



September 27, 2010

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

*By electronic delivery to:*  
[OverdraftComments@fdic.gov](mailto:OverdraftComments@fdic.gov)

Re: Overdraft Payment Programs and Consumer Protection, FIL-47-2010

Ladies and Gentlemen:

Umpqua Bank appreciates the opportunity to respond to the Federal Deposit Insurance Corporation's (FDIC) Financial Institution Letter (FIL-47-2010) articulating the FDIC's expectations for management and oversight of automated overdraft protection programs. Umpqua Bank's overdraft program is an important service to our customers. Responsible and effective oversight of the program is a duty our institution takes very seriously.

Our Current Practices – An Overview

Umpqua Bank has an effective enterprise-wide risk management system that allows us to dynamically manage the consumer protection, regulatory, safety and soundness risks associated with our overdraft protection services. We believe these services are of great value to our customers and therefore monitor our practices to ensure they are fair and designed to inform customers of the risks and potential costs involved from using the service.

While not intended to be an exhaustive list, the following are some of the efforts Umpqua Bank has taken in 2010 as a result of our on-going self evaluation:

- Implemented a daily limit on the number of Overdraft Charges a consumer will incur in one day<sup>1</sup>.
- Ceased charging a fee when a transaction overdraws an account by less the \$5.00.
- One of the first banks to restructure posting order.

To inform our customers of the risks and potential costs involved from using overdraft services, the Bank adheres to the following best practices (again, not an exhaustive list):

- Clear and meaningful disclosures are provided at account opening describing the Bank's overdraft protection policy; the associated costs; the customer's right to opt-out of the programs; the availability of alternative protection products (such as a Line of Credit or connection to another transaction account) to help reduce the costs of overdrafts; and the

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<sup>1</sup> Does not apply to business accounts.

- Bank's right to revoke the customer's participation if the account isn't returned to a positive balance at least once every thirty days.
- Account opening personnel review the disclosures with the customer to ensure they understand the mechanics and costs of the program and to answer any additional questions.
- On-going training is provided to customer facing personnel to ensure they know how to explain program features and other choices and promptly execute a customer's request to opt-out of overdraft protection programs.

Regulations E and DD – The costs of implementation

To fully implement the requirements resulting from recent amendment to Regulations E and DD, Umpqua Bank has spent over \$530,000 this year with additional costs still expected. This figure does not include personnel costs. The project required significant commitment and time from many departments and individuals within the Bank to implement. Additionally, the figure does not reflect the costs associated with on-going compliance monitoring activities which will require additions to staff to execute. The full cost of implementation will not be known for some time.

If similar requirements for check and ACH transactions are imposed upon banks, as were implemented with Regulation E, the costs will be unnecessarily and excessively burdensome.

Prescriptive Monitoring Requirements

Umpqua Bank agrees with the FDIC a strong monitoring program is necessary to ensure overdraft programs do not harm the consumer or create unintended risk for the institution. The Bank welcomes assistance from the FDIC in determining what 'elements' should be present in a solid monitoring program, but cautions against establishing prescriptive requirements which may not pertain to all banks and all customers. Defining "excessive or chronic customer use" as a "customer who overdraws his or her account on more than six occasions where a fee is charged in a rolling twelve month period" may not be an appropriate rule in all circumstances.

Umpqua Bank has several objections to the proposed six occasion guidance:

- The Congress left this provision out of the *Dodd – Frank Wall Street Reform and Consumer Protection Act* for good reasons.
- The number is arbitrary. One overdraft in a year may be excessive for some customers while twelve maybe reasonable for another.
- The responsibility for determining excessive or chronic customer use falls on the bank, instead of the customer, who may have proactively opted-in for the service. The customer determines his or her level of excessive or chronic use at opt-in and may opt-out at any time.
- There are better preventative measures banks may exercise, including dropping customers from the overdraft program or closing out the account.

Such prescriptive definitions also fail to recognize the positive, preventative efforts banks take on the front end of their processes such as providing clear and meaningful disclosures; training staff to explain

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all overdraft features and choices; and refraining from including overdraft accommodation amounts in available account balance information (a practice Umpqua Bank does not practice nor condone). A Bank's monitoring program should allow a bank to identify customers that may need to be contacted, but flexible enough to account for varying customer circumstances. Ultimately, this is just good customer service.

As an alternative, Umpqua Bank suggests the FDIC encourage each institution, as part of their overdraft procedures, to create a definition of "excessive or chronic customer" that represents the institution's customer base, location demographics, user experience etc. and determine the appropriate response on a situation-by-situation basis.

Summary and Conclusion

Umpqua Bank's mission statement in part reads: "The mission of Umpqua Bank is to create a unique and memorable banking environment in which our customers perceive the bank as an indispensable partner in achieving their financial goals..." For over 50 years, Umpqua Bank has worked tirelessly to deliver excellent service, value and innovative products to our customers. Our longevity and reputation are testimony to our customer centric and friendly practices. Overly burdensome and costly regulations hinder our ability to be indispensable to our customers.

In "spirit" and actuality, Umpqua Bank has already implemented many of the practices outlined in the 2005 *Joint Guidance on Overdraft Protection Programs* that are re-articulated in FIL-47. We understand and support the FDIC's efforts to identify existing compliance gaps and to address them, but do not believe the abusive practices of a few institutions requires new, burdensome, and prescriptive regulations proposed in FIL-47-2010.

Umpqua Bank strongly recommends the FDIC refrain from imposing these requirements at this time and instead engages with individual banks on their specific needs/situation, when compliance issues become apparent.

Respectfully submitted,



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