Morrill & Janes Bank

OverdraftComments@fdic.gov
September 22, 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:

Morrill & Janes Bank welcomes the opportunity to respond to the proposed Federal Deposit Insurance Corporation's (FDIC) Financial Institution Letter (FIL) articulating the FDIC's expectations for management and oversight of automated overdraft protection programs. Morrill & Janes Bank and Trust Company is nearly a $550 million bank headquartered in Merriam, Kansas and operates mostly in rural and urban Northeastern Kansas. As a small community bank for over 150 years, we offer a broad range of products and services.

As a community bank, we have seen numerous changes over the regulatory and financial landscape over the last twelve months. We support interagency efforts to provide clear direction to banks and examiners on the FDIC's supervisory expectations for the management and oversight of automated overdraft protection programs. The Federal Reserve's recent amendments of Regulations E and DD required our bank to make significant changes to operations and our business model. Because of the newness of these regulations we do not feel that increasing new regulatory obligations in this area is warranted at this time. Layering additional requirements on top of these new requirements, injects unnecessary complication, confusion, and uncertainty into overdraft compliance for bankers, consumers, and examiners.

The FDIC should not independently impose burdensome new regulatory requirements.
The *2005 Joint Guidance on Overdraft Protection Programs* (2005 Interagency Guidance) was issued on an Interagency basis and while much of the guidance was superseded by the regulatory changes to Regulations E and DD, we do not feel that it is in the consumers or the banking industry's best interest to issue rules on an agency by agency basis. We believe that any statements of supervisory expectation regarding such an important banking service should apply consistently and fairly across all depository institutions. Otherwise, banking customers could be subject to overdraft programs guided by disparate regulatory standards.

Regulatory efforts to define excessive use and to require prescriptive follow-up requirements impose significant costs with little value to the customer.
The proposal would require financial institutions to establish systems to track and generate reports of customers that incur six overdraft transaction fees in a rolling twelve-month period. We would be forced to expend considerable time and effort to ensure compliance with the pronounced litmus test for excessive use – the "six-in-twelve" requirement. We are not clear on the meaning. Does it include check, ACH, or recurring debit transactions that may incur an overdraft fee? Does it mean six occasions when the balance is below zero and any number of overdrafts is paid? Are six occurrences always equivalent to six fees? Under our overdraft program, the customer has the ability to opt-out of the program not only for debit card transactions but with all transactions. They have this ability at any time. To date we have only a handful of customers that have chosen to not participate. On a monthly basis, customers receive a

statement showing both the monthly fees relating to overdrafts but also the annual amount of overdraft fees. Clearly customers are currently receiving important information relating to their overdraft fees.

Under the proposal we would be required to document what "meaningful and effective" follow-up action was taken on customers. From time to time, we currently do contact customers concerning overdrafts. In every case, the customer has known the amounts incurred in overdraft fees and had a reasonable explanation concerning the overdrafts and are happy to have such a valuable service. It is our opinion, that customer's know their accounts and requiring the bank to contact customers would be extremely time-consuming and provide little benefit to anyone.

We are also concerned with the unintended consequences with these requirements. We fear that examiners may interpret the duty to monitor and contact frequent users as a duty to stop the use of overdraft services despite the customer's informed and voluntary opt-in choice. Banks should not be required to suspend overdraft protection services, to take away debit card privileges, or to close an account based on an arbitrary regulatory standard that is contrary to customer choices, and customers should not be denied services they understand, want, and value. Nor should customers be subject to ongoing monitoring and repeated calls that will only embarrass and annoy them when they have made their choice clear through written election and conduct consistent with that choice.

The FDIC should not establish "daily limits on consumer costs."
The FIL states that the FDIC "expects" supervised institutions to "institute appropriate daily limits on consumer costs by, for example, limiting the number of transactions that will be subject to a fee or providing a dollar limit on the total fees that will be imposed per day." Rather than imposing a regulatory requirement for all banks to adopt daily limits, we believe that the industry should be given latitude to evaluate its regulatory obligations and to design overdraft programs that deliver choice to consumers in a transparent, responsible manner. This process will yield a variety of programs designed to address customer needs fairly, disciplined by free choice and healthy competition. It will also encourage the further development of overdraft services as technology and consumer needs change.

The FDIC should not require annual approval of overdraft program features by bank boards of directors
We firmly believe that the Board of Directors does not need to be involved in this granular and technical nature of approving overdraft programs—this is a management function. Our bank board does review broad statements of policy regarding overdraft programs and practices, and reports of usage; however they should not be expected to provide ongoing oversight of program features. To require such granular oversight imposes a managerial duty on a board of directors that they have neither the time nor expertise to undertake. Moreover, by their nature, programs requiring board approval and oversight demand extensive documentation and administrative review that limit managerial abilities to make program adjustments as the market or customer needs change.

Conclusion

Morrill & Janes Bank appreciates the opportunity to comment on these important issues. We understand and support the FDIC's efforts to identify existing compliance gaps and to address them. We believe, however, that many of the statements of supervisory expectation included in the financial institution letter impose new regulatory requirements that will impose significant new costs and burdens with little or no customer benefit. The recently implemented Regulation E and Regulation DD revisions pertaining to overdrafts have not seasoned yet and the full impact of those changes has not yet been felt. Once those regulations have been fully implemented and tested, then on an interagency basis, compliance gaps can be addressed. Having one clear statement of supervisory expectation rather than individual agency pronouncements will promote clarity and consistency, ensuring much better consumer protection than can be provided by an inconsistent patchwork of individual agency mandates.

Sincerely

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