

Fidelity Bank

July 30, 2004

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.,
Washington, DC 20552

The logo for Fidelity Bank, featuring the word "Fidelity" in a large, bold, serif font, with the word "BANK" in a smaller, bold, sans-serif font directly underneath it.

Re: Attention: No. 2004-30
Overdraft Protection Guidance

Dear Sir or Madam:

Fidelity Bank, a federal savings association headquartered in Wichita, Kansas with over \$1.6 billion in assets, offers an overdraft privilege service to all personal and small business checking customers. Our service is offered to all eligible checking accounts that have been open for at least thirty days and are in good standing by the depositor, and no application from or agreement by the account holder is required to take advantage of the service. As with most of the financial institutions across the country, Fidelity Bank has always exercised discretion with respect to the payment of overdraft items. Our recent attempt to clarify our operational process by formally disclosing overdraft limits, has been extremely well received by customers, generating hundred's of positive comments from individuals who have been grateful for our decision to pay an overdraft item rather than returning the check to the merchant, resulting in additional fees.

This service is quite popular with our customers. We believe its popularity is due to the fact that we have gone to great lengths to fully disclose our process to the customers, and we are committed to administering the program in such a manner that promotes sound banking principals and encourages responsible consumer behavior. Because this is such an important service to our customers, we appreciate the opportunity to respond to the Proposed Overdraft Protection Guidance. Although we understand the Board's desire to protect the consumer from programs designed to mislead customers, we have a number of concerns with the Proposed Guidance and have outlined these issues below.

Comments concerning 30-day charge off proposal – We believe the 30-day time frame for charge-offs is too short. Our current back office process is based upon a 60-day charge-off period. This process has produced outstanding results and has posed no risk to this institution from a safety and soundness perspective. We have found that our success rate in the collection of overdrafts has gone from 30% where the overdraft is charged off within 30 days, to over 80%, where the account is not charge off for an additional 30 days. Limiting the charge-off period to 30 days does not take into account that the average consumer gets paid every 2 weeks or a least monthly. This factor must be considered when establishing a reasonable charge-off timeframe. It is our opinion that a

well-run collection process and the extension of the charge-off period to a minimum of 60 days actually reduces, not increases, the potential financial loss to the institution.

Comments concerning unused commitments – We strongly disagree with reporting the available amount of overdraft protection as an “unused commitment.” A commitment is defined as an obligation, an agreement or a pledge to do something in the future. Our overdraft privilege service is purely discretionary and in no way meets the definition of a commitment to pay. Even with improved automation to identify those check items that require a pay/return decision and/or automation that helps define a customer’s overdraft limit, we are not in any way eliminating our discretion when deciding to pay or return an overdraft item. The discretionary aspect of our service is well disclosed in every brochure and product disclosure. By simply communicating the available amount of the overdraft privilege to the customer, we are certainly not committing to pay any overdraft. Consequently, this requirement will only create unnecessary paperwork and will serve no real purpose, especially since less than 7% of our customers actually use the service at any given time. Such reporting would grossly overstate the risk to this financial institution.

Comments concerning notices upon first and subsequent overdrafts - Like most all financial institutions across the country, Fidelity Bank always provides prompt notification to customers regarding paid or returned overdraft items, along with a complete summary of all charges incurred. The proposed guidelines suggest modifying this standard process requiring banks to accumulate and report aggregate charges on a monthly basis. This would require considerable system programming, resulting in unnecessary expense for financial institutions and would simply be a restatement of the information already provided. We can find no good reason to modify our existing approach and are very much against the proposed guidelines outlined in the Interagency Guidance.

Comments concerning customer alerts before a non-check transaction triggers any fees– We have given this suggestion serious thought, and believe this to be a programmatic nightmare. Even if this didn’t require sophisticated programming and the use of automation, ensuring proper written notifications at ATMs and POS terminals may not always be feasible. Currently, we clearly post the customer’s available balance and the ledger balance at our ATM’s and at every inquiry point, notifying them of the balance from which we agree to authorize payment. This has eliminated confusion and our customers view this as a straightforward approach to managing their account balance.

Comments concerning limiting the daily number/amount of overdraft fees – We strongly disagree that there should be a cap on overdraft fees. Each time we agree to pay a check rather than return the item, we are saving the customer from the possible inconvenience of retailer/payee fees, late charges and negative credit implications. Since there is no discussion on assigning limits to merchants, retailers and other payees for returned items, this one-sided action against financial institutions will only lead to added cost and inconvenience for the consumer.

Comments concerning an opt-out agreement – The proposal suggests that each depository institution now disclose that overdrafts may be paid and request each and every customer to opt out of the service. We fail to see any added value by implementing such a policy. At the time the account is opened, customers currently receive disclosures outlining the bank's discretion in the payment of overdrafts. Customers also receive a complete list of all banking fees, including the fee for the payment of or the return of overdraft items. Regardless of whether or not we pay or return the check, the customer will still incur the same fee when he or she chooses to write a check for more than his/her balance will cover. We agree that the consumer should have the right to inform the bank that he/she would rather have insufficient checks returned to merchants than paid by the bank. However, we fail to see the value in forcing every customer to opt-out of the process rather than handling customer requests on a case-by-case basis. Once again, it is this bank's position that paying an insufficient check as opposed to returning the check to the merchant/payee saves the customer considerable time, expense and embarrassment.

Comments concerning the discretionary nature of the program – We firmly agree that all disclosure information should enforce the discretionary nature of the bank's overdraft handling process. We even go as far as describing the broad circumstances under which the bank would no longer agree to pay an insufficient check. Therefore, by trying to identify the specific circumstances under which the bank would refuse to pay an insufficient check, the bank would in fact be implying that all checks would be paid in the absence of the criteria set forth. Such specific criteria would seem to fly in the face of complete discretion and could cause considerable confusion on the part of the customer.

Thank you for the opportunity to submit our comments on the Proposal to the Agencies. We would be happy to answer any questions the Agencies might have regarding our comments.

Sincerely,



Michele Kyle
SVP Retail Banking
Fidelity Bank
Wichita, KS