THE COMMERCIAL BANK

P.O. Box 40
Mason, Texas 76856
Phone 325/347-6324
Fax 325/347-5960
E-Mail bmcmillan@tcbmason.com
Member F.D.I.C.

DELIVERED VIA E-MAIL:
OverdraftComments@fdic.gov

Bobbie McMillan
President/CEO

September 22, 2010

Federal Deposit Insurance Corporation
550 17th Street NW
Washington, D.C. 20429-9990

Re: FIL-47-2010 Overdraft Payment Programs and Consumer Protection

Dear Sir or Madame:

I am the President/CEO of a $28 million small rural community bank in the Central Hill Country region of Texas. We are probably one of the few community banks that still operate an "ad hoc overdraft" program. We never initiated any automated "Overdraft Protection" scheme like so many in our industry did. Back when this became all the "rage" for income generation, I am proud to say that my Board looked at the program and said "This only encourages bad fiscal responsibility and we will not run our bank like that, even if we do miss the extra income".

After reading the FIL 47-2010, I believe that the real focus of this guidance is the use of Automated Overdraft Payment Programs, and is not intended for banks like mine. However, I do want to add my comments to several areas of the guidance, as they might be applied to us.

1. Overdraft fees-These fees are assessed per Non-Sufficient Funds item presented and are clearly disclosed in our Service Charge notices given to customers at the opening of their account. We do not charge any other fee. We have never charged an NSF fee on any Debit Card Transaction, period, even before the Reg E changes.

2. I have a real problem with the implication in the phrase in the FIL "Extremely high costs in relationship to the overdraft benefit and/or permitting product over-use often result in customer dissatisfaction and complaints". <u>The responsibility to keep track of an account balance lies squarely on the shoulders of the account holder, they are accountable</u>. No one has twisted their arm to write a check or use an ATM or Debit card. It is the account holder's duty to maintain balances sufficient to cover automated debits and pre-authorized transfers. I feel reasonably sure that each and every account holder received a service charge disclosure when they opened the account. To result in dissatisfaction and complaints, translates to "I can't/won't/don't know how to keep my up my balance so it's not my fault" .

This perception that the account holder is a “victim” or “abused” is just flat wrong and unfair to our industry. As to the harm to low or fixed income individuals, maybe not everyone should have a checking account if they are unable to do basic math.

Guidance that results in regulatory control of a bank’s ability to price its services, and imposes structuring as stated in the Guidance “Institute appropriate daily limits on customer costs, for example, limiting the number of transactions that will be subject to a fee or providing a dollar limit on the total fees that will be imposed per day” is Price Control, pure and simple. I suggest that if customers don’t like what they are being charged for a privilege and an accommodation, they have the right to do their banking business elsewhere! A personal example is if I don’t like standing next to a guy that pokes me in the eye, then I will move away, I won’t just complain about it to a policeman and expect him to make the guy poke me more gently or less frequently.

3. Monitoring for excessive or chronic use of overdrafts to identify customers with more than 6 occasions of overdrawn balances in a rolling 12 month period-This is a blatant attempt to control how a bank does business under the guise of consumer protection. Banks do not force customers to initiate transactions that won’t be paid when presented for payment. Why should we be their “handler”? We have the duty to offer accounts for use and the customer has the duty to understand the terms associated with the account. Rather than counseling customers, if this becomes a regulation banks will more than likely just close those accounts. Then how is that helping them?

I would hope that as our primary regulator, the FDIC would seriously consider the economic implications of this proposal on the current banking system. If it remains on track I would sincerely ask that there be exemptions on all guidance for banks, like mine that do not have automated overdraft programs. I would ask that this guidance be withdrawn.

Thank you for the opportunity to comment on this FIL 47-2010.

Sincerely,

Bobbie McMillan
President/CEO