From: "Ed Mierzwinski" <ed@pirg.org> on 08/06/2004 04:47:08 PM

Subject: Regulation DD - Overdraft/Bounce Protection Services

COMMENTS OF
U.S. PIRG, California PIRG, Florida PIRG and Washington State PIRG on bounce protection

Jennifer J. Johnson
Secretary, Board of Governors
Of the Federal Reserve System
(12 CFR Part 230; Docket No. R-1197)
(Docket No. OP-1198)

and

Office of Comptroller of Currency (Docket No. 04-14)
Federal Deposit Insurance Corporation
Office of Thrift Supervision (No. 2004-30)
National Credit Union Administration

Re: Proposed Rule – Regulation DD
and Overdraft Protection Guidance

We are writing on behalf of the aforementioned state Public Interest Research Groups and U.S. PIRG, which represents all the non-profit, non-partisan member-based state PIRGs, to express our opposition to the Federal Reserve Board's and OCC's proposal to under-regulate over-priced bounce loans, or so-called "bounce protection", under the deficient Truth in Savings Act (TISA). Bounce loans, if allowed at all, should be regulated under the Truth in Lending Act (TILA).

The Board and the other federal banking regulators should also take steps beyond the proposed guidance to halt the other abuses of bounce loans, most particularly bank advertisements for bounce loans that encourage consumers to use overdrafts as a credit source.

A November 2001 PIRG *Big Banks, Bigger Fees* report finds that the average consumer who can't afford to meet minimum balance requirements pays $228/year for a regular checking account, when all service fees, account fees, and ATM fees are added together. By marketing check bouncing fees as a so-called courtesey service, these costs will only increase, in a deceptive manner.

Banks have devised a three part strategy to gouge consumers. They raise existing fees, invent new ones, and make it harder to avoid fees, by raising minimum balance requirements, so more people pay more fees. Bounce protections, however, raises the quest for fee income to a new, cynical level -- it encourages practices that once were penalizes, but still penalizes them.

Worse, if the proposed guidance becomes final, these cynical practices will have the explicit encouragement of regulators, who are supposed to represent the public interest, not find a way to rationalize or legalize every wrong-headed idea that the worst of the bankers comes up with.

Bounce protection schemes are nothing more than an attempt to re-capture the stream of fee income that payday loan stores have taken from the banks. Instead of encouraging banks to emulate these rpedatory lenders -- and apparently giving them the legal right to do so outside the Truth In Lending Act , no less -- you should encourage banks to make loans that people can afford, not trick them into paying fees they don't deserve to pay.

We cannot understand how the Board (along with all of the federal banking regulators) can explicitly admit that bounce loans are credit, then fail to regulate them under the key federal law governing credit disclosures. Bounce loans are an extraordinarily expensive credit product. For example, a $100 overdraft will incur at least a $20 fee. If the consumer pays the overdraft back in 30 days, the APR is 243%. If the consumer pays the overdraft bank in 14 days, which is probably more typical for a wage earner, the APR is 520%.

It is because of the expensive cost of bounce loans that consumers need to have Annual Percentage Rate (APR) disclosures. Without them, consumers have no way to compare the cost of bounce loans other similar credit transactions, such as payday loans, pawnbroker loans, auto title loans, overdraft lines of credit, and credit card cash advances. Of all the high rate lenders, it is ironic that banks offering the most expensive form of credit can avoid the need to disclose the single and most critical piece of credit information. Contrary to the Board's suggestion, consumers do find APR disclosures useful, with one study finding over 80% of consumers aware of APRs and 60% finding TILA disclosures helpful. More detailed comments submitted by the National Consumer Law Center and others, which we endorse, contain suggestions for how to disclose the APR in a meaningful manner.

As for the proposed guidance issued by the federal banking regulators, it does not go far enough in protecting consumers from the harms of bounce loans. The banking regulators must implement stronger protections for consumers, and those protections must be legally enforceable by both regulators and the consumers who are harmed by bounce loans. There is no private right of action in TISA as there is in TILA.

Stronger protections are necessary to prohibit banks from marketing bounce loans as a credit source, essentially encouraging consumers to write bad checks for their credit needs, and without a firm commitment to cover them. These consumers, often low-income and vulnerable, are likely to use bounce loans repeatedly and become trapped in a cycle of debt. Conversely, banks often do not seek affirmative consumer assent when imposing bounce loans, and consumers are charged these expensive bounce fees without their consent or any prior warning. The banking regulators must mandate that positive consumer opt-in is required for any form of credit, including bounce loans.

Stronger protections are also needed to restrict bounce loans made accessible through automated teller machines (ATMs) and debit card transactions. There is simply no justification for allowing a consumer to overdraw an account for a transaction that is on-line, real time, for which the banks can confirm funds availability. The bank's purported reasons why bounce loans benefit consumers – saving them from merchant penalties, late charges, and embarrassment – are completely inapplicable to ATM and many debit transactions.

Note that we are not opposed to traditional overdraft programs based on balance transfers from savings or other accounts or line of credit loans at reasonable rates. We are only opposed to bounce loans that are exorbitantly expensive, that are not accompanied by APR disclosures, that are imposed without affirmative consumer consent, and/or that are advertised to consumers as an easy source of credit.

Without TILA coverage and stronger consumer protections, bounce loans will ultimately undermine years of efforts to bring unbanked consumers into the financial mainstream. Previously, consumer advocates and Treasury had agreed that bank accounts are safer and cheaper than going to check cashers or keeping large amounts of cash at home. Given the risk of incurring multiple overdrafts through unfair bounce loan products, we can no longer make that claim with as much certainty– going to a check casher might just be cheaper and safer than risking expensive bounce loans fees. Ultimately, the irresponsible actions of banks in offering bounce loans may lead to more unbanked consumers.

We look forward to hearing from you after you have completed this docket. We are quite frankly surprised that you have gone so far in this disappointing direction and urge you to re-think these efforts from society's perspective, not only the narrow self-interest of banks and their sometimes too narrow-minded regulators. I understand that we will often disagree on policy. That is the nature of regulation. But to justify your action by claiming that some consumers might actually benefit from a bounce protection product is simply not justifiable based on a reasoned analysis of the facts. While we would prefer a ban, if it were at all justifiable to go forward, your legalization of bounce protection could only be rationalized if the product were more strictly regulated as a loan.

In this case, however, your efforts at bending over backwards to legalize lucrative payday lending by banks have ignored the bigger picture of what payday lending means to society at large.

Regards,
Ed Mierzwinski

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