

Memorandum

To: Office of the Comptroller of the Currency, Treasury (OCC)
Board of Governors of the Federal Reserve System (Board)
Federal Deposit Insurance Corporations (FDIC)
Office of Thrift Supervisions, Treasury (OTS)
National Credit Union Administration (NCUA)

From: Marcia Gilzeane, CFO

CC: Allan Prindle, CEO

Date: June 24, 2004

Re: Response to Proposed Guidance and Request for Comments

Comments concerning 30 day charge-off

I am in agreement with the Interagency Guidance concerning the charge-off of overdraft balances within 30 days from the date of first overdraft. It has been my experience that consumers who are willing to repay their overdrafts will do so after receiving sufficient notices and phone calls. If the consumer does not respond within this time it is most likely that they will not after 30 days, and to delay the charge-off process then creates a timing issue in regards to GAAP as it pertains to losses attributable to overdraft fees.

Comments concerning reporting overdraft balances as loans and the losses as loan loss (See "Safety and Soundness Considerations"- paragraph four.

It seems contradictory that the proposed Interagency Guidance would assert in its guidelines arguments that depository institutions not treat Overdraft Protections as loans and make clear distinctions to consumers regarding overdraft privilege as non-loan products, yet conclude the following in paragraph four of "Safety and Soundness Considerations";

- 1) Balances for overdrafts should be reported as loans
- 2) Losses (except attributable to fees) should be charged off against allowance for loan and lease losses
- 3) Available amounts of overdraft protections should be reported as "unused commitments".

Overdraft protections are not loans, they do not carry the same disclosures as loans, they do not have an interest rate attached, nor is there an attached agreement for repayment. It therefore stands to reason that since overdraft protection are not loans, they should not be records on the financials of depository institutions as loans. In regards to the argument that they are 0% loans because they are not being administered on an individual basis as the earlier overdraft protections plans were, but rather on an automated system which grants overdraft protection to a large base and is not discretionary, and are therefore being administered as a line of credit, I disagree. This argument does not take into consideration that overdraft protections are triggered by an NSF item, this same item in the past has been returned and a fee assess to the consumer. The only difference under the overdraft protection scheme is that although the consumer is assessed the same fee, there is the added advantage of the payment of the item.

Allowance for loan loss by definition are provisions set aside for the purpose of possible loan defaults, and since overdraft protections are not loans they should not fall under this requirement. Since overdrafts are against

deposit funds, the losses should be reported as losses to deposits, the same method used to charge-off a return check loss is valid to charge-off an overdraft. Furthermore the fear that fees collected for NSF items will not reflect the possible charge-off loss for the same period; should be null and void if the 30 day charge-off rule is followed.

Finally if overdraft protections are not loans they should not be reported as unused commitments. I understand the Interagency concerns as it relates to under-reported deposit balances, and I believe they are legitimate. Deposit insurances may be reported for less than their true balances because they reflect negative balance caused by overdraft protections, but maybe the solutions is to require special reporting. I do not believe the solution is to fit overdraft protection into the mold of loans for the sake of calculate deposit balances more accurately.

In conclusion, I believe that by dictating that the depository institutions treat overdraft protection as loans on our financial statements and reports to regulatory agencies, you the regulatory agencies will change the perception and understanding of the overdraft protection program within depository institutions. As a result the process and application of overdraft protection will change, and eventually they will begin looking like loans and the consumer will be the ones to lose. Instead of overdraft protection being a better solution to payday loans and other outrageous high cost loans being peddled to the uneducated consumer, it will begin to look like these products, as depository institutions find ways to make the product pay for the reporting burdens that will be produced by these guidelines.