

July 29, 2004

Via E-Mail regs.comments@occ.treas.gov

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Via E-Mail regs.comments@federalreserve.gov

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, N.W.
Washington, DC 20551

Re: OCC Docket Number 04-14
Proposed Interagency Guidance
On Overdraft Protection Programs

Federal Reserve Docket No. R-1197
Proposed Regulation DD Amendment

This comment letter is submitted on behalf of Britton & Koontz Bank, N.A. in response to the above referenced proposals ("Proposal") and request for public comment as published in the Federal Register. We appreciate the opportunity to provide commentary on the closely related topics addressed in the Proposals. The comments below reflect our underlying concern that much of the guidance imposes additional regulatory burden where a determination of need has not been fully developed and established. The regulatory burden will ultimately serve to inflate the cost of this service to the consumer while providing the consumer with no meaningful benefit or available alternative.

- The proposed guidance specifically provides that overdrawn balances should be charged-off within 30 days from the date first overdrawn. We would offer that 60 days would be more favorable to the consumer and 60 days is still well below the 120 days allowed for loans. Most consumers attempt to repay overdrafts as quickly as possible and banks actively pursue the prompt payment of overdrafts through the use of written and oral notices to consumers.
- The proposed guidance of 30 days does not allow the consumer adequate time to correct the situation that may be due to a short period of unemployment, unexpected expenses such as auto repairs or a medical crisis. It is not unusual for it to take two to four pay periods for a customer to recover from significant expenses that may be occasional in nature.
- Additional expense will be incurred by the consumer to reactivate an account that has been charged off in the form of collection fees, cost of new checks, fees associated with new ATM and/or debit cards.
- The consumer's credit record will be negatively impacted by the reporting of these charge offs. Oftentimes those most affected by an unexpected auto repair or medical bill are the same

individuals who have a difficult time qualifying for a traditional loan product, and a charge off on their credit history will further deteriorate their ability to obtain credit.

- The Proposal stated that when overdrafts are paid, credit is extended and that fees for paying overdraft items are not considered finance charges under Regulation Z. Some institutions may make a commitment to pay overdrafts in connection with their program; however, many banks are providing this service on a completely discretionary basis. It is our understanding that the courts have concluded that an overdraft is not credit under the Truth in Lending Act and that fees are not considered finance charges. Additionally, the FRB's recently proposed amendments to Regulation DD make it clear that overdraft programs are not credit. The Proposal also discussed the concept of finance charges where fees charged for a service on an account that is in the program may be higher than a similar fee for an account that is not in the program. It is our experience that banks generally charge the same fee for a service regardless of whether the account is subject to overdraft protection or not. We believe that fees for non-sufficient items should be the same for items paid or returned and for accounts that qualify for overdraft protection as well as those that do not.

- The Proposal comments on the applicability of ECOA prohibitions and notices of adverse action. We strongly agree that institutions should not discriminate against persons on the basis of race and other factors. Furthermore, we contend that the automatic decisioning that takes place in an overdraft protection program is generally based on factors such as amount of time that account has been open, length of time since last overdraft, regular deposits and similarly objective events; thus it is our contention that these programs are equal in their treatment of customers. However, while we believe these programs to be generally equal, we believe that ECOA should not apply to overdraft protection programs, but rather only to extensions of credit as previously discussed under Regulation Z and Regulation DD pending proposal discussion.

- The Proposal suggests that banks inform consumers about overdraft programs and other services and credit products. We believe that the requirement of a lengthy document that fully discloses other services and products would be unnecessarily burdensome to the bank and would have the effect of restricting the payment of overdrafts for all consumers. While we agree that banks should notify customers of activity such as overdrafts and the fees assessed for services provided, a requirement to inform consumers extensively of alternative products and "identify the risks and problems in relying on the program and the consequences of abuse" is unnecessary. Banks have a significant amount of information available about their products and services, including lines of credit, and the fees associated with the products and services. Multiple documents regarding the same information exposes the bank to additional risks and costs in keeping all documents current whereas single sources provide for greater timeliness and accuracy of information resulting in greater efficiencies for the institution and ultimately, the consumer. We believe that these same single documents are sufficient to inform the consumer of program fee amounts and check clearing policies and better serve the consumer than providing them with multiple documents containing redundant information. Additionally, this requirement would be overly burdensome for banks where they must disclose to accounts participating in the overdraft program while still being able to pay overdrafts for non-participating accounts without benefit of disclosure. This also raises the question of whether additional disclosures would be required for institutions that may have an auto decisioning process, but not a formal program.

