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September 27, 2010

Federal Deposit Insurance Corporation

Attn: Comments

550 17th Street NW

Washington, DC 20429

Attn: Comments - **Sent Via Electronic Delivery**

RE: FIL-47-2010 Comment on Overdraft Payment Supervisory Guidance; dated August 11, 2010

Dear Sir or Madam:

On behalf of the Oregon Bankers Association (OBA) and its membership of Oregon's state and national banks, we appreciate the opportunity to offer comment on the proposed Overdraft Payments Supervisory Guidance. The proposed Overdraft Payments Supervisory Guidance raises several issues that require greater scrutiny.

As an initial matter, Oregon banks just finished complying with the new opt in requirements for debit card transactions, assuring customers have the choice to maintain or decline overdraft protection. It is our view that these newly implemented rules address the key concern about fees charged for overdrawing one's account due to small debit card purchases. Compliance requirements related to the opt-in rules were significant, but banks took the necessary steps to comply. It is our view that the proposed new "guidance" – coming so soon after the opt-in implementation – takes the issue too far and creates imbalance in a bank's ability to manage its customers' needs. We have detailed some of our key concerns below.

In our view, customer service is the "coin of the realm" to our banks. Oregon banks appreciate that their failure to provide excellent customer service will drive their clients into the arms of their competitors. Assuring that customers have appropriate choices and information is key to the success of any bank product or service, including overdraft protection programs that are valued by many bank customers.

With respect to the specific proposals of the guidance, OBA offers the following comments:

- **Requirements related to frequent users of overdraft protection.** The OBA does not quarrel with the need to monitor frequent users of overdraft protection, however, it does not believe the FDIC should establish a rigid "litmus test" of what constitutes a customer's frequent use of

overdraft protection (i.e., six times in a in a rolling twelve month period). This kind of threshold discourages banks from having discretion in implementing their overdraft protection monitoring system and best meeting the needs of its customers. We believe that, once a frequent user of overdraft protection has been identified, banks should be encouraged to contact the customer and provide that customer information about alternatives. Once the customer has been given information about the alternatives and is in a position to make an informed choice based on those alternatives, the customer should be free to continue using the service if that is what the customer chooses to do. Finally, a duty to monitor and contact a customer excessively utilizing an overdraft protection may be interpreted by compliance examiners as creating a duty, on the part of the bank, to stop the excessive use of overdraft programs. If that were the case, banks may feel inclined to close accounts or end debit card privileges, increasing the number of unbanked and pushing customers to more expensive and less regulated financial services offered outside of traditional banks.

- **Daily Limits on Fees.** Decisions regarding whether to “institute appropriate daily limits on customer costs” should be left to the discretion of each institution. Banks should remain free to evaluate their markets to design and operate sustainable and responsible overdraft programs that provide choice to consumers. In a competitive banking environment, such as we have in Oregon and across the nation, customers have many choices as to where they can deposit their funds. In the case of traditional banks, issues such as cost, convenience and level of service all play into this decision.
- **Communication with Customers About Options.** The guidance focuses on ensuring that a bank’s communications provide information about alternatives to overdraft protection, yet, it also suggests that providing information about overdraft protection in the Regulation E notice is not sufficient. This begs the question of when a bank should provide information about alternatives. Should alternatives to overdraft protection be found in all promotional materials issued by the bank? If not all, then in what material should this information be contained? This remains an open question. Further clarification should be provided in the guidance.

Thank you for the opportunity to comment on the Overdraft Payments Supervisory Guidance. If you have any questions, please feel free to contact me or OBA’s Director of Government Relations, Kevin Christiansen, at (503) 581-3522.

Very best regards,

Linda W. Navarro
President & CEO
Oregon Bankers Association & Independent Community Banks of Oregon