

OverdraftComments@fdic.gov

September 27, 2010

To: Federal Deposit Insurance Corporation

Re: Financial Institution Letter FIL-47-2010; Overdraft Payment Supervisory Guidance

Advocates for Basic Legal Equality, Inc. (ABLE), thanks you for your questions on how to deal with overdraft fees and overdraft protection programs.

Advocates for Basic Legal Equality is a not-for-profit law firm that provides free legal services in civil matters to the low income and elderly who can not afford to pay for a lawyer. We serve 32 counties in Northwestern Ohio, roughly from Dayton to Toledo to Mansfield, from offices in Dayton and Toledo. We work closely with Legal Aid of Western Ohio which serves the same area. We provide assistance in matters of family, housing, consumer, civil rights and economic opportunity. ABLE is a participant in Ohio's "Save the Dream" program, where we provide legal assistance in order to save the homes of borrowers in foreclosure. We and our predecessor legal services programs also have years of experience helping clients who received predatory mortgage loans, payday loans, unaffordable credit card payments and other abusive lending products. We have seen the effects that overly expensive debt has on draining resources from the low income community.

We have long been concerned that fees and penalties such as overdraft fees have become a profit center for the lending industry. This has given the lending industry incentives to create tricks and traps that cause overdrafts and penalties, and to manipulate their systems to create as many penalties as possible. We have seen how this practice affects our elderly, low-income clients - for example, ABLE recently represented an elderly woman who was charged \$1573.30 in interest and an additional \$1445.49 in fees and penalties over a three year period on an original credit card debt of \$1984.65. (Despite paying \$1603.65 during that time and making less than \$360 in additional purchases, she owed \$3303.41 at the end of that period.) To prevent situations like these, the FDIC should adopt rules requiring penalties to be revenue neutral, and institutions should make their money on interest charged in a transparent, competitive marketplace.

We are also concerned that abusive practices in some parts of the lending industry are used by others in the lending industry to justify their abusive lending practices. For instance payday lenders justify their high cost loans by comparing them with overdraft fees. In turn banks have devised "overdraft protection" products that resemble payday loans.

Current regulations governing overdraft fees (1) do not address the dramatic disparity between the amount of the overdraft and the amount of the fee institutions charge for covering it, or the frequency with which fees can be charged, i.e. the “35 dollar cup of coffee” resulting from a small overdraft; (2) allow institutions to re-order transactions to generate additional overdraft fees; (3) fail to address the problem of an excessive number of overdraft fees being borne by a relatively small and vulnerable group of consumers, primarily those who have no savings cushion and limited sophistication with the practices of the industry. This group often includes the working poor as well as students and young people in general ; (4) continue to allow steep fees for debit card overdrafts which could easily be denied at no charge, as customers expect (5) should require consent for overdraft-based fees with respect to coverage of all payment methods such as checks and electronic payments, and (6) do not address marketing of various overdraft plans favoring the one which most enriches the bank, such as requiring customers to opt in to receive the less expensive plans.

These and other abusive overdraft practices can make checking accounts unattractive to unbanked consumers, who fear becoming indebted with cascading overdraft fees. Fear and mistrust of the banking system - fears that are unfortunately justified given existing practices - are harmful to all concerned. Unfortunately it is up to the regulators to ensure that the banking system operates in a trustworthy manner.

We urge you to read the excellent Comments *of the* Center For Responsible Lending, Consumer Federation Of America, National Consumer Law Center (on Behalf of its Low-Income Clients) and Consumer Action, Consumers Union *on the* Supplemental Guidance on Overdraft Protection Programs, OTS-2010-0008 (June 28, 2010) which are available online at <http://www.responsiblelending.org/overdraft-loans/policy-legislation/regulators/OTS-overdraft-guidance-comment-June-2010.pdf> .

Thank you for your attention.

Truly yours

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