From: Gail Pyle [gpyle@fwbank.com] on behalf of John Hampton [jhampton@fwbank.com]
Sent: Thursday, September 09, 2010 10:01 AM
To: Overdraft Comments
Subject: Comments on FIL47-2010 regarding Overdraft Payment Programs

First Western Bank would like to respond to the proposed FDIC Overdraft Payment Supervisory Guidance, **FIL-47-2010**. While this proposed guidance is to provide consumer protection, we feel this may actually be very damaging to the consumer.

While the guidance states that the fees banks charge are excessive in relation to the benefit to the consumer, it does not appear to take into consideration the fee that consumers would be charged if the insufficient items are returned to the merchant that accepted the check, which are about equivalent to the bank's fee for paying the item. Banks began this program as a service to customers. In the event of an overdraft the customer will pay the fee to the bank instead of the merchant, which saves them potential embarrassment, negative impact on their relationship with the merchant, and possibly adverse credit ratings such as being denied the ability to pay by check at other merchants due to NSF activity reported to companies like TeleCheck. The NSF Fee banks charge is used to cover the cost associated with processing the insufficient item, sending notices informing the customer of the insufficient item, collection efforts, and the risks associated with potentially not collecting on the overdraft.

If banks are going to be required to decrease NSF charges, increase monitoring of these accounts, and provide increased financial education to customers that wish to use this service, banks may be forced, due to undue burden, to forgo their overdraft programs completely and return all insufficient items. This won't save the consumer any money because they will be charged the same fee by the merchant that originally took the item. This will not only cost the consumer about the same amount, not including negative image and credit effects, but may also be costly to businesses. As banks begin returning all of these items because they can't afford to take on the risk, the businesses that accepted these payments may be hurt from larger collection expenses, especially your smaller businesses.

While banks can, and do, offer the consumers other options instead of overdraft programs, these are not always feasible for the consumers that tend to use overdraft programs regularly. The alternative of linking a savings account to a checking account has long been an option for customers, though many consumers do not have funds to place, or keep, in a savings account. Also, due to Regulation D, the number of automatic transfers out of savings accounts is limited to 6 per month. Overdraft lines of credit are also not a viable option for many of the consumers that need access to Overdraft programs because they may not qualify for a traditional unsecured line of credit.

We would ask the FDIC to re-review their guidance on monitoring customers for excessive use and recommend a monitoring program that would be more efficient on banks in order for them to continue offering this service. The guidance recommends contacting customers in-person or by phone if they have overdrawn their account 6 times within a rolling 12 months. This would be extremely burdensome and costly for banks as they will most likely need to hire more staff to comply. In addition the majority of our customers may not be reachable by either of these methods as they are at work during banking hours. We request the FDIC consider increasing the number that is considered excessive to an average of 4 overdrafts per month, reviewing within a quarter, and allowing banks to also communicate to the customers their options through mail or email (as allowed under the E-Sign Act). This will help allow banks to implement monitoring without added costs of programming and perhaps without hiring additional staff.

In response to the FDIC's recommendation of check clearing procedures, we feel these also need to be re-visited to include not only check clearings but all other debits, including but not limited to debit card transactions, ATM transactions, ACHs, In-person withdrawals, online banking transactions, and so forth. Suggesting items be cleared by check number leaves out the majority of transactions, which are electronic, and do not have check numbers. Also attempting to clear by check number may not be accurate as many of your joint account holders hold different check books with different check numbers. Recommending clearing items in the order they are received is also not a realistic option. Currently our bank software doesn't even have this option. All items usually are cleared in batches, ACH batches, check batches, teller items, etc. Further guidance would be needed on how to clear items within a batch mode. For instance if a customer has several debits coming in the same ACH batch, how should these be posted?

Banks have already seen a decrease in income with the implementation of Regulation E as it does not consider that just because a POS transaction is authorized at time of transaction that other debits have not been initiated but not cleared. If those debits clear prior to the POS transaction (because they are not all real time), then banks not only not charge for the item if the customer didn't opt-in, but the item is also un-returnable, leaving the bank with a potentially uncollectable item and no service charge for assessing that risk while giving the customer a free account, free debit card, free statements, free ATM access, and free online banking. How are banks expected to be profitable and give everything away for free? Yet the FDIC also suggests banks offer low-cost checking accounts. We do! They are FREE, as long as their balance remains in the positive. Taking away NSF income for banks will also cause them to abandon their free checking account programs and charge monthly service charges on all accounts. How do you think the consumers that balance their account regularly and do not spend more than they have will react to this? These consumers should not be punished for the ones that may be acting irresponsibly with their finances.

We appreciate the FDIC's concern for the consumer and agree that there are consumers over-utilizing this service at a high cost to them, although most of these consumers have chosen to do so and they are well aware of those costs as they are included in their account opening disclosures, listed on their statements every month if the service is used, listed on NSF notices that are sent each time an NSF occurs, etc. Bank employees are more than willing to teach customers to balance their checkbook and at times offer special classes for this. If consumers think that banks are the bad guys now for charging a fee to pay the items that have overdrawn their account, just wait until banks decide they cannot support Overdraft Programs any longer due to the extra costs involved through this proposed guidance and begin returning their house payments, auto payments, electric payments, and so on.

John T. Hampton
Chairman/CEO
First Western Bank
P. O. Box 238
Booneville, AR 72927
www.fwbank.com