From: Jason Lamb [mailto:jasonedlamb@hotmail.com]
Sent: Monday, September 27, 2010 4:28 PM
To: Overdraft Comments
Subject: FIL-47-2010 comment letter

Ladies and Gentlemen:

I respectfully submit this comment letter to state that I adamantly oppose the FDIC's proposed guidance in FIL-47-2010 that addresses overdraft coverage programs. I believe the guidance will backfire because:

1. It will harm more customers than it will help, shifting fees to all customers, and
2. It does not address the problems that cause customers to frequently overdraw, and
3. It will enable not just the frequently overdrawn, but also fraudsters like worthless check-writers, to take advantage of limits on overdraft fees to abuse the businesses that accept checks for payment.

Any consumer can occasionally overdraw by accident, due to miscalculation or forgetfulness, but this guidance addresses a newly-invented concept: "chronic" users of overdraft services. The problems causing so-called "chronic" usage of overdrafts include a lack of funds necessary to make a sufficient deposit, and a lack of inclination to balance an account. The guidance, by ignoring those causes, fails to solve the real issues. But should the FDIC choose to take the leap anyway, then please:

1. Consult the other agencies and issue joint interagency guidance, not just guidance from one agency,
2. Emphasize the ad hoc exemption,
3. Clarify that the guidance is only about consumer accounts,
4. Drop the monitoring requirements (or change the 6 fees to 96 or some other equally arbitrary but much more realistic and workable number)
5. Drop the requirement to call consumers (consumers haven't asked for more harassing phone calls)
6. Drop the caps on daily fee totals, both arbitrarily-determined ones and self-imposed ones,
7. Drop the references to posting order (as posting order cannot be based purely on dollar amounts, given that many different types of transactions are final and non-returnable, like ATM withdrawals, outbound wires, cashed checks, etc.),
8. Exclude return item fees from the guidance, and
9. Clarify exactly when the FDIC expects account closure for a so-called "chronic" user of overdraft services, bearing in mind that with guidance of this nature, such a requirement will be perceived or created by financial institutions, even if the FDIC insists that there isn't one.

Linked savings accounts are indeed a less costly alternative than traditional overdrafts, but they only prevent overdrafts for consumers who can (and choose to) fund them. Telling a frequently overdrawn customer to open a linked savings account is the same as telling them to "start keeping more money in their checking account." Offering a second account doesn't solve the problem, because the consumer would still have to fund it.

Most frequently overdrawn customers would not have success in obtaining a line of credit to cover overdrafts. Many "chronic" users of overdraft services have similar and equally pervasive issues in their credit histories. Thus, for many frequently overdrawn customers, there *are no* less costly alternatives.

In the past year or two, the country has implemented new requirements under Truth in Savings, Electronic Funds Transfer, Truth in Lending, and a host of other new rules and amendments. The list is nearly endless. And this doesn't even touch on the numerous new state laws, or the massive overhaul outlined in the Dodd-Frank (DRANK) Act, or the impending further overhaul by the Consumer Financial Protection Bureau. Unending change does not help consumers. New rules, whatever their intention, restrict business activities and lead to some businesses exiting the area being regulated.  One simply can’t pass a rule restricting the use of a service without expecting the availability of that service to decrease.

The fee cap is probably the most troubling aspect of the guidance.  It’s like trying to end the obesity epidemic by imposing caps on the dollar amount restaurants can charge.  If restaurants could charge a maximum of $3 no matter how many hamburgers were consumed, then at least a few people would see this as an opportunity to consume all they wanted and more, knowing that the law was going to protect them from having to pay for their excesses.  I warn that all efforts to restrict the ability to charge overdraft fees amount to an "All-You-Can-Spend Buffet" sign, for the portion of the population which already overspends, much to the dismay of the rest of the public.

Overdraft fees will only serve as a deterrent as long as banks are allowed to use them for every overdraft.  Like it or not, overdraft fees are the reason your bank account is free, instead of $50 a month.  I suggest that the FDIC rescind this guidance, and instead focus on more consumer education initiatives to address the problems that cause consumers to frequently overdraw, with a goal of helping those consumers without benefiting fraudsters or harming the rest of the consumer public.

Sincerely,
Jason Lamb