

July 30, 2004

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

Attention: No. 2004-30

Subject: No. 2004-30
Interagency Guidance on Overdraft Protection Programs

Gentlemen:

We are pleased to respond to the Interagency request for comment concerning the guidance on Overdraft Protection Programs.

We concur with the agencies' general approach in providing Best Practices regarding ODP programs.

Our institution implemented an automated overdraft protection program (ODP) in June 2002 with the assistance of Pinnacle Financial Strategies. The customer response to the program continues to be overwhelmingly positive and less than 1% have opted out of the program. Customers are pleased that insufficient items are not automatically being returned to merchants, resulting in them paying not only the bank's insufficient funds fees, but also the merchant's returned check fee, which is often greater than the bank's fee. Customers appreciate the fact that they can pay their bills on time, avoiding late fees and disconnect fees, and protecting their credit rating. Not only does the program save the customer money, but also the embarrassment and hassle resulting from a check being returned. Customers have expressed gratitude that such a program is in place in case of an emergency. In some instances customers just make a simple mistake, such as forgetting to make a deposit or a math error.

Safety & Soundness Considerations

The Guidance establishes a clear safety and soundness standard that overdrafts must be charged-off within 30 days.

Over 40% of our customers who are in a 30 day or greater overdraft condition bring their account back to good standing. Many of these customers have experienced a temporary job loss or possibly another life changing event. If we were to close their account after 30 days, then the consumer is reported to Chex Systems and would have difficulty opening another checking account at any financial institution.

Our Bounce Protection program is a customer-friendly approach that is based on safety and soundness standards requiring notifications to the customer of the overdraft and an encouragement to bring the account to a positive balance as soon as possible. Currently we charge off accounts after 75 days of an overdraft condition. From the date of the first overdraft to the date of charge off, the customer receives 7 pieces of mail communication concerning their overdraft condition. A key component of our program is to suspend the ODP after 33 days, which greatly reduces our exposure.

Many customers will be disenfranchised by lowering the standard to 30 days. We believe 60-90 days is a more reasonable time to collect a deposit account. We would urge reconsidering the 30 day charge off recommendation.

“When an institution routinely communicates the available amount of overdraft protection to depositors, these available amounts should be reported as "unused commitments" in regulatory reports. The Agencies also expect proper risk-based capital treatment of outstanding overdrawn balances and unused commitments.”

While we disclose an overdraft dollar amount or limit to our customers that we indicate we may routinely cover “as a courtesy” in the event of a transaction resulting in non sufficient funds, we clearly specify that this is a non-contractual service and thus it is not a formal loan commitment. We do not believe that by merely providing stated limit amounts should constitute an unfunded loan commitment with regulatory and capital treatment similar to formal contractual loan commitments. We further note that the statement “routinely communicates the available amount of overdraft protection to depositors” is vague and ambiguous. This sentence indicates that the number of disclosures the bank might make to the customer may change the non-contractual nature of the service. We disagree with this statement and believe that educating our customers and providing them with information about their balances and their overdraft limits is merely providing customers with information so that they may better manage their checking account.

Best Practices

“Institutions that establish overdraft protection programs *should take into consideration the following practices that have been implemented by institutions and that may otherwise be required by applicable law.*”

We note that the guidance is intended as best practices for management “to consider.” We share the concerns of other institutions that this phrase (which we believe is important) will be lost by examiners when looking at the institution’s individual best practices. Few institutions will be able to implement all of the best practices. Examiners should give consideration to management’s review of each practice and reasons for not adopting certain practices without undue criticism on any individual item. We believe this point should be stressed with more clear guidance for examiners in this section.

We would like to comment on some of the best practice recommendations.

Marketing and Communications with Consumers

- **Avoid promoting poor account management.** Do not market the program in a manner that encourages routine or intentional overdrafts; rather present the program as a customer service that may cover inadvertent consumer overdrafts.

We concur. In our written communication with the customer, we explain to the customer “You should not consider and use Bounce Protection as a line of credit or regular source of funds” and “to manage your finances responsibly”.

- **Clearly disclose program fee amounts.** Marketing materials and information provided to consumers that mention overdraft protection programs should clearly disclose the dollar amount of the overdraft protection fees for each overdraft and any interest rate or other fees that may apply. For example, rather than merely stating that the institution's standard NSF fee will apply, institutions should restate the dollar amount of any applicable fees in the overdraft protection program literature or other communication that discloses the program's availability.

We concur. We clearly disclose the actual fee for an NSF item in our written communication to the customer.

- **Clarify that fees count against overdraft protection program limit.** Consumers should be alerted that the fees charged for covering overdrafts, as well as the amount of the overdraft item, will be subtracted from any overdraft protection limit disclosed, if applicable.

We concur. Our communication states that the fee will be deducted from the overdraft limit.

Program Features and Operation

- **Alert consumers before a non-check transaction triggers any fees.** When consumers attempt to use means other than checks to withdraw or transfer funds made available through an overdraft protection program, provide a specific consumer notice, where feasible, that completing the withdrawal will trigger the overdraft protection fees. This notice should be presented in a manner that permits consumers to cancel the attempted withdrawal or transfer after receiving the notice. If this is not possible, then post notices on proprietary ATMs explaining that withdrawals in excess of the actual balance will access the overdraft protection program and trigger fees for consumers who have overdraft protection services. Institutions may make access to the overdraft protection program unavailable through means other than check transactions.

This best practice appears to recognize limited availability of ATM providers that can provide such programming, and allows for the posting of signs at bank owned ATMs. The guidance does not, however, address POS terminals, most of which are located in retail stores throughout the country. The absence of clear guidance concerning the inability of institutions to provide advance notice to consumers at POS may create an expectation that institutions should not make ODP available at POS locations. The challenge is that ATM and POS systems are driven by the same balance mechanisms in most banks. Clearly, customers want access to their ODP limits at these locations, so regulatory forbearance would be advised until the technology catches up with new banking products.

In conclusion, we concur with many of the recommendations and best practices the Board proposes that attempt to provide full disclosure for overdraft programs. We respectfully differ with the safety and soundness guidance recommending that overdraft accounts be charged off at 30 days as many customers will be negatively impacted. I encourage you to give favorable consideration to extending this provision to 60-90 days.

Sincerely,

Mike Newbold
Executive Vice President – Consumer Banking