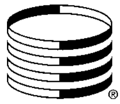


IOWA BANKERS
ASSOCIATION

August 5, 2004

Office of the Comptroller of the Currency
Communications Division
250 E Streets, SW.
Public Information Room, Mailstop 1-5
Washington DC 20219
Attn: Docket No. 04-14

Jennifer J. Johnson, Secretary
Board of Governors
Federal Reserve System
20th Street and Constitution Avenue, NW.
Washington, DC 20551
Attn: Docket No. R-1198

Robert E. Feldman, Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW.
Washington, DC 20429
Re: Overdraft Protection Guidance

Regulations Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G. Street, NW.
Washington, DC 20552
Attn: No. 2004-30

Re: Proposed Interagency Guidance on Overdraft Protection Programs

Dear Madams and Sirs:

Iowa Bankers Association ("IBA") is a trade association representing nearly 95% of 400+ banks and savings and loan associations in the State of Iowa. We appreciate this opportunity to comment on the joint proposed Guidance on Overdraft Protection Programs issued in the Federal Register June 7, 2004. In developing the comments contained herein, IBA invited its member banks to respond to the proposed Guidance.

The IBA supports the federal bank agencies' efforts to provide guidance in the area of overdraft protection. Overdrafts have long been a subject of debate from both a compliance and safety and soundness perspective. Bank management faces the difficult task of balancing the scales between providing good customer service, maintaining shareholder revenues during turbulent interest rate environments, and keeping the bank safe and sound. And all of this is done while bearing an increasingly heavier and heavier regulatory burden for consumer protection compliance.

Comments Related Application of Guidance

Many of the IBA's members do not yet participate in the formal, automated "overdraft protection programs" administered by, or under the auspices of a third party vendor, for which the guidance appears to be targeted. However, it is safe to say all of our member banks have provisions in their deposit account agreements that provide the institution may or may not, at its sole discretion, pay items against insufficient funds. Institutions incorporated such language long before vendors developed automated systems for handling NSF items drawn on customers' accounts. Likewise, institutions developed guidelines (sometimes formalized in a written program) to assist in making the decision

to pay or not pay NSF items long before the development of the "overdraft protection programs" addressed in the Guidance. Some institutions even "automated" the process long ago through their own procedures. Rest assured, those deposit account holders who overdraw their accounts frequently know exactly how far they will be allowed to overdraw their account. That amount has been "communicated" over and over again by virtue of a pattern or practice and may, in some instances, have been verbally communicated to the accountholder. The application of the proposed Guidance to traditional ad-hoc methods of overdraft payment is of great concern to our membership. The underlying tone of the Guidance is that the "ad-hoc method" of traditional overdraft payment is easily distinguished from the new wave, automated overdraft protection programs. We are not convinced the issue is or will be quite so "black and white" to bank management and regulators trying to abide by the Guidance if finalized as proposed.

Comments Related to Marketing, Safety and Soundness & Legal Risk Considerations
The Guidance points out three main areas of concern related to "overdraft protection programs" and their application. First of all, it is important to understand that with a few exceptions, institutions develop programs, disclosures and marketing materials with the goal of clearly communicating to consumers all the details of a product – product features, how it can be used, any fees that may be associated with its use, etc. Keep in mind there are already regulations (Truth In Savings Act and Fair and Deceptive Trade Practices) and laws (the Uniform Commercial Code) which require banks to provide disclosures, account agreements, and marketing materials which clearly outline program details, fees, etc. The Guidance addresses concerns regarding the marketing of some overdraft protection programs; that is, that the marketing is misleading, suggesting overdrafts will always be paid when in fact payment is discretionary, that fees are not clearly outlined, that access to the service is available by more avenues than merely writing an NSF check. All of these concerns are addressed under current regulation (Reg. DD and the Fair & Deceptive Trade Practices Act). The Guidance appears to be duplicative and its application only to targeted "overdraft protection programs," which again can be a murky distinction. Rather than initiate additional rules/guidance, would not the Agencies' time be better spent enforcing the current rules against those few institutions they believe are violating current statutes? Again, it appears as if new regulatory burden is being placed against the mass of financial institutions for the "sins" of a few.

The Agencies concern expressed over the safety and soundness considerations related to overdraft protection programs is valid and not a new concern. Overdraft protection programs have long been an area of concern during regulatory safety and soundness exams with banks being encouraged to develop policies and procedures regarding the payment of overdrafts, monitoring and collection of NSF deficit amounts. The suggested 30-day timeframe for charge off of uncollected NSF amounts is too short. Many banks have reported collection timeframes from 30-45 days and in a few instances, 60 days. Also the guidance does not provide for discretion on the part of the institution in its collection efforts. The consumer may be experiencing special circumstances (such as extended illness, change in jobs, etc.) that have resulted in the NSF, but will have funds available to cover the amount within a short period of time outside the 30-day timeframe.

