FIRST NATIONAL BANK TEXAS

James D. Dreibelbis
President

July 28, 2004

Mr. John D. Hawke, Jr.
Department of the Treasury
Office of the Comptroller of Currency
250 E Street, S.W.
Public Information Room, Mailstop 1-5
Washington, DC 20219

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Robert E. Feldman, Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

RE: Proposed Interagency Guidance on Overdraft Protection Programs
Docket No. OP-1198 (Federal Reserve System)
Docket No. 04-14 9 (Office of the Comptroller of Currency)

Proposed Regulation DD (Truth-In-Savings Act) Amendment
Docket No. R-1197

On behalf of First National Rank Texas, please accept this letter in response to the request for public commentary on the Proposed Interagency Guidance on Overdraft Protection Programs as referenced above and as jointly published in the Federal Register on June 7, 2004, by the OCC, FRB, FDIC, OTS and NCUA. We also appreciate the opportunity to provide commentary on the closely related topics addressed in the proposed amendments to Regulation DD. The comments below reflect our underlying concern that much of what is proposed in the guidance is simply additional regulatory burden wherein a determination of need has not been fully developed and established. Said regulatory burden will ultimately serve to inflate the cost of this service to the consumer while providing the consumer with no meaningful benefit or available alternative.

- The proposed guidance specifically provides that overdrawn balances should be charged-off within 30 days from the date first overdrawn. **We suggest 90 days which is still well below the 120 days allowed for loans and half the 180 days allowable for credit card accounts <u>and</u> lines of credit tied to checking accounts that only require minimum payments as opposed to repayment in full.**
    - The proposed guidance of 30 days does not allow the consumer adequate time to correct the situation that may include periods of short interruptions in income due to mistake, temporary seizure or unemployment.
    - Additional expense will be incurred by financial institutions since many overdrafts over 30 days are ultimately cleared by the consumer. Financial institutions that use third party collection agencies will also incur costs to collect overdrafts that would otherwise be paid if not charged-off.
    - Additional expense will fall to the consumer to reactivate their account with the financial institution once the overdraft is cleared to include:
        - The collection fee assessed on the account at the time of charge-off
        - The cost of a new order of checks
        - The fee for issuance of a new debit card
    - The consumer's credit record will be negatively impacted by the reporting of the charge-off to all major credit reporting agencies.
    - The proposed guidance clearly provides for disparate treatment between financial institutions and credit unions (30 days vs. **45** days).

- The proposed guidance specifically states that the existence of an extended repayment plan would not extend the charge-off determination period beyond 30 days from the date of overdraft. **This would adversely impact a consumer's ability to cure the balance and regain control of his or her checking account while building credit through a payment plan for the overdraft.**
    - Absent a repayment option, the consumer may be unable to repay the overdrawn balance save and except by returning to the overdraft once their pay is deposited, thus perpetuating the cycle and causing the consumer to pay additional NSF fees. A loan to repay the overdraft allows the consumer to keep his or her checking account open while repaying the overdraft apart from the checking account under monthly terms that are affordable.
    - Charge-off of the overdraft balance while the consumer is making a bona fide attempt to repay the overdraft negatively impacts the consumer's retail credit report all while the consumer tries to rectify the balance due the financial institution.
    - The proposed guidance presumes that no underwriting occurs for the extended repayment plan. These plans should be underwritten using appropriate lending guidelines resulting in a signed note with specific repayment terms. All loans of this nature would then be subjected to the same management and reporting standards as all other loans at the financial institution.

