

September 27, 2010

Federal Deposit Insurance Corporation

RE: Request for Comments on Overdraft Payment Supervisory Guidance

As an \$80M community bank located in the Midwest, we have concern regarding the potential effects of proposed Overdraft Guidance and appreciate this opportunity to comment.

Using highlights from FIL-46-2010:

Institutions should provide clear and meaningful disclosures and other communications about OD payment programs, features and options. The number of disclosures we currently provide – to comply with current regulations as well as to provide good customer service – has grown to such proportions that very few customers will take the time to read them. Mandating additional disclosures or specific wording will create additional work for the financial institutions but will have little or no benefit to the consumers when they are not read.

Institutions should demonstrate compliance with the new OD opt-in requirement for ATM withdrawals and debit card transactions. FDIC supervised institutions are already required to demonstrate proof of compliance.

Institutions should promptly honor customers' requests to decline coverage of ODs resulting from non-electronic transactions. This information is not specific enough to allow comment.

Institutions should give consumers the opportunity to affirmatively choose the OD payment product that overall meets their needs. Disclosures provided under both Regulation E and Regulation DD already meet this need.

Institutions should monitor accounts and take meaningful and effective action to limit use by customers as a form of short-term, high-cost credit, including giving customers who overdraw their accounts on more than six occasions where a fee was charged in a rolling twelve-month period, a reasonable opportunity to choose a less costly alternative and decide whether to continue with fee-based overdraft coverage. What an incredible burden this would place on financial institutions! It would be impossible to meet this requirement without adding additional staffing. To suggest some type of contact with those customers would be quite unrealistic. We believe customers are very aware of their overdraft habits. Overdraft notices are sent. Depending on the severity of the overdraft, the customer may receive more than one follow-up letter. In addition, each overdraft fee is itemized on the customer's statement and the charges are summarized in grid format on the statement. When does the consumer start assuming some responsibility for their own actions? Overdraft alternatives are presented when consumers open their accounts. That information is again presented with Opt-In information. In addition, at any time they inquire about options, they are provided with alternatives. As long as we allow the customer to spend without consequences, or we limit their consequences, the less responsible they will become.

Institutions should institute appropriate daily limits on OD fees. The bank has no control over how many checks a customer writes on a given day or how many will clear on a given day. The amount of work and risk involved on the bank's behalf, grows with each check that is processed. Mandating a cap does not allow the bank to adequately cover its costs and associated risks. Financial institutions and customers should be allowed to contract for that service and associated fees.

Institutions should not process transactions in a manner designed to maximize the cost to consumers. Many financial institutions are already waiving OD fees if the resulting overdraft is under a specified small dollar amount (i.e., \$5.00 or less). Therefore, if only small dollar items are presented, the customers may have their items paid without a fee. Given the choice, we believe most consumers would choose to have their large dollar items paid first to avoid late fees and penalties. Using a chronological order based on the receipt of the check could create multiple issues. Many checks today are received electronically and controlling the posting order of those would require costly reprogramming of internal systems. When you receive numerous checks in the same incoming file, how do you determine the time of receipt? If two items have the same time stamp, which would you pay first? Consumers can understand paying large to small based on dollar amount, or small to large. Trying to explain the various ways an item can be received and proving to the customer which was received first, could be a nightmare. If you want a consumer-friendly regulation, that would not be the best choice.

Rather than burden all banks with more compliance issues, we suggest each bank's overall overdraft program be reviewed. Banks that do not demonstrate they are in compliance with existing regulations and that are not taking steps to inform their customers of overdraft options should be expected to make positive improvements.

Opt-In legislation has already taken a significant toll on financial institutions and their processors. To create additional monitoring and waiving of more fees may spell death for some small banks who are already struggling in a difficult financial environment.

It is time to let our customers take responsibility and let them make their choices. If they choose to overdraw their account, they pay the charges for which they contracted. If the charges of one bank do not fit their needs, they have the option of choosing another institution for those services. Only when we hold them accountable will we start to see the pendulum swing toward a more responsible consumer.

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