



Banking for you.

September 23, 2010

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

Re: FIL-47-2010

Ladies and Gentlemen:

American State Bank is a \$2.5 Billion financial institution that has been a part of the Lubbock, Texas community for 62 year. During that time we have grown to include 37 locations in 21 Texas communities. We employ over 660 personnel and serve the financial needs of over 70,000 customers.

Customer service is our highest priority and our amazing growth is a testament to that fact. We have been able to retain our customers at a rate much higher than industry standards and if our customers believed for even a moment that we were taking advantage of them, they would certainly take their business to one of our many competitors.

The new regulatory framework provides the consumer with considerable control over the overdraft process. Amended Regulation E provides that depository institutions may not impose an overdraft fee for ATM and one-time, point-of-sale debit card transactions unless the customer expressly consents, or opts-in, to the overdraft program. In order to ensure meaningful customer consent, the regulation establishes a notice and consent process that requires a bank to inform customers of the existence of alternatives to the standard overdraft protection plan such as a link to a savings account, which may be less expensive than standard overdraft practices. Also, customers may revoke their opt-in at any time without consequence or cost. The Board could not have fashioned greater flexibility in consumer choice than it has in Regulation E's freedom to opt-in and opt-out at will.

In addition, the amended Regulation DD requires that banks provide their customers with clear disclosures on periodic statements of all NSF and overdraft fees. Thus, customers who opt-in make an informed choice, receive information that highlights the cost of the service, and are free to change their minds and discontinue the service at any time.

Given this new regulatory framework, I question what additional consumer benefit can be gained from the imposition of new requirements to monitor programs for excessive or chronic customer use and to respond in some fashion. In effect, the FDIC proposal assumes that some customers made and continue to make the wrong, albeit informed and manageable choice, that fits their needs. That would seem to me to negate customer choice rather than empower it.



Member FDIC

Not only is the benefit to customers questionable, there are costs and practical challenges that can not be ignored. 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. Institutions would be forced to expend considerable time and effort to ensure compliance with a pronounced requirement that is not yet clearly defined.

Bankers will also be required to document that they took meaningful and effective follow-up action, including contacting the customer to discuss less costly alternatives to the automated overdraft payment program and recording the customer's decision whether to continue fee-based standard overdraft services or to choose another available option. The financial institution letter even goes so far as to suggest that such contact must be in person or by telephone, an unworkable requirement for all but the smallest institutions.

The vast majority of our customers make sound financial decisions on a daily basis and for those few who do not; we already work with and counsel them in order to match them with the products that best fit their financial needs. I urge the FDIC to allow financial institutions to exercise discretion with respect to the identification and treatment of excessive overdraft users and to continue to allow consumers the freedom of choice.

Sincerely,



Tony Whitehead  
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