September 23, 2010

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

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

Ladies and Gentlemen:

Sunflower Bank, N.A. appreciates the opportunity to respond to the proposed Federal Deposit insurance Corporation's (FDIC) Financial Institution Letter (FIL) setting forth the FDIC's expectations for management and oversight of automated overdraft protection programs. However, we are wary of any potential use of the financial institution letter format in order to impose new regulatory requirements. While many of the FDIC's expectations set forth in the financial institution letter are appropriate, Sunflower Bank believes that other expectations are based upon unwarranted presumptions that have the potential to greatly add to bank's compliance costs in a poor economic environment with little, if any, benefit to consumers.

Among the expectations delineated in that letter is the expectation that financial institutions will "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 six 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." Such an expectation presumes that customers have not been provided with a less costly opportunity despite the current regulatory requirement (Regulation E) to inform customers of the existence of alternative "overdraft protection plans such as a link to a savings account, which may be less expensive than our standard overdraft practices. To learn more, ask about these plans." Such an expectation further presumes that customers qualify for those alternative programs when, in fact, an overdraft program may be the customers only meaningful ability to obtain credit. Finally, such an expectation presumes that all customers do not desire to be enrolled in such an overdraft protection program.

Sunflower Bank, N.A.'s experience is contrary to the FDIC's expectations articulated above. Many of our customers greatly value and have clearly expressed their desire to participate in an overdraft protection program. We have received few complaints regarding our overdraft protection program, including from those whose use that service on a regular basis. Instead, when we have attempted to restrict the usage of that program, we have been greeted with howls of outrage. We would suggest that the FDIC accumulate empirical evidence customers engaged in the "excessive or chronic use" of overdrafts protection products either do not understand the consequences of the use of such products or do not desire the products even after understanding the consequences of the use of such products.

Another expectation found within the FIL is that a financial institution will institute appropriate daily limits on overdraft fees. Such an "expectation" appears to be more in the form of a regulation requirement than a mere expectation. It is also vague. What is an appropriate daily limit? Who makes that decision? May what is appropriate vary depending upon the facts and circumstances surrounding the individual customer's use of the particular product?

The final expectation Sunflower Bank, N.A. chooses to comment on is the expectation that a financial institution shall not process transactions in a manner designed to maximize the cost to consumers. This expectation engages in the assumption that any particular financial institution knows which manner of processing transactions will result in maximizing the cost to consumers and that this is the reason that the particular financial institution engages in the particular manner of processing transactions it utilizes. It also engages in the assumption that the manner of processing transactions affects all consumers in a like manner. Such an assumption ignores established consumer preferences that important payments be paid first. Given the complexities of presentment, settlement, and payment order and the innumerable issues surrounding the same, it is believed that further study is required before imposing such an "expectation". The Federal Reserve Board is currently engaged in such a study. It is believed that no action should be taken with respect to this "expectation" until the Federal Reserve Board concludes it examination of payment order issues and considers whether it should promulgate a rule with respect to those issues.

Once again, Sunflower Bank, N.A. appreciates this opportunity to comment upon the FDIC's expectations as contained in this Financial Institution Letter. We understand and support the FDIC's effort to address existing compliance gaps. However, we urge caution in engaging in indirectly imposing new regulatory requirements that will result in increasing costs and burdens to financial institution that provide little benefits to customers.

Respectfully yours,

Philip M. Durr
Compliance Officer
Sunflower Bank, N.A.