September 21, 2010

Federal Deposit Insurance Corporation via **OverdraftComments@fdic.gov**
or via fax to (703) 465-4303

RE: FDIC FIL-47-2010 dated August 11, 2010 "Overdraft Payment Supervisory Guidance"

The Callaway Bank appreciates the opportunity to comment on the above-referenced guidance. Our bank's 153-year history has taught us many lessons, including the fact that change is a way of life and banking must evolve to serve the needs of our communities. Transactional deposit accounts have evolved along with the methods our customers may use to access those accounts, but throughout the years our intent to provide a worthwhile and valued service to our clients has remained steadfast.

Our bank tries to be reasonable in our approach to fees and access to overdraft credit, and in our communication with our clients. We provide low-cost options for overdraft coverage, we explain the options, and we encourage clients to choose the method best suited to them. We encourage responsibility and awareness, and we provide many tools our clients may use to protect themselves from overdrafts and overdraft fees. But in the end, the client is in control of their actions and is responsible for prudent management of their funds.

In our opinion, the proposed Overdraft Payment Supervisory Guidance goes beyond what has traditionally been provided through interagency guidance – which is additional support or direction to help banks develop policies and procedures to comply with existing laws and regulations. As outlined below, we believe that certain proposed provisions go beyond guidance, imposing expectations that are not currently required by law or regulation, and that would effectively preempt Missouri law.

In addition, if the FDIC pursues the adoption of this Guidance and the Federal Reserve Board and OCC do not adopt any guidance, FDIC-regulated banks will be placed at a competitive disadvantage due to increasing costs and burdens they will have to undertake to comply with the Guidance. We believe that any guidance on a topic of this nature should always be Interagency – not just from one agency. The FDIC seems to be over-reaching in its attempt to support consumer advocacy groups, without considering the cost of compliance on small institutions and the resultant impact on non-interest income.

The following comments are directed at specific provisions of the proposed Overdraft Payment Supervisory Guidance:

FDIC expects financial institutions to provide clear and meaningful disclosures and other communications about overdraft payment programs, features and options. Many regulatory requirements currently exist requiring disclosures to consumers regarding their accounts. Suggested model forms and clauses to provide these disclosures have been adopted through consumer testing by the regulatory agencies. Banks use these model forms verbatim as a safe harbor to ensure compliance, also making it easier for customers to compare fees and practices by account and by bank. This proposed Guidance seems to suggest that the FDIC expects disclosures beyond those already required by Regulation DD and Regulation E. These regulations already require a great deal of information about overdraft programs and fees to be disclosed to the customer prior to account opening, on customer statements, and upon request. If the FDIC wants to force additional disclosures, we believe a better approach would be to accomplish changes through proposed rulemaking by the Federal Reserve Board to amend Regulation DD and/or Regulation E, not through this separate Guidance.

FDIC expects financial institutions to demonstrate compliance with new overdraft fee disclosure requirements that mandate providing a notice and reasonable opportunity for customers to affirmatively choose fee-based overdraft coverage of ATM withdrawals and one-time point-of-sale debit card transactions. We are unsure why this needs to be stated. We have Regulation E in place, and we would be examined periodically for compliance. Is the FDIC expecting a more proactive demonstration of compliance, such as separate reporting? We believe normal examination procedures would be sufficient to ensure compliance, and would suggest that anything more would simply be onerous and unnecessary.

FDIC expects financial institutions to promptly honor customers' requests to decline coverage of overdrafts resulting from non-electronic transactions. Community banks like ours seek to inform and provide choice to our clients. However, we believe there is no provision in existing laws or regulations that requires a financial institution to honor a customer's request to prohibit payment of overdrafts. In fact, the model form adopted by the Federal Reserve Board in the recent change to Regulation E contained verbiage stating that the bank may authorize and pay overdrafts for checks, ACH, and recurring bill payments, recognizing the bank's right to provide and manage overdraft services. As stated above, the consumer has the option to choose the overdraft protection method(s) best suited to them, and we provide many methods of monitoring balances. However, it seems the FDIC is implying the bank would have to manage yet another opt-in program for non-electronic items on top of all the other programs already in place, causing more expense for the bank and resulting in more confusion for the client. That would be a bad idea. Ultimately, it is the customer's choice to spend funds they don't have when they write the check or authorize the recurring payment.

