INDEPENDENT COMMUNITY BANKERS *of* AMERICA

February 28, 2007

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

Study of Overdraft Protection Programs

Dear Mr. Hanft:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to comment on the FDIC's proposed survey of current bank overdraft protection programs. According to the February 7 *Federal Register* announcement, the FDIC plans to survey approximately 500 state-chartered nonmember banks. Each bank will be asked a series of 88 questions about its overdraft policy and procedures. Approximately 100 of these banks will be selected for closer examination to obtain more detailed information. The FDIC plans to use automated data collection techniques where possible to minimize burden.

Overview of ICBA Comments

ICBA questions whether it is appropriate to survey banks about their overdraft protection programs at this time. Since interagency guidance and best practices for handling overdrafts is relatively recent, conducting this survey seems premature. ICBA is not aware of safety-and-soundness concerns or other problems that warrant this

[1] The Independent Community Bankers of America represents the largest constituency of community banks of all sizes and charter types in the nation, and is dedicated exclusively to representing the interests of the community banking industry. ICBA aggregates the power of its members to provide a voice for community banking interests in Washington, resources to enhance community bank education and marketability, and profitability options to help community banks compete in an ever-changing marketplace.

With nearly 5,000 members, representing more than 18,000 locations nationwide and employing over 268,000 Americans, ICBA members hold more than $908 billion in assets, $726 billion in deposits, and more than $619 billion in loans to consumers, small businesses and the agricultural community. For more information, visit ICBA's website at www.icba.org.

investigation. ICBA also believes this survey will be burdensome and may not produce useful results, especially since it is not clear what motivated the survey or what goals the information collection hopes to achieve. Before the next step is taken, it will be important for the FDIC to identify how banks will be selected for the survey and whether responding will be optional or mandatory. Finally, ICBA believes it is incorrect to presume automation can be used to collect the data, since the survey as designed may not be compatible with existing bank software programs. As a result, the only way to automate the data collection would require extensive revision and reprogramming of bank computer systems.

Need for Survey

ICBA believes that surveying bankers on overdraft protection programs may be premature. While banks have allowed customers to overdraw their accounts for almost as long as customers have had banking relationships, automated techniques to let customers who meet pre-set parameters overdraw their accounts is a relatively recent development. This use of technology drew attention to overdraft programs, prompting the federal banking agencies to propose guidelines for banks. Final interagency guidelines[2] were released in February 2005 to address safety and soundness considerations, legal risks and best practices for banks to consider. Separately, the Federal Reserve updated Regulation DD, which implements the Truth-in-Savings Act, to provide additional guidance on overdraft programs. The changes to the Federal Reserve's rule did not take effect until July 1, 2006 – less than one year ago.

As a result, it is too soon to survey bankers on overdraft program policies and procedures. Any data collected now would not present a clear and accurate picture since the recent changes have not had sufficient time to fully take effect. This is especially true if the survey follows the proposed format. While it would collect data about how a bank handles overdrafts, it does not take into account changes in policies and procedures that may have resulted from the recent guidance, nor does it distinguish between what preceded the guidance and what followed it. If a bank changed procedures as a result of the guidance, the survey would not reflect that change. This would produce misleading data.

While some might argue that data collected today would provide a baseline, because changes are still taking effect and because the data would indiscriminately combine information before and after the guidance was issued, it would not be an accurate baseline. In fact, burdens associated with collecting and reporting the information might cause some banks to eliminate overdraft protection programs, further skewing the usefulness of the data as a baseline. Since no data was collected before the guidelines were published or the applicable rule change, ICBA recommends that the proposed survey not be undertaken until enough time has passed to allow the changes to fully take effect.

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[2] *Joint Guidance on Overdraft Protection Programs*, see FIL-11-2005 issued by the FDIC February 18, 2005.

Moreover, there is nothing to indicate there are safety and soundness concerns or other problems that require such a burdensome collection of data. Neither the FDIC nor the other banking regulators have indicated any problems. The Interagency Guidelines and changes to the Federal Reserve rule affecting overdraft protection programs were issued to address any problems or concerns that may have existed, but nothing has indicated the guidelines did not do what they were designed to accomplish.

ICBA is also concerned that conducting such a survey indicates a bias against overdraft protection programs. Well-designed and properly disclosed overdraft protection programs can be a useful and beneficial customer service. For example, even though consumers are encouraged to regularly balance account statements, anecdotal evidence suggests those who do are the exception rather than the rule. Overdraft protection programs save those who have not properly balanced their account statements the embarrassment and expense of bouncing a check. Eliminating or discouraging overdraft protection programs, as the survey might do, would do these customers a disservice.

