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August 5, 2004

Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
RE: Overdraft Protection Guidance

To Whom It May Concern:

The Operations & Technology Committee of the New Jersey League of Community Bankers* ("the League") is pleased to respond to the request for comments to the notice of proposed guidance and request for public comment on overdraft protection services. We applaud the regulatory agencies for providing guidance on these products, but we do have several areas of concern.

In general, we believe that the proposal does not adequately differentiate between the discretionary nature of overdraft protection services, which are increasingly automated, and overdraft lines of credit where there is a commitment to pay. Also, we strongly believe any "best practices" included in the final regulation should be regarded as guidance and not mandatory.

The proposed guidance provides that overdraft balances should generally be charged off within 30 days even if an institution has entered into a payment plan that extends beyond the 30 day period. The League believes that institutions should be given greater flexibility to work out repayment arrangements with their customers. Forcing a mandatory charge-off within such a timeframe could unfairly impact the customer. A charge-off date of 60-days would allow many more customers to cure the overdraft and better protect their credit.

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 and lease losses. The 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. The League believe that it is more appropriate to net overdraft balances against deposits because no agreement exists with respect to the overdrafts. Furthermore, negative balances occur daily at institutions, without regard to overdraft protection programs, and these balances are not classified as loans nor are

* The New Jersey League of Community Bankers, founded in 1908, is a trade association representing 70 of New Jersey's savings banks, savings & loan associations and commercial banks with total assets of over \$60 billion. The League's wholly-owned subsidiary, the Thrift Institutions Community Investment Corporation ("T.I.C.I.C.") assists League members in forming consortia to make loans on low-to-moderate income housing and economic development projects throughout New Jersey. Since its founding in September 1991, T.I.C.I.C. has facilitated loans on nearly 4,500 affordable housing units and has loans in process on over 500 more affordable housing units. Loans made and loans in process total nearly \$302 million.

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they subject to immediate charge-off policies. We believe that overdraft balances should be treated the same way. In addition, to the extent these balances are not treated as loans, available amounts also should not be reported as “unused commitments” in regulatory reports.

The proposed guidance also states that “when overdrafts are paid, credit is extended,” and then discusses the treatment of fees and charges under Regulation Z. Courts have generally concluded that an overdraft is not credit under the Truth in Lending Act, unless it is a line of credit established by written agreement. Similarly, we do not believe that it is appropriate to apply the Equal Credit Opportunities Act to overdraft programs.

We disagree with the suggestion that institutions require consumers to “opt-in” before providing overdraft services or, alternatively, permit consumers to “opt-out” of an overdraft program. Consumers are typically apprised by institutions when they may honor an overdrawn item, instead of returning the item unpaid. The payment of an overdraft item is generally in the interest of the customer in that it averts the imposition of a fee by a merchant or another party at the other end of the transaction.

Finally, we do not believe that institutions should be required to post notices at proprietary ATMs informing customers that withdrawals in excess of their balances may create an overdraft. Many ATM customers are not aware of the ownership of the ATM that they are using, and we believe that they may misinterpret notices on non-proprietary ATMs relating to that institution’s customers.

Thank you for this opportunity to comment. If there are any questions or a need for clarification, please contact me at 908 272 8500, ext. 614.

Sincerely,

A handwritten signature in black ink that reads "James Meredith". The signature is written in a cursive, flowing style.

James M. Meredith
Senior Vice President