



# United

## Community Bank.

September 14, 2010

Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street NW  
Washington, D.C. 20429-9990  
[OverdraftComments@fdic.gov](mailto:OverdraftComments@fdic.gov)

Re: Comments on the FDIC's proposed guidance on Overdraft Payment Programs and Consumer Protection – FIL-47-2010

Dear FDIC:

Thank you for the opportunity to comment on the proposed Overdraft Payment Supervisory Guidance, specifically as it relates to courtesy overdraft programs.

By way of introduction, United Community Bank is an \$8 billion state chartered bank headquartered in Georgia with 114 banking offices located throughout Georgia, North Carolina and Tennessee.

United does offer a courtesy overdraft protection program to our customers. We fully comply with existing regulations that affect this area, as well as the *2005 Joint Guidance on Overdraft Protection Programs*.

### Comments

- We concur with the FDIC's recommendation that a customer should be allowed to decline coverage of non-electronic transaction overdrafts if they do not wish to have it added as a feature to their account. At United, we discuss this option with our customers at account opening, as well as remind them of that option with materials that are sent when the customer becomes eligible for overdraft coverage.

We would not support any recommendation that requires the customer to "opt-in" to coverage for non-electronic transactions. To require this option would be detrimental to the customer as it could result in checks and other items being returned unpaid prior to the time the customer makes a decision to "opt-in". As a result the customer could incur greater fees associated with returned check charges from merchants.

- We concur that customers should be provided the opportunity to choose the overdraft payment product that overall best meets their needs. Recent changes to Regulation E

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require us to inform the customer of the options that are available to them, and we also discuss these options with the customer at account opening. For United, our customers do not become eligible for overdraft courtesy coverage until the account has been opened and handled satisfactorily for 60 days. To require an "affirmative" consent to a particular overdraft payment option will result in customer checks and other non-electronic payments being returned unpaid because the customer failed to make a timely decision on which payment option they prefer. And while the delay was created by the customer, rest assured that it will be the bank they blame for their error.

- United has approximately 240,000 checking accounts in our bank. During 2009 approximately 20,000 customers had more than 6 non-sufficient funds transactions, and over 7,000 had actual overdrafts in their accounts. Not all overdrafts were related to the bank's formal courtesy overdraft program. For a bank our size, any attempt at ongoing monitoring of accounts with six or more overdrafts in order to contact the customer in person or via telephone to determine if another product would better suit them would be entirely unmanageable.

For frequent users of the courtesy overdraft service, it is uncommon they have another type of savings or checking account to link to their account. Most customers who do have such accounts will contact the bank to link the accounts after experiencing their first overdraft charges because they wish to avoid any additional fees.

We have also found that revolving lines of credit are useful to the consumer for a while, but then what inevitably happens is the revolving line of credit that was established for overdraft protection is soon maxed out and the customer is once again back to paying overdraft fees. At United we have the system capabilities to link accounts, add lines of credit, and provide courtesy overdraft...all attached to the same account in any order the customer prefers. In many instances the customer has no funds in the linked account, they have maxed out the line of credit, and they now rely on courtesy overdraft to cover their checks.

An additional concern is that a line of credit is a loan that requires underwriting. To contact the customer and ask if they are interested in a loan product that could be less costly, but then have to decline the customer because they do not qualify for the product because they do not meet the established underwriting standards puts the bank in an awkward position. What are our options? Must we now tell the customer that we are going to have to close their account because they don't have a savings account to link to, they don't qualify for a loan, but they have had more than 6 overdraft fees in the past 12 months? By proposing this guidance the FDIC appears to be making more consumers "unbankable"...all in the name of consumer protection.

- The FDIC seems to overlook the fact that participation in the courtesy overdraft program is designed to save consumers money. If a customer writes a check without having money in their account, the bank can choose to either pay that check or return

it. That decision applies regardless of whether the customer has courtesy overdraft privileges or not. If my bank pays the check, the customer is charged an "overdraft fee". If my bank does not pay the check, the customer is charged a "returned item fee" (both fees are the same amount).....plus they will likely also be charged additional fees by the merchant where the check is returned. They could also face legal consequences for writing "bad checks".

The guidance proposes instituting daily limits on overdraft fees. It is reasonable to assume that if a bank can not impose a fee for an overdraft, then the bank will simply choose to return the check, thereby creating additional fees for the customer. The customer will not win in this situation.

- Much discussion has been centered on the processing of checks in a high-to-low or low-to-high order. Processing checks in a particular order is not that simple. For example, within our bank we process point of sale and ATM transactions prior to any other transactions. Once a POS transaction has been authorized, that transaction must be paid regardless of whether or not the customer has funds available in their account. Because of a flawed merchant processing system, it is possible for transactions to be authorized days or weeks before they are presented for payment to our bank. Because we can not return those transactions, we take those funds from the customer's account first.

We also process on-us checks and customer withdrawals that are cashed by our bank in a priority order. The customer has already received the cash, so we want to ensure that we recover our funds prior to paying funds to third parties.

We also process internal loan payments ahead of checks and other third-party transactions. And then we process ACH transactions before we process checks.

As you can see, it is not simply a matter of posting high-to-low or low-to-high. There are many, many other issues to be considered. It is not simply an issue of clearing a check in the order it is received, or in a specific check number order. To implement such guidance creates additional risk to the bank as it increases the potential for losses that will be incurred.


## **Conclusion**

While we understand the FDIC's desire to protect consumers from questionable banking practices, I think it is important to remember that consumers have a financial responsibility to manage their checking accounts wisely. There is simply no incentive for the customer to do that if the regulatory agencies continue to implement and propose guidance that seeks to place no burden of responsibility on the consumer. The consumer has access to their financial information 24/7 via numerous avenues. They can check account balances, transfer funds, determine which checks have cleared, etc. United Community Bank, like most banks, provides this service to the customer for free. The

consumer has all of the tools available to them to know how much money they have in their checking account. If they chose to write checks knowing they have no funds available, why should the bank be penalized?

We request that the FDIC withdraw their proposed guidance and allow the consumer protections that is already in existence to service their purpose without adding additional burdens to an already over-regulated banking industry.

Best Regards,

A handwritten signature in black ink that reads "Carol A. Chastain". The signature is written in a cursive style with a large, prominent "C" at the beginning.

Carol A. Chastain  
Senior Vice President and Chief Compliance Officer  
United Community Banks, Inc.