



**By electronic delivery to:**  
[OverdraftComments@fdic.gov](mailto:OverdraftComments@fdic.gov)

September 25, 2010  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street, N.W.  
Washington, D.C. 20429-9990

**RE: Overdraft Payment Programs and Consumer Protection FDIC FIL-47-2010**

Ladies and Gentlemen:

First Victoria National Bank appreciates the opportunity to comment on the above referenced financial institution letter. First Victoria National Bank has in excess of \$1.5 billion in total assets. We are proud of our heritage as the oldest independent bank in Texas. As a full-service commercial bank currently serving over 70,000 customers in the Texas Gulf Coast, the I-45 corridor north of Houston, the Brazos Valley and Fort Bend County with 27 Banking Centers and 34 ATMs the bank wishes to express the views we believe demonstrate our experience with our customers using overdraft protection services.

The mission statement of First Victoria is to build lasting profitable relationships through the delivery of quality financial services and to enhance long-term shareholder value. With those goals in mind, the bank has offered as a service to our customers, an overdraft privilege program since 2005. The bank contracted with a third-party vendor to provide this service using the 2005 Joint Guidance on Overdraft Protection Programs (2005 Interagency Guidance).

One of the best practices of the interagency guidance that the bank has always employed is that of full customer disclosure. Our Overdraft Privilege Brochure incorporates the best practices already outlined in the joint guidance that applies to all banking institutions, not just FDIC regulated ones. This ensures that all customers using the ODP protection understands the important features of the program as follows: when the service will be granted based on eligibility requirements; what types of transactions can be used to access the program; how long you have to repay; what notices will be sent when you use the program; what is your limit; what happens if you go beyond your limit; what are the costs (example of three paid items in one day with the fees); the payment order of checks and the other options to cover overdrafts including good account management; overdraft lines of credit and links to other accounts. In addition, the brochure also explains how to have the service removed from their account.

It has been our experience that our customers who use this service have benefited from it. The bank does not encourage usage of the service and does provide education outlined in the above reference brochure in the Overdraft Privilege Customer Policy. The policy discourages customers from using the service as a continuing line of credit. In addition, it also discloses the payment order of checks, from high to low, as is also does in our banks deposit agreement. This is another one of the proposed changes in the FIL. The FDIC in making this proposal it appears, did not take into consideration the technical restrictions. The recommendation of clearing items in the order they are received is not practical based on the system limitations and real world methods used by debit card and ATM processors. This is further outlined in the comments submitted by the American Bankers Association of which First Victoria National Bank is a member institution.

As we have not seen explicit customer complaints related to how items are paid and see continuing use of the program we maintain our original belief that our customers would rather not have a larger item check, such as a mortgage payment, returned which could cause a possible negative impact to a creditor or a larger late charge than a smaller dollar item.

The FIL is proposing new guidance in several areas to educate our customers and to require banks in our view to become extremely intrusive something that may very likely cause a negative customer experience. Examples of these proposed requirements are as follows:

- Ensure clear and meaningful disclosures and other communications, including providing information about options to overdraft protection.
- Review check-clearing procedures to ensure they operate in a manner that avoids maximizing customer overdrafts and related fees through the clearing order.
- Review marketing, disclosure, and implementation of programs.
- Distinguish account balance from any available overdraft coverage amounts.
- Consider providing information to consumers about how to access free or low-cost financial education workshops or individualized counseling.
- Monitor programs for excessive or chronic use, and “if a customer overdraws his or her account on more than six occasions where a fee is charged in a rolling twelve-month period, undertake meaningful and effective follow-up action.”

Our bank has already addressed the majority of these proposed requirements in other ways through the revisions in other regulations such as Regulation E and DD along with guidance from the UCC and state law. The comment letters submitted by the Independent Bankers Association of Texas outline the state-specific rules and our bank, as a member of this organization; fully supports and agrees with their comments. The comment letter submitted by the American Bankers Association outlines important issues from bankers and our bank, as a proud member of this organization; also supports their views on this proposal.

