September 26, 2010

By electronic delivery to:

OverdraftComments@fdic.gov

Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429-9990

Re: "Overdraft Payment Supervisory Guidance", FIL-47-2010

The Indiana Bankers Association (IBA) appreciates the opportunity to respond to the proposed FDIC Financial Institutions proposal on "Overdraft Payment Supervisory Guidance". The IBA is a non-profit trade association representing approximately 160 Indiana financial institutions. The IBA supports efforts to provide clear direction to financial institutions and their examiners on the FDIC's supervisory expectations for the oversight of automatic overdraft protection programs.

The recent amendments to Regulation E and DD have required significant changes in the business models of Indiana banks. We support these amendments and the clear statements of supervisory expectations. However, until the impact of the amendments to Regulation E and DD have been thoroughly examined and understood, we highly recommend that the FDIC avoid the declaration of supervisory expectations based on presumptions about bank practices and consumer choices that remain untested. Adding additional requirements on top of the current framework only fosters unnecessary confusion and complication in an already overwhelming regulatory environment. In our opinion, the proposed guidance goes well beyond what has traditionally been provided through interagency guidance. We also caution against using the institution letter format to impose new regulatory requirements, particularly over burdensome requirements that will add significant compliance obligations to the detriment of consumer options.

The following comments are directed at specific provisions of the proposed Overdraft Guidance:

FDIC insured banks will be placed at a competitive disadvantage. If the FDIC pursues the adoption of the Guidance and the Federal Reserve Board and the OCC do not adopt any guidance, FDIC-regulated banks will be placed at a competitive disadvantage due to increasing costs and burdens they will have to undertake to comply. We believe that any guidance on a topic of this nature should always be an Interagency guidance rather than from a single agency.

FDIC expects financial institutions to give customers the opportunity to affirmatively choose the overdraft payment product that overall meets their needs. This expectation implies that every bank offers more than one overdraft payment product. Banks will offer the products and services that best fit their market and customer base. Many community banks do not offer overdraft lines of credit due to the complexity of open-end disclosures required by Regulation Z. The cost of new investment in technology and resources for compliance is simply cost prohibitive for many community banks. Currently, customers have the right to receive Regulation DD disclosure prior to opening an account describing the fees and features for the account. If the bank does not offer the fees and features that suit their needs, they can look for an account elsewhere. Given this new regulatory framework, we question what additional benefit can be gained from the imposition of new requirements to monitor programs for "excessive or chronic" customer use and respond appropriately to them. The FDIC proposal seems to assume that some customers made and continue to make the wrong choice, albeit an informed and manageable choice that fits their needs. This seems to diminish customer choice rather than enhance it.

FDIC proposal would implement the "six-in-twelve" rule, increasing costs and regulatory burden for financial institutions. The proposal would also require costs and practical challenges that should not be ignored. The proposal would require financial institutions to create systems to track and generate reports of customers that incur six overdrafts in a rolling twelve month period. Institutions would have to expend considerable time and effort to ensure compliance with the "six-in-twelve" proposal.

More onerous follow-up documentation, predicated on assumption that customers don't know what they are doing. 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, if they qualify for an alternative. 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. This provision would also be in conflict with the Indiana Do-Not-Call list. The Indiana Attorney General recently stated that contacting customers to inform them of changes to the overdraft laws are explicitly prohibited.

In addition, the proposed threshold confuses frequent responsible use with excessive use and would result in a form of government-mandated harassment predicated on the assumption that customers do not know what they are doing, the expenses they are incurring, or the choices they have made.

Institutions 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.

FDIC expects financial institutions to apply appropriate daily limits on overdraft fees. This proposed guidance goes beyond current law. The marketplace should and does drive this issue, and many banks have adopted such a limit as a competitive strategy. What does the FDIC consider to be "appropriate"? The guidance states that such a limit would reduce customer costs. However, if the bank does not pay the overdraft and returns the check, the customer will still incur a non-sufficient funds fee at the bank and will likely also incur a return check fee from the merchant. We do not believe that this will reduce the customer's costs, in fact, it will likely increase them. If customers believe that they are paying excessive amounts for overdrafts on a daily basis, perhaps they should choose another bank. The FDIC should not mandate a set limit on overdraft fees.

FDIC expects financial institutions to provide clear and meaningful disclosures and other communications about overdraft payment programs features and options. Many regulatory requirements currently exist requiring disclosures to consumers regarding their accounts. Suggested model forms and clauses to provide these disclosures have been adopted through consumer testing by the regulatory agencies. Most banks use these model forms verbatim as a safe harbor to ensure compliance, also making it easier for customers to compare fees and practices by account and by individual banks. This proposal seems to suggest that the FDIC expects disclosures beyond those already required by Regulation E and DD.

Conclusion

The IBA appreciates the opportunity to comment on these important issues. We believe that the vast majority of banks respect their customer and have acted appropriately towards them. As we forge the new path of banking, under the recently enacted Dodd-Frank Act many financial institutions are understandably concerned about the amount of regulation and the impact that the regulation may have on each institutions ability to stay in business. 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 IBA strongly recommends that the FDIC refrain from imposing these requirements at this time when the state of overdraft programs and customer experience with them is unknown. Moreover, if and when compliance gaps do become apparent, we urge the FDIC work with the other banking agencies to draft interagency guidance to address them. Having one clear statement of supervisory expectation rather than individual agency pronouncements layered on top of the amended regulations and the 2005 Interagency Guidance will promote clarity and consistency, ensuring much better consumer protection.

If you have any questions about these comments, please contact the undersigned at (317)387-9380 or jdehaven@indianabankers.org.

Sincerