



March 9, 2007

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

Re: Study of Overdraft Protection Programs  
72 FR 5718 (February 7, 2007)

Dear Mr. Hanft:

America's Community Bankers (ACB)<sup>1</sup> appreciates the opportunity to provide comments on two draft surveys designed by the Federal Deposit Insurance Corporation (FDIC) to collect information regarding overdraft protection products offered by state nonmember financial institutions and the usage patterns of overdraft products among depositors in those institutions.<sup>2</sup> This information will be collected in two parts: a survey questionnaire that will be distributed to 500 state-chartered nonmember financial institutions and an additional micro-data collection in which more detailed information will be collected from up to 100 of these institutions. These draft surveys have been proposed following the FDIC's consideration of comments on earlier versions of the surveys. ACB submitted comments on the earlier drafts in a letter to the FDIC dated December 18, 2006.

The supporting statement the FDIC submitted to the Office of Management and Budget (OMB) regarding the surveys indicates that the FDIC has "little systemic information about the features of overdraft protection programs and how the features are related to the usage and the attendant accrual of fees." The FDIC states that, as a banking regulatory agency charged with monitoring bank compliance with consumer protection laws and regulations, the agency needs more information about overdraft protection programs and the usage of such programs in order to aid future policy making decisions.

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<sup>1</sup> America's Community Bankers is the national trade association committed to shaping the future of banking by being the innovative industry leader strengthening the competitive position of community banks. To learn more about ACB, visit [www.AmericasCommunityBankers.com](http://www.AmericasCommunityBankers.com).

<sup>2</sup> 72 Fed. Reg. 5718 (Feb. 7, 2007).

## **ACB Position**

ACB believes that the FDIC would benefit from improved public comments if the reason for this data collection was explained in further detail. The FDIC's primary mission is to insure customer deposits and ensure that banks operate in a sound and safe manner. The background information accompanying the proposed surveys does not demonstrate how any concerns regarding overdraft protection products relates to bank safety and soundness. As with the earlier drafts, the revised surveys were not published for comment in the Federal Register. Instead, the information could only be found on the OMB website or by making a telephone call to the FDIC.

Moreover, ACB is concerned that the draft overdraft protection surveys suggest a regulatory bias against all overdraft protection programs. As a general matter, well-designed, fully disclosed overdraft protection programs that are consistent with the existing regulatory guidance and represent best practices provide value to consumers. While certain practices by a few institutions are not ideal, 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 and into unregulated entities.

ACB is very appreciative of the FDIC's improvements to the draft questionnaire and micro-data collections that were released in August 2006. Meaningful improvements were made to reflect the amendments to Regulation DD that went into effect on July 1, 2006 as well as the inter-agency guidance on overdraft protection programs that was issued in February 2005. We also appreciate that the FDIC worked with nine depository institutions to conduct a pilot test of the data collections.

While the surveys were improved, ACB remains very concerned about the time and costs associated with responding to the surveys as well as whether participation in the surveys is truly voluntary. Our specific comments follow.

## **Voluntary Participation**

Neither the survey questionnaire nor the micro-data collection states that responding to the data collection is voluntary. However, based on conversations with FDIC staff, ACB understands that institutions are not required to participate in the studies. Moreover, the Supporting Statement that the FDIC filed with OMB regarding this information collection implies that the surveys are optional. The Supporting Statement states that FDIC field staff will administer the questionnaire in order "to minimize burden on FDIC-supervised banks" and to "increase survey response rates."

We are concerned that community banks will not view the surveys as purely voluntary, particularly if the FDIC staff administers the survey questionnaire as part of the scheduled examination cycle. Accordingly, we request that the FDIC conspicuously state the voluntary nature of the questionnaire and the micro-data collection in the instruction and overview section of both documents. We also request that the FDIC ensure that there will not be retribution against institutions that elect not to participate in the surveys.

## **Regulatory Burden**

The questionnaire and the micro-data collection will impose a substantial burden on the financial institutions that will be selected to participate in the information collection. 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. ACB recognizes that the FDIC has reduced some portions of the information requested from the original surveys released last year. However, the surveys currently under consideration still would require a substantial commitment of time and resources by banks completing them.

The FDIC estimates that institutions will spend a cumulative 9,500 hours responding to the information collection – three hours per respondent to complete the questionnaire and 80 hours per respondent to complete the micro-data collection. We believe these estimates fall far short of the amount of time it will take institutions to prepare for the surveys, conduct internal research to answer the questions, format data, and complete the surveys.

