American Bankers Association
Building Success. Together.

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By electronic delivery

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Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: Templates for Safe, Low-cost Transactional and Basic Savings Accounts

To Whom It May Concern:

The American Bankers Association (ABA)[1] appreciates the opportunity to comment on the Federal Deposit Insurance Corporation's (the FDIC) Proposed Templates for Safe, Low-Cost Transactional and Basic Savings Accounts (Templates).[2] These Templates include "potential features for safe, low-cost transactional and basic savings account products for low- and moderate-income (LMI) consumers."

ABA and its members share the goal of the FDIC's Advisory Committee on Economic Inclusion to expand the market for sustainable banking services to consumers of financial services, including LMI individuals. Bankers are actively engaged in serving the LMI market and aspire to follow the guiding principles expressed by the Committee when doing so. Unfortunately, ABA concludes that the Templates fail to address the realities needed to articulate a flexible, viable and sustainable business case for many of the communities and LMI market segments that our members currently serve and those they seek to serve.

For the reasons discussed below, ABA does not support the prescribed terms of the proposed Templates. As proposed, the Templates would not be economically viable or sustainable for insured financial institutions, as the proposed account features would not allow the accounts to pay for themselves. Consequently, the proposed accounts would need to be underwritten or subsidized by the institutions or other accountholders. To be economically feasible, consideration of realistic "all-in costs" of providing these accounts to LMI consumers would be necessary.

ABA's concerns go beyond the particular terms of the proposed Templates to identify shortcomings of the "Template" approach:

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[1] The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $13 trillion banking industry and its two million employees.

[2] *See* FDIC Press Release, *FDIC Seeks Public Comment on Templates for Safe, Low-cost Transactional and Basic Savings Accounts* (May 7, 2010) at: http://www.fdic.gov/news/news/press/2010/pr10104.html.

1. **A template suggests a cookie cutter approach that assumes a "plain vanilla" solution for what is a diverse market of needs and demand for varied services.** Templates suggest an inflexible "one-size-fits-all" approach.
2. The needs of LMI individuals or families vary along geographic, ethnic, educational, employment, economic and age criteria. The Template approach ignores these many variations. Increasing numbers of college graduates entering the market are doing so at entry level jobs that are likely in the LMI segment of their local markets. Other members of this income tranche are also members of ethnic emerging markets whose desire for particular services vary from those of LMI individuals with different backgrounds.
3. The LMI population is not even income monolithic.[3] The interests and capacities of those at 78 percent of area median income are much closer to those middle-income consumers at 82 percent of area median income than either are to those earning only 50 percent of area median income. It is generally recognized that housing affordability is a much different reality for moderate-income families than it is for low-income families—a reality that obviously has ramifications for the needs of those different families for transactional accounts.
4. LMI individuals and families are regularly receiving services from the banking sector as evidenced by the track record of banks examined under the Community Reinvestment Act.[4] Many LMI individuals and families are making responsible use of existing transactional accounts. **Consumers are not looking for a limited- feature, plain vanilla account that the government believes they should be steered to for their own protection just because they are LMI.**
5. Using a "safety" label to distinguish Template products from other insured products is misleading. As the FDIC states in its *Never Lose a Penny* Brochure, **"[s]tay within FDIC limits and your deposit accounts are 100% safe and secure."**[5] An FDIC initiative should not convert the "safety" of insured accounts upon which its reputation and mission are based into marketing to sell Template

[3] Although the Templates do not define the contemplated meaning of low- and moderate-income "consumers", a common definition of these income tranches is the Community Reinvestment Act (CRA) regulations. *See* 12 CFR 228.12(m), that defines low-income as individual income that is less than 50 percent of the area median income, and moderate-income as at least 50 percent and less than 80 percent of the area median income.

[4] The CRA regulation directly measures bank service to LMI populations and it is reported in every bank's CRA examination public evaluation as found at http://www.ffiec.gov/cra/examinations.htm#PUB_EVAL. Credit and retail services to LMI families is a fundamental measure of bank CRA performance and includes not only loan products, but deposit products, banking by telephone or computer, and debit cards as part of electronic banking systems. Proposals for fine-tuning measures for retail services are part of the policy discussion on CRA reform, but they are not intended to limit how banks make available mainstream products to LMI families or to limit LMI consumers (whoever they may be and independent of their individual express needs and capacities) to a particular government-designed or endorsed- product template promoted, offered or assigned to them on the basis of their income status.

[5] *See* http://www.fdic.gov/regulations/resources/brochures/PennyBrochure_English.pdf.

products that are no safer than any other insured depository system account when used within the FDIC limits.

6. Templates that set prices or price ranges as proposed beg the question of how such prices are arrived at for different market segments and why marginal differences transform one product from being within the government-endorsed Template and another is not. What is the material difference between a $1 minimum balance and a $5 dollar minimum balance or another minimum balance when it comes to meeting the principles that the initiative seeks to promote? All that such and similar pricing requirements will do is inhibit bank participation.
7. The Government should not be in the product design and endorsement business. We know from the regulatory safe harbor experience that the Government thumb on the scale of what earns public imprimatur is an almost irresistible dictation of bank behavior—especially for compliance risk averse community banks. Such endorsements are contrary to the real solution to LMI service—the promotion of variety and individual initiative through competition. If there is a role for publicity then let private sector recommendations step up subject to the constraints of trade defamation and transparency of rating criteria and rater expertise. In this world of internet retail customer ratings, views on product utility are a public good voluntarily provided where the desirability of certain features can be evaluated on either an individual reviewer or aggregate basis and consumers can pick whomever's framework best suits their own perspective.

While ABA appreciates the dialogue generated by the Committee's exploration of the Template notion, ABA and its members believe that there are better alternatives for expanding LMI services than a government designed- and endorsed-product Template initiative. Among those alternatives are the following:

1. Take full advantage of the existing latitude of the CRA public narrative to highlight sound and successful bank programs and products that have favorable LMI penetration so that they can be brought to light and emulated by other institutions as well as rewarded by the patronage of their local communities.
2. Revamp the Bank Enterprise Award (BEA) program to enable demonstration projects among a broader range of participants to develop viable business plans that can be adopted by other banks or banking service providers.
3. Avoid stifling new technologies with inflexible regulatory requirements or chilling supervisory risk pronouncements, so that banks can take full advantage of developing delivery channels to better reach target markets. Reloadable prepaid cards and mobile banking have promising LMI demographics and could be the engine for delivering value and convenience.

Thus, ABA recommends that the FDIC not move ahead with these Templates. If however, the FDIC does proceed with Templates, ABA's more specific comments and recommendations are provided below.

Discussion

Issues Applicable to Both Transactional and Basic Savings Account Templates

Past Experience with Similar Products.

The proposed Templates are similar to other well-intentioned past federal government basic banking products and programs that have had limited success. For example, the U. S. Department of the Treasury's "First Accounts Program" has not attracted large participation by financial institutions.[6] That program offered government grants to, and partnerships with, financial institutions, consumer groups, and the government to develop and implement programs to expand access to financial services for LMI consumers who do not have an account with an insured depository institution. The success of this program has been called into question. The results do not show that providing low-cost checking or savings accounts to unbanked LMI consumers created sustainable banking relationships.[7] It would be important to examine the reasons that a well-supported program such as this did not meet with the hoped-for result before proceeding with yet another effort to get LMI consumers into bank accounts.

Moreover, as noted above there are viable alternatives to full-service, widely-available free accounts offered by banks today that may appeal to LMI consumers.[8] One such

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[6] *See Findings from the First Accounts Program*, U.S. Department of the Treasury (January 2009) at: http://www.ustreas.gov/offices/domestic-finance/financial-institution/fin-education/docs/ExecutiveSummary_FirstAccounts_1-9-09.pdf.

[7] U.S. Treasury states on page ix of the Executive Summary of its *Findings from the First Accounts Program*: "[a]lthough the programs offered by grantees varied significantly in approach and products, the account-level data do not by themselves illuminate obvious program success or failures."

