

**Branch Banking & Trust Co.**

Deposit Services

Mailcode: 001-16-18-10
200 W. Second Street
Winston-Salem, NC 27102

September 27, 2010

Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429-9990

Re: Financial Institution Letter FIL-47-2010 – Overdraft Payment Supervisory Guidance

Dear Sir or Madam:

Branch Banking and Trust Company and its affiliated banks and subsidiaries of BB&T Corporation (BB&T) appreciate the opportunity to comment on the Federal Deposit Insurance Corporation's (FDIC) Overdraft Payment Supervisory Guidance (the Guidance).

BB&T (NYSE: BBT) is one of the largest financial services holding companies in the U.S. with more than \$155.1 billion in assets and market capitalization of \$18.2 billion, as of June 30, 2010. Based in Winston-Salem, N.C., the company operates approximately 1,800 financial centers in 12 states and Washington, D.C., and offers a full range of consumer and commercial banking, securities brokerage, asset management, mortgage and insurance products and services. A Fortune 500 company, BB&T is consistently recognized for outstanding client satisfaction by J.D. Power and Associates, the U.S. Small Business Administration, Greenwich Associates and others. More information about BB&T and its full line of products and services is available at www.BBT.com.

BB&T is a strong advocate of clear and meaningful disclosures and other communication of deposit account and overdraft protection terms, conditions and fees that assist consumers in making informed choices. We also believe in providing consumers with convenient access to current account and transaction information that allows them to manage their accounts and finances effectively and efficiently, anytime, anywhere. Finally, we do not condone or engage in practices that are misleading, unfair, or deceptive to our clients.

BB&T respects the FDIC's intentions in proposing additional supervisory guidance with the goal of ensuring that financial institutions mitigate the risks associated with offering automated overdraft payment programs and comply with all consumer protection laws and regulations. However, we believe the FDIC is acting prematurely, given that the recent and extensive amendments to Regulation E related to overdrafts were not fully in effect at the time the Guidance was issued, and that the full impact of the Regulation E changes will not be clear for at least a year. We also believe that any additional overdraft

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guidance should be coordinated with other financial regulatory agencies and issued under the auspices of the Federal Financial Institutions Examination Council (FFIEC). Our comments and concerns are detailed below.

Timing of Proposal

Recently enacted amendments to Regulation E governing overdraft practices and fees became effective for new accounts July 1, 2010 and for existing accounts on August 15, 2010. The changes dramatically alter longstanding practices regarding the payment of overdrafts that many consumers had become familiar with over the years. Millions of consumers are now required to decide in advance how they want ATM withdrawal and one time debit card transactions handled by their financial institutions. In addition, many banks have voluntarily introduced caps on daily overdraft fees and waive the fees for small dollar overdrafts.

We anticipate that the impact of these extensive changes will not be fully understood – by consumers, financial institutions, or regulators – for at least a year. It is likely that during this time many consumers will make changes to their initial overdraft opt-out/opt-in decisions and other payment and financial habits, and that financial institutions may make additional appropriate changes to their products and services. We urge the FDIC to delay adoption of any supervisory guidance on overdraft programs until such time as the true impact of the recent Regulation E overdraft rules has become known and fully understood.

Coordination with Other Supervisory & Regulatory Agencies

We note that earlier this year the Office of Thrift Supervision issued Proposed Supplemental Guidance on Overdraft Protection Programs and that elements of its proposal are inconsistent with Regulation E overdraft rules and with the FDIC's Guidance. We believe this lack of consistency will result in unnecessary confusion, particularly among consumers who will be subject to overdraft practices that vary based solely on which agency supervises their financial institution or who may bank at multiple institutions with varying practices. Any guidance on as basic a financial service as the payment of consumer deposit account transactions should be applied consistently and fairly for all depository institutions. For these reasons, we urge the FDIC to work with the other U.S. financial regulators to jointly consider the necessity of any new overdraft guidance, and suggest that this be undertaken under the auspices of the Federal Financial Institutions Examination Council.

