact of the overdrafts and overdraft fees. We believe this is true whether the account is overdrawn on one occasion or many occasions. How? In addition to the notice provided at the time of the overdraft, the periodic statement of activity each month details the fees assessed for overdrafts and insufficient items for the statement period and the year-to-date as required by Regulation DD. As recommended in the 2005 Joint Guidance on Overdraft Protection Programs, we provide a letter to customers who have been overdrawn on more than an occasional basis to remind them that there may be other funding options available, for example they may enroll for automatic transfers from another account at the institution or they may apply and qualify for a loan or credit card. We send this letter on a quarterly basis so as not to inundate the customer with monthly letters. Response to these letters has been virtually nonexistent.

Were the bank to discontinue offering the service to those who overdraw their accounts on more than an occasional basis or who are deemed to be "excessive or chronic" overdrafters, a number of customers would be harmed. If overdraft protection services are not available, we will find customers returning to, or beginning to, use payday lenders and other providers of expensive, short term credit. We are concerned that many users do not have a second account from which funds may be transferred and many may not qualify for a small personal loan. Furthermore, if items are returned, rather than paid into overdraft, customers will pay the same amount in fees for insufficient funds, plus additional fees from merchants.

It would be our recommendation that the bank contact the customer (by phone, in person, or by letter) on a periodic basis, which is no more than quarterly, for a more narrowly defined excessive overdraft usage during the preceding 3 months. The contact would inform the customer of funding options available and ask for direction from the customer. The customer would not be required to respond to the call, conversation or letter. If no response was received, no further action would be required from the bank until the next quarter when excessive overdraft usage is identified.

Thank you for the opportunity to comment on this issue and for your consideration of my remarks. If you have any questions or wish to contact me I may be reached at 501.978-2294.

Sincerely,

Karen Ruckle
Bank of the Ozarks
Compliance Officer
501.978.2294

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