[8] The last published Board of Governors of the Federal Reserve System *Annual Report to the Congress on Retail Fees and Services of Depository Institutions* (June 2003) reported at pages 2-5 that "[m]ore than 95 percent of banks and savings associations offered at least one type of noninterest checking account" during the survey period of June 2001 – June 2002, of which during 2002, 32 percent of banks and savings associations offered no fee checking if the account holder maintained a minimum balance, and 30 percent of such institutions offered free checking accounts, with a minimum balance to open the account. Almost all banks and savings associations offered some form of savings accounts during this period. Of these, during 2002 approximately 62 percent of these institutions offered simple statement accounts and approximately 15 percent offered no-fee statement accounts. Each account type had minimum balances to open the accounts. The link to the Report is: http://www.federalreserve.gov/boarddocs/rptcongress/2003fees.pdf.

See also GAO Report 08-281 (January, 2008) on *Bank Fees: Federal Banking Regulators Could Better Ensure That Consumers Have Required Disclosure Documents Prior to Opening Checking or Savings Accounts,* which states on page 7 that "Depository institutions [banks, thrifts, and credit unions] typically offer a variety of savings and checking accounts, such as ordinary savings, certificates of deposits, interest-bearing checking, and noninterest-bearing checking accounts". The GAO Report also states on page 15, "[a]dditionally, an increasing number of the surveyed institutions offered free checking accounts alternative is a re-loadable debit card. This can be used to provide a viable and sustainable product for LMI consumers and insured depository institutions. It minimizes the costs of basic transactional and savings accounts while offering attractive, convenient features for LMI consumers. Certain protections, such as the inability to receive advances on the card, can be built in to avoid the imposition of fees that could present problems for the user. LMI consumers are likely to be familiar with this product, given its widespread use in many government programs.

Optional Nature of the Templates.

While these accounts would appear to be optional for financial institutions, it is not clearly stated in the proposal. Any such account Templates should be optional and not prescriptive. Mandating a "one-size-fits-all" account should be avoided to allow for innovation, and there should be flexibility to allow depository institutions to adapt to their market. The goal should be sustainable economic inclusion for those consumers who would like to participate in the banking system.

Moreover, the proposed Templates are not placed in context. For example, would there be incentives for banks to offer such accounts by receiving CRA credit or some other benefit? If banks do not offer these products, there should not be negative CRA rating implications.

Eligibility and Account Opening.

The FDIC's proposed consideration of account opening latitude and flexibility (as permitted by law) during the process of identifying a customer and assessing the risk of opening a new account, practically speaking, is limited due to bank safety and soundness requirements, including the requirement that banks comply with Customer Identification Program (CIP) requirements. It would be dangerous for banks to make exceptions to the CIP requirements; customer identification procedures cannot undermine banks' safety and soundness or national security responsibilities.

The ABA strongly recommends that CIP regulatory standards be observed during any account opening. The Templates should not be based on making exceptions to these requirements. CIP requirements already possess sufficient flexibility, including the use of the *matricula consular* card. Institutions whose CIP policies do not take advantage of the full latitude of regulatory discretion should consider whether amending their CIP programs to do so is worthwhile given the benefit of potentially reaching a broader segment of their market.

Other Eligibility and Account Opening Concerns. The Templates also raise many questions that are not addressed. For example:

(with a minimum balance required to open the account) over this period. For example, in 2001 almost 30 percent of the institutions offered free checking accounts, while in 2006 the number grew to about 60 percent of institutions."

- How would LMI consumers be defined?
- How would an insured financial institution determine which consumers are LMI consumers who would qualify for LMI accounts, not only at account opening, but also after the account is opened?
- Would the institution have to determine and monitor the consumer's income level?
- How would the institution manage the risk of bad credit, especially for "second chance" consumers?
- How could an institution restrict the FDIC-proposed types of accounts to LMI consumers without also having to offer these accounts to the general population?

<u>Access to Consumer Education and Account Management Resources</u>.

Increased financial literacy is a worthy and important goal that should focus on increasing consumer financial education to the general population rather than targeting education to LMI consumers. The goal should be to enhance consumer understanding of basic banking benefits and responsibilities.

There already exists a vast amount of financial education available to consumers, some of which has been successful in educating consumers on all types of accounts. The financial education needs of LMI consumers and new entrant market segments for transactional and asset-building services should be designed to address the fact that such consumers may have limited experience with managing complex or complicated products that depend on alert judgment to use the products properly.

<u>Direct Deposits</u>.