Ensure ongoing and regular board and management oversight of program features and operation. Appropriate steps include an annual review of an overdraft program's features.

We agree that ongoing and regular management oversight of a bank's overdraft program features and operations is a reasonable and appropriate supervisory expectation, but disagree with any requirement that this oversight be made a board responsibility or that such oversight require an annual review. A bank's board should be given discretion to assign oversight responsibilities to the appropriate committee or management staff as it

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deems appropriate, as well as to determine the appropriate frequency of program feature reviews.

Review Marketing, Disclosure and Implementation of Programs; Train Staff to Explain Program Features and Other Choices

As part of our compliance program for the Regulation E Overdraft rules, as well as for BB&T overdraft policy changes to limit daily overdraft fees that we announced in September 2009, BB&T undertook a widespread and comprehensive review and update of our overdraft systems and processing, client disclosure and communications materials. This initiative, sponsored by the Bank's executive management, was designed to ensure that each of our deposit clients was made fully aware of upcoming changes in overdraft rules and services, understood how the changes might impact them, and were informed of their available alternatives and how to select them. Our communication plan included statement messages, direct mail, inbound and outbound call center messaging, and materials posted at ATMs, drive-in windows, teller windows and on BB&T's website, www.bbt.com. In parallel with this client outreach effort, online and instructor led training programs were developed to ensure that appropriate employees understand and can explain overdraft program features and alternatives to clients and prospects. BB&T takes great pride in our efforts to communicate with our clients to minimize any confusion and promote responsible use of overdraft services. This was and continues to be a massive undertaking, and we believe that throughout the financial services industry a great deal of resources have been devoted to similar ongoing efforts. Accordingly, we think that this provision of the proposed guidance is unnecessary.

Monitoring Programs for Excessive or Chronic Customer Use

As mentioned above, BB&T believes in providing clients with the information and tools they need to manage their deposit accounts and achieve financial success. We agree with the FDIC that clients should be given a reasonable opportunity to choose between fee-based overdraft coverage and other available alternatives, and we afford this opportunity to *all* clients, not just those who incur excessive or chronic overdrafts. We believe, however, that the monitoring efforts as outlined in the Guidance are not realistic and are unnecessary.

First, we note that BB&T depositors are given the opportunity to avoid *all* overdraft fees on their accounts, and not just overdraft fees for ATM and one-time debit card transactions. We also note that any depositors incurring overdraft fees from ATM or one-time debit card transactions have previously, knowingly and affirmatively decided to opt-in to the automatic payment of these transactions. Finally, as required by Regulation DD, periodic statements provided to depositors highlight both statement period and year-to-date totals for overdraft fees. Accordingly, it seems apparent that depositors who overdraw their accounts have consciously made the decision to allow the overdrafts and knowingly accept the fees they have incurred.

In light of the above, we believe it is unnecessary to require depositor contact at arbitrarily selected fee levels. Financial institutions should be permitted to exercise discretion in determining what constitutes chronic and/or excessive use and to develop

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appropriate follow-up procedures and client contact methodologies. Consumers have clear and instructive information with regard to overdrafts. They have the right to choose whether to participate in an overdraft program, and those that do so have evidenced such desire. It is not appropriate to create a discretionary limit to supplant a customer's fully informed decision.

If, however, it is deemed that specific thresholds are necessary, we believe the threshold for requiring bank intervention with the depositor should be determined by the bank as part of its overall overdraft program. Additionally, we recommend that a calendar year, as opposed to a rolling twelve month period, be used for tracking overdraft occurrences, as this matches the NSF and overdraft fee reporting periods stipulated in Regulation DD and will be in line with the totals reported on depositor statements. However, as we have noted, we believe that specific thresholds are unnecessary.

