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Washington, DC 20036

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Nessa Feddis
Senior Federal Counsel
Phone: 202-663-5433
nfeddis@aba.com

August 12, 2004

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal
Reserve System
20th St. and Constitution Ave., NW
Washington, D.C. 20551
Attention: Docket No. OP-1198

Office of the Comptroller of the
Currency
250 E Street, S.W.
Public Information Room, Mail Stop
1-5
Washington, DC 20219
Attention: Docket No. 04-14

Robert E. Feldman, Executive
Secretary
Federal Deposit Insurance
Corporation
550 17th Street, NW
Washington, DC 20429

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, DC 20552
Attention: Docket No. 2004-30

Re: Proposed Interagency Guidance on Overdraft Protection
Programs
7 June 2004 *Federal Register*

Dear Ms. Johnson,

The American Bankers Association ("ABA") would like to submit this additional comment on as a supplement to our letter of 6 August 2004 to the Federal Reserve Board, Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, and the National Credit Union Administration ("the Agencies") on their proposed Interagency Guidance on Overdraft Protection Programs. The proposed Guidance is intended to assist insured depository institutions in the responsible disclosure and administration of overdraft protection services.

The ABA brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership – which includes community, regional, and money center banks and holding companies, as well as savings associations, trust companies, and savings banks – makes ABA the largest banking trade association in the country.

In the proposed Guidance section on “Best Practices,” the Agencies recommend under “program Features and Operation” that banks monitor overdraft protection program usage which may indicate a need for alternative credit arrangements and inform consumers of these options. The final Guidance should warn banks about marketing restrictions in the Federal Communications Commission’s (“FCC”) telemarketing rule¹ if they choose to contact the customer by telephone.

Amended rule 47 C.F.R. 64.1200(d) prohibits businesses from initiating any call for telemarketing purposes unless the business maintains an internal, company specific, do-not-call list. Telemarketing is defined as “the initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services. . .” Under 64.1200(d)(6), businesses must honor the do-not-call request for five years. However, unlike the rule for the national do-not-call list, there is no exception to this company-specific do-not-call list provision for “established business relationships.” Thus, if the customer is on the bank’s internal do-not-call list, the bank may not, by telephone, solicit the customer for a product, including “alternative credit arrangements or other services” that the Agencies suggest.

In addition, even if the consumer leaves a telephone message inquiring about alternative products, the bank may not be able to return the telephone call because there is no “inquiry” exception to the company-specific do-not-call rule as there is with the national do-not-call rule. While there have been suggestions that by inquiring the consumer is requesting to be removed from the list, this is far from clear in the FCC rule. ABA is in discussions with the FCC about the issue, but suggests that the Agencies also discuss the matter with the FCC.

ABA appreciates consideration of these additional comments to this very important rule. We would be pleased to provide additional information.

Regards,

A handwritten signature in black ink that reads "Nessa E. Feddis". The signature is written in a cursive style with a large initial 'N' and 'F'.

Nessa Eileen Feddis

¹ See *Rules and Regulations Implementing the Telephone Consumer Protection Act of 1991*, CG Docket No. 02-278, FCC 03-153, Report and Order (rel. July 3, 2003) (*Report and Order*). A summary of this Report and Order was published in the *Federal Register* on July 25, 2003 (68 Fed. Reg. 44144).