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Sent: Friday, August 06, 2004 5:43 PM
To: regs.comments@ots.treas.gov
Cc: Amanda Bryan
Subject: No. 2004-30

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

RE: No. 2004-03
Proposed Interagency Guidance on Overdraft Protection Programs.

Dear Sir or Madam:

We have reviewed the proposed guidance concerning overdraft protection programs and related reporting items. While we appreciate the desire of the joint Agencies to provide guidance to financial institutions regarding overdraft protection programs, we believe the proposed guidance will create undue cost and burdens on institutions to comply. We also feel that the vast majority of institutions generally follow most, if not all of the "best practices" being proposed without the added regulatory compliance (and cost) burdens being proposed. Our institution does so all ready.

There are two areas of the proposed guidance that we have deemed to provoke further commentary:

- 1) The proposed guidance provides that "overdraft balances should generally be charged off 30 days from the first date overdraft". This period is too short and not in following with prudent, safe and sound industry practices. Statistics show that relatively few accounts that go 30 days overdrawn will ultimately be charged off. Rather, consumer practices and normal payment timing would be impacted by "forcing the issue" on accounts only 30 days overdrawn. Rather (and supported by statistical data of charge off ratios) a 60 day period would be better suited to associate actual/probably "loss" accounts with overdrawn days.
- 2) The proposed guidance attempts to redefine overdrafts (programs or extensions thereof) as "credit" transactions under Regulation Z. We strongly disagree with this proposal and urge the agencies to delete it from the final guidance. Credit extensions must and can only be created by written, formal agreements between the institution and the customer creating a true credit transaction under UCC and existing law. Courts have concluded that an overdraft is not credit under the Truth in Lending Act, unless it is established as a "line of credit" established by written agreement. The proposed guidance would appear to attempt to change current legal precedence in this area.

We appreciate the opportunity to comment on the proposed guidance.

Sincerely:
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