Survey Questionnaire. The survey questionnaire asks for a summary of income from fees associated with NSF services for the period of 2002 to 2006. These questions are illustrative of the research required to completely answer the survey questions. The questions ask for detailed fee information, including total gross income from all fees related to non-sufficient funds (NSF) items, total gross income from paid NSF items, and total gross income from returned NSF items. Many institutions will have to conduct internal research to answer these questions because such detailed fee income information will not be readily available. If the questions must be included in the survey, they should be limited to the year 2006.

Institutions completing the questionnaire will also be required to spend substantial time researching the answers to the survey questions about advertising. The survey questionnaire inquires how many times the institution advertised in print, radio, or television in 2006 and of those ads, how many were primarily to promote the institution's overdraft protection program. The survey asks similar questions about the institution's customer mailings. The four questions on advertising alone could take a large percentage of the estimated three hours it will take institutions to complete the questionnaire. Due to the investigative work required, institutions may elect not to answer these questions.

Another troubling question asks, "In 2006, did the institution ever NOT cover an NSF item for a customer in good standing, where there were sufficient funds with the institution's policy limits?" It is not likely that the interviewee will be able to answer this type of question with any level of certainty, thereby requiring further research.

Micro-data Collection. The micro-data collection would require a large effort by respondents to provide information on every customer checking account to provide specific information in a specific format. The FDIC estimate of 80 hours per bank per survey is not sufficient. For example, one of the requirements is for each checking account to be assigned a unique identifier, a substantial burden if the bank does not already do so.

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.

## **Reimbursement**

Section A of the Supporting Statement filed with OMB states that “where necessary, the FDIC is willing to consider reimbursement of some or all of the costs required to ensure the validity and reliability of the micro-data collection.” ACB appreciates that the FDIC acknowledges the substantial cost to community banks that research and respond to the survey questionnaire and/or the micro-data collection. Completing the surveys has the potential to strain precious resources of community banks with limited compliance and operational resources.

ACB requests that the FDIC state its reimbursement policy in the instructions and introductory material to the survey questionnaire and the micro-data collection. We also request that the FDIC clarify the process by which an institution may request reimbursement and explain how the FDIC will evaluate such a request. The FDIC should respond to reimbursement requests in writing before an institution begins research and other preparations for responding to the survey questionnaire or the micro-data collection.

## **Transparency**

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 and record retention policies. Therefore, we believe the FDIC should publish the surveys for public comment and the FDIC Board should consider the comments formally before conducting the surveys.

Institutions that complete the questionnaire and/or the data download will invest many hours of staff time collecting information, formatting data, and completing the surveys. As a result, we believe that individual depository institutions may have an interest in viewing and providing feedback on the proposed surveys while they are still in draft form. Accordingly, we request the FDIC to make the surveys easier for the banking community to download and review. We specifically request that the FDIC post the draft surveys and supporting documentation on the agency’s website and allow additional time for industry comment.

## **Survey Results**

The results of the survey have the potential to influence public policy discussions and possibly the regulatory treatment of overdraft protection programs. Therefore, the survey results must be viewed in the context of other marketplace practices. To fully understand overdraft protection products, we strongly recommend that the FDIC further analyze the marketplace to determine other costs consumers would incur if a depository institution did not pay a check as part of an overdraft protection program. Such costs include, but are not limited to:

- Fees imposed by merchants if a check is returned unpaid.
- Late fees charged by utilities, landlords, and other entities.
- Effects of returned checks being reported to credit bureaus.

The FDIC should gather specific information regarding these costs in order to more fully understand consumer use of overdraft protection programs and how such programs compare to other market practices.

### **Conclusion**

Given the burden that will be imposed on banks selected to participate in the FDIC- administered overdraft surveys, we request that the FDIC review the surveys and eliminate questions that disproportionately add to the burden of the banks without providing a reasonable benefit. This could be achieved if the FDIC were to make the draft surveys easily accessible to the public by publishing the surveys in the Federal Register for notice and comment. ACB would be pleased to work with the FDIC staff to develop a process that will provide the best information on overdraft protection without creating additional burden for financial institutions.

Sincerely,



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

cc: Office of Information and Regulatory Affairs,  
Office of Management and Budget