



December 18, 2006

Mr. Steve Hanft
Legal Division
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: Study of Overdraft Protection Programs

Dear Mr. Hanft:

America's Community Bankers (ACB) appreciates the opportunity to provide comments on a draft survey designed by the Federal Deposit Insurance Corporation (FDIC) to collect information on the "features and effects" of overdraft protection products offered by state nonmember financial institutions. ACB received the survey on October 30, 2006 after a request to the FDIC, but the survey was not included in the FDIC's original request for comment on an information collection published in the Federal Register on August 16, 2006.

ACB Position

ACB is concerned that the draft overdraft protection survey suggests a regulatory bias against all overdraft protection programs. The FDIC's objective in collecting the proposed information is not clear and not discussed in the Federal Register notice. As a general matter, well-designed, fully disclosed overdraft protection programs that are consistent with regulatory guidance and represent best practices provide value to consumers. We are aware that certain practices in the market are not ideal and we are committed to working with the banking agencies to eradicate such practices. However, we are concerned that further restrictions on overdraft protection programs will have the unintended consequence of driving a legitimate banking service out of regulated institutions into unregulated entities.

Overdraft services may be discretionary or offered as part of a menu that includes overdraft lines of credit or linked account features. In addition to providing a customer service, good overdraft protection programs ensure that customers are given complete and accurate materials describing an institution's overdraft protection program as well as educational materials about financial management.

Customers benefit from courtesy overdraft programs by not having to pay a fee to the merchant in addition to the bank's insufficient funds fee. The customer can decide whether the fees charged for this service are worth the benefit of the overdraft protection. If a customer chooses to participate in an overdraft protection program and receives full disclosure as to the fees and the benefits of the program, the customer should not have that choice restricted.

Because the results of the draft survey to be filled out by a small group of banks could have far reaching effects on a much wider group of financial institutions, ACB believes it is critical for the FDIC's information collection to be relevant and reflective of current overdraft protection practices. Therefore, we believe the FDIC should publish the surveys for public comment and the FDIC Board should consider the information.

Even though depository institutions have long provided overdraft protection services, the federal banking regulators have exercised more active oversight over these programs in recent years. Amendments to the provision in Regulation DD governing overdraft protection programs went into effect less than five months ago. Furthermore, agency guidance on overdraft protection programs was issued in February 2005. We do not believe any survey on overdraft protections should request information that pre-dates the amendments to Regulation DD, as it is confusing to ask participants to report on past practices instead of practices that are currently required.

In addition, the survey presents a substantial burden on the financial institutions selected to participate. ACB is concerned about the scope of the survey as well as the amount of time that would be required for institutions to compile the requested information. We believe that completing the questionnaire would involve the participation of multiple departments within an institution and would take much longer to complete than the three hours estimated by the FDIC.

Our more detailed comments follow.

FDIC Overdraft Protection Survey – Part 1 Institutions Programs and Practices

The following suggestions highlight areas of concern to ACB:

- ACB recommends that any information collection limit its request for historical information to 2005 and forward. Regulatory policies have changed, and we believe the cost associated with gathering information about overdraft protection practices, expenses, fees, statistics and other information from 2002 to 2004 would outweigh any significant benefit to the FDIC.
- ACB recommends deleting questions related to the income and losses derived from paid and returned items that are drawn on insufficient funds. These questions appear to be outside the stated scope of the FDIC's survey, which is to study the features and consumer usage patterns of overdraft protection programs. If the FDIC elects not to delete these questions, we believe it is important to narrow the time span of these

questions to the years 2005 and 2006. Institutions may not have parsed fee income and losses for paid and returned items prior to the 2005 amendments to Regulation DD.

- ACB recommends that survey questions related to the amount of advertising in print, radio, or television be deleted. The relevance this information is unclear. Further, this information generally is not readily available to bank operations or compliance officials who would be in contact with the examiners conducting this survey. ACB does not believe the utility of the information would outweigh the burden of its collection.
- ACB recommends that questions regarding vendor compensation and related fee arrangements be removed. This information would not shed any light on consumer usage patterns of overdraft protection programs.

FDIC Overdraft Protection Survey – Part II Customer/Transactions Level Data Request

ACB has concerns about the time and effort required to comply with the three separate downloads required in Part II of the survey. The amount of information and, more importantly, the formats for that information, would require a significant expenditure of resources for some financial institutions. This expenditure would far exceed the 40 hours estimated in the notice, depending on the type of IT systems each bank uses.

Responding to the survey would require institutions to provide information to the FDIC that is not readily available. To provide all of the requested information, some institutions would need to request that their service provider develop a special report. This could be time consuming and costly.

In other cases, institutions would need to sift through multiple reports to respond to a specific data request. For instance, to provide information about accounts that receive Social Security benefits, institutions would need to pull all ACH transaction files, use the files to identify Social Security direct deposit accounts, and then compare those accounts to an overdraft activity file.

Many of the requested data downloads would be labor-intensive, and we question whether community banks could provide the requested information. As a result, we are uncertain as to whether the FDIC would receive sufficient data to conduct a meaningful study of overdraft protection programs.

Conclusion

Given the importance of the information to be collected by the FDIC on overdraft protection services, we request that the FDIC publish its proposed survey for public comment and that the FDIC Board consider the information. ACB would be pleased to work with the FDIC staff to

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develop a process that will provide the best information on overdraft protection without creating additional burden for financial institutions.

Sincerely,

A handwritten signature in cursive script, appearing to read "Patricia A. Milon".

Patricia A. Milon
Chief Legal Officer and Senior Vice President,
Regulatory Affairs