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Steve Hanft
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Federal Deposit Insurance Corporation
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Washington, D.C. 20429
VIA FACSIMILE (202) 898-3838
VIA EMAIL: comments@fdic.gov

Re: *Study of Overdraft Protection Programs*

Dear Mr. Hanft,

The California Reinvestment Coalition (CRC) writes in response to the notice and request for comment on the FDIC's proposed one-time collection of information on the features and effects of overdraft protection programs in FDIC-regulated financial institutions. CRC strongly urges the FDIC to proceed with such an investigation.

The California Reinvestment Coalition is a nonprofit membership organization of more than two hundred (200) nonprofit organizations and public agencies across the state of California. We work with community-based organizations to promote the economic revitalization of California's low-income communities and communities of color. CRC promotes increased access to credit for affordable housing and community economic development, and to financial services for these communities. Over the last few years, CRC has focused increased attention on fighting predatory financial practices in California.

Overdraft protection programs have the potential to be one of the most predatory of financial products. CRC believes that such programs are responsible for transferring billions of dollars in fees assessed to unsuspecting consumers into bank profits. Because the payoff for financial institutions is so great, the need for strong regulatory oversight is heightened in order to ensure that consumers are sufficiently protected.

Overdraft fees can have severe economic consequences for consumers, and can force and keep consumers out of the financial mainstream. Accordingly, CRC and its members have developed the Essential Bank Account as one alternative to these high fee accounts. The Essential Bank Account is a checkless checking account that makes it unlikely that customers will be able to overdraw their accounts. Citibank has been offering this product in San Diego, and Washington Mutual is now offering a version of it statewide in California.

The proposed review of overdraft protection programs of several hundred FDIC regulated institutions is a positive step in the right direction. CRC also acknowledges the FDIC and sister agencies for promulgating guidance on the subject, but we believe that the guidance does not go far enough in promoting consumer understanding and sound financial management. Additionally, we question whether banks are adhering to the best practices outlined.

The collection of information is necessary for the proper performance of the FDIC's functions, and the information collected will have great practical utility. In order to enhance the quality, utility and clarity of the information to be collected, CRC urges the FDIC to consider the following issues in its examination of FDIC regulated institutions and their overdraft protection programs:

- **Introducing the product**. What precisely are customers told about overdraft protection options when they open an account? What precisely are they told verbally, and what is put in writing? If customers do not affirmatively choose another option, is overdraft protection the default program for customers?

- **Volume**. How many customers overdraw their accounts each year? What percent of total bank customers at each institution does this represent? How many times a year do individual customers overdraw their accounts? How much fee income is earned by banks annually as a result of overdraft protection programs?

- **High to low check clearing**. Do institutions clear the largest checks first and then smaller checks, which necessarily results in more instances of overdraft? How many additional overdrafts and how many dollars in overdraft fees result from this policy? How often, if at all, have customers complained about this practice?

- **Double (or triple?) dipping**. How many times do banks charge an overdraft fee for the same item? For example, if a vendor runs a bounced check a few times, does the bank charge an overdraft fee in each instance?

- **Notification**. Do ATM machines clearly warn customers before each transaction if they are about to overdraw their accounts and incur a fee? Do the ATM machines then require customers to affirmatively choose to proceed with the transaction after being forewarned of an impending fee? Do ATM machines alert the customer to the exact amount of the fee to be incurred? If this type of notice is not provided, how is this consistent with the notion of promoting responsible consumer financial behavior? Also, do ATM receipts display the allowable balance with or without the approved overdraft line? Further, are notices sent to customers who access the overdraft protection program and, if so, how soon after the transaction?

- **Discretion**. What percent of the time when customers overdraw their accounts do banks opt to cover the overdraft through the use of an overdraft protection program? What factors go into this decision? Do the banks have a policy on when they use their discretion to cover overdrafts?

- **Fees**. What are the fees assessed to customers who overdraw their accounts? Is there a fee for each day the account is in arrears? Is there a cap on daily fees that can be charged? For how many days are daily fees assessed?

- **Rates**. What have been the average Annual Percentage Rates (APR) charged customers who have triggered overdraft protection? What is the highest APR that has been charged a customer?

- **Costs**. What are the costs to banks when customers overdraw their accounts and the banks cover the overdraft through an overdraft protection program? How does this cost to the banks relate to the fees charged to the consumer?

- **Staff training**. Are bank staff trained in the nuances of the overdraft protection program and how to explain its terms and conditions to customers?

- **Channels**. What percent of overdraft protection fees charged at each bank come from bounced checks, what percent from ATM withdrawals, what percent from debit purchases, etc.?

- **Complaints**. How often, if at all, have consumers complained about bank overdraft protection programs? If complaints have been registered with the banks, which aspects of the banks' overdraft protection programs have been the source of the complaints?

- **Overuse**. How many overdrafts does a bank allow a consumer to make before taking alternative action? When that point is reached, what alternative action is taken?

- **Steering**. What percent of bank customers who are in an overdraft protection program are from groups protected under the Equal Credit Opportunity Act? How does this relate to each bank's overall percent of customers from these protected classes?

The FDIC should determine precisely what bank policies on overdraft protection programs look like and how much money these programs generate for participating banks. The FDIC should document these practices, urge compliance with existing best practices, require better public reporting of overdraft fees as a stand alone item in Call Reports or other disclosure document, and revisit the best practices in light of the findings from this investigation.

Finally and importantly, the FDIC and sister agencies should reverse their counterintuitive decision not to apply Truth in Lending to overdraft protection programs, which are clearly extensions of consumer credit. The guidance itself notes that “overdraft balances should be reported on regulatory reports as loans.”

We urge the FDIC to proceed with the proposed study, and to vindicate the consumer protection, not merely the safety and soundness, principle implicated by these programs.

CRC will be conducting its own analysis of bank overdraft programs in the coming months. We will share this information with the bank regulators.

Thank you very much for your consideration of these views.

Very Truly Yours,

Kevin Stein
Associate Director