We are also concerned with the examples provided for "meaningful and effective follow-up action", as we do not believe that in-person or telephone contact are practical methods for communicating in many cases. We note that banks do not always have telephone numbers on file for depositors, that many depositors have only mobile phones or unlisted phone numbers, and that those customers who do provide a telephone number at account opening do not always advise their bank when the number changes. Even in cases where a phone number is available, customers are not always available to answer a call or may not return the bank's call. Similarly, in the age of direct deposit, internet banking, mobile banking, remote deposit and ATMs, many depositors rarely, if ever, visit a banking office or banker.

We would also urge the FDIC to specifically state that meaningful and effective follow-up action may be accomplished through mailed notification, e-mailed notification, or online or mobile messages to the consumers. These notices and messages may briefly summarize the client's recent overdraft and overdraft fee history, advise that less costly alternatives may be available, and direct the client to sources of additional information, such as the bank's website, call center or branch.

We also note that the proposed Guidance does not specify if continued follow-up is required if there are subsequent overdraft occurrences following the bank's initial follow-up with the depositor, and if so, how soon or frequently this additional contact should occur. We urge the FDIC to stipulate that once initial contact is made with a client, or in situations where the client refuses to acknowledge or respond to our contact efforts, no further follow-up is required during the ensuing calendar year, and if a client who is contacted states that he/she is aware of and understands the other available overdraft alternatives and affirmatively chooses to continue having overdrafts paid through the bank's automated service, no further follow-up with the client should be required during the life of the account.

Institute Appropriate Daily Limits on Customer Costs

BB&T does not support a regulatory limit on overdraft fees. Banks have voluntarily chosen to implement their own limits and one year ago BB&T announced overdraft

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policy changes designed to limit customers' daily costs and fees for small dollar overdrafts. The changes, which took effect earlier this year, included elimination of overdraft fees for debit card and ATM transactions that overdraw an account by less than \$5 and a cap of four overdraft fees per day for these same transactions. We also instituted alerts at BB&T ATMs when a client's withdrawal transaction would result in an overdraft, and continue to provide these ATM alerts regardless of the client's opt-in or opt-out preference. Similar to our comments expressed above, consumers have clear and instructive information with regard to overdrafts and associated fees. It is not appropriate to institute limits after a customer has made an informed decision.

Consumer Financial Education

BB&T is a strong and long-term advocate for consumer financial education. Among current initiatives are a number of programs for consumers and community groups, including BB&T's "*How To Do Your Banking: Your Guide to Financial Institutions and the Services They Provide*", "*Playbook For Life – The Student's Guide to Understanding and Planning Your Financial Future*", offered in conjunction with the NCAA and The Hartford, and the FDIC's "*Money Smart*" financial education program.

BB&T has also long been active in outreach efforts to the Hispanic community, which includes a disproportionate number of unbanked/underbanked households. These efforts include Spanish language brochures, advertising, website and telephone support, multi-cultural financial centers, and cross-border remittance services. In addition, BB&T has created a series of educational CDs designed to introduce newly-arrived Hispanic consumers to the basics of the U.S. banking system and living in the U.S. BB&T also partnered with Freddie Mac and CRA-NC to create *Nuestro Barrio*, a DVD series that addresses financial literacy with a focus on homeownership. The *Nuestro Barrio* series was the recipient of the 2007 Homes4NC Affordable Housing Achievement Education Award.

Finally, BB&T is funding a three-year online financial literacy project in partnership with EverFi, a provider of online and other financial education services. The program includes ten 30-minute online modules covering a variety of financial topics and is designed for integration with existing curriculum. The program is being offered to students in 34 North Carolina high schools and will be expanded to 200 schools in the near future.

BB&T is very proud of its initiatives in support of consumer financial education and believes they provide convenient and free access to relevant resources that assist consumers in our market areas in effectively managing their financial lives.

