



# Quaker City Bank

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## Loan Service

(562) 907-2270 (866) 907-2270

## Retail Administration

(562) 464-4222

## Home Loan Center

(562) 907-2920

## Branches:

Uptown Whittier Office  
(562) 945-3724

East Whittier Office  
(562) 693-7811

La Habra Office  
(562) 694-3931

Fashion Square Office  
(562) 690-7525

Brea Office  
(714) 990-3621

Fullerton Office  
(714) 870-7810

La Mirada Office  
(562) 944-0326

Hacienda Heights Office  
(626) 968-1487

Alta Vista Office  
(714) 792-2940

Anaheim Hills Office  
(714) 279-8900

Rowland Heights Office  
(626) 965-2582

## Located in WAL-MART® Stores:

Porter Ranch Office  
(818) 832-3928

Lakewood Office  
(562) 429-7275

Corona/North Office  
(909) 372-2990

Foothill Ranch Office  
(949) 855-5660

Murrieta Office  
(909) 696-9432

Corona/South Office  
(909) 270-5040

Huntington Beach Office  
(714) 375-4016

Lancaster Office  
(661) 948-8261

Palmdale Office  
(661) 533-6697

Chino Office  
(909) 548-4662

Pico Rivera Office  
(562) 949-7674

Santa Fe Springs Office  
(562) 941-9123

Long Beach Office  
(562) 436-3464

Temecula Office  
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San Marcos Office  
(760) 233-5647

La Quinta Office  
(760) 564-9499

August 2, 2004

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

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Re: Attention: No. 2004-30  
Proposed Interagency Guidance  
on Overdraft Protection Programs

Ladies and Gentlemen:

We appreciate the opportunity to comment on the proposed Interagency Guidance on Overdraft Protection Programs issued by the Federal Financial Institutions Supervisory Agencies ("Agencies"). The Proposed Guidance is intended to assist depository institutions in the disclosure and administration of overdraft protection services.

While we appreciate the desire of the Agencies to provide guidance to depository institutions on overdraft protection programs, we believe the Proposal will result in significant costs and burdens on institutions as they attempt to comply with the guidance. We are concerned that the guidance will restrict our flexibility in offering overdraft programs. Moreover, the guidance may result in consumers being provided with fewer alternatives to address inadvertent overdrafts.

### Safety and Soundness Considerations

The Proposed Guidance provides that "overdraft balances should generally be charged off within 30 days from the date first overdrawn." The Proposed Guidance also states that even if an institution allows a consumer to cover an overdraft through an extended payment plan, the 30-day charge off provision would apply.



We believe that a 30-day period to charge off an overdraft balance is too short, and inconsistent with industry practices. Many consumers seek to repay overdrafts as quickly as possible. Additionally, we actively pursue the prompt payment of overdrafts through the use of written and oral notices to customers. Many circumstances arise due to the frequency or timing of payment by employers to consumers or unanticipated additional expenses which at times, makes it difficult for consumers to repay the overdraft in full within 30 days of the initial occurrence. We believe that if the account is charged off within 30 days, it can be more difficult to collect payment for such amounts. Thus, we believe adoption of a 60-day charge off period would enhance the ability of institutions to collect overdrafts.

The Proposed Guidance also provides that, with respect to reporting requirements, overdraft balances should be reported as loans and overdraft losses should be charged against the allowance for loan losses. The Proposed Guidance also states that when an institution routinely communicates the available amount of overdraft protection to depositors, the amounts should be reported as “unused commitments” in regulatory reports. We respectfully disagree with the approach and believe that it is more appropriate to net overdraft balances against deposits because no agreement exists with respect to the overdrafts. Additionally, to the extent these balances are not treated as loans, available amounts also should not be reported as “unused commitments” in regulatory reports.

