Telephone: 216/689-4107
Facsimile: 216/689-4121

August 4, 2004

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th and C Streets, N.W.
Washington, DC 20551

RE: Comments to Overdraft Protection Guidance (Docket No. OP-1198) and Amendments to Regulation DD (Docket No. R-1197)

Dear Ms. Johnson:

Key appreciates the opportunity to comment on the proposed Overdraft Protection Guidance ("Guidance") and the proposed amendments to Regulation DD ("Amendments"). Since the Guidance and Amendments are so closely related, Key is submitting a joint comment.

About Key

Cleveland-based KeyCorp ("Key") is one of the nation's largest bank-based financial services companies, with assets of approximately $86 billion. Key companies provide investment management, retail and commercial banking, consumer finance, and investment banking products and services to individuals and companies throughout the United States and, for certain businesses, internationally. The company's businesses deliver their products and services through branches and offices and a network of approximately 2,200 ATMs.

General Comments on Guidance

Key wholeheartedly agrees that overdraft programs should be managed through adequate policies and prudent risk management. Further, Key agrees that consumers should be aware of the costs and limitations of overdraft services, and the services should not be promoted to encourage customer misuse. However, Key disagrees with the characterization of overdraft protection as "short-term credit facilities". At Key, (and virtually every financial institution), overdraft services are discretionary. This is clearly disclosed in our deposit agreement. The discretionary payment of an overdraft does not convert the service into a contractual commitment to advance funds in the future. A contractual commitment is the defining feature of a credit facility, and is absent from discretionary overdraft services. This mischaracterization leads to customer confusion (which both the Guidance and Amendments seek to avoid) as well as uncertainty regarding reporting of "unused commitments".

Comments on Safety and Soundness

The Guidance requires that overdraft balances should generally be charged-off within thirty (30) days from the date of the first overdraft. Key believes this proposal is unnecessarily restrictive and will adversely affect consumers. Charge-offs of overdrafts are routinely reported to credit bureaus. Prematurely charging-off an overdraft will result in negative information appearing on consumers' reports. Our experience indicates that some consumers clear overdrafts between thirty and sixty (30-60) days. In addition, some customers pay overdrafts through monthly automatic deposits. These deposits may not occur within thirty (30) days of the overdraft. These consumers would be hurt by the proposal. Key recommends that the agencies adopt a sixty (60) day charge-off period.

The proposal also indicates that institutions that "routinely communicate [] the available amount of overdraft protection to depositors should include these amounts as 'unused commitments' in regulatory reports." As indicated above, Key believes that agencies are mischaracterizing discretionary overdraft services as credit facilities.[1] The Guidance should clearly state that discretionary overdraft services are not subject to regulatory capital rules for unused commitments.

<u>Comments – Best Practices</u>

While Key believes that the Best Practices are well intentioned, Key is concerned that they will do more harm than good. Our concerns are based on several factors. First, the agencies have compiled the list from their observations of practices throughout the industry. While all of the elements are practiced collectively by financial institutions, Key submits that no institution can follow all of the practices. This is not the result of an unwillingness to adopt Best Practices, but rather by the variety of each institution's overdraft services and the limitations of their respective systems. Some of the suggested practices may be prohibitively expensive (such as obtaining affirmative consent), others may not be applicable to a particular institution's program (such as alerting consumers before a non-check transaction triggers any fees). At a minimum, Key urges the agencies to include a statement that institutions need only adopt those practices suited to their overdraft services, and the failure to adopt any of the practices should not be deemed an unfair or deceptive practice under state or federal law.

Second, Key is unaware of any prior issuances by the federal regulatory agencies of best practices. Ordinarily, the agencies propose clear and concise regulations to address particular concerns. Key believes that the proposed amendments to Regulation DD (with some changes discussed later) are the appropriate method for addressing consumer education and responsible use of overdraft protections services. The Guidance is, by design, very broad. Although the broad nature of the Guidance may

[1] Key recognizes that institutions are required to include unused *written* commitments in regulatory reports. These commitments are completely different from discretionary overdraft services in that the institution has committed in writing to extend credit to a borrower in the future.

provide financial institutions flexibility, it also leaves financial institutions exposed to varying interpretations by examiners and to potential litigation. For example, the Guidance recommends that financial institutions "explain to consumers the costs and advantages of various alternatives to overdraft protection program, and identify for consumers the risks and problems in relying on the program and the consequences of abuse". How much disclosure is enough? Are financial institutions to inform consumers that other alternatives are superior, when in fact they are not? For example, consumers that have not previously overdrawn their accounts, or only done so infrequently, may not be "advantaged" by a line of credit product with an annual fee.

Lastly, Key believes the Guidance and Best Practices do not clearly define the scope of their coverage. While the Guidance includes a list of characteristics that define overdraft programs, it is not clear whether the Guidance and Best Practices apply to institutions that *disclose* the programs, but do not *promote* them. Key believes that attempting to distinguish overdraft protection programs based on "promotion" is unworkable and will lead to more, not less, confusion in the marketplace.

Comments – Proposed Amendment to Regulation DD

General Comments.

Key supports the Board's objective of assuring adequate disclosure of overdraft services and preventing misleading advertisements. As noted above, Key believes these objectives are best addressed through clear and concise amendments to Regulation DD, as opposed to the broadly defined Best Practices set forth in the Guidance.

Suggested Modification to the Amendments.

Section 230.8(f)(3) of the proposed Amendments requires institutions to disclose in advertisements "[t]he time period by which the consumer must repay or cover any overdraft". This requirement is based on the confusion in both the Guidance and Amendments that overdraft services are credit facilities. They are not. Payment of overdrafts is discretionary, and therefore repayment is expected immediately. To imply that the customer has a period of time in which to repay the overdraft is contrary to the Board's objective of preventing misleading advertisements. We suggest the section be deleted.

Similarly, Key suggests that the disclosure in 230.8(f)(4) requiring disclosure of the "circumstances under which the institution would not pay an overdraft" be deleted. The proposed interpretation of 230.8(f)(4) suggests a short sentence identifying three reasons will suffice. The problem is that the reasons an institution may not pay an overdraft are nearly infinite. Customers may be confused by such a disclosure and mistakenly believe that an overdraft will automatically be paid if they comply with the disclosure, when in fact the overdraft is purely discretionary and may not be paid. Key does not believe that it is useful to list the hundreds of reasons that an overdraft may not be paid, and suggest that the requirement be dropped. Key believes that the proposed disclosures in 230.8(f)(1) and (2) more than adequately inform the customer of the consequences of an overdraft.

The Board also proposes to require additional disclosures on periodic statements. While Key recognizes that total amount of fees for the statement period and calendar year to date may be useful information for consumers, the costs of programming and reformatting statements will be significant. Key encourages the Board to give institutions at least one (1) year to implement these changes.

Finally, Key wants to express its complete support for the Board's longstanding practice of exempting overdraft services from Regulation Z. The fact that these services are discretionary clearly indicates that the associated fees are not finance charges. To impose credit disclosures for a deposit fee would only add further confusion to the issue. Furthermore, annual percentage rate disclosures under Regulation Z are ill suited for deposit fees. Key sees no reason for the Board to modify its position and impose another set of disclosures for these services on top of those in Regulation DD.

Thank you for the opportunity to comment.

Very truly yours,

Forrest F. Stanley
Senior Vice President and
Deputy General Counsel

FFS/laa