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By Electronic Delivery

Ms. Shelia Bair, Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington DC 20429

RE: FIL-47-2010, Overdraft Payment Programs and Consumer Protection (Comment on Supervisory Guidance)

Dear Chairman Bair,

The Pew Safe Checking Project, a division of the Pew Health Group, is tasked with providing research and policy recommendations related to consumer checking accounts to create a safer and more transparent marketplace for checking accountholders. The Project applauds the FDIC for proposing this guidance related to Overdraft Payment Programs and believes these are important measures for protecting those American consumers serviced by FDIC member institutions from overdraft-related abuses. We appreciate the opportunity to comment. Based on our research and analysis, we have three specific recommendations, set out below.

1. To reduce inadvertent overdrafts, customers who have opted in should be notified of their other options at their first overdraft.

In its proposed guidance, the FDIC calls on its supervised institutions to “monitor program for excessive or chronic customer use, and if a customer overdraws his or her account on more than six occasions where a fee is charged in a rolling twelve-month period, undertake meaningful and effective follow-up action.” Pew agrees with the directive to monitor chronic customer use of expensive overdrafts, a pattern which suggests that those customers are using overdrafts inappropriately for longer term credit needs. Those customers overdrawing their accounts excessively should receive the highly individualized attention, in person or via telephone, recommended by the proposed guidance.

However, our research also shows that the vast majority of persons who overdraw do so unaware of the overdraft at the time it occurs.ⁱ To help customers who overdraw unintentionally, Pew recommends that after a consumer’s very first overdraft, a reminder of the option to opt-out be included on the next account statement. In addition to providing a notice of the ability to opt-out, this reminder may serve to discourage future inadvertent overdrafts as well.

2. Customers should be provided complete pricing information on alternatives to standard overdraft.

The Guidance also encourages institutions to “train staff to explain program features and other choices.” However, currently, only a vague reference to other overdraft programs is required on the Federal Reserve’s model form which states:

“We also offer overdraft protection plans, such as a link to a savings account, which may be less expensive than our standard overdraft practices. To learn more, please ask us about these plans.”

To help customers evaluate alternatives to traditional overdraft programs, Pew recommends that the guidance specify that staff should provide customers with pricing information for each overdraft protection option, in a manner that enables customers to easily compare the costs of the alternatives. For example, if a standard overdraft fee is \$35, this should be disclosed alongside pricing information for the same overdraft amount from a linked savings account, line of credit or credit card overdraft. To ensure fair disclosure of pricing terms, the various options available should be presented to the consumer at account opening as well as whenever a consumer requests opt-out information. Consumers should not be required to ask for a less expensive alternative. Clear and complete pricing information should be readily provided without request.

We understand that for a number of reasons, including a consumer’s credit history and account type or balance, not every type of overdraft coverage program is possible for all consumers. In the circumstances of an overdraft option requiring certain credit standards, the guidelines should require that member institutions publish the criteria used to deny a line of credit or other less expensive credit alternative. The institutions should also be required to disclose the account balances required to maintain any other type of overdraft coverage, such as a linked savings account. Publication of these criteria will help consumers understand these limits and help the FDIC enforce fair lending laws.

3. Check clearing from largest to smallest should carry an irrebuttable presumption of non-compliance.

Pew agrees with the FDIC’s suggested review of check-clearing procedures. Recently, the U.S. District Court for the Northern District of California ordered Wells Fargo & Co. to pay more than \$200 million to California customers due to the way in which the company processed checking account withdrawals. The court found the manipulation of withdrawals by the bank, with highest withdrawals being posted before lower ones, was unfair and deceptive and intended to maximize overdraft fee revenue. Although the decision relies on California law, the court’s reasoning demonstrates that processing withdrawals from largest to smallest maximizes overdraft revenue in all cases. Therefore, regardless of the specific record of the bank’s intent, largest-to-smallest processing order should be considered non-compliant.

The Pew Safe Checking Project looks forward to working with you as the FDIC implements new guidance for overdraft rules. As always, we are available to discuss these comments or any other aspect of our work at any time. Thank you for reviewing our comments.

Sincerely,

Eleni Constantine
Director, Pew Financial Security

ⁱ Matt Fellowes and Mia Mabanta, *“Converting Basic Financial Service Fees Into Prosperity,”* (Washington, DC: The Pew Charitable Trusts, 2008), www.pewtrusts.org/safebanking (accessed September 22, 2010).