

MAINE BANKERS

Association

By electronic delivery to:
OverdraftComments@fdic.gov

September 27, 2010

Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, D.C. 20429-9990

Re: Overdraft Payment Programs and Consumer Protection, FIL-47-2010

Ladies and Gentlemen:

The Maine Bankers Association, a statewide trade association representing 30 Maine retail banks and their 7000 employees, welcomes the opportunity to comment on the Federal Deposit Insurance Corporation's (FDIC) Overdraft Payment Programs and Consumer Protection, FIL-47-2010. MBA's members concur with the FDIC in recognizing the importance of overdraft issues to our members and their customers.

Our members have worked diligently to incorporate sweeping overdraft processing changes recently implemented by the Board of Governors of the Federal Reserve (the Board) through amendments to Regulations E and DD. The Board's changes came after extensive consumer testing by the Board in order to gauge customer expectations relative to overdraft programs. The Board's consumer testing clearly reflected that consumers want their important payments paid including ACH, checks and recurring debit card transactions. However, customers were divided on the payment of ATM and one-time debit card transactions that overdraw their account. The amendment to Regulation E acknowledges the value to consumers of bank overdraft programs and provides the customer with the option to opt-in to an overdraft program for one-time debit card transactions. It is important to remember that the Board's amendment to Regulation E allows the consumer to revoke their opt-in for one-time debit card transactions at any time.

It has been less than two months since the Board implemented the Regulation E and DD changes. These changes required significant business model adjustments and operational changes for our members. FIL-46-2010 adds additional overdraft regulatory requirements (e.g. account monitoring for excessive or chronic use) onto our member banks. The MBA is asking the FDIC not to add any additional compliance obligations over and above those required by the Board's amendments to Regulation E and DD and to refrain from setting agency specific supervisory expectations that will result in disparate regulatory standards. Regulatory disparate standards regarding supervisory expectations could result in banking customers being subjected to different overdraft programs if they have multiple accounts in different banks.

The recent amendments to Regulation E and DD provide a strong consumer choice and responsibility component and were finalized after a comprehensive consumer choice study requested by the Board and conducted by Macro International, Inc. (Macro). MBA's members ask the FDIC to work with other federal regulators to draft clear supervisory expectations that confirm the standards articulated and the policies established by the amendments to Regulation E and DD made by the Board.

The MBA would like to outline several issues of concern in Overdraft Payment Programs and Consumer Protection, FIL-47-2010.

The Term "Excessive or Chronic Use" of Overdraft Programs

FIL-47-2010 requires a bank to establish a monitoring system to track and generate reports on customers who incur six overdraft transaction fees in a rolling twelve-month period. This litmus test for excessive use (six overdrafts fees in a rolling twelve-month period) will cause extreme compliance and regulatory burden on banks, and it appears to negate the consumer choice provisions incorporated in the Board's previous overdraft amendments. The FDIC does not provide a clear definition on what is counted as a transaction (e.g., check, ACH or recurring debit transactions) when trying to determine if a customer should be categorized as an excessive user of an overdraft program. MBA asks the FDIC to avoid imposing prescriptive new monitoring and follow-up requirements for overdraft programs. Different banks have developed alternative products (e.g., savings transfers and lines of credit) to serve frequent users of overdraft services. The new regulatory enhancements in the amendments to Regulation E and DD provide the consumer with comprehensive information on their personal cost and usage of their bank's overdraft program.

The Term "Meaningful and Effective Follow-up Action" When Notifying Customers

FIL-47-2010 suggests that when excessive overdraft usage occurs, the follow-up contact from the bank to a customer must be in person or by telephone. Regulation DD requires periodic statement summaries of overdraft usage and the continued ability for a consumer to opt-out of their one-time debit card transactions selection. MBA feels that the overdraft usage summary outlined in Regulation DD is sufficient notification for a consumer. Any additional in-person or telephone reminders by the bank to the consumer about excessive overdraft program usage are not necessary, and consumers may consider the additional verbal notifications to be excessive and harassing.

Daily Cost Limits

MBA believes that the FDIC should not mandate daily limits on consumer costs for overdrafts. The Board made enhancements to Regulation E and DD to provide a customer with adequate information to review their personal cost and usage of their bank's overdraft program.

Account Payment Ordering

The Board's consumer testing found that consumers want important payments paid and are willing to pay for the cost of the overdraft payment. Mortgage and car payments are often the largest payments a consumer makes on a monthly basis. In FIL-47-2010, the FDIC states that it expects institutions to

“review check clearing procedures to ensure they operate in a manner that avoids maximizing customer overdrafts and related fees through the clearing order. Examples of appropriate procedures include clearing items in the order received or by check number.” Paying based on check number or order received does not ensure that the customer’s wish to have important payments paid is met. MBA request that the FDIC not include payment ordering in their final supervisory expectation and wait until the Board has more time to review the issue.

Opt-Out Overdraft Coverage for Check and ACH Transactions

We previously mentioned that the Board’s consumer testing clearly reflects that most consumers want their important payments paid including ACH, checks and recurring debit card transactions. FIL-47-2010 states that “institutions should allow customers to decline overdraft converge (i.e., opt- out) resulting from non-electronic transactions.” This statement is a shift in the regulatory requirements for overdraft programs. MBA would like the FDIC to clarify their overdraft coverage opt-out statement because FIL-47-2010 is a statement of supervisory expectations and this appears to be a new regulatory requirement.

MBA appreciates the opportunity to comment on the important issues outlined in FIL-47-2010. Overdraft Payment Programs are important to Maine’s consumers and our members. We appreciate the FDIC’s efforts to identify compliance gaps with current overdraft programs regulation. However, the MBA feels some of the items outlined in FIL-47-2010 go beyond addressing compliance gaps and are more in line with establishing new regulatory requirements. MBA asks the FDIC not to implement any of the items in FIL-47-2010 dealing with new regulatory requirements including: monitoring, excessive usage notification, daily cost limits, payment ordering and opt-out for all overdrafts. MBA supports the creation of a joint supervisory expectation document to provide one clear statement of supervisory expectations to promote clarity and consistency to ensure consistent consumer protections along with compliance clarity for our members.

Sincerely,



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The Maine Bankers Association (www.mainebankers.com) represents 30 retail banks that operate over 500 branch locations in Maine and whose more than 7,000 employees provide financial resources that improve the quality of life for Maine’s citizens and businesses.