

May 26, 2010

FDIC

Re: "Proposed Templates for Safe, Low-Cost Transactional and Basic Savings Accounts"

Submitted via email to: SafeAccountTemplateComments@fdic.gov

Ladies and Gentlemen:

This comment letter is submitted by a concerned citizen, who also happens to be an executive of a small bank in the United States, concerning FDIC's "Proposed Templates for Safe, Low-Cost Transactional and Basic Savings Accounts."

Introduction

FDIC should immediately reverse course and withdraw its paternalistic proposal. FDIC's proposal greatly oversteps its authority, and is an attempt to exert further control over the economy of the United States. Financial institutions have determined that unbanked and underbanked markets are generally unprofitable, a fact which FDIC chooses to ignore. FDIC's proper role in price-fixing, setting fee amounts, and determining what rates are "competitive," is and should remain non-existent. FDIC's attempt to define what is or is not "competitive" is a logical paradox, and laughably Orwellian. The "flexibility" admonishment in relaxing identity verification standards flies in the face of U.S. law. The unbanked and underbanked market segment, while including some law-abiding citizens, also represents the underbelly of society, as opposed to an untapped and desirable target market. Criminals (both domestic and international), illegal aliens, smugglers, and various persons who should be denied access to the banking system would greatly benefit from FDIC's proposal. Further, many law-abiding citizens have made perfectly reasonable decisions (of their own free will) that they have no interest in using financial institutions, and FDIC is not tasked with overturning the decisions of the citizenry. FDIC should withdraw its proposal and lawmakers should reevaluate FDIC's ability to propose such mandates which are radically outside the bounds of FDIC's authority.

Underbanked Means Unprofitable

FDIC misleadingly states in its introduction that *"A survey of banks released by the FDIC last year also revealed that three quarters of banks are aware of significant underserved populations in their market area, but less than one-fifth had targeted these markets as a strategic priority."* Any banker can tell you the simple and rather obvious reason for that fact: underserved populations represent unprofitable relationships, to a very great extent. FDIC forgets that financial institutions exist not to provide a public service but to earn profits for their shareholders. Financial institutions, through the forces of the market, constantly strive to reach potentially-profitable untapped markets. The low number of financial institution relationships in that market is proof positive of the segment's unprofitable nature. Various studies and figures touted by FDIC may suggest otherwise, but these are nothing more than anecdotal propaganda generated in advance contemplation of this consumerist agenda. Those who have studied this area, including bankers and even some FDIC employees, can verify that all efforts to cater to this segment have resulted in failure as concerns *profitability*. For instance, a president of a Latino-owned bank explained that his three-year effort to cater to the underbanked in California, through the opening of a multilingual branch designed for an underbanked census tract, had cost an incalculably vast amount of time, effort, and resources, and had remained a total failure, both in terms of profit and the opening of new accounts. In his words, the underbanked population in that region do not trust banks; do not

want bank accounts; and will not use bank accounts; no matter what he does to try to attract them.

FDIC's authority to price-fix

FDIC and other regulators should have no role in determining the amount of fees financial institutions can collect by contract with their customers. FDIC states in its introduction that a "guiding principle" in product development would be that accounts must have "low and transparent fees." Alarming, it goes a great leap further in its actual template, stating that the monthly maintenance service charge must be zero. FDIC's actual template says the charge must be, literally, "No fee." FDIC's proposal would mean an institution could suffer expenses (such as the per-account fee which institutions pay to their software providers monthly for each account on the books) indefinitely for a customer whose balance was \$20 or even less. The templates go on to state that a bewildering variety of other services and features traditionally subject to modest fees must instead be subject to "no fee," including but not limited to online banking, mobile banking, telephone banking, electronic funds transfers, and automatic funds transfers between accounts, etc. FDIC appears to have no appreciation or awareness of the fact that financial institutions depend on revenue and income to survive. Further, their proposal sets the stage for FDIC to allege that institutions engage in discrimination, should financial institutions attempt to provide just *some* customers with so-called "safe, low cost" accounts, while providing other customers with traditional accounts.

FDIC suggests that charges for money orders, check-cashing, bill payment, wire transfers, and international remittances be limited to a "competitive market rate." It also suggests that for savings accounts, the accounts must be interest-bearing with a "competitive/market rate." This proposal is intentionally deceptive in its simplicity, as it would be FDIC's prerogative to later issue, without public comment, guidance as to how such rates and charges should be determined. FDIC has no authority to set or limit market rates or fees, or engage in any other form of price-fixing. If it infers that it does have such authority, such authority should be challenged and ultimately removed by lawmakers.

