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VIA FAX: (703) 465-4303

September 2, 2010

Federal Deposit Insurance Corporation
550 17th Street NW
Washington, D.C. 20429-9990

Re: Overdraft Lending Supervisory Expectations

To Whom It May Concern:

I am writing from Woodstock Institute to comment on the Federal Deposit Insurance Corporation's (FDIC) recent supervisory expectations for the implementation of the 2005 *Joint Guidance on Overdraft Protection Programs*.¹ I would like to take this opportunity to commend the FDIC for preparing these written expectations for the safe and sound implementation of overdraft loan programs which we believe clarify many of the outstanding concerns Woodstock believes went unaddressed in the 2005 guidance.

Woodstock Institute is a leading nonprofit research and policy organization in the areas of fair lending, wealth creation, and financial systems reform. Woodstock Institute works locally and nationally to create a financial system in which lower-wealth persons and communities of color can safely borrow, save, and build wealth so that they can achieve economic security and community prosperity.

Yearly Limits on Overdraft

Woodstock supports providing a precise definition for excessive or chronic customer use, a definition that was noticeably absent in the 2005 Guidance. We would like to recommend that the scope of the supervisory expectations be expanded to prohibit overdraft practices that enable excessive or chronic use. By defining excessive or chronic use as six or more overdraft charges annually, the FDIC has provided much-needed clarification on this issue. Woodstock also supports the requirement that financial institutions contact consumers to discuss opting-out of overdraft protection or identifying alternative products such as lines of credit.

We recommend that no additional overdraft charges be permitted to accrue, regardless of the outcome of the customer notification process, once a customer has accrued six overdraft charges in a 12-month period.

¹70 Fed. Reg. 9127 (Feb. 24, 2005).

Check-Clearing Procedures

Woodstock Institute strongly supports the proposed requirement that financial institutions review their check-clearing procedures and ensure that they operate in a manner that does not maximize the number of overdrafts (*e.g.*, by processing drafts from largest to smallest). This provides important clarity to the 2005 guidance, which requires only that financial institutions disclose to consumers the possible impact of transaction clearing policies on the number of fees that could be accrued.

Daily Fee Limit

Woodstock supports the proposed supervisory expectation that financial institutions limit the number of daily transactions subject to a fee or limit the total amount of the fee. This is a slight improvement over the 2005 guidance, which requires only that financial institutions disclose when more than one overdraft fee may be charged per day.

We support the FDIC's proposal to limit the number of daily transactions subject to an overdraft fee, and recommend that the FDIC take the additional step to establish this limit at no more than one overdraft charge per day.

Non-Electronic Transactions

The July 1, 2010, Regulation E rules that require notice and reasonable opportunity for customers to opt-in to overdraft programs do not apply to non-electronic transactions such as paper checks or ACH transfers.¹ We commend the FDIC's proposed supervisory expectation that financial institutions honor a customer's opt-out request, but believe that Regulation E should be amended to require all customers subject to overdraft fees to affirmatively opt-in to any overdraft program that assesses charges for non-electronic transactions.

Thank you for the opportunity to comment on this proposal and I look forward to the release of the final supervisory expectations.

Sincerely,

Tom Feltner
Vice President
Woodstock Institute

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¹C.F.R. § 205.17 (b)