- The proposed guidance specifically provides that the available amount of overdraft protection should be reported as "unused commitments" in regulatory reporting if the amount is "routinely" communicated to the consumer. **The statement lacks specificity sufficient to determine what means of communication is being referred to and what frequency would constitute "routine". Additionally, since the payment of any item is in the financial institution's discretion, the amount of systematic coding on an account does not constitute a commitment on the financial institutions part that should be reported.**

507 North Gray Street **P.O. Box 937** Killeen, **Texas 76540** **Ph: (254) 554-4252** **Fax: (254) 554-4289**

- The proposed guidance suggests a "Best Practice" is to include the dollar amount of the overdraft fee in all materials that "mention" overdraft programs. A single brochure with all fees disclosed provides greater timeliness and accuracy of information as well as greater efficiencies for financial institutions.
    - Consumers are referred by all product brochures to one fee brochure to negate the need for multiple brochure updates when fees change.

- The proposed guidance suggests a "Best Practice" is to provide the consumer with an "election or opt-out" feature. Opting-out would ultimately harm the consumer at the point the service is actually needed thus consumers prefer a financial institution pay the NSF item regardless of whether it was knowingly or mistakenly issued against insufficient funds.
    - If a consumer where to opt-out at the time the account was opened, the consumer will be negatively impacted in the following ways at a point later when he or she might not even recall the action had been taken.
        - The fee for payment or return by the financial institution of each NSF item is the same in most cases making it no less costly for return of the item.
        - Returned items cause the consumer to incur the following additional consequences:
            - Merchant fees for the returned item
            - Multiple fees associated with the Merchant's multiple presentment of the same item in an attempt to collect it from the financial institution
            - Negative report by the merchant to check approval data bases
            - Possibility of criminal prosecution

- The proposed guidance suggests a "Best Practice" is to alert the consumer before a non-check transaction triggers any fees. This suggested practice is not possible given the various means of presenting items as well as the move to convert checks to electronic payments.
    - In the case of ACH, POS or online bill payment items, it is not feasible to notify the consumer prior to payment. Return would cause the same charge to apply to the consumer's account with additional penalty impact to the consumer from the merchant or creditor as aforementioned.
    - Return of the electronic item by the financial institution may also cause cancellation of insurance policies, reoccurring payment arrangements and/or memberships.

- The proposed guidance suggests a "Best Practice where feasible" is to alert the consumer in advance if the institution plans to terminate or suspend the consumer's access. The financial institution's obligation to pay or return an NSF item is discretionary and is determined on a case by case basis when an item is presented for payment. Overdraft protection should be disclosed in the depositor's agreement as being offered only at the sole discretion of the financial institution.

- The proposed guidance suggests a "Best Practice" is to consider limiting the number of overdraft items paid daily or a daily limit on the number or amount of fees that will be charged against any one account while continuing to provide coverage. The financial institution nor the consumer can control the timing of the presentment of items. The financial institution incurs costs for every item it handles for the consumer regardless of the timing of presentment.

- The proposed amendment to Regulation DD concerning overdraft fees would require that financial institutions provide the consumer with aggregated monthly and year-to-date totals of NSF fees paid as well as differentiating between overdraft fees and return item fees.
    - These proposed changes would require every financial institution to make extensive modification to its operating system at great expense in order to provide information to the consumer that is already available for their personal calculation.
    - Financial institutions should only be required to differentiate overdraft fees from return item fees if the financial institution has differing charges for each action.
    - The relevant information concerning each NSF item charge is on the consumer's financial institution statement on the date incurred and is available for cumulative calculation by the consumer should it be information sought or found useful. It is also reflected on all NSF or overdraft notices sent to the consumer.
    - The fees assessed not only recover some of the expense incurred in handling NSF items, but also serves as a deterrent to those customers who would otherwise choose to perform transactions that result in an NSF item charge.

First National Bank Texas appreciates the opportunity to comment on the proposed guidance. I would be happy to discuss this matter more fully with your staff or to testify before any of the agencies should you so desire. I strongly urge all of the agencies to consider the burden that the proposed guidance will place on financial institutions while ultimately providing no benefit to the consumer. Accordingly, I request that the Proposed Guidance be withdrawn or at a minimum revised and republished for public comment.

Sincerely,

James D Dreibelbis

James D. (Jay) Dreibelbis