



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

Re: Overdraft Payment Programs and Consumer Protection  
FIL-47-2010

SpiritBank appreciates the opportunity to comment on FIL-47-2010 regarding the FDIC's proposed Overdraft Payment Supervisory Guidance. As the FDIC has recognized by issuing the FIL, this matter is very important to both financial institutions and consumers.

The speed with which the changes related to consumer overdrafts were implemented plus the systems and operational changes required to comply allowed little time to assess regulatory expectations regarding follow-up. SpiritBank supports the FDIC's efforts to provide guidance for examiners and financial institutions on this matter. Less than 90 days have elapsed since the first mandatory compliance date of July 1, 2010 and less than 60 days have elapsed since the August 15, 2010 mandatory compliance date for existing customers. It would seem that a longer period of time to test not only changes in bank practices but also consumer choices may be desired; thereby ensuring the guidance issued is relevant.

SpiritBank endorses and supports consumer education in the form of disclosures, definitions and explanations of exactly how products or services the Bank provides work, what charges are associated with a specific product or service, the amount of each potential charge, and what action or activity triggers a charge. However, at some point, the consumer should be allowed to make an educated decision of how to handle their banking transactions without that decision resulting in a negative impact to the financial institution.

SpiritBank provides, as most banks do, our customers with the ability to monitor their accounts and balances as well as make intra-bank transfers through internet banking and voice response systems.

SpiritBank has offered customers the ability to opt-out of non-electronic transaction overdrafts since 2004. Therefore, the expectation to promptly honor a customer's request to decline coverage of these types of overdrafts is not an issue.

An alternative payment method to overdrafts is desirable and should be offered. SpiritBank offers automatic transfers from other accounts owned by the customer.

The Bank supports monitoring of frequent users; however, each financial institution should be allowed to use their discretion in setting up the criteria and filtering related to the monitoring. Many of the customers who have frequent overdrafts do not have additional accounts with balances sufficient enough to cover their overdrafts and they have opted in after reading the informational disclosures provided by the bank. The customer should be free to continue using the service if that is what the

customer wants. What would happen if the ability to overdraft was not available to these customers? They would likely turn to more expensive funding alternatives such as finance companies or pay-day lenders or in some cases become one of the "unbanked".

SpiritBank also feels bank's should be able to set their own fee schedules based on their market area and individual criteria relative to how automated their systems are, personnel involvement, etc. Consumers should be well aware of the costs associated with overdrafts as that information is required to be disclosed on each account statement for not only the present statement cycle but for the year to date.

Communication about options is important and keeps the consumer informed and there are various avenues that could be utilized to convey information from statement messages to messages on the bank's website.

There is no payment order that is going to make every consumer happy or be beneficial to the consumer in all instances. Banks are familiar with their customer base and the trends exhibited by their customers. Banks should be allowed to define their payment order based on what is best suited for the majority of the customer base.

SpiritBank does not advertise or promote overdraft programs. We do, at bank discretion, pay overdrafts for bank customers who bring their accounts back to a positive balance within a short period of time. The bank also provides a "no cost" alternative for customers who need time bringing their accounts back to a positive balance.

The Regulation E changes that became effective recently are new for consumers, bankers and regulators. We again urge the FDIC to entertain a longer test period than 90 days prior to issuing final guidance.

Sincerely,



Lois Shamas  
Director of Corporate Compliance