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By electronic delivery

October 16, 2006

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

Study of Overdraft Protection Programs
71 *Federal Register* 47224, 16 August 2006

Dear Mr. Hanft,

The American Bankers Association (“ABA”) appreciates the opportunity to submit our comments to the Federal Deposit Insurance Corporation’s (“FDIC”) draft 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 (Comment Request) is required by the Paperwork Reduction Act of 1995 as a means to reduce paperwork and respondent burden.

The proposed survey is divided into two sections: Part I, “Institution Programs and Practices” with potentially 107 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 Level Data Request,” containing 37 data fields related to information about personal and financial information about bank customers and their overdraft experience.¹

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

¹ ABA requested a copy of the survey that is the subject of the Comment Request and was provided a copy designated “Draft Version: September 20, 2006.”

companies and savings banks--makes ABA the largest banking trade association in the country.

Summary of ABA Position

Overdraft protection—in its various forms—has saved innumerable consumers from countless occasions of embarrassment and expense due to unintentionally overdrawn checks. 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.

ABA and its members have encouraged the application of best practices in offering overdraft protection programs well before interagency guidance addressed this topic.² Indeed, the ABA booklet was recognized as a recommended reference by OTS for industry implementation of overdraft programs.³

The Interagency Guidance was published just last year and the associated changes to Regulation DD (Truth in Savings Act) went into effect only as recently as July 1st of this year. Nevertheless, the FDIC proposes a survey that seeks minutely detailed information on a variety of overdraft protection programs dating back to 2002—several years before the agency provided any guidance with respect to this product. Given the recognized value of overdraft protection programs and the absence of any material unsafe or unsound conduct with respect to their delivery, ABA believes that the proposed survey is untimely, unduly burdensome and unnecessary for any reasonable supervisory purpose.

We address the four factors for which comment is solicited as follows:

The proposed survey is not necessary, nor practical.

ABA is unaware of any supervisory experience that merits the scope of the proposed survey or data download. We do not believe that the FDIC examination process has uncovered any noteworthy safety and soundness or compliance problems with linked transfer accounts, overdraft lines of credit or ad hoc overdraft policies. Nor has there been any indication from the FFIEC agencies that the guidance they issued in 2005 has failed to have the desired supervisory impact with respect to

² 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."

³ See, OTS Guidance on Overdraft Protection Programs, *id.* at 8429, "For savings associations interested in further reading on best practices, OTS recommends an American Bankers Association publication entitled, 'Overdraft Protection: A Guide for Bankers.'"

automated promoted, or automated non-promoted, overdraft protection programs.

As the Comment Request remarks, this survey seeks data “not currently included in the Call Reports or other standard periodic regulatory reports.” For ABA, this signifies that the data sought is not sufficiently germane to the core supervisory mission of the federal banking agencies as applicable to the depository institution industry generally—or to state non-member banks as a group—to merit collection on other than a case-by-case basis. Indeed, ABA would predict a firestorm of protest were FDIC to try to include the breadth and burden of the proposed survey data in the Call Report process.

Furthermore, we believe that a survey on overdraft protection programs is premature, given that most of the historical data being requested about past years (going back to 2002) would not have been collected or broken out prior to the Regulation DD (Truth in Savings Act) changes that became effective July 2006 and prior to the relatively recent Interagency Guidance. In some cases, the data being requested are only available as a result of the changes to Regulation DD or the Guidance. For example, prior to the changes to Regulation DD, many banks did not separate overdraft fees for checks not paid from overdraft fees for checks paid. In addition, banks may not have been monitoring accounts in the fashion recommended by the Guidance. Accordingly, the response in many instances may be “not available,” reducing the utility of the data.

In short, there is simply no track record at this time worth evaluating through a one-time survey instrument. Indeed, the limited information available in requested form is only likely to lead to an incomplete picture of current practices and unfounded policy conclusions.

In other words, there is neither supervisory need for, nor practical utility to be gained from, conducting the proposed survey or data download.

The estimates of burden for this survey are inaccurate.

First, the 85 question basic survey estimated to be completed in a three hour meeting with an examiner does not reflect the likely time to be incurred by banks to prepare for and then complete in person the draft provided to ABA for comment. By our count the actual number of questions including relevant sub-parts exceeds 100. Moreover, questions like, “In 2006, how many times was the program featured in print, radio or television advertisements, or in a customer mailing?” and “In these advertisements, how many were primarily to promote the program or prominently featured the program?” contemplate not only inordinately exhaustive searches, but are compounded by hair splitting distinctions between what *primarily promotes* versus *prominently features*. Preparing

answers for this type of survey will take days of searching and then hours more of articulating a responsive answer.