With the recent changes to Regulation E, our bank spent countless hours and resources to enact the changes that the Federal Reserve felt would effectively address consumers’ concern over the excessive fees charged by banks for the “small dollar” overdraft. The Regulation standard A-9 notice was specifically designed to educate the customer on the options available to them to cover not only debit-card and ATM transactions and give them the choice to “opt-out” of those transactions, but to disclose the other types of programs to cover overdrafts. Our bank not only sent out the required A-9 notice, we were proactive and sent several pieces of educational materials to our customers ahead of the required notices to educate them in order for them to make an informed choice. Employee training was another major focus in order for our employees to be able to communicate effectively to our customers regarding their choices and make an informed one. Our bank respectfully recommends extending the proposed comment period until the revisions to regulation E and DD have had more time to reflect the true results of the change before implementing new regulatory burdens.

It has always been our policy to review and disclose all advertising and marketing materials in regards to Regulation DD overdraft protection by the Compliance Department in all mediums prior to publication. This proposal would not change that practice. All regulatory guidance requires this review. A new regulatory burden for one supervisory agency will cause disparity among the other agencies and does not appear necessary especially with the Frank-Dodd Act changes in transition.

First Victoria National Bank has followed the 2005 Guidance as we believe most prudent community banks have and has not included the overdraft protection limits in any available balance. This fact is clearly disclosed on our Overdraft Privilege Brochure. A need to put this requirement in the proposal appears redundant to the guidance.

One of the proposals is to consider providing information to consumers about how to access free or low-cost financial education workshops or individualized counseling. Our bank uses the FDIC Money Smart Program and has for many years. We provide the program to high schools in our area each year. In addition, we participate in the ABA Teach Children to Save and Get Smart About Credit. Our bank also offers Electronic Transaction Accounts (ETA). ETA stands for Electronic Transfer Account, low-cost account for recipients of Federal payments. The U.S. Department of the Treasury designed the ETA for individuals to receive their Federal payments electronically. The federal and state agencies including the Federal Reserve already have initiatives to promote financial literacy program. This proposal seems redundant to the already existing resources.

At some point, banks have to assume that a customer monitors his or her account and with the consistent notices that are issued with the use of each occurrence the customer has taken personal accountability and responsibility for use of the overdraft protection program. Account holders may become offended by the requirements that banks are required to “notify” them again when they have reached a relatively low level of usage. As stated previously, they are already notified each time they use the program. In the opinion of the bank, follow-up is already being conducted. Another challenge could be from the technology standpoint to retro-fit software to monitor the use for six times in a rolling twelve-month period for this requirement. In addition, the disclosures are already notifying customers not to use the service as a continuing line of credit and that the bank has the option to remove the service. Our bank does not want to unintentionally drive the customer towards using the more expensive payday lender or pawn shop out of embarrassment or feeling under the spotlight.

Our bank has always offered the “Fresh Start” program for customers who are unable to repay their overdraft within the 30 day period. This allows the customer to repay the outstanding balance in four monthly installments giving them a “second” chance to repay. This educates them on how to better handle their account. Our Call Center and other banking employees are always available to assist our customers with balancing and discussing how to manage their accounts. Monthly statements have a section on the reverse side for the customer to use for balancing their statement. The bank has additional products such as online banking, mobile banking, internet access in most banking centers and telephone banking to assist in keeping our customers up-to-date on their balances and other banking information.

The bank does not agree with the proposal to require annual Board approval of overdraft program features. The bank and our third-party vendor conduct a review of the overdraft program on an annual basis. It is not the mission of the bank’s Board of Directors and they do not have the time or the expertise to undertake a meaningful review of overdraft program features.

In conclusion, First Victoria National Bank appreciates the opportunity to comment on these important issues, supports the recent changes to the existing regulations, and meaningful efforts to improve overdraft protection programs. With the recent changes just becoming effective, more time is needed to determine the results of these changes before new regulatory requirements are proposed and implemented. This is especially important with the requirements being proposed by a single regulatory agency. In addition, the proposed changes could very well be premature with the pending regulatory transition brought about by the Frank-Dodd Regulatory Reform Act passage.

Sincerely,



Russell Marshall  
President & CEO