



400 California Street  
San Francisco, CA 94104

September 27, 2010

Federal Deposit Insurance Corporation  
550 17<sup>th</sup> Street NW  
Washington DC 20429-9990

RE: FIL 47-2010  
Request for Comment on Overdraft Payment Supervisory Guidance

Ladies and Gentlemen:

Union Bank, N.A. respectfully submits the following response to the Federal Deposit Insurance Corporation's (FDIC's) request for public comment on the above-captioned proposed regulatory guidance, published as Financial Institution Letter 47-2010, August 11, 2010 (the "Proposal"), concerning overdraft payment programs.

Union Bank, N.A. ("the Bank" or "we") is a California-based national bank with assets of \$83 billion, 396 branch offices located in California, Oregon, Washington, and Texas, and approximately 10,000 employees. We appreciate the opportunity to comment on the Proposal.

### Summary of Impact

The Bank agrees with and has already implemented most of the recommendations contained in the Proposal. However, we are concerned about the recommendation for "meaningful follow-up action" that would include telephone or in-person contact with customers with excessive or chronic overdraft activity.

### Current Practices

The Bank is committed to fully informing its customers of options available to protect themselves against unintended overdrafts. Currently, customers receive such information through printed materials, online announcements and banners, and interaction with customer contact personnel.

Customers are made aware of various ways to avoid overdrafts. Customers may choose a plan to have funds transferred from a savings account or overdraft line of credit (credit qualification is required for the line of credit). New account opening practices include offering the savings transfer plan and overdraft line of credit. If the customer does not choose the savings transfer plan or overdraft line of credit, the Bank currently offers an overdraft service that may pay an item into overdraft at the Bank's discretion. The amount available to an individual customer for the overdraft service is based on a statistical model that indicates a customer's ability to repay the overdraft. If a customer does not "opt-in" for the overdraft service for ATM and one-time debit card transactions, the Bank may cover an overdraft for checks and other types of items. Any customer may discontinue the overdraft service upon request.

Customers also are made aware of opportunities to monitor their account balance to avoid overdrafts. Any customer may use the Bank's online banking or telephone banking and thereby have the ability to check account balance and transactions at any time. Customers may enroll in account alerts to be notified by text or email of a low or negative account balance. Beginning in October 2010, customers will be able to access their accounts and account balances by telephone. Finally, the Bank currently is exploring the possibility of email notification to customers with a low account or overdrawn balance. The Bank does not have a small-dollar loan program.

The Bank's practice is to not charge an overdraft fee if the account balance is overdrawn by \$5 or less, or if a deposit is made to cover the shortfall by the end of the same business day. No more than 5 items per day are subject to an overdraft fee, and the bank's sustained overdraft fee is limited to \$30 per overdraft period. Many times, overdraft fees are waived for first-time or isolated overdrafts.

The Bank believes that these practices, taken collectively, offer customers meaningful options and readily available information to monitor their account activity and transact responsibly on their accounts.

#### Proposal for "Meaningful and Effective Follow-Up"

The Bank is concerned about the Proposal's recommendation for "meaningful and effective follow-up" if a customer overdraws his or her account on more than six occasions where a fee is charged in a rolling twelve-month period. The Proposal suggests in-person or telephone contact to discuss less costly alternatives, such as a linked savings account or line of credit.

We request clarification about whether the contact would be triggered upon the sixth incidence of an overdraft day, regardless of the number of items for which a fee is charged, or upon the sixth incidence of a fee being charged, which, at Union Bank, could occur the second time an account goes into overdraft.

We believe the recommendation for telephone or in-person contact is not realistic or practical. Our experience with telephone calling efforts shows that many calls result in failure to reach the account holder. For privacy reasons, we believe it would not be appropriate to leave a voicemail or play a recorded message that provides any detail about the overdraft condition. We ask clarification about the expectation to continue contacting a customer, such as number of attempts or duration of time, if there is no contact made.

We also request clarification on what the follow up requirements would be if a customer continues to overdraw their account. For example, what is the expectation if a customer overdraws their account 7, 8, 9 or even more times in a rolling 12 month period. Once we have made contact with the customer and they have declined signing up for different services for handling overdrafts, what is the expectation regarding continuing to following for subsequent overdrafts?

We support the Proposal's recommendation for meaningful follow-up, but not by telephone or in-person contact initiated by the Bank. We can support email notification and follow-up, presently under exploration, or a printed notice mailed to the customer, perhaps as an enhancement or addition to the overdraft notice already mailed to the customer.

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We appreciate the opportunity to provide comment on the Proposal and thank you for consideration of our concerns. If questions regarding the information in this comment letter arise, please contact me at 415-765-2907 or at [lynn.sullivan@unionbank.com](mailto:lynn.sullivan@unionbank.com).

Sincerely,

A handwritten signature in black ink that reads "Lynn Sullivan /s/". The signature is written in a cursive style with a clear "s" at the end.

Lynn Sullivan

Executive Vice President

Chief Compliance Officer

Union Bank, N.A.