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By electronic delivery

March 9, 2007

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

Study of Overdraft Protection Programs
72 *Federal Register* 5718, February 7, 2007

Dear Mr. Hanft,

The American Bankers Association (“ABA”) appreciates the opportunity to submit our comments to the Federal Deposit Insurance Corporation’s (“FDIC”) “final version” of a survey to collect information on the features and usage patterns of overdraft protection programs in state nonmember financial institutions. The notice and request for comment is required by the Paperwork Reduction Act of 1995 as a means to reduce paperwork and respondent burden.

The ABA, on behalf of the more than two million men and women who work in the nation’s banks, brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership--which includes community, regional and money center banks and holding companies, as well as savings associations, trust companies and savings banks--makes ABA the largest banking trade association in the country.

The final version of the survey is substantially the same as the draft version. The proposed survey is divided into two sections: Part I, “Institution Programs and Practices with questions about overdraft programs related to scope of services, income and losses, processing practices, program selection, policies, monitoring, information provided to consumers, fees, account coverage, and vendors; and Part II, “Customer/Transaction Data Request,” containing data fields related to information about personal and financial information about bank customers and their overdraft experience.

The survey will not reflect the value to consumers of paying overdrafts.

As noted in our October 16, 2006 letter commenting on the draft version, overdraft protection – in its various forms -- has saved innumerable consumers from countless occasions of embarrassment and expense due to unintentional overdrafts, whether by check, debit card, or through automatic electronic instructions. Not captured in any survey will be the value to the consumer of paying rather than returning an important item. Failure to pay in a timely fashion taxes, mortgages, car loan payments, credit card bills, and other bills have significant consequences to consumers, whether those bills are paid by check, by debit card, or through the automated clearing house. Banking customers want the peace of mind these programs afford and understand the trade-off between an overdraft fee and the double jeopardy of account NSF and merchant bounced check fees.

The survey is not necessary, will not reflect changes in overdraft experiences due to regulatory amendments, and is not justified pursuant to the Paperwork Reduction Act.

ABA and its members have encouraged the application of best practices in offering overdraft protection programs well before interagency guidance addressed this topic.¹ Indeed, the ABA booklet was recognized as a recommended reference by OTS for industry implementation of overdraft programs.²

As we noted in our earlier letter, ABA is unaware of any compliance examination experience that merits the scope of the proposed survey or data download. We do not believe that the FDIC or other EFIEC agencies have found through the examination process any indication that the overdraft program guidance they issued in 2005 has failed to have the desired supervisory impact. Nor has there been any suggestion of other compliance problems or safety and soundness concerns related to overdraft policies and programs.

We also believe that a survey based on 2006 data is premature because the data will straddle the periods before and after the Regulation DD amendments effective July 1, 2006 and thus not reflect changes to policies and experiences as a result of those amendments.

Given the lack of evidence that existing overdraft guidance is not

¹ See, Joint Guidance on Overdraft Protection Programs, 70 Federal Register 9127 (February 24, 2005) and Guidance on Overdraft Protection Programs, 70 Federal Register 8428 (February 18, 2005 together Interagency Guidance.”

² See OTS Guidance on Overdraft Protection Programs, ~. at 8429, “For savings associations interested in further reading on best practices, OT5 recommends an American Bankers Association publication entitled, Overdraft Protection A Guide for Bankers.”

satisfactory and the fact that the time period will not capture any changes due to regulatory changes effective July 2006, we believe that collection of the data is inconsistent with the intent of the Paperwork Reduction Act. The purpose of that statute is to prevent federal agencies from “fishing around” and imposing paperwork and other burdens on private sector institutions absent a compelling agency need or reason. We do not believe that the FDIC has demonstrated such a need or justification.

In summary, ABA urges the Office of Management and Budget not to approve the proposed survey at this time.

Sincerely,

Nessa Eileen Feddis