

September 27, 2010

VIA EMAIL

Federal Deposit Insurance Corporation
550 17th Street NW
Washington, D.C. 20429-9990

Re: Comments Regarding FIL 47-2010, "*Overdraft Payment Supervisory Guidance*"

Dear Sir or Madam:

Thank you for the opportunity to comment on the proposed guidance *Overdraft Payment Supervisory Guidance* (the "Proposed Guidance"). As Chief Risk Officer of Montecito Bank & Trust (the "Bank"), a privately-owned banking institution in Santa Barbara, California with just under \$1-billion in total assets, I am writing to express my opinions on specific provisions of the Proposed Guidance.

Montecito Bank & Trust generally agrees with many of the regulatory expectations the FDIC has provided related to the management of automated overdraft payment programs. In fact, we have instituted many of the items covered in the Proposed Guidance since the inception of our own service. However, if the regulatory requirements become too burdensome, financial institutions such as ours will have no choice but to discontinue these services. This will likely expose our customers to the same Returned Item fees, but without the benefit of having their items paid into the overdraft.

COMMENTS ON SPECIFIC ACTIONS PROPOSED BY THE FDIC REGARDING AUTOMATED OVERDRAFT PRIVILEGE PROGRAMS

- I. **"Monitor programs for excessive or chronic customer 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, including, for example:**
 - **Contacting the customer (e.g., in person or via telephone) to discuss less costly alternatives to the automated overdraft payment program such as a linked savings account, a more reasonably priced line of credit consistent with safe and sound banking practices, or a safe and affordable small-dollar loan; and**
 - **Giving the customer a reasonable opportunity to decide whether to continue fee-based overdraft coverage or choose another available alternative.**
 - **The FDIC specifically seeks comment on whether an effective way to monitor for excessive use of automated overdraft programs would be for supervised institutions to contact a customer after the six transaction fees trigger and**

discuss available alternatives. The bank would explain, for example, that it also offers linked savings accounts, overdraft lines of credit or small dollar loans, each of which may be less expensive than the automated overdraft program. The consumer would then be asked to pick the available option he or she prefers to cover any future overdrafts, including the choice of opting in to the bank's overdraft program. "

It would appear that six overdrafts within a rolling twelve month period is an arbitrary number, which could promote fraud and abuse within the marketplace. In addition, the language is unclear and leaves room for interpretation by both FDIC examiners and financial institutions. For example, if "six occasions" mean each individual instance where a customer overdraws their account and is assessed a fee, we would be required to contact a customer to offer alternatives when their account is overdrawn only two days during the twelve-month period but had more than six items overdraw their account on those two days.

Further, should the proposed guidance be adopted to require financial institutions to contact accountholders by means other than written or electronic if the accountholder agrees, these requirements will place severe compliance costs, to include additional staffing, infrastructure, and training, on all financial institutions to schedule in-person visits or make individual telephone calls without manifesting the intended results. Any required customer notification should continue to be in written form.

Added compliance cost will ultimately result in fewer products and higher prices for accountholders. Customers expect and welcome financial institutions paying their reasonable overdrafts. If regulators continue placing constraints on overdraft programs, financial institutions will no longer offer these programs. An unintended consequence for the accountholders will be higher fees and a decrease in service levels, followed by increased fees not paid to the bank, but to other entities collecting on "bad" checks.

In regard to the offering of a "small-dollar loan" ("SDL") to accountholders as an additional alternative to a financial institution's overdraft services, in today's current economic environment, financial institutions are unlikely to adopt a non-profitable product such as SDLs. Additionally, as with all loans, SDLs require formal underwriting and processing. Given the fact that accountholders require immediate accommodations when attempting to draw on unavailable funds, SDLs would not be a customer-friendly alternative for existing overdraft services.

In addition, we see no material benefit in requiring financial institutions to repeatedly notify customers of overdraft program alternatives once they reach an arbitrary threshold related to overdraft activity, particularly when applying/enrolling in such alternative programs will not guarantee a decrease in accountholder overdraft activity. Accountholders are already made aware of alternates to fee based overdraft programs at account opening and within required disclosures related to ATM and everyday debit card overdraft service opt-in. There is no need to require financial institutions to repeatedly remind accountholders of these services throughout the life-cycle of the account. We feel that check and ACH transactions should continue to be automatically

covered by overdraft programs. Montecito Bank & Trust has always honored any request from an accountholder who wishes to terminate participation in any overdraft program, regardless of whether regulatory guidance exists that requires opt-out.

We feel it is also important to point out that a check or ACH transaction returned as unpaid would still incur a returned item fee, which is equal to the overdraft fee at most financial institutions, including Montecito Bank & Trust. In addition, the accountholder would also be subject to merchant fees, possible late fees, and potential legal action from the merchant.

II. "Institute appropriate daily limits on customer costs by, for example, limiting the number of transactions that will be subject to a fee or providing a dollar limit on the total fees that will be imposed per day."

We generally do not object to the concept of a dollar limit on the total overdraft fees that can be imposed per day. In fact, we have instituted a daily limit on overdraft fees at Montecito Bank & Trust; however, we remain concerned that accountholders will be tempted to "game the system" and time transactions to minimize their exposure. Once the daily limit is reached, there is no longer any deterrent to continuing to draw against insufficient funds.

III. "Review check-clearing procedures to ensure they operate in a manner that avoids maximizing customer overdrafts and related fees through the clearing order. Examples of appropriate procedures include clearing items in the order received or by check number."

We firmly believe in transparency with our clients, and do not condone check-clearing practices that are intentionally designed to maximize overdraft activity. However, the order in which we process payments is complex and dependent on various situations that can effect presentment and system delivery. For example, electronic transactions already take priority because they are assumed to settle the next day. A check that is converted into an ACH item would therefore already be paid prior to another, larger item that was not converted into an electronic transaction.

In closing, we would like to assure you that the Bank's management team and the Board of Directors are in full support of enhanced consumer protection and proper risk mitigation controls around account overdrafts; however, we do not feel that the Proposed Guidance in its current form meets that objective. Thank you for considering my comments.

Sincerely,



Laurel Sykes
Chief Risk Officer
Montecito Bank & Trust