Check Clearing Procedures

The Guidance recommends that institutions "review check-clearing procedures to ensure they operate in a manner that avoids maximizing customer overdrafts and related fees..." and cites as examples of appropriate procedures clearing items in the order received or by check number.

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We note that individual checks are generally received for posting in physical batches or electronic image files without accompanying date or time stamps for the individual checks, and that many deposit posting systems are therefore not designed for or capable of posting checks in the order received. We also note that posting checks in check number order affects the posting order for only those checks received in a single day's processing cycle. Check number posting does not necessarily result in posting checks in the order in which they were written by the depositor, as individual checks may be delayed in the mail or held by the payee before being negotiated.

Additionally, we are not aware of any widespread agreement on what constitutes a check clearing process that either maximizes, minimizes or is neutral as to overdraft fees, or that overdraft fees alone should be the determining factor in establishing a check clearing process. For example, high to low posting can result in a client's largest items, such as mortgage or loan payments, being paid first, thereby avoiding additional return payment and/or late fees from the mortgage or loan company and perhaps damage to the client's credit history.

We also request that the FDIC clarify that for the purpose of determining the order in which transactions are received, items are defined as being "received" by the bank as soon as they are authorized by the bank or the bank otherwise guarantees the item's payment.

We also urge the FDIC to be cognizant of the complexity and criticality of bank deposit transaction posting programs in enforcing any new requirements for check clearing methods. Any changes to these posting systems, particularly those involving the capture and storage of date and time information for checks, will require extensive analysis and programming modifications to deposit software as well as statement, funds transfer, overdraft protection and other related systems. All of these changes need to be subjected to extensive quality control and other testing, as even minor errors can result in significant disruptions to bank processing and client service. Accordingly, we recommend that the FDIC allow at least 24 months for compliance with any Guidance provisions requiring changes to check clearing methods.

Finally, we note that the Federal Reserve is currently conducting a thorough study of transaction posting order issues to determine if there is a need for rulemaking in this area. We strongly urge the FDIC to defer any consideration concerning guidance related to transaction posting order until the Federal Reserve completes and issues findings from its study.

Regulation E Requirements

As mentioned above, BB&T devoted significant resources to Regulation E compliance and communicating with depositors. All client communication materials were fact-based descriptions of the new rules, BB&T's policies, and the alternatives available and there were no attempts to steer clients to a particular alternative or otherwise unduly influence their decision.

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We also note that the Federal Reserve intentionally excluded check and ACH transactions from its Regulation E Overdraft rules, and made this decision based on its thorough evaluation of overdraft functions and consumer preferences. We therefore believe that the FDIC should not unilaterally and significantly broaden this requirement, especially outside of a formal rulemaking process.

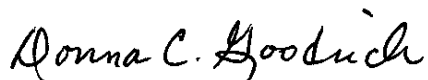
Inconsistent application of waivers of overdraft fees will be evaluated in light of all applicable fair lending statutes and regulations.

We believe that this provision would likely restrict a bank's ability to provide client service based on the client's relationship and history with the bank. We also question how fair lending statutes and regulations can logically be applied to deposit account fee waivers, particularly since many of the "prohibited basis" definitions in fair lending regulations rely on customer information which is not routinely obtained for deposit account clients. Given this lack of customer information, it would be almost impossible to ensure compliance with fair lending rules, and as a consequence banks would be forced to deny all fee waivers and refunds, regardless of the circumstances.

In closing, I would like to reiterate BB&T's position that the FDIC's proposed Overdraft Payment Supervisory Guidance is premature and that many of its provisions are unnecessary or impractical to implement. We strongly urge the FDIC to withdraw the proposal in favor of guidance developed and issued jointly with other financial regulatory agencies, allowing sufficient time for consumers, financial institutions and regulatory groups to fully understand the impact of the recent Regulation E Overdraft rules.

Thank you for your consideration of our comments, and please feel free to contact me with any questions.

Sincerely,



Donna C. Goodrich