



South Carolina Bankers Association

September 24, 2010

Federal Deposit Insurance Corporation

Re: Request for Comments on Overdraft Payment Supervisory Guidance;
FIL-47-2010

The South Carolina Bankers Association thanks the FDIC for the opportunity to comment on the above proposed guidance. Our comments are set forth below in two parts. First, an overall comment on the nature of the proposed guidance and, secondly, specific comments on the FDIC's expectations for banks and their overdraft programs.

Much like all banks across the nation, South Carolina's banks take their overdraft protection programs seriously not just from a customer service perspective but also in appreciation of the consumer protection aspects of the programs and their regulations. Overdraft protection programs are important services offered to our customers. Those customers that responsibly manage such accounts benefit greatly from these optional services. In fact banking regulators understand the importance of overdraft programs and have adopted regulations to address both banks and consumers' concerns.

SCBA understands and supports the measures recently adopted in Reg DD and Reg E and is working with its member banks to educate them on these regulations. With Regs DD and E there is now a clear balance between the parties in overdraft programs – banks clearly disclose rules and then manage programs properly; customers opt-in and then manage their accounts prudently. Any guidance must recognize this important and necessary balance between the banks' responsibilities and their customers' responsibilities.

As such, SCBA has three primary points overall concerning FIL-47-2010:

- Given the structure of the federal banking regulatory scheme, any overdraft guidance should be a joint interagency effort – not one issued piecemeal on an agency-by-agency basis. Already, the Office of Thrift Supervision has issued a proposed detailed guidance that varies with the FDIC proposed guidance. Banks supervised by OTS now potentially face two different guidances to not only follow but also on which to be examined. This point cannot be overstated – various banking regulators with differing standards examining banks' overdraft programs is, at best, an inefficient practice and, at worst, an inequitable practice that regulators should strictly avoid.

- Any such guidance should be delayed to allow the latest rules to take effect. Reg DD and recently enacted Reg E provide many of the consumer protections that this guidance seeks to offer. SCBA urges the FDIC to allow sufficient time to let these regulations assimilate into the market.
- Finally, overdraft protection programs should be risk-management programs and not prescriptive in nature. These programs are inherently risk programs since they are based on customers' decisions to overdraw their accounts. We agree that customers should be fully educated about the consequences of overdrawing their accounts but ultimately they should also bear the responsibility of managing their accounts. These guidances must reflect the customer's role in successful overdraft protection programs.

In addition, SCBA provides the following comments concerning the FDIC's specific expectations for banks' overdraft programs:

- SCBA agrees with the FDIC that clear, concise disclosures are necessary for our banking customers to make proper, informed decisions about overdraft protection; however, SCBA strongly believes it is ultimately the customer's responsibility to read and understand the disclosures. With this in mind, financial education for customers, provided in a clear manner is best. Disclosures are quite often thrown out, often without having been read. Consumer brochures would provide an additional, better and more marketable way to educate customers on how to avoid overdraft fees.
- SCBA is concerned about the FDIC's expectation that banks "*[g]ive customers the opportunity to affirmatively choose the overdraft program that overall best meets their needs.*" Many of our smaller community banks offer only one overdraft protection product. Does this FDIC expectation imply that banks now must offer more than one program? SCBA agrees that customers should have choices – but only when it is feasible for a bank to offer multiple products. SCBA requests further clarification of this expectation.
- Just as SCBA believes that the customer has the responsibility to read disclosures and should have the power to choose an appropriate program, SCBA also strongly believes that it is ultimately the customer's responsibility to act properly and diligently when multiple overdrafts occur. FDIC's expectation that banks bear the burden of overseeing a customer's account and contacting them when more than six overdrafts have occurred in a 12 month period is an inefficient and costly burden shift onto the banks. South Carolina banks should not have to intercede on behalf of customers that chronically overdraw their accounts. It is the customer that should have the responsibility to review their accounts and be aware of what has become repeat behavior.
- The FDIC's expectation that banks demonstrate compliance with the overdraft opt-in requirements simply begs the question – what is necessary to demonstrate

compliance? SCBA asks that FDIC issue further details as to what is necessary to demonstrate compliance.

- As to the expectation that banks limit overdraft fees on a daily basis, we refer back to our comments on notifying customers after a certain number of overdrafts – customers must bear the responsibility to monitor their accounts on a daily basis and make responsible decisions when making purchases. Additionally, customers are also free to move their accounts to banks that do limit fees – many banks do so already for customer service and in competition for deposits. With today's technology (instantly accessing accounts via computers and handhelds; e-mails and texts indicating balances) any responsible and prudent customer can easily control the amount of daily fees they incur.

In conclusion, SCBA stresses that overdraft fees are easily avoided by customers exercising reasonable care in managing their transaction accounts. Reg DD now offers consumers protection in requiring banks to make clear disclosures about their overdraft programs. Reg E goes even further to require that a customer must opt-in to such programs. This is an important balance: a customer now must make a conscience and educated decision to participate in an overdraft program understanding fully that is still their responsibility to know how much money is in their accounts. Likewise banks must not only make clear disclosures but should offer customers educational materials on how to participate in an overdraft program. This balance is the most effective way to help customers manage their accounts better and more wisely, thus reducing overdraft fees.

Overdraft protection programs work best when both parties understand and bear equal responsibilities. The FDIC guidance should reflect this guidance. SCBA thanks the FDIC to comment on the FIL-47-2010 and the proposed guidance.

Sincerely,

A handwritten signature in black ink, appearing to read 'A. O'Neil Rashley, Jr.', with a long, sweeping underline that extends to the right.

A. O'Neil Rashley, Jr.
Senior Vice President and Counsel