FDIC expects financial institutions to give consumers the opportunity to affirmatively choose the overdraft payment product that overall meets their needs. Our bank does offer a variety of overdraft prevention, payment and coverage options for the consumer to choose, but again, smaller institutions like ours cannot afford to offer the full spectrum of choices the FDIC may have in mind. Recent regulatory change has made overdraft lines of credit with open-end disclosures required by Regulation Z extremely complex and expensive to offer. Customers are already provided Regulation DD disclosures prior to account opening describing the fees and features for an account, what further burden of cost would we bear in trying to meet the FDIC's expectations of proving affirmative choice?

FDIC expects financial institutions to monitor accounts and take meaningful and effective action to limit use by customers as a form of short-term, high-cost credit, including, for example, giving customers who overdraw their accounts on more than six occasions where a fee is charged in a rolling twelve-month period a reasonable opportunity to choose a less costly alternative and decide whether to continue with fee-based overdraft coverage. The

FDIC states banks should monitor programs for "excessive or chronic customer use" and also should undertake "meaningful and effective" follow-up actions. No law or regulation requires a financial institution to take either of these actions. The FDIC seems to be over-reaching its authority. This expectation would impose an incredible burden on banks. Customers receive information at account opening describing the fees and features of their account. Customers also receive information on their statements detailing the amount of overdraft fees they have incurred (per statement cycle and year to date). Customers are given choices to help prevent overdraft situations, and to cover overdrafts when they do occur. If customers over any period of time (including the very first time they are assessed an overdraft fee) feel those fees are excessive, they certainly have many options – ensure they do a better job keeping track of their transactions, inquire at the bank about options that may work better for them, ask to opt out of payment of overdrafts on their account, close their account, etc. With the abundance of information already provided, the FDIC now wants the bank to monitor the consumers' account for them and force them to periodically affirm their choice? We can't force people to be responsible, and the FDIC shouldn't make the banks take on the role of parent.

From a practical standpoint, this expectation would be extremely difficult to implement. For example, how are these six "occasions" counted? By account? Or by customer? What if the customer has three accounts? Customer relationships and accounts change constantly and this type of monitoring would be extremely costly and burdensome, especially for small banks like ours.

The FDIC expects follow-up action to include contacting the customer by person or via telephone. This would require enormous resources of the bank and implies that the customer would welcome such an intrusion by the bank. What an awkward and potentially insulting conversation from the customer's viewpoint! If the customer has already affirmatively opted in to the bank's payment of overdrafts via ATM and one-time debit card transactions, why should they be contacted again after they have incurred overdrafts and be given a "reasonable opportunity to decide" (also subjective terminology) whether to continue? They have the right to opt out at any time.

Banks from a safety and soundness and risk management standpoint have reasons to monitor their overdraft programs. It should be at the bank's discretion whether to take any action in connection with a customer who may have excessive overdrafts – as determined by the bank, not by a "one size fits all" standard. The bank may feel it is appropriate to stop paying overdrafts, close the account, or reach out to the customer, but that should be the bank's decision – not forced upon us by guidance that is not based on regulation or law.

FDIC expects financial institutions to institute appropriate daily limits on overdraft fees.
This proposed guidance goes beyond current law. Missouri law contains no limits on what a bank may charge for an overdraft fee, and does not impose a daily limit. The marketplace should and does drive this issue. What is considered "appropriate" in the eyes of the FDIC? The FDIC states that such a limit will reduce customer costs. If the bank does not pay the overdraft and returns a check, the customer will still incur a non-sufficient funds fee at the bank and will also incur a returned check fee from the merchant. How does that reduce the customer's costs? If customers believe they are paying excessive amounts for overdrafts on a daily basis, they may

elect different options for overdraft protection, they may shop in the marketplace for another provider, or they may choose to act more responsibly in managing their funds. The FDIC should not mandate a set limit on overdraft fees.

