MEMBER F.D.I.C.

NB NODAWAY VALLEY BANK

SINCE 1868

September 27, 2010

Via E-Mail Transmission Only: OverdraftComments@fdic.gov
Federal Deposit Insurance Corporation

RE: FDIC FIL-47-2010 dated August 11, 2010 "Overdraft Payment Supervisory Guidance

Ladies and Gentlemen:

Nodaway Valley Bank ("NVB") appreciates the opportunity to comment on the above-referenced guidance ("the Guidance"). By way of background, NVB is a privately-held, state chartered, non-member community bank with numerous locations serving several communities in northwest Missouri. As a "small big bank" with roughly $700 million in assets, our trade territory extends into southwestern Iowa, northeastern Kansas and southeastern Nebraska. Our size, footprint, and customer base have provided us a significant amount of experience and perspective regarding overdraft payment methods and systems and their collective impact on customers.

It is against that backdrop that we submit this comment and respectfully request that FDIC: (1) scale back, if not eliminate altogether, certain provisions of the Guidance that either exceed what the law requires or exceed the standards of traditional guidance as more specifically described herein; (2) adopt the Guidance as an interagency undertaking in concert with the Federal Reserve and OCC, and not simply as Guidance applicable only to FDIC member banks; and (3) provide more clarity and specifics to certain provisions (as more specifically described herein).

The comments appearing hereafter are targeted at specific provisions of the Guidance:

- **FDIC expects financial institutions to 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 withdraw 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**

It is noteworthy that several terms within this provision are highly subjective, which, among other potential concerns, may lead to litigation. FDIC calls for banks to monitor "excessive or chronic customer use" and implement "meaningful and effective" follow-up actions yet no statute or regulation requires such actions. If it were proposed through rulemaking, it would impose an unreasonable and seemingly impossible burden on banks to satisfy

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Practically speaking, it is difficult to foresee how the expectation would play out in practice. Specifically, how are the six "occasions" counted? What happens when the customer has multiple accounts? Due to the fluid nature of customer relationships and the number and type of accounts they maintain over time, monitoring of this sort would be costly and burdensome.

- **FDIC expects financial institutions to provide consumers the opportunity to affirmatively choose the overdraft payment product that overall meets their needs**

Although this bullet point suggests all banks provide numerous overdraft products, NVB and other similarly situated community banks do not. For instance, NVB does not offer overdraft lines of credit for several reasons including the fact the open end disclosures required by Regulation Z are complex and require a significant investment. We do, however, offer a traditional ODP limit for consumer accounts and a sweep product wherein the checking account with ODP protection is tied to a savings account (and available funds are swept to the overdrawn checking account). What's the point to all this? NVB offers the products and services it believes will best serve its customer base, including those services directly related to overdraft protection. Expanding the menu of overdraft products to service a non-existent demand is simply unwarranted. Customers seeking a product NVB does not offer can look elsewhere.

- **FDIC expects financial institutions to provide clear and meaningful disclosures and other communications about ODP programs, features and options.**

The Guidance suggests FDIC will require disclosures beyond those already required by Regulation DD and E are to be provided to consumers. If FDIC is anticipating the need for additional disclosures by virtue of the Guidance, it should be proposed through the normal administrative rulemaking procedure by the Federal Reserve Board to amend Reg DD and E (not via the Guidance).

- **FDIC expects financial institutions to promptly honor customers' requests to decline coverage of overdrafts resulting from non-electronic transactions.**

This is not required under current law. An accompanying law or regulation should be proposed to more formalize FDIC's expectation.

- **FDIC expects financial institutions to implement appropriate daily limits on overdraft fees.**

This is another example of the Guidance calling for action by banks beyond what the law on the books requires. No such limits exist under Missouri law. Moreover, it is our feeling the marketplace should dictate what banks charge for overdraft fees. Customers believing a bank's ODP fees are too high may move their banking business elsewhere.

In closing, NVB's longstanding and proud history of banking in its communities since 1868 has been marked by a healthy respect and admiration for its customers. Any success NVB can lay claim to has hinged in large measure on treating its customers with respect and fairness. Those habits and practices would continue even had Dodd-Frank not been implemented. Beyond those concerns stated herein, there is very real and legitimate concern that compliance with many of the FDIC's expectations expressed in the Guidance will substantially increase our costs. While we hope to absorb these additional expenses with minimal impact, the prospect of increased operating expenses is tougher to swallow knowing the existing statutory and regulatory framework sufficiently protects the consumer (and knowing our positive track record with ODP practices). The more realistic solution lies in additional financial education, not in added regulation, much of which is difficult to understand and impractical to the banks *and* the consumer.

Thank you for your consideration.

Yours truly,

Benjamin K. Byrd
Vice President, Counsel