



[Via email: regs.comments@OTS.treas.gov](mailto:regs.comments@OTS.treas.gov)

August 6, 2004

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552

RE: No. 2004-30
Overdraft Protection Guidance

Ladies and Gentlemen,

Jackson Federal is a \$1.8 billion federally chartered thrift operating 14 retail banking offices in southern California. Although we share the concerns listed in the proposal regarding clear disclosures for customers, we have significant concern about some of the conclusions drawn in the proposal about long-standing typical banking activities, now being described as overdraft programs.

We have handled customer overdrafts in a consistent and traditional manner for a number of years, and have also been troubled by the instances of abuse. However, our fear is that in an effort to curb abuses, the operation of more traditional services will be negatively impacted.

For example, we have never promoted to customers an "overdraft service," or "bounce protection." We have consistently retained the right to pay or not pay each individual check presented against insufficient funds. We do not indicate an amount that would be paid, or not paid, neither in marketing materials, nor at ATM's when balances are displayed. We believe that our handling of customer overdrafts provides a service to those customers whose checks we choose to honor, and charge a fee accordingly. We believe that since we have no obligation to honor any specific check, or any specific amount, a conclusion that this type of service is an extension of credit is erroneous.

One example where good intentions could result in harm to both our institution and our customers is the proposal to charge off all overdraft balances after 30 days. This would result in nothing positive¹, but would have a variety of negative outcomes. Our inability to collect after 30 days would result in honoring fewer overdrafts, such that more customers would be negatively impacted. Customer's whose checks were honored, but charged off after 30 days, would have their accounts closed by our Bank, and then they would experience great difficulty in

¹ It appears that the early charge-off is designed to capture these items in the institution's loan loss reserves. However, the size of activity in checking overdrafts is miniscule compared to the existing level of loss reserves for our entire lending portfolio. Therefore, the intended improvement to financial reporting is immaterial, and certainly not worth the side effects.

opening a new account elsewhere. We collect the great majority of amounts outstanding after 30 days, and believe the selection of 30 days to be a sledgehammer approach to a non-issue.

While we are supportive of added disclosure and best practices, we feel there are significant differences between "programs", which are marketed and implemented as such, where customers both open the account to receive the "protection", and come to rely on the ability to bounce checks, vs. practices such as ours where we implement daily pay/no pay decisions. Our concern is that without better distinction between these practices, all overdraft processes are lumped together. For example, we have developed our own automated matrix to assist in our daily pay/no pay decision. Still, the process allows for human intervention, and frequently requires such. We do not feel that the automation of tasks should cause our practices to be defined as bounce protection, or even an overdraft protection program. We feel that the final regulation should clearly distinguish between these types of practices, so that the guidance is reflective of both the risk and the actual processes involved.

Another example is the suggestion to offer an "opt-out" option for overdraft programs. This concept is inconsistent with the way we process overdrafts. There is nothing to opt-out of, since we have no commitment to honor any insufficient checks, and offering customers this option would not only confuse them, but imply that if they do not opt out, they are in, and we will honor their overdrafts. In addition, if a customer were to opt out, this would not stop them from writing checks on insufficient funds, it would just mean we would be forced to return the check unpaid and charge the customer a fee. Our decision whether to honor the item and ask the customer to make a deposit into their checking account would be pre-empted by a misguided option. In an environment where we have made no commitment to honor overdrafts, the opt out requirement simply makes no sense. This is another area where if the guidance does not make this clear, we could still face examiners attempting to apply best practices where it is illogical.

In summary, we believe there is ample room for improvements to disclosure and practices, but that the agencies should very carefully make distinctions between the actual business processes, with the resulting guidance appropriate to the specific situation.

Sincerely,

A handwritten signature in black ink, appearing to read "D. Tad Lowrey".

D. Tad Lowrey
Chairman and Chief Executive Officer

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