### **Truth in Lending Act**

The Proposed Guidance states: “when overdrafts are paid, credit is extended.” The guidance then discusses the treatment of overdraft fees and finance charges under Regulation Z. We strongly disagree with this statement and urge the Agencies to delete it from any final Guidance. The courts and other entities have reviewed this matter and have concluded that an overdraft is not credit under the Truth in Lending Act, unless it is a line of credit established by written agreement. Any determination or statement that an overdraft is “credit” should only be made in connection with a full discussion and consideration of existing legal precedent on this issue. Moreover, there does not appear to be any reason to include this statement since the guidance implicitly notes that overdrafts are not covered by Regulation Z because the fees are not considered finance charges. Finally, the FRB’s recent proposed amendments to Regulation DD, which solely covers deposit accounts and not credit, makes it clear that overdraft programs are not credit.

## **Best Practices**

In general, the establishment of “best practices” can help institutions identify issues and approaches to disclose information and administer financial products and services. While several of the “best practices” set forth in the Proposed Guidance are helpful and appropriate, a number of the “suggestions,” if adopted, would require costly and significant changes to their programs. Additionally, it is vital that the agencies clarify that the failure to meet one or more standards does not necessarily indicate an unfair or deceptive practice.

**Marketing and Communications with Consumers.** We fully support truthful and meaningful disclosures to consumers relating to overdraft protection programs. Financial institutions should not communicate in a manner that encourages consumers to mismanage their accounts.

**Fairly Represent Overdraft Protection Programs and Alternatives.** We are concerned with the suggestion that institutions “explain to consumers the costs and advantages of various alternatives to the overdraft protection program” and identify the risks and problems in relying on the program and the consequences of “abuse.” Providing a detailed cost-benefit analysis of the alternatives to overdraft programs will require the creation of a lengthy and complicated document.

**Explain Check Clearing Policies.** We believe the disclosure of our check clearing policies is outside the scope of the purpose of providing information about overdraft programs and should be deleted. The Agencies suggestion of a “clear” disclosure would require a lengthy and detailed document.

**Provide Election or Opt-Out of Service.** Providing an “opt-in” notice to consumers for overdraft programs is not supported by existing law, and we believe that institutions currently do not use such an approach. Additionally, there is no basis for requiring the provision of an “opt-out” notice to consumers. The provision of an election suggests a commitment that is inconsistent with the discretionary nature of overdraft protection programs.

**Alert Consumers Before a Non-Check Transaction Triggers any Fees.** We believe that posting a notice at an ATM that withdrawals in excess of the balance of funds will access the overdraft, will confuse and mislead consumers. Not all customers of an institution may have use of that institution’s overdraft program, and such a disclosure at an ATM would confuse and potentially mislead these consumers. Additionally, it would be impossible to provide a prior notice on POS and preauthorized transactions.

Regulation Comments  
Office of Thrift Supervision  
August 2, 2004

**Promptly Notify Consumers of Overdraft Protection Program Usage Each Time.** While we agree that institutions should notify consumers when overdraft services have been triggered, we recommend the provision suggest that institutions “promptly” notify consumers of the overdraft, rather than requiring the notice to consumers “the day” the overdraft program has been accessed. Certain transactions might not be processed in real-time and as a result, the institution may not know until day two or three whether an overdraft has occurred.

**Consider daily limits.** The result of a daily limit policy could mean the imposition of equivalent NSF fees, returned item fees charged to the consumer by the payee, penalties and interest payments charged by the payee, and the possibility of negative credit reports.

**Monitor overdraft protection program usage.** Banks should not be required, as a matter of course, to evaluate each customer’s appropriate level of use of overdraft protection. The proposal fails to define excessive use and the degree of knowledge of a customer’s profile implied in this proposal is unrealistic.

Quaker City Bank appreciates the opportunity to comment on this important matter.

Sincerely,

A handwritten signature in black ink, appearing to read 'Rick McGill', with a long horizontal flourish extending to the right.

Rick McGill  
President  
Chief Executive Officer