First State
Community Bank

September 24, 2010

Federal Deposit Insurance Corporation

RE: FDIC FIL-47-2010 dated August 11, 2010 "Overdraft Payment Supervisory Guidance"

First State Community Bank appreciates the opportunity to comment on the above-referenced guidance.

In our opinion, the proposed Overdraft Payment Supervisory Guidance goes beyond what has traditionally been provided through interagency guidance. As outlined below, we believe that certain proposed provisions go beyond guidance, imposing expectations that are not currently required by law or regulation, and that would effectively preempt Missouri Law.

In addition, if the FDIC pursues the adoption of this Guidance and the Federal Reserve Board and OCC do not adopt any guidance, FDIC-regulated banks will be placed at a competitive disadvantage due to the increasing costs and burdens they will have to undertake to comply with the Guidance. We believe that any guidance on a topic of this nature should always be Interagency – not just from one agency.

The following comments are directed as specific provisions of the proposed Overdraft Payment Supervisory Guidance:

FDIC expects financial institutions to provide clear and meaningful disclosures and other communications about the overdraft programs, features and options. The proposed Guidance suggests that the FDIC expects disclosures beyond those already required by Regulation DD and Regulation E. These regulations require information about overdraft fees to be disclosed to the customer prior to account opening, on customer statements and upon request. If the FDIC expects additional disclosures, that should be accomplished through proposed rulemaking by the Federal Reserve Board to amend Regulation DD and/or Regulation E, not through Guidance.

FDIC expects financial institutions to demonstrate compliance with new overdraft fee disclosure requirements that mandate providing a notice and reasonable opportunity for customers to affirmatively choose fee-based overdraft coverage of ATM withdrawals and one-time point-of-sale debit card transactions. First State Community Bank is in full compliance with this regulation. However, exam procedures or additional information will be necessary to know what will be expected to demonstrate compliance for an examination.

FDIC expects financial institutions to promptly honor customers' requests to decline coverage of overdrafts resulting from non-electronic transactions. The model form adopted by the Federal Reserve Board in the recent change to Regulation E contains verbiage stating that the bank may authorize and pay overdrafts for checks and automatic bill payments. There is no provision in existing laws or regulations that requires financial institutions to honor customers' requests to decline coverage of overdrafts resulting from non-electronic transactions, therefore the Guidance is not appropriate in "expecting" banks to do so when there is no accompanying law or regulation to point to requiring such practice.

FDIC expects financial institutions to give consumers the opportunity to affirmatively choose the overdraft payment product that overall meets their needs. As a community bank, First State Community Bank offers the products and services that best fit the markets and customer base that we serve. The expectation implies that every bank should offer more than one overdraft payment product to all customers. Customers have the right to receive Regulation DD disclosures prior to account opening describing fees and features for an account – if First State Community Bank does not offer the fees and features that suit their needs, it may be in their best interest to look for an account at another bank.

FDIC expects financial institutions to monitor accounts and take meaningful and effective action to limit use by customers as a form of short-term, high-cost credit, including, for example, giving customers who overdraw their accounts on more than 6 occasions where a fee is charged in a rolling twelve-month period a reasonable opportunity to choose a less costly alternative and decide whether to continue with fee-based overdraft coverage. Currently, there is no law that requires banks to monitor programs for "excessive or chronic customer use" or that banks should undertake "meaningful and effective" follow-up actions. This expectation would impose an incredible burden on community banks like First State Community Bank. Customers receive information on their statements detailing the amount of overdraft fees incurred per statement cycle and year to date. At any time if customers feel that these fees are excessive, they have many options: closing the account, monitoring more closely their own transactions to avoid overdrafts, inquiring at the bank about options that may work better or opting out of payment of overdrafts on their account.

Implementation of this expectation would be extremely difficult. Customer relationships and accounts change on a daily basis and this type of monitoring for a community bank would be extremely costly and burdensome. Would the "6 occasions" be counted by account or by customer? What if a customer has multiple accounts?

First State Community Bank has developed an overdraft program that is monitored and controlled based on the bank's discretion of whether or not it is appropriate to stop paying overdrafts, close an account or reach out to the customer. From a risk management standpoint, this should remain the bank's decision and not become a "one size fits all" standard.

FDIC expects financial institutions to institute appropriate daily limits on overdraft fees. Missouri law contains no law on what banks may charge for an overdraft fee, and does not impose a daily limit. What is considered "appropriate" in the eyes of the FDIC? The FDIC states that such a limit will reduce customer costs. However, if the bank returns a check instead of paying the overdraft, the customer will still incur a non-sufficient funds fee at the bank and will also incur a returned check fee from the merchant. The FDIC should not mandate a set limit of overdraft fees.

FDIC expects financial institutions to not process transactions in a manner designed to maximize cost to consumers. In Missouri (section 400.4-303(b) RSMo) banks are allowed to process paper checks in any order, except for certain legal processes. Chronological ordering based on the time of the check receipt sounds reasonable, however, many more transactions other than checks access accounts throughout the day. Technology is not to the point yet where each transaction can be processed based solely on time received regardless of the type of transaction. Customers have to understand that what appears as a "balance" at any given time may have transactions pending that will affect the balance.

The FDIC will take supervisory action where overdraft payment programs pose unacceptable safety and soundness or compliance management system risks or result in violation of laws or regulations, including unfair or deceptive acts or practices and fair lending laws. Overdraft payment programs are not designed to be detrimental to customers and do not pose an unacceptable risk for safety and soundness. If customers did not see value in these types of programs, they would not still be in existence. Though some may disagree with banks paying overdrafts, most customers are relieved that they have avoided the embarrassment and consequences of having a check returned unpaid because the bank covered their payment.

The FDIC states that institutions should incorporate best practices outline in the *2005 Joint Guidance on Overdraft Protection Programs*. The Guidance states that "the best practices, or principles within them, are enforceable to the extent they are required by law." Banks should be allowed to decide whether or not to implement the "best practices" that are not required by law.

First State Community Bank respects our customers and has acted responsibly towards them. It is in everyone's best interests that bank customers are informed so they may make the best decisions to manage their finances. Missouri is one of only three states that require a personal finance credit to meet high school graduation requirements. Any efforts by the FDIC to provide financial education would be welcomed.

There is a growing concern with the amount of new regulations and associated costs that community banks will be able to absorb and still be able to stay in business. The small communities in this country will suffer greatly if community banks disappear and all that is left are the large holding company banks. As you review this proposal, please take into account the important role that community banks play in serving the citizens of this country and the extreme burden that will be placed on those banks as a result of this proposal.

Thank you for your time and consideration of my comments.

Sincerely,

Greg Allen

Chairman of the Board and CEO
First State Community Bank
Farmington, MO