The upheaval caused by overdraft reform

Incredibly, FDIC suggests that for such accounts "overdrafts are not permitted and NSF fees are not assessed by the institution." On the heels of massive overdraft regulatory reform, which is in the process of eliminating up to 50% of service charge income received by the industry by its effective date of July 1st, 2010, FDIC would be severely misguided should it attempt to control or limit the amount of monthly service charges that financial institutions can collect through mutual agreement with their customers. Does the FDIC fantasize that financial institutions can operate without income? Or does income even factor into FDIC's considerations? FDIC has no authority to reduce or limit industry income; its interference in the natural movements of the market may well contribute to economic collapse.

Nonexistence of "Flexibility" in Verifying Identity

In the absence of an amendment to the regulation, institutions would be foolish to "apply latitude and flexibility" as concerns their Customer Identification Programs. FDIC's statement that such flexibility can be "as permitted by law" is an oxymoron, since the CIP regulation permits no such flexibility. Institutions are required by regulation to obtain *and verify* personally-identifiable information about new customers, which is basic and limited to: full name, date of birth, Taxpayer Identification Number, and physical address; they are further directed to obtain the type, number, issue date, and expiration date of an unexpired government-issued identification such as a driver's license or passport. There is no justifiable

or lawful reason to reduce these requirements. No institution would be willing to relax their requirements in the absence of extremely specific and detailed legal or regulatory instructions to do so, such as by means of an amended regulation. The market segment that lacks verifiable identities includes an unknowable number of drug traffickers, persons who have violated the immigration and tax laws of the U.S., and various other criminals. Does the FDIC imagine that these persons need even more unfettered access to the banking system?

Underbanked Includes Underbelly

FDIC bemoans the fact that up to one-quarter of U.S. households have chosen not to have a current bank account. Bankers are well aware that this market includes many members of the underbelly of society, such as:

- Persons whose income is derived from criminal activity, including but not limited to drug trafficking, arms trafficking, human slavery/forced prostitution, armed robbery, theft, human trafficking, and fraud
- Members of international criminal groups, both those on suspect lists and those who have yet to be identified
- Persons engaged in tax evasion who avoid financial accounts in order to avoid detection
- Former customers who owe large unpaid debts to between one and several financial institutions
- Fraudsters who open accounts for the sole purposes of committing financial crimes
- Unemployed persons who have no source of income with which to maintain an account
- Undocumented and unlawful immigrants who have entered the country illegally, and who lack any form of unexpired government-issued identification, and who are therefore prohibited by law and FDIC rules from obtaining an account at any U.S. financial institution (31 CFR 103.121)

Law-Abiding Citizens Who Choose Not to Use Banks

Additionally there are many law-abiding U.S. citizens who have chosen, and will continue to choose, to not use financial institutions. Some know that in certain situations their bank records can be obtained without subpoena or due process, such as through the use of the USA PATRIOT Act's section 314(a). In that process, bankers must 'give up' the names of their customers, without any court's approval, if a law enforcement agent asserts to the Treasury Department's FinCEN that a named subject is a person of interest in a current investigation.

Even law-abiding citizens may fear the objective Currency Transaction Report (CTR) and totally subjective Suspicious Activity Report (SAR) which is made available to federal law enforcement agencies like the Federal Bureau of Investigations (FBI), Internal Revenue Service (IRS), the U.S. Secret Service, Drug Enforcement Agency (DEA), Immigrations and Customs Enforcement (ICE) and all divisions of Homeland Security, etc.

Even beyond that segment, there are numerous other fine, upstanding and law-abiding U.S. Citizens who simply do not wish, now or ever, to have a bank account. Some people prefer the "cash under the mattress" method of saving passed down from their grandparents who survived the 1920s and 30s. The reasons a person might choose not to use the banking system (or indeed, may never have the thought of opening a bank account cross their minds) are both endless and irrelevant to the purpose of the existence of the FDIC. It is not the FDIC's place, through further throttling regulations on the industry, to attempt to force banking onto any persons of sound mind who choose, through their own free will and for reasons entirely their own, not to use banks.

Conclusion

FDIC should withdraw its proposal and lawmakers should reevaluate FDIC's authority to issue guidance of this nature or to interfere in the effective functioning of the economy.

Sincerely,

A Concerned Citizen