- We strongly oppose any requirement for an “opt in” or “opt out” provision. Consumers are informed at account opening regarding the bank’s discretion in paying overdrafts and the customer’s liability for overdrafts. Additionally, consumers are also informed that the payment of any item against insufficient funds is at the bank’s discretion and not an obligation of the bank. Requiring an “opt in” before overdrafts could be paid would increase the cost to the consumer through additional merchant fees and could result in loss of check writing privileges with certain merchants. The requirement of an “opt out” notice further increases the financial burden of compliance on a bank through hard costs and may confuse customers who believe they are opting out for privacy. Overdraft protection programs allow for customers to terminate the privilege and banks are sensitive to any consumer who would notify a bank of their preference to return checks.

- The Proposal also suggests that banks alert consumers before a non-check transaction triggers any fees by providing specific consumer notice, where feasible, before completing the transaction. The term, where feasible, is subject to interpretation and can be different for each bank. It would take time to reprogram ATMs and POS terminals to allow such notice and the change would be a significant financial burden to the industry with little or no value to the consumer. Because these systems generally do not operate in “real time”, a consumer might reasonably assume that funds were available at the terminal and discover later that additional checks had posted against the account between the time of the POS transaction and the actual posting to the account of the transaction resulting in the appearance that the POS transaction was posted against insufficient funds. Additional notices at ATMs serve no real purpose due to the number of other required disclosures and may actually confuse consumers.

- The Proposal recommends that banks promptly notify consumers of overdraft protection program usage each time used. It is our position that banks should notify consumers anytime that items are presented against insufficient funds (whether paid or returned) and systems for doing so are already in place and functioning at most all institutions. A requirement to provide a specific notice of program usage and other suggested information serves no added benefit over the current system of notification; however, it would increase the financial burden on the institution. Banks also have systems in place to handle the collection of overdrawn checking balances and work with consumers to resolve the issue where indicated; to require a separate system is a financial burden and redundant. We suggest that the Agencies modify the suggestion to use the term “promptly” and let the institution determine by what method (paper or electronic) they will notify the consumer.

- The Proposal also recommends that banks notify consumers in advance if the institution plans to terminate or suspend the consumer’s access to the service. We do not feel that this is necessary as it is the bank’s position that the payment of overdrafts is discretionary, that there was never a commitment to pay overdrafts and that the consumers were notified of this at account opening.

- The Proposal suggests daily limits on the number of overdrafts or dollar amount of fees that will be charged against any one account each day. Limits could conceivably result in important items being returned such as house payments, insurance premiums, reoccurring payment arrangements and/or memberships. Institutions have generally taken the position that the payment

of items against insufficient funds is discretionary and is determined on a case by case basis. Additionally, the financial institution incurs costs for every item it handles for the consumer whether paid or returned.

- The proposed amendment to Regulation DD would also require each institution to provide aggregated monthly and year-to-date totals of NSF fees and differentiate between overdraft fees and returned item fees.
 - These requirements would require all institutions to modify operating systems in order to provide information that is readily available.
 - The relevant information concerning the NSF item charge is provided on the periodic statement indicating the date it occurred and the amount. Additionally, notices with the same information are sent to consumers on the date that the overdraft occurs.

- The amendment suggests that an account could not be advertised as “free” if there were a fee charged for overdraft protection. It is our position that a monthly service charge for overdraft protection would be a maintenance fee and we agree with the proposal’s recommendation; however, a fee charge in connection with an item presented against insufficient funds (NSF) should not be considered a maintenance fee for the same reasons as previously mentioned. The fact that an account may be charged an NSF fee should not preclude it from being advertised as “free” in light of the fact that NSF’s are under the sole control of the consumer. If the consumers never write an NSF check, they will never incur this fee; therefore, NSF fees should not be considered maintenance fees regardless of whether the items were paid or returned.

Britton & Koontz Bank N.A. appreciates the opportunity to comment on the proposals before the Agencies. We would be happy to answer any questions in connection with our comments.

Respectfully submitted,

W. Page Ogden
Chairman, President
& Chief Executive Officer