

From: Werner, Benny [bwerner@cbnk.com]
Sent: Tuesday, August 03, 2004 4:08 PM
To: regs.comments@ots.treas.gov
Subject: No. 2004-30, Guidance on Overdraft Protection Programs

Thank you for the opportunity to comment on the above. The proposed regulations, Guidance on Overdraft Protection Programs No. 2004-30, concerning programs offered by financial institutions to honor checks on overdrawn demand accounts have erroneously viewed these deposit accounts as extensions of credit. The relationship between the customer and financial institution does not involve the customary process of credit underwriting to qualify a customer for an extension of credit. Even the title of the proposed regulations misleads concerning the nature and practices of the overwhelming majority of financial institutions. These are not Overdraft Protection Programs, that name describes the Overdraft Lines of Credit that banks offer. There is no "protection" against overdrafts in these programs, they are more correctly named Overdraft Privilege or Courtesy Coverage. Capturing the very spirit in the proposed regulations and recognizing that we agree that we never have the desire to mislead our customers, we sincerely request you change the name of this proposed regulation. The interpretation of these deposit account relationships as a lending relationship has led to proposals that would cause financial institutions to report misleading information and potentially be to the detriment of consumers.

Since the account relationship is a deposit relationship the accounting should be consistent. Thus, losses incurred by the financial institution should be accounted for as a deposit loss. In those limited instances when an overdrawn balance is uncollected for 30 days or longer and collection efforts are made, the collection is due to a deposit relationship not a loan relationship. The establishment of rigorous loss estimations is unwarranted since the balance is generally charged-off in 30-60 days depending on the likelihood of recovering the overdrawn balance. A requirement to report losses or loss estimations on deposit relationships as loan losses would be to report misleading information.

Bankers are true risk managers. To require a charge off in 30 days places an unnecessary requirement that removes our abilities to work with the customers based on their capacity to cover the overdraft and maintain their account and good credit rating. Making a charge off requirement of 30 days may prove to be a detriment to the consumer who appears to be a recipient of the intended benefit of the overall regulation. Banks need the flexibility to manage charge offs based on good risk management policies. Our experience has shown that 30 to 60 days is needed for some hard working, honest people to try and cover overdrafts. We charge some off in 2 days, some 50 days, and most are handled within 45 days. It all depends on the circumstances. Placing everyone in the same box is definitely an unnecessary and detrimental requirement, 60 days is appropriate.

The continued misinterpretation of these deposit relationships could lead to these relationships being subject to Regulation Z. Subjecting these relatively small balances to Regulation Z would not be administratively economically feasible and result in the elimination of this service to consumers. The payment of checks on overdrawn deposit transaction accounts now permits the customer to avoid return check charges from merchants and preserves the customers' credit standing. Consumers would lose these advantages with the elimination or reduction in these programs.

Our customers appreciate this service; they now know the guidelines on how we make decisions regarding paying or returning checks. They know there is a fee involved. They know that this is not our Overdraft Protection program, which we call our line of credit product. They are invited to apply for Overdraft Protection on each notice of an overdraft so they can avoid fees. We do not promote overdrafts, we simply accommodate the customer needs and provide a true "Courtesy" service to them. We have been doing this basic service as long as we have been offering checking accounts. Putting this more formal automated program in place changed nothing regarding overdrafts except it automated the decision process for us and informed the customer of our process. We implemented the very conservative program licensed by Alex Sheshunoff Management Services, L.P. over a year ago. Please do not add unnecessary regulations that will harm the consumer and perhaps ultimately take away a service that they appreciate.

Respectfully submitted by:

Benny N. Werner

SVP, Retail Banking

Community Bank

Staunton, Virginia

540/213-1221