Massachusetts Bankers Association

March 9, 2007

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

RE: Study of Overdraft Protection Programs

Dear Mr. Hanft:

On behalf of our 205 commercial, savings, cooperative banks, and savings and loan members in Massachusetts and throughout New England, the Massachusetts Bankers Association (MBA) appreciates the opportunity to comment on the Federal Deposit Insurance Corporation's (FDIC) second notice and request for comment entitled "Study of Overdraft Protection Programs." In the notice, the FDIC provides updated estimates of the potential burden of the data collection on respondents and again requests comments on whether the collection is necessary, ways to enhance the quality and utility of the information, and further ways to minimize the burden on respondents.

MBA continues to have concerns with the FDIC's intent to collect data on overdraft protection programs. As we stated in our first comment letter, significant regulatory changes governing these programs went into effect on July 1, 2006. In addition, joint regulatory guidance containing a number of recommended "best practices" was issued approximately 18 months ago. Changing consumer habits takes time, however and we remain concerned that the FDIC will not obtain an accurate assessment of how the new rules are working. We would recommend waiting at least 12-18 months so that the new disclosures and "best practices" have more time to influence customer behavior.

We are also disappointed that the survey remains almost identical to the draft of September 20, 2006. While we appreciate the FDIC removing questions regarding specific census tracts as well as "Download III: NSF Transactions File, Lines of Credit Programs" from Part II of the survey, we remain concerned about many of the questions. Specifically, in Part I of the survey the FDIC is now requesting that institutions provide the FDIC with the total number of times the institution advertised in print, radio, or television. Most institutions advertise hundreds if not thousands of times each year, with ads for numerous types of products that have no relationship to deposit accounts and overdraft protection programs. While we understand that the FDIC is attempting to determine the number of advertisements with overdraft protection as a percentage of total ads, we believe that collecting this data will be a significant burden on banks and yield little essential information for the FDIC study.

MBA continues to believe that the FDIC's estimate of three hours for respondents to Part I is inadequate. Banks may have numerous account types, with different products offered on each. Large institutions may have many different offerings in different states or markets. This would add considerably to the FDIC's initial three hour estimate. While we were pleased that the FDIC doubled the estimated time for Part II to 80 hours, we question whether the information obtained through the micro-data collection is worth this fairly significant burden on the industry. We also note that the FDIC still

Massachusetts Bankers Association, Inc.
73 Tremont Street, Suite 306
Boston, Massachusetts 02108-3906
Tel. (617) 523-7595 / Fax. (617) 523-6373
http://www.massbankers.org

plans to schedule a number of training conference calls to assist banks in completing the survey. This speaks volumes as to the degree of regulatory burden banks will face.

Finally, we are again disappointed that the FDIC has not published the actual survey questions in the Federal Register for industry comment. As we noted in our first letter, we obtained a copy of the draft and final surveys through meetings with agency officials, an avenue not available to most community banks. In fact, the Federal Register notice once again does not provide any information on where to obtain the actual survey questions. We question why the FDIC would not ask for public feedback before undertaking this significant data collection effort.

Conclusion

We again respectfully ask the FDIC to reconsider issuing this survey until the survey questions have been issued for public comment. We also request that the FDIC continue to work to minimize the regulatory burden on the industry. We have provided a number of comments on specific questions in the survey in the attached appendix.

Thank you again for the opportunity to comment. If you have any questions or need additional information regarding our comments, please contact me at (617) 523-7595 or via email at jskarin@massbankers.org.

Sincerely,

Jon K. Skarin
Director, Federal Regulatory & Legislative Policy

JKS:aam
Enclosure

Appendix

Comments on Selected Questions from FDIC Overdraft Protection Survey, Parts I and II

Part I – Institution Programs and Practices

General Comments:

We believe the FDIC already has access to the vast majority of information requested in Part I of the survey through the standard exam process. Information on revenues, vendor contracts, program features, policies and procedures, and fees is readily available to examiners. The need for a comprehensive survey to aggregate this information is a substantial burden on small community banks.

Specific Comments:

I. General & Aggregate
  A. Scope of Services
    3. Does the institution offer automated promoted overdraft protection?

Comments: The use of the term "promoted" throughout the survey is potentially confusing for banks since it is not defined. While it appears that the FDIC equates "promoted" with the definition of "advertising" contained in the revised Regulation DD rules, we believe the survey should mirror the definitions and language in the regulations.

I. General & Aggregate
  C. General Processing Practices
    1. In what order are transactions typically paid?

Comments: While most banks have general policies on transaction posting, many community banks rely on third-party processors that, in part, determine transaction posting order. Some banks may not have complete control over this process and may not be able to answer this question accurately.

II. Program Specific
  C. Information Provided to Consumers
    8. In 2006, how many times did the institution advertise in print, radio, or television?

Comments: Most banks have hundreds, if not thousands, of advertisements each year. Many promote products completely unrelated to overdraft protection programs such as certificate of deposit rate specials, home mortgages, and other products. Collecting information on all advertising may involve coordinating with numerous departments and staff depending on size, market, and other factors. We question whether determining the percentage of advertisements promoting overdraft protection programs is worth this considerable burden.

<u>Part II – Customer/Transactions Level Data Request</u>

<u>General Comments:</u>

The FDIC estimates that banks will need approximately 80 hours to complete Part II of the survey. However, the complexity of the information request, and the fact that the FDIC plans to hold weekly conference calls to brief institutions indicate that completion of Part II will exceed this estimate.

<u>Specific Comments:</u>

Table IA
Download I: Customer List
Section: Account Profile
Field Number 15 – Social Security Benefits Recipient

Comments: The FDIC is requesting information on individual customers related to the direct deposit of Social Security benefit funds. We have significant concerns with the potential privacy implications of this request. In addition, since the FDIC is only asking for those individuals that have their Social Security benefits deposited directly, the accuracy of the information collected is highly suspect.

Table IIA
Download II: NSF Transactions File
Section: Overdraft Activity

Comments: The FDIC is requesting transaction-level data from institutions on all overdraft activity for every customer for the calendar year 2006. This request will yield the FDIC an overwhelming amount of information; however there is no mention of how the FDIC plans to use this data or why it is being requested. We believe some explanation should be provided before banks must undertake this extremely burdensome process.