It is both costly and time-consuming from an operational standpoint to charge off an account and then later re-open the account. Rather the institution should be given the latitude to develop its own charge-off procedures appropriate to it customer base, collection process and circumstances involving the customer. A "one-size-fits-all" approach may not be the best solution to this issue.

Reporting the amount of overdraft protection available to consumers as "unused commitments" in regulatory reports and factoring into risk-based capital treatment outstanding overdrawn balances and unused commitments would pose another monitoring and reporting burden on institutions all ready drowning in red tape. Again, the program provides for discretionary payment of overdrafts, not mandatory payment of items. The amount of "available overdraft protection" to accountholders is a dynamic number, changing all the time as new accounts are opened, privileges are revoked for misuse, etc., thus determining "available amounts of unused commitments" would be difficult if not impossible and changes throughout the course of the day. We do however, agree with the Guidance's direction to charge losses against the allowance for loan and lease losses and uncollected overdraft fees be reversed against overdraft fee income accounts or associated earned income accounts; this is the practice currently required of financial institutions for their "ad-hoc" methods for overdraft payments. The reporting would then more accurately reflect the effectiveness of the institution's risk related to the overdraft program, as well as its collection and charge off procedures.

Comments Related to Suggested Best Practices

The Guidance provides a number of "best practices" related to the marketing of overdraft protection, most of which, appear to be reasonable (those practices related to fee disclosure, check payment order, the fact that payment is discretionary, etc.) But the Guidance also suggests the consumer should be informed of "circumstances" in which the bank would refuse to pay overdraft items or otherwise suspended the overdraft protection program. There is a danger in describing in detail circumstances in which the protection may be suspended or items paid or not paid. The underlying tone in providing such detailed information is that if all criteria are met, all items would be paid, which is not the case as the institution maintains its discretion to pay or not pay NSF items at all times. We recommend this best practice be removed.

The Guidance also suggests that the Agencies would prefer overdraft programs be offered and accepted before they are established in connection with an account, or at the very least, the consumer be given the opportunity to "opt out" of over draft protection services. Adding yet another "opt-out" option to the bank's list of "opt-outs" goes beyond regulatory burden. We do not dispute that consumers should be able to decline overdraft protection services and that the bank would be well advised to get the consumer's written declination affirming their acknowledgement that NSF items will be returned rather than paid, also describing the bank's fee for returned NSF items, but do not believe the benefits of a full "opt-out" program to the consumer will outweigh the cost and monitoring burdens to the institution. Again, these overdraft protection programs are discretionary, they may not be offered to all accountholders, therefore, a full opt out program is not warranted.

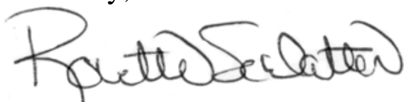
The Guidance also suggests additional disclosure regarding fees associated with the program as well as actual balances vs. available balances when a consumer is initiating a non-check transaction, which may trigger protection under the overdraft protection program. Our members would not be adverse to such disclosure if the technology were readily available. It is also important for the Agencies to recognize the number of transactions occurring outside the bank's auspices through the interchange system where current technology does not accommodate such disclosure. Again, we recommend that this best practice be removed.

Finally, the Guidance suggests banks should establish daily overdraft fee caps for overdraft protection programs. If the institution applies caps to its overdraft protection program (whether the program is an "ad-hoc" program or automated program), then it seems appropriate that the cap be disclosed. However, to suggest that such caps be mandated steps outside normal regulatory perspective. The Agencies have always be careful not to dictate what fees an institution may or may not charge, but have mandated clear disclosure of such fees to the consumer at the time of account opening. Again, we recommend this best practice be removed.

In closing, it is important to understand that at the time a financial institution makes the determination whether or not to open an account or offer overdraft protection, the decision is not based upon how much overdraft fee income the institution predicts it can earn from the account. Overdraft protections have developed as a result of an evolving financial product market. Financial institutions would prefer to have all items be presented against sufficient funds, but the fact of the matter is that today's consumers demand more products and services, one of which is protection for NSF items. If the consumer's bank does not offer the protection the consumer is seeking, they will simply move to another institution that will provide such requested service – an institution often outside the traditional, regulated banking industry.

Thank you for your consideration of my comments.. If you have any questions related to my comments, please feel free to contact me at (800) 532-1423 or at rschlatter@iowabankers.com.

Sincerely,



Ronette Schlatter
Compliance Coordinator
Iowa Bankers Association
8800 NW 62nd Ave.
Johnston, IA 50131