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VIA: Electronic Mail

Re: Overdraft Protection Guidance, Docket No. OP-1198

Dear Board of Governors of the Federal Reserve System and Other Agencies of the Federal Financial Institutions Examination Council (FFIEC):

As founder and chief executive officer of BSG, LLC, a consulting firm that works closely with financial institutions on numerous programs including overdraft courtesy programs, I want to congratulate the Federal Financial Institutions Examination Council (FFIEC) for issuance of its proposed “Interagency Guidance on Overdraft Protection Plans.” The payment of non-sufficient fund items creating overdrafts has been part of banking since its inception, and while a common practice in most institutions, it is one that is subjective and allows for disparate treatment of customers.

I believe it is this subjectivity—and, therefore, the opportunity for misinterpretation and abuse—that has caused overdrafts to become so controversial. Therein lies the value of the regulatory clarity in offering guidelines. I, therefore, strongly urge you not to limit your guidelines only to disclosed programs. I am fearful this limited focus excludes a large group of financial institutions with undisclosed overdraft services, thereby, perpetuating mixed interpretations and leaving room for potential abuse. Based on my analysis of financial institutions’ varied overdraft practices, all programs should be regulated, as it is in both the institution’s and the consumer’s best interest.

While I understand there are some consumer activists who are unhappy with the proposed guidelines, I am not convinced they fully understand the service and the negative impact to consumers if the service is denied. In fact, if the financial industry as a whole had been more attuned to the needs of the marketplace earlier, I maintain we may never have experienced the proliferation of the check cashing and payday lending industries. Their significant growth demonstrates a need. However, isn’t it better for this need to be served by traditional financial institutions that are well scrutinized and closely regulated?

There seems to be a misconception among some consumer activists regarding who utilizes overdraft services and how valuable the service is to those consumers. Studies from several years ago indicate that, at that time, consumers saved over \$7 billion annually from NSF items that were paid and not returned,. Since then, the number of non-sufficient items (and their corresponding service charges) has increased and will continue to do so with the soon-to-be-implemented Check 21 processing. As a result, overdraft services will become even more valuable to those who utilize them—a

consumer group that is not limited to a specific demographic, socioeconomic, or psychographic segment.

According to a recent proprietary study conducted by a national banking organization, 77% of banking customers said they think a bounce protection program would be “very useful/somewhat useful” to them. Of these respondents, 74% had college degrees, 79% were employed full-time, and 78% had household incomes of \$50K+. These statistics clearly dispel the belief that overdraft programs take advantage of the disadvantaged and prey on their dire situations.

In addition to these survey results, consumers have demonstrated their overall appreciation or desire to have the overdraft service the old fashioned way—*by using it*. This assertion was confirmed recently when a BSG client bank conducted an in-house analysis of its overdraft customers. This is what the bank says:

“In the fall, we determined who our top NSF fee payers were in our automated courtesy pay program by pulling a selected accounts report from our host system. We extracted the 300 account holders who paid the most NSF fees year-to-date, but still kept their account in good standing. What we found was our “Top 300” is a diverse group, representing virtually all demographic groups in our community. I circulated the list to all senior management and the reaction was interesting. Most of my colleagues were surprised to see their neighbors, friends, golf partners, fellow church members and community leaders on the list, even near the top.

“Senior management now recognizes that our program is a service used and appreciated by all customer groups, not just a small socioeconomic subset.”

While some opponents suggest that overdraft service fees may be inappropriate, I truly believe the service provides a significant value proposition, particularly when one looks at the alternative--returning the items and levying *additional* costs on the consumer. The fact is, these charges are in line with--if not lower than--other common consumer fees, such as late charges on rent, mortgages, credit cards, utilities, etc. The list goes on...

Let me give you my personal “thank you” for addressing the overdraft issue and providing guidance on a service that allows consumers a choice, which is certainly in everyone’s best interest.

Yours truly,

W. Barrett Nichols
Chief Executive Officer

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