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To: The Board of Governors of the Federal Reserve System

From: Michael A. Alvey, President, BSG, LLC

Date: 7/16/04

RE: Comments on Proposed Rule Regulation DD; Docket No. R-1197

Since 2000, BSG, LLC, has implemented a courtesy overdraft program, OverdraftHonor®, to financial institutions with cumulative assets exceeding \$174 billion. We are pleased to report that BSG's best practices, which advise informing and educating consumers about how overdrafts are handled in each institution, have never resulted in a regulatory violation. We attribute this accomplishment to the willingness of our clients to adhere to our "Responsible Approach™" recommendations, which closely mirror the Board's proposed regulations addressing concerns about the marketing of courtesy overdraft protection programs. As such, we would like to compliment the Board on its thoroughness regarding these regulations and believe the proposal clarifies the necessary disclosures. However, we would like to comment on two concerns in the proposed rule.

Our first concern addresses **Section 230.2 Definitions** and *the definition of an advertisement*.

The proposed rule states

An institution is not promoting a deposit or service solely by providing disclosures required by federal or other applicable law at account opening, on a periodic statement or on an electronic terminal receipt.

We recommend that the Board consider adding language that would exempt communications used to educate and inform consumers about the institution's overdraft policy from the proposed definition of advertisement. While the Board seems to make an allowance for disclosing a courtesy overdraft policy in the depositor's account agreement given at account opening, we believe it falls short of the goal of responsibly informing consumers about an institution's overdraft courtesy policy, due to the fact that most account holders do not take the time to read the account agreement.

We believe that since some aspects of courtesy overdraft programs, such as availability to overdraft at the ATM, may be new to consumers, the financial institution's overdraft policy should be explained clearly in a separate disclosure. This disclosure would be sent only to those account holders subject to the specific courtesy overdraft policy being disclosed. Such disclosure should contain all of the safeguards in the proposed rule, as

well as in the FFIEC Proposed Interagency Guidance on Overdraft Protection Programs. We respectfully recommend the Board include this type of disclosure in its definition of acts that would “not” be considered an “advertisement”, or “promoting a depositor service.”

Our second concern relates to **Section 230.6 Periodic Statement Disclosures** and *the cost and technical burden of complying with the proposed rule of providing period-to-date and year-to-date fee amounts for paid items and returned items on periodic statements*. The commentary states this rule is being proposed to provide consumers with a greater awareness of overdraft fees and charges. We believe consumers are already adequately advised about insufficient funds (financial institutions incur a significant expense to inform consumers via mailing NSF notices, sending collection notices, making telephone calls, and sending periodic statements showing each NSF/OD charge), and the proposed periodic statement disclosures will have no significant effect on changing consumer behavior. In cases where proper disclosure is not taking place, the proposed Interagency Guidance on Overdraft Protection Programs addresses proper communication. As such, it seems highly unlikely consumer behavior will change as a result of the addition of the proposed periodic statement disclosures given the number of notices currently being sent to consumers who incur a substantial number of NSF/OD fees.

In addition, this proposal would be very costly. Most financial institution core systems could not comply with the proposed disclosures without incurring significant expense to make system changes to accumulate data for inclusion on monthly statements. We request that the Board reconsider such a costly and burdensome change that would primarily be directed at the small percentage of consumers that frequently overdraft. Financial institutions already provide NSF and overdraft information in a detailed format that allows consumers to reconcile their accounts and compute monthly and year-to-date fees if they desire.

We believe it is better for institutions to monitor and counsel frequent users of an overdraft program by written correspondence and telephone conversations to: (1) suggest other alternatives for handling overdrafts; (2) refer them to a credit counselor; or (3) opt out of the program. We consider this solution to be pro-active and more effective than the passive disclosure of month-to-date and year-to-date fees on statements.

We hope the Board will seriously consider the changes recommended above. Please feel free to contact me at 502-581-1511 if you have questions regarding our comments.

Sincerely,

Michael A. Alvey
President & COO
BSG, LLC