

nebraska state bank  
& trust company

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September 27, 2010

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

Reference: FIL-47-2010

To Whom It May Concern:

Thank you for the opportunity to comment on the *Overdraft Payment Supervisory Guidance*. As the Compliance Officer and Chief Executive Officer of a \$140 million community bank, we are writing to express our deep concerns and opposition to the section of the proposal that would require institutions to allow customers to decline overdraft coverage on non-electronic transactions. This proposed enforcement is not consistent with the regulation issued by the Federal Reserve Board.

Like all other banks in the country, we prepared and enforced the Federal Reserve Board's Regulation E requirements in July and August of 2010. However, due to our bank not having an overdraft protection program, we choose to not send letters regarding an option of opt-in or out. Instead, we choose to opt-out all consumer customers. This was also partially due to the nature of the opt-in/out letter which made it seem as though our bank had an overdraft protection program (which we do not) and our inability, based upon regulatory guidance, to make this letter more clear for our customers. Therefore, at the current time, all our customers are designated as "opt-out" for POS and ATM transactions.

The FDIC's issuance regarding overdraft payment supervisory guidance is highly concerning. Specifically, the comments under the heading 'Regulation E Requirements' do not seem to align with the Federal Reserve Board's intended regulation. The FDIC noted, "Although the FRB did not address the payment of overdrafts resulting from non-electronic transactions, such as paper checks or ACH transfers, the FDIC believes institutions should allow customers to decline overdraft coverage (i.e., opt out) for these transactions and honor an opt-out request." Our most pertinent question is if the Federal Reserve Board wanted to include ACH and paper checks in the regulation, why didn't they? Why did they specifically designate in the law only ATM and one-time POS transactions? We feel as though the FDIC will be enforcing a regulation as they

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see fit, and not how the regulation was explicitly written; to include only ATM and POS transactions, not checks and ACH.

Additionally, if the FDIC chooses to enforce the regulation in a manner which we do not believe the regulation was written, then additional time and resources will need to be devoted to enforcing this new expectation. This new expectation, on top of the already looming significant compliance changes, could cause a significant drain on the net income of community banks.

In the event the FDIC chooses this enforcement; we would highly encourage you to discuss with the Federal Reserve Board the needed revision of the Model Consent Form. For a bank without an overdraft protection program this consent form is highly confusing. For instance, the letter states, "I want my institution to authorize and pay overdrafts on my ATM and everyday debit card transactions". Our policy and practice is to decline authorization on these types of transactions unless funds are available at the time of the authorization request. If the FDIC were to enforce the regulation on virtually all transactions, we would have no choice but to send the letters to our customers or risk losing all of our overdraft non-interest income. Unfortunately at this time, the only letter to send is the Model Consent Form which does not align with our current bank practices.

We would highly encourage you to reconsider your overdraft payment supervisory guidance. Please enforce the law as the Federal Reserve Board intended which includes only POS and ATM transactions. Please feel free to contact us if you would like to discuss this further.

Sincerely,



Kristy Bartak  
Compliance Officer



Paul Parliament  
Chief Executive Officer

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