

From: Hollis G. Swift
Subject: Overdraft Protection Programs

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Proposal: Regulation DD - Truth In Savings
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Name: Hollis G Swift
Affiliation: Compass Bank
Category of Affiliation: Commercial
Address1: 15 S. 20th Street
Address2:
City: Birmingham
State: AL
Country: UNITED STATES
Country Code: 840
Zip: 35244
PostalCode: 35233

Comments:

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Jennifer J. Johnston
Secretary
Board of Governors of the Federal Reserve System
Submitted via Website

Re: Docket No. OP-1198, Interagency Guidance on Overdraft Protection Programs

Dear Ms. Johnston,

Compass Bank has reviewed the agencies' proposed Guidance on Overdraft Protection Programs, as well as the comments submitted to date. As are the other institutions commenting, Compass is concerned about the expense and burden placed on institutions by some provisions of the Guidance. You have already received comments on these. We would like to reiterate the point that some of the proposals cannot be implemented in any way meaningful to the customer. In addition, we would urge the agencies to make a clearer distinction between overdraft protection programs, to which the Guidance is applicable, and "the discretionary accommodation traditionally provided" to those lacking an overdraft line of credit.

One example of a proposed feature of an overdraft protection program that we do not think useful is the proposal that consumers be given a specific notice "/w/when they attempt to use means other than checks to withdraw or transfer funds made available through an overdraft protection program." Overdraft protection programs, traditional or otherwise, do not operate unless funds in the account are exhausted. There is not a "separate" funding source. As do most institutions, Compass processes checks, other debits, and deposits received during a business day at one time in the evening. A balance based on the prior night's processing would be the balance accessible at the

point-of-sale or an ATM on any day. How useful would be a notice that this transaction would have overdrawn the account if it had been processed the prior night along with the other transactions from the prior day? In effect, this is the notice the customer would be getting. This tells the customer nothing ab

out what will happen on the day he or she makes an ATM or POS transaction, since it does not take into account any deposits or checks to be processed that evening. It is unknown at the time of the transaction whether the customer will incur a charge that day or not. In fact, the customer might not get such notice because the balance on the system (from the prior night's activity) would have been sufficient for the transaction, but in fact a check posting on the same day of the transaction could overdraw the account. The customer might also get a notice and a deposit may be credited that night, such as an ACH deposit of a payroll check, a credit from a prior POS transaction, or a traditional check, that would prevent an overdraft from occurring. We fail to see how giving a notice at the point of sale or the ATM, as described above, would do anything more than further confuse the customer.

There are other provisions of the Guidance that might be burdensome and not necessarily helpful to the customer, but it is unclear whether they apply to us. Compass does not market an overdraft program other than a line of credit with Truth-in-Lending disclosures. As do other institutions, Compass may allow customers without a line of credit to overdraw their accounts. What is disclosed to our customers, along with other terms of their deposit account, is the fact that Compass may or may not permit an overdraft to an account and the amount of the fee charged, which is the same whether the debit is honored or not. We prefer not to actively market a program for paying overdrafts to our customers. One might think the provisions of this Guidance would not apply in our case.

It is not clear to us that not promoting such a product would exempt us from complying with the Guidance. Many of the criteria that the Guidance lists as characterizing the "overdraft protection programs" that are the subject of the Guidance, also apply to "traditional" programs that pay some overdrafts. For instance, coverage is automatic to a certain extent (as it is at every bank), a flat fee is charged, the service charge applies to all kinds of debits, etc. We would urge the agencies to specifically define what triggers application of the Guidance to a program. Is it the fact that a program is marketed to the customer? What constitutes marketing? Is it the fact that individual decisions are made about the amount of the line of credit? The proposed Guidance muddles together safety and soundness concerns and consumer protection. It is not at all clear that this Guidance does not apply to every financial institution in the country, since every institution allows overdrafts on accounts with at least some of the features described. If the guidance applies as broadly as it seems to, then there will be no point in not actively advertising and marketing such a program, and this may lead more institutions to promote overdraft services to their customers. We don't believe that is the intent of the Guidance.

We appreciate the opportunity to comment on this Guidance.

Sincerely,

Hollis G. Swift
Corporate Counsel
Compass Bank

IP:
User Agent:

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Mozilla/4.0 (compatible; MSIE 6.0;

Windows NT 4.0)