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September 24, 2010

Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street NW  
Washington, DC 20429-9990

**Delivered Via E-Mail:**  
**OverdraftComments@fdic.gov**

Re: FIL-47-2010

Dear Sir or Madam:

I am writing today on behalf of Southwest Bank. Our bank has with more than \$800 million in assets and has been in this community for more than 40 years. We employ more than 200 people and serve the banking needs of approximately 26,000 people in this area.

I begin my comments with the above because I feel that the FDIC, in proposing this guidance, is operating on the mistaken belief that bankers are willfully and deliberately taking advantage of their customers through their institutions' overdraft payment programs. Nothing could be further from the truth. The fact of the matter is that if a bank were trying to mislead its customers for profit's sake, the bank would soon have no customers. Competition in today's marketplace is tough, and banks are doing everything they can to ensure they keep the customers they have.

We are committed to our customers' success. As part of that commitment, we continually review the needs of our customers to provide them with improved services. We provide information on credit alternatives to overdrafts. We provide access to free internet banking as well as our new free text banking, so that the customer, at any time, and anywhere they have a phone or a computer, can learn their account balance before they make a purchase. When a customer does use overdraft protection, we notify them the next business day so that if somehow they were unaware, they will be promptly informed.

So, with this being said, I would like to comment on the following specific areas of concern in the proposed supervisory guidance. First, the proposed requirement that a financial institution monitor their overdraft program for excessive or chronic customer use, and, if a customer overdraws his account on more than six occasions in a rolling 12-month period, undertake meaningful and effective follow-up action. This proposal makes a number of assumptions that I believe are erroneous. The first is that customers who take advantage of overdraft programs rather than maintaining an accurate picture of their account's balance are unaware of the consequences of their actions. For these customers, who have repeatedly indicated that they are willing to absorb any overdraft charge in return for access to funds at the customer's discretion, requiring the bank to contact them again, in addition to those actions mentioned above, would yield no benefit. Our customers have been informed of less costly

alternatives and some have chosen the overdraft program. Furthermore, if a customer repeatedly tells his banker that he is okay with any overdraft expenses incurred, a banker calling that customer every six months to counsel him on credit alternatives could not only be viewed as harassing but lead the customer to take his business to another bank that is less intrusive.

Second, I am very concerned with the notion that a bank, a for-profit enterprise with whom its customers have a contractual relationship, with responsibilities on both sides, must allow a customer to violate their depository contract (i.e., the depository agreement setting out the customer's duty with regard to maintaining a positive account balance) without consequence once they have violated the contract more than six times in a rolling 12-month period. Such a result would actually reward them for frequently violating the contract.

We retain our customers because of the personal service we provide them. A limit of six overdrafts - in a rolling 12-month period - is an arbitrary number that is counter to existing Reg. DD requirements that require us to provide overdraft information to our customers on a year-to-date basis. The Bank would then have to monitor both year to date and rolling 12-month figures in a cumbersome process that would produce confusing results for the customer. Regulation DD currently requires disclosure of the total dollar amount for all fees or charges imposed on an account for paying checks or other items when there are insufficient or unavailable funds and the account becomes overdrawn and the total dollar amount for all fees or charges imposed on the account for returning items unpaid. This must be done both for the statement period and for the calendar year. Introducing an inconsistent rolling time range for which banks must reach out to the customers to counsel them on their overdraft usage imposes additional compliance burdens and costs on all banks, which will likely lead to increased costs as well as confusion for all customers. We suggest that banks be given the discretion of monitoring either a rolling 12-month figure or the year-to-date figure.

Finally, we are concerned that different examiners will have different definitions for terms such as "appropriate daily limits on customer costs." If these terms might be used in future regulation, we suggest that the FDIC clearly define such terms.

I appreciate your providing me with the opportunity to comment on this matter, and I hope the FDIC will reconsider the promulgation of this guidance.

Yours very truly,



Vernon Bryant