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STATE OF MICHIGAN  
OFFICE OF FINANCIAL AND INSURANCE SERVICES  
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES  
David C. Hollister, Director

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ACTING COMMISSIONER

March 4, 2003

To the Chief Executive Officer of the State-Chartered Credit Union or State-Chartered Bank  
Addressed:

Some depository institutions in this state are exploring or may have implemented third-party designed programs to generate fee income from customers writing checks on insufficient funds. In some cases, these are being considered as replacements for banks' traditional overdraft lines of credit.

A staff review has concluded, in concurrence with OCC Interpretive Letter #914 (attached), that there are significant compliance issues and potential contingent liabilities associated with such programs. Not least of these are legal, credit and reputational risks.

Some program marketing materials obscure the nature of a program or create confusion or misunderstanding in the minds of institution customers, exposing the programs to the risk of being considered "unfair, unconscionable, or deceptive acts or practices" under Michigan's Consumer Protection Act. Programs that encourage consumers to overdraw their accounts may, as well, run afoul of Michigan Penal Code provisions that establish penalties for inducing persons to commit crimes. From a public policy perspective, marketing of programs that encourage frequent overdrafts may promote fiscal irresponsibility among some customers.

The Federal Reserve is examining this issue. In its December 6, 2002 request for comment on proposed changes in the commentary to Regulation Z, the Federal Reserve also asked readers for "Information and comment . . . on how "bounce protection" services are designed and operated and how these services should be treated for purposes of TILA in order to assist the Board in determining whether and how to provide guidance on potential coverage under Regulation Z or to address possible concerns under fair lending or other laws."

Institutions considering, and those already participating in, such a program should

- conduct preliminary and ongoing due diligence reviews of program vendors;
- evaluate the substance of a program as well as the form in which it is presented;
- thoroughly consider the compliance, legal, supervisory and public policy issues set forth above and in the attachment in determining whether to participate or continue to participate in a program; and
- obtain guidance from competent legal counsel.

Ronald C. Jones, Jr., Acting Commissioner

March 4, 2003

Date