Massachusetts Bankers Association

August 9, 2004

Office of the Comptroller of the Currency
Attention: Public Information Officer
250 E Street, S.W.
Mail Stop 1-5
Washington, DC 20219
Docket No. 04-14
regs.comments@occ.treas.gov

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, N.W.
Washington, DC 20551
Docket No. OP-1198 and R 1197
regs.comments@federalreserve.gov

Mr. Robert. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429
Attention:Comments
comments@fdic.gov

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
Docket No. 2003-67
regs.comments@ots.treas.gov

SUBJECT: Interagency Guidance on Over-Draft Protection Programs

Dear Sir/Madam:

The Massachusetts Bankers Association which represents approximately 220 commercial, savings, co-operative banks and savings & loan institutions in Massachusetts and New England appreciates the opportunity to comment on the proposed inter-agency guidance on over-draft protection programs.

First, we would applaud agency staff for the thorough review of bounced-check protection programs and your conclusions that such programs are not extensions of credit and not subject to Regulation Z. We also concur that additional consumer education is necessary and are generally supportive of a "best practices" approach to advertising and disclosure.

Having said this, however, there are several proposed requirements which warrant reconsideration. In fact, there are several provisions (including the Fed's proposed changes to Regulation DD: Truth-in-Savings) which blur, rather than clarify the distinction between bounced-check protection programs (whether traditional informal programs or specifically marketed) and over-draft credit lines. As a matter of course, we would strongly urge that these proposed regulations only apply to marketed bounced-check protection programs for which a specific limit is disclosed.

In fact, the guidance defines all forms of over-draft protection as a credit service. This is not accurate. An over-draft line of credit is a guarantee to pay over-drafts under defined terms. On the other hand, over-draft bounced-check protection is provided on a discretionary basis. By not making this distinction, the proposal requires that all over-draft balances be reported as loans for purposes of required quarterly financial reports and that banks should adopt written policies and procedures to assess credit and other risks. Equally problematic is the suggestion that available amounts of bounced-check protection programs be reported as "unused commitment." How can a disclosed discretionary payment be viewed as

a "commitment?" We would strongly object to these requirements which only add to both consumer and banker confusion. This language should be deleted.

Likewise, the proposed requirement that over-draft balances be charged-off within 30 days is equally troubling. Since most over-drafts are corrected within 30-60 days, allowing a minimum of 60 days will result in few adverse reports to consumer reporting agencies, a higher incidence of repayment and less regulatory burden.

With respect to best practices, we would assert that they not be viewed as mandatory standards or required to be adopted in full by banks. Member banks should be allowed to design their policies to meet the needs of their customers and the institution. We would also add the following:

- Clearly Explain Discretionary Nature of Program**:** If over-draft payments are discretionary, we agree that disclosure information should not mislead consumers to expect payment is assured. Disclosures should be specific on this issue. However, requiring a listing of all circumstances of non-payment provides a false guarantee that payment will occur in all other situations, when that is not the case. Banks should simply be required to disclose whether or not payment is discretionary.

- Alert Consumers Before a Non-Check Transaction Triggers Fees**:** While we are supportive in concept, it is not always possible to determine accurately if, or when a fee will be imposed. We do agree, however, that available balances at an ATM should not include funds available through the bounced-check protection programs.

- Usage of Over-Draft Protection by Customers: While we are supportive of banks' monitoring of these programs, the guidance's direction to identify those who are "excessively reliant" is too vague to be meaningful. Alternatively, banks should have the discretion to assess customer use and take appropriate action, or suggest alternative products available. Consumer education on how to avoid over-drafts should remain the primary focus for all.

With respect to the proposed revisions to Regulation DD, we would again question the lack of distinction between Regulation Z over-draft lines of credit and bounced-check protection plans (both formal and informal). For example, in Section 230.6 (ii) changes to periodic statements would be mandated to include year-to-date totals for both bounced-check protection fees and traditional NSF fees. This is not only an added regulatory burden cost for all banks (even those without bounced-check protection programs), but also creates consumer confusion, ignores the consumer savings of late charges imposed by merchants and creditors, and further complicates a consumer's monthly statement. This requirement should be dropped from the proposal.

Thank you for your consideration of our views.

Sincerely,

Daniel J. Forte
President

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