Need for Transparency

The FDIC has not published the survey or made it readily available to the public. Instead, interested parties must request a copy to review its content and format. As noted, ICBA believes that properly structured overdraft protection programs can benefit consumers. In fact, many bank customers find them useful for avoiding unnecessarily bouncing checks and the resulting fees and inconvenience. On the other hand, some consumer activists strongly oppose the programs and contend they should be banned or heavily restricted. Because this controversy surrounds overdraft protection programs, ICBA believes it would be more appropriate for the FDIC to publish the proposed survey or make it readily available on the agency's website to allow all interested parties to easily review and comment on it. At the same time, the FDIC should specify why it proposes the survey to allow interested parties to comment on the rationale for conducting the survey.

It is important to recognize that last year's Regulatory Relief Bill requires the banking agencies to carefully review data collected through Call Reports to ensure that the data collected is useful and necessary. Consistency with this Congressional mandate is another reason ICBA recommends the FDIC articulate the need for this data collection.

Regulatory Burden

The FDIC has not indicated whether banks must respond to the survey or whether providing the information is voluntary. Data collection can be very burdensome for all banks, but especially community banks. Therefore, ICBA believes it is important for the FDIC to clearly state whether the banks asked to respond to either phase of the survey are doing so voluntarily or under an agency mandate. Moreover, it would be helpful if the

FDIC indicated how the banks involved in either phase of the survey will be selected. Outlining that information would allow interested parties to provide suggestions or other comments.

ICBA is extremely concerned about the potential burden the survey will impose on community banks. The agency estimates it will only require three hours to respond to the first phase of the survey. ICBA finds this grossly underestimates the amount of time needed to respond. It is unlikely that many banks maintain the requested information in an easily accessed format. Therefore, the time needed to provide answers to many of the questions is likely to involve time-consuming manual review and collection of data from account records – requiring far beyond the amount of time estimated. For some community banks, that manual process may entail account-by-account review. One community banker suggested it might take 300 hours – at least – to collect the information for the first phase. For example, assembling the requested information on advertising and other costs associated with publicizing overdraft protection programs will require a great deal of research and effort to isolate the information to respond to the survey.

Moreover, the survey is structured in such a way that an answer is required for each and every item, even though questions may not apply. Reformatting to eliminate areas that do not apply to individual banks would make it somewhat easier and less burdensome. For example, the survey asks about "linked accounts." If a bank does not offer this service, then all questions dealing with linked accounts should be eliminated once the bank indicates it does not offer the service instead of entering no or not applicable for each and every question on linked accounts in the rest of the survey. While the survey may make sense from a data processing point of view, it will be slow and cumbersome for those putting together the information to respond.

The survey also makes certain assumptions that may not be appropriate. For example, the survey requests information about the order in which a bank processes checks for clearing. This presumes the bank has an established order for processing items without allowing for the possibility that items might be processed in the order presented or some other random system. This lack of flexibility or requiring an answer that may be incorrect could create flawed data that in turn would produce flawed policy decisions.

Since the FDIC has not articulated what it hopes to accomplish with this data collection or given other details about how the agency plans to conduct the survey, ICBA cannot suggest alternatives that might achieve the same goal that are less burdensome or more efficient. To address this issue, ICBA recommends that the FDIC meet with industry representatives to discuss the survey, explain the goals, and explore alternative ways to accomplish those goals.

Automation

The FDIC suggests it will use automation to collect the data where possible, but ICBA questions whether this is truly feasible. Requiring data to be provided electronically, especially for the second phase of the survey, could actually be costly and time-consuming for many banks. If a bank does not maintain information in the formats requested, providing it electronically will require software modification – involving possibly extensive revisions to existing software programs. And, since many community banks rely on third-party service providers, it will take time to contact outside service providers to have them revise programs to provide the data. To ensure data is requested in a format banks can easily supply without costly reconfiguration of existing software, ICBA again recommends the FDIC meet with industry representatives and software providers to determine whether existing programs can be easily used to provide the information the FDIC seeks.

Conclusion

Before moving forward, ICBA strongly recommends that the FDIC clearly explain why it plans to conduct the survey and that the agency work with interested parties, especially industry representatives. This would help the FDIC find ways to collect the data in the most effective and efficient manner. As currently proposed, the survey could be a potentially burdensome and costly exercise for community banks but may not provide useful information. Fundamentally, ICBA is concerned the survey may discourage banks from continuing to offer what many consumers find to be a useful and beneficial product. To avoid these possible unintended consequences, ICBA recommends the agency work in collaboration with all interested parties.

Thank you for the opportunity to comment. If you have any questions or would like additional information, please contact the undersigned by telephone at 202-659-8111 or by e-mail at robert.rowe@icba.org.

Sincerely,

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