From: Angie Eilrich [mailto:aeilrich@firstbankkansas.com]
Sent: Friday, September 24, 2010 5:59 PM
To: Overdraft Comments
Subject: Comment letter submission

Please find attached our comments regarding the FDIC's request for comment on these Overdraft Management supervisory expectations.

September 23, 2010

To: Federal Deposit Insurance Corporation

RE: Request for Comments on Overdraft Payment Supervisory Guidance

As a $230M community bank located in the Midwest, we have great concern regarding the potential effects of proposed Overdraft Guidance and appreciate this opportunity to comment. Our position is that we strongly oppose these expectations due to the fact that they are unreasonable, unrealistic and pose a tremendous burden to community banks.

We believe that community banks are in the best position to know their customers, their needs and their payment habits. In a small community, to have your check paid by the bank, although a fee is incurred is far more desired than risking the embarrassment of a returned check to a local or regional merchant.

Using highlights from FIL-46-2010:
Institutions are reminder to:

Provide clear and meaningful disclosures and other communications about OD payment programs, features and options. The number of disclosures we currently provide – to comply with current regulations as well as to provide good customer service – has grown to such proportions that very few customers will take the time to read them. Mandating additional disclosures or specific wording will create additional work for the financial institutions but will have little or no benefit to the consumers when they are not read.

Demonstrate compliance with new overdraft fee disclosure requirement. Financial institutions are used to the "burden of proof" required to demonstrate compliance with regulations. This is already an expectation as an FDIC supervised institution.

Promptly honor customers' request to decline coverage of overdrafts (opt-out) resulting from non-electronic transactions. The banks would need more explanation of this proposed term as there is not enough information here to provide adequate comment.

Give consumers the opportunity to affirmatively choose the overdraft payment product that overall best meets their needs. By providing the existing disclosures required under both Regulation E and Regulation DD, banks are already providing consumers with full disclosure of available products and services.

Monitor accounts and take meaningful and effective action to limit use by customers as a form of short-term, high-cost credit, including giving customers who overdraw their accounts on more than six occasions where a fee was 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. What an incredible burden this would place on financial institutions! It would be impossible for a community bank to undertake this requirement without adding additional staffing that it would be required to implement such monitoring and follow up. We believe that it is the customer's responsibility to manage their financial habits and we believe customers are very aware of their overdraft habits. Overdraft notices are sent. Depending on the severity of the overdraft, the customer may receive more than one follow-up letter. In addition, each overdraft fee is itemized on the customer's statement and the charges are summarized in grid format on the statement. When does the consumer start assuming some responsibility for their own actions? Overdraft alternatives were presented when consumers open their accounts. They are informed once again when Opt-In information was given to them. In addition, at any time they inquire about options, they are provided with alternatives.

Institute appropriate daily limits on OD fees. We cannot control how many checks a customer writes on any given day and the amount of work and risk involved grows with each check they write. To mandate a cap on that is not allowing the bank to adequately cover its cost and the associated risk. The customer contracts for the associated fees via the disclosures and agreements they are given.

Not process transactions in a manner designed to maximize the cost to consumers. Many financial institutions are already waiving OD fees if the resulting overdraft is under a specified small dollar amount (i.e., $5.00 or less). Therefore, if only small dollar items are presented, the customers may have their items paid without a fee. Given the choice, we believe most consumers would choose to have their large dollar items paid first to avoid late fees and penalties. Using a chronological order based on the receipt of the check could create multiple issues. Although paying checks in order seems logical, so many of the actual items presented for overdraft are electronic and controlling the posting order of those would require re-programming of internal systems which would be quite costly. Consumers can understand paying large to small based on dollar amount, or small to large. Trying to explain the various ways an item can be received and proving to the customer which was received first, could be a quite difficult.

Opt-In legislation has already taken a significant toll on financial institutions and their processors. To create additional monitoring and waiving of more fees will have a significantly negative earning impact for some small banks who are already struggling in a difficult financial environment.

It is time to let our customers take responsibility and let them make their choices. If they choose to overdraw their account, they pay the charges for which they contracted. If the charges of one bank do not fit their needs, they have the option of choosing another institution for those services. Only when we hold them accountable will we start to see more consumer responsibility.