Second, particularly with regard to Part II, Customer/Transactions Level Data Request, much of the data requested are either not collected or not readily accessible. Retrieving and entering the data into a survey response will require *hours* of labor *per account*. The data simply are not retrievable and transferable in an automated fashion and will require enormous manual effort. For instance, the date of account opening may not be available because the account might have been purchased and the account opening date not transferred. If the date of account opening is available, like the date of birth information, it usually is not linked with account transaction. There are no fields to allow retrieval of this information electronically. Accordingly, this information would have to be retrieved manually, if available, and reported manually, for each account, and immensely time-consuming, labor-intensive task. The burden would be especially onerous for small institutions.

Moreover, much of the information requested may simply not be available or downloadable as envisioned, especially with regard to Part II. For example, some banks do not have information about the number of deposit accounts converted to workout loans and the total dollar amount of those workout loans (Part I. General: B. Aggregate Income & Loss, questions 6 and 7). By way of other examples: Banks usually do not collect census tract information on deposit accounts. They also normally do not know whether the account holder is in the military, a senior (unless it is a special senior account), or student. Similarly, Social Security recipients are not usually identified.

During ABA's outreach to its members for reaction to the survey and data download, we received comments like, "40 hours—more like 40 days!" Other members reported that their IT department managers blanched, shook their heads and replied, "You better hope this never has to be done."

From ABA's discussion with members—and their vendors, we believe that the proposed survey and data download represent enormous burdens that the FDIC estimate does not begin to capture.

FDIC needs focus and outreach to effectively define its data needs.

The Comment Request seeks comment on "ways to enhance the quality, utility, and clarity of the information to be collected." ABA believes that this goal can only be achieved by having a more interactive discussion between agency and industry representatives about the true underlying supervisory objectives of the proposed information collection. As noted above, most of the proposed survey collects historic information independent of supervisory value—a veritable researcher's fishing

expedition. Without a clearer supervisory focus, the survey is condemned to meander and the data download is destined to be a useless comma-delimited mass of numbers and gaps.

We have also been advised by members that the data's utility may be diminished by other factors such as mergers and periodic surges in deposit account openings and the fact that overdraft fees paid by business accounts may not be separated from those paid by consumer accounts. In addition, we are concerned that other factors will distort the results. For example, an increase in deposit accounts, as a result of a merger or acquisition or simply a special marketing campaign might show an increase in overdraft fee income for a particular year. The results might also be misleading for banks that do not separate business account information from consumer account income. The overdraft fee income picture could be misinterpreted in these situations especially as some businesses may have specific arrangements to use overdrafts as an alternative line of credit. Thus, the overdraft usage and fees paid by businesses may be far different than the typical consumer account.

Accordingly, we propose that ABA along with representative member bankers meet with FDIC staff to explore what means and methods may exist to achieve the legitimate supervisory interests of the agency—be that through an improved survey, a narrow data collection or other more effective means.

Technology is not the answer to this proposed data collection.

It is routine for Paperwork Reduction Act estimate notices to seek comment on “ways to minimize the burden of the information collection on respondents, including through the use of automated collection techniques...” Indeed, agencies have become myopic about the subject, assuming that data is always available in automatically retrievable form and consequently being misled to believe that they have but to ask and information will come forth—or as anticipated in this case, will simply be “downloaded.”

ABA finds from discussions among its members that many of the data points FDIC seeks are not automatically retrievable either from the bank itself or its vendors. Consequently, technology cannot correct the flaw of over breadth that characterizes the proposed information collection. Only a more focused supervisory re-evaluation of the survey's purpose and a more judicious selection of truly necessary—and available—operating information can lead to a worthwhile agency inquiry.

Conclusion

ABA understands that the proposed collection was intended to “provide information on the features and effects of overdraft protection programs in state nonmember financial institutions”—but we question for what purpose, in response to what supervisory experience, with what cost, with what likelihood of reliability or completeness, and ultimately for what value? None of these questions has been adequately addressed by the FDIC’s proposed draft survey or the Comment Request. The unfettered scope of the proposed information collection is plainly unjustified; assured to create a massive paperwork burden, and, in its present form, destined to produce results that are neither meaningful nor useful.

As a predicate to undertaking any survey or data download, ABA urges the FDIC to reconsider its supervisory needs, focus its regulatory purpose and reach out to industry to facilitate a collection of information—if one is still deemed necessary—better designed to achieve safety and soundness or compliance objectives. ABA is very interested in further discussions with FDIC and will follow-up by contacting FDIC staff to arrange such a meeting.

Sincerely,

A handwritten signature in black ink that reads "Nessa E. Feddis". The signature is written in a cursive style with a large initial 'N' and 'F'.

Nessa Eileen Feddis