FDIC expects financial institutions to not process transactions in a manner designed to maximize the cost to consumers. In the past there have been a number of ways to process paper checks; there was processing by high-low amounts, low-high amounts, and chronologically as the paper check appeared. In Missouri this was allowed by section 400.4-303(b) RSMo, where the bank is allowed to process the paper check in any order, except for certain legal processes. While chronological ordering based on the time of the check (or debit) receipt sounds reasonable, many more transactions than just checks can access accounts, and the technology is not perfect and continues to evolve. Customers have to understand that what appears as a "balance" at any given time may have transactions pending that will affect that balance and it is imperative that they keep track of every single transaction that will debit or credit their account. Our concern with this statement by the FDIC is the interpretation of "manner designed to maximize cost to customers" – each and every method of processing items can be criticized as the least fair to consumers from some perspective, and each and every method can be supported as the most fair to consumers from some perspective. Who gets to choose which is the most appropriate method - and what investment in core technology might be necessary to comply with the standards? As an independent bank we value the ability to make our own local business decisions that best suit our business strategy and our community's expectations, and would not like to see the processing order mandated.

The FDIC will take supervisory action where overdraft payment programs pose unacceptable safety and soundness or compliance management system risks or result in violations of laws or regulations, including unfair or deceptive acts or practices and fair lending laws. Banks of course are required to follow laws and obey them; the federal bank regulator is empowered to review the bank's action and criticize it. We do not believe overdraft payment programs per se pose unacceptable risk for safety and soundness or that they are designed to be detrimental to customers – especially in the community banking industry. If customers did not want these types of programs, they would have vanished long ago. While customers may disagree philosophically with the bank's payment of overdrafts, in many cases customers are relieved that the bank has covered their payment to avoid embarrassment and unwelcome consequences of having their check returned unpaid. And, in the end, the customer is responsible for prudent management of their finances. Community banks have a history of working with our clients to provide appropriate and reasonable services requested by our community. It seems unnecessary to punish all banks (including community banks) for the sins of predatory banks, who could more easily be dealt with on a case-by-case basis by their primary regulator.

Conclusion We believe community banks like ours respect their customers and have acted responsibly towards them. As we move into a new era with the Dodd-Frank Act, there are real issues about the amount of regulation (and the associated costs) a bank may absorb and stay in business. There is no perfect formula to make the overdraft go away, but financial education -- particularly at the high school level -- should help along with fair disclosure by the banks and personal responsibility from their customers. We strongly support consumer financial education and have been active in local efforts to promote financial literacy. The state of Missouri is one of three states that require a personal finance credit to meet high school graduation requirements, and many Missouri bankers have volunteered to assist high school teachers in educating their students. It is in everyone's best interests that bank customers are informed so they may make the best decisions to manage their finances. Any efforts by the FDIC in providing financial education to encourage responsible financial management by consumers would be welcomed.

We do not believe over-regulation of a particular aspect of banking (such as overdraft programs) is helpful to consumers in general. In fact, we believe the costs of regulation will force banks to make difficult decisions about the scope and price of financial products offered to consumers, resulting in ALL consumers having less choice and higher prices for basic services. As advocates of a healthy banking system that effectively supports our nation's financial well-being, we encourage the FDIC to think about the detrimental effects of the proposed guidance, and pull back to a more reasonable interagency stance that can be endorsed by the nation's community banks.

Thank you for your time and the consideration of our comments.

Respectfully,

Kim Barnes
Mike Imhoff
Tom Harris
Gary Meyerpeter
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Dave Shively

Members of Management and the Board of Directors,
The Callaway Bank