From: Susan higgins [shiggins@accessbank.com]
Sent: Friday, September 10, 2004 1:58 PM
To: regs.comments@ots.treas.gov; regs.comments@occ.treas.gov; regs.comments@federalreserve.gov; regs.comments@fdic.gov
Subject: Interagency Guidance on Over-Draft Protection Programs

Re: Interagency Guidance on Over-Draft Protection Programs

Dear Sir or Madam:

As a community banker and, I strongly agree with, and applaud the agencies for their conclusion that such programs are not extensions of credit and therefore not subject to Regulation Z. I also fully support the proposals to require clear disclosure and communication at origination of OD Programs to fully and accurately inform the customer. However there are some areas of the proposed requirements and best practices that cause me concern, they are as follows:

The Fed's proposed changed to Regulation DD - I believe these proposed changes will make it more confusing for customers and bankers to determine the difference between an OD Protection Program and an over-draft line of credit (subject to Reg Z) creating confusion between a true credit product, the OD Protection line of credit, and the courtesy of paying an item(s) that results in an OD.

I believe the final ruling should clearly identify that the proposed requirements apply only to "Formal" OD Programs with predetermined limits, (ie those promoted to institutions by vendors) and not to "Informal", or "Discretionary", programs that are particular to the institution, do not have specified limits for customers, and that are not marketed.

The guidance defines all forms of over-draft protection as a credit service – This adds to the confusion because the guidance does conclude that Reg Z does not apply, but that for Regulatory Reporting purposes the amount of "Unfunded Commitments" must be included. If this is confusing to bankers, it would be much more confusing to consumers. If this language, in some form, remains in the final requirements, I believe the final rule should more clearly differentiate between the following:

§ "Over Draft Prevention" that is supported by a true Line of Credit evidenced by a signed promissory note, and therefore would have an "Unused Commitment" amount to be reported on quarterly reports.

§ "Over Draft Programs" that are a "program" that has a specific amount that the customer is allowed to draw their account into the negative, Over-Draw. These have a specific amount and could also be considered an "Unused Commitment" for quarterly reporting purposes.

§ "Traditional Over-Drafts" that do not have any commitment on behalf of the institution to pay any customer into OD, and do not have any set amount or limit. Accounts are allowed to pay into the negative as a customer courtesy to prevent the customer the problems, embarrassment, etc. caused by having a check returned NSF. These are definitely not credit products, but a courtesy to the customer, and because the amount allowed is totally subjective, these should not and can not be considered in the "Unused Commitment" quarterly reporting.

Proposed Requirement that over-drawn accounts be charged off within 30 days – This is the most troubling of all the proposed requirements. The vast majority of over drawn accounts are settled between 30 and 60 days, either by being brought back to a positive balance or by charge off. Requiring charge off at or before 30 days would result in more consumers having negative reports to the credit bureaus and law suits filed for collection of these overdraft charge offs.

In conclusion, If the proposed rules are not changed to address these problem areas I anticipate the following to take place:

1. Many banks that have a "Formal Program", rather than subjecting themselves to the additional requirements, will drop the program and return to the Traditional Discretionary payment of accounts. They will thereby, return items that are currently being paid under these formal programs, and still charge the customer the same fee – an NSF fee rather than an OD fee.

2. Customers will have the additional fee imposed by the merchant the check is returned to, and will be subject to collection efforts by third parties hired by the merchants, and the fact of their returned NSF check will be reported to agencies such as CheckSystems.

Giving an ending result that likely results in more harm to the customer because they will be subjected to more collection efforts; derogatory reporting to agencies such as CheckSystems; having their checks accepted at fewer merchants; while paying the same fee to the financial institution. Thus, consumers will ultimately be hurt by the proposed guidance that is intended to help them.

Sincerely,

Susan Higgins

Sr. Vice President

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