Direct deposits should be an optional and encouraged component for both types of accounts. Direct deposits would be beneficial to employed consumers whose employers offer direct deposit services.

Moreover, banks should have the option to require deposits be electronic or in cash. Fake checks have been a popular instrument for criminals who find a pretext to send a counterfeit check to an unsuspecting victim and direct him or her to deposit the check, withdraw cash the next day (which a bank must permit by law), and wire the funds to the criminal. The check is then returned unpayable and the victim is responsible for the amount wired.

Issues Specific to Transactional Account Template

<u>Opening Balance Deposit Requirement</u>.

ABA recommends that an account opening deposit balance be required. Obviously, there is little incentive for a person to be interested in opening a bank account unless he or she has at least a nominal amount of money. This would encourage LMI consumers to maintain a reasonable balance for the consumer's use and encourage responsible monitoring of the account. A minimum opening balance requirement could be achieved with relative ease and consumer convenience, especially if there is a direct deposit feature used for transaction accounts. It would also make the account more sustainable for the consumer. Moreover, bank experience is that criminals will try to open accounts without funding them, to have them available for various schemes. Therefore, banks typically require accounts to have some initial amount deposited.

Check-writing Capability.

ABA recommends that check writing should not be permitted on transactional accounts for LMI consumers, especially if NSF and overdraft fees are not allowed. This would eliminate the possibility of LMI consumers overdrawing their accounts by using checks, and would reduce concerns with overdraft and NSF situations on these accounts. This means that the account is less likely to be closed for cause. Not permitting checks also means it is less challenging and less intimidating to manage the account, so that the account is more attractive to many in the target audience. In addition, it would avoid increased operating costs associated with the processing of overdrafts.

Re-loadable debit cards and bill paying options may be more practical, manageable, and beneficial features for transactional accounts and would also help reduce fraud.

Unlimited Number of Electronic Withdrawals.

Financial institutions' optional use of electronic banking, including unlimited electronic withdrawals, account viewing, and account transfers, should be allowed on transactional accounts for LMI consumers. This would enhance the value of using the account for consumers and would reduce many concerns related to check-writing features on transactional accounts. Electronic transactional accounts would enhance account management.

While liberal use of electronic options should be encouraged, we believe banks should be able to charge fees after some maximum transaction volume is reached, in order to offset the additional costs to the institution. This is especially important if ABA's recommendation against check writing on transactional accounts is not accepted and the FDIC allows check writing, in light of the amendment being considered in Congress that would drastically reduce debit card interchange fees that are used to support free checking accounts. There are direct and indirect costs associated with providing checking accounts that permit people to have 24/7 access to their money by multiple means, in multiple locations around the world. Interest derived from larger balances is one primary income source to help cover these costs, but this income would be minimal for accounts with low balances. In addition, income from debit card interchange will probably be nominal if the interchange amendment becomes law. This means that it is predictable that the accounts will be unprofitable. To help minimize the loss, banks should be able to limit the number of free transactions.

ABA also recommends that the use of ATMs with a starter withdrawal limit may be a reasonable option on accounts for LMI consumers.

Proposed Prohibition of Overdrafts and NSF Fees Assessed by the Institution.

The FDIC's proposed blanket prohibition of overdrafts and NSF fees could be problematic especially if customers have check-writing capability. If banks are not permitted to charge NSF fees, the bank has little ability to encourage their customers to manage the account: there is simply no consequence to casual management and authorizing transactions knowing funds are unlikely to be available, because there simply is no consequence. This is expensive – and risky – for the bank and detrimental to the customer, who may find the account closed for cause and no future access to checking services.

ABA recommends that account holders have the option for overdraft services – and fees. Many LMI consumers may not have the luxury of having enough money to open a savings account or of being eligible for a line of credit. Moreover, some may not want the line of credit as it poses a temptation. However, having checks and ACH transactions returned is expensive and often a hardship for customers. They usually incur fees and penalties imposed by the payment recipient (e.g., landlord, merchant) and may find that their checks or ACH transactions are no longer an accepted payment alternative. Studies, including those conducted by the Federal Reserve Board in drafting its recent changes to Regulation E (Electronic Fund Transfer Act), found that the vast majority of consumers wanted their important payments paid, even if it meant incurring an overdraft fee. [9]

Thus, ABA recommends that the use of overdrafts should be the consumer's choice, especially for "starter" accounts for LMI consumers. Again, ABA also encourages the use of re-loadable debit cards as a valuable alternative starter product for LMI consumers to reduce potential variable cost events such as returned checks resulting from users' inexperience or account mis-management.

Linked Checking Accounts.

This FDIC-proposed alternative option of linking a checking account to a savings account or line of credit to cover overdrafts may not be feasible to offer and administer for LMI consumers. Thus, it may not be a true option in the current environment, if overdrafts generally would be prohibited. ABA recommends that the Template should not add complicated features to the basic transactional account. Banks have these features in general account choices and LMI customers can graduate from a basic transactional account when they want to access features that demand more judgment in order to use the account effectively and with the necessary degree of individual responsibility.

[9] *See Review and Testing of Overdraft Notices*, Submitted to: Board of Governors of the Federal Reserve System (December 8, 2008), Submitted by: Macro International Inc.

Direct Deposits.

As previously noted, direct deposits would be a beneficial optional feature of transactional accounts for LMI consumers. They would be convenient and provide consistency in maintaining an account balance. However, direct deposits for some LMI consumers may not be available. An alternative might be a payroll card offered by the bank. Currently, employer-sponsored payroll cards enjoy modest exceptions to the periodic statements for Regulation E. However, a more attractive alternative to those whose employers do not offer such cards or to those who change employers is a payroll card offered by the bank itself. FDIC should work with the Federal Reserve Board to encourage it to provide the same regulatory exceptions. Doing so reduces costs without harm to consumers, which will provide another incentive to offer this popular product to those whose employers do not offer the option.

Option to Automatically Transfer into a Savings Account.

This option would be a beneficial feature of a transactional account. ABA recommends that the FDIC's proposal for automatically transferring a fixed dollar amount every month would be easier to administer and would provide more certainty for consumers than a transfer of a fixed percentage of each checking account deposit each month.

Proposed Other Financial Services Offered to Customers and Noncustomers.

The FDIC's proposed additional "Other Financial Services" in the Transactional Account Template should be products or services that insured depository institutions could, but would not be mandated to, provide to LMI customers. Many of the additional services might fit well with the LMI customer and the account, but the demand for any particular service will vary enormously depending on the market, and it makes no sense to incur the cost of setting up and maintaining services that are not in demand.

Providing these services to noncustomers presents many separate issues, including potential Bank Secrecy Act requirements and liability. There are many unanswered questions that would need to be addressed regarding providing these proposed services to noncustomers. In addition, it is important in building a sustained, long-term relationship that LMI customers have convenient and quick access to their bank's service. Competition with noncustomers may impede that good customer service. Banks should be able to ensure that their LMI customers are served well and quickly in order to help encourage opening and maintaining an account. Also, knowing that they must open an account to obtain certain services might provide an incentive to open the account.

Issues Specific to Basic Savings Account Template

Opening Minimum Balance Deposit Requirement.

ABA recommends a minimum balance deposit requirement at account opening. This would encourage increased savings by LMI consumers.

Withdrawals.

Withdrawals should be permitted for basic savings accounts for LMI consumers, consistent with Regulation D limitations on the number of withdrawals to third parties.

Direct Deposits.

Direct deposits, especially direct deposits or automatic transfers from a transactional account at the same institution, would be beneficial features of basic savings accounts for LMI consumers. They would be convenient, consistent, and would encourage savings by LMI consumers. These deposits should be optional, not mandated.

Conclusion

ABA and its members have long supported the goal of the FDIC's Advisory Committee on Economic Inclusion to ensure that all consumers, including LMI consumers, have access to affordable banking services. Indeed, as the GAO study found, most banks offer free accounts. Unfortunately, ABA concludes that the Templates fail to address the realities needed to articulate a flexible, viable and sustainable model that will address the needs of the LMI segment in particular. We are happy to be a part of any discussion on appropriate alternatives. ABA appreciates the opportunity to comment on the proposed Templates. If you have any questions, please contact the undersigned at (202) 663-5331 or via e-mail at kmctighe@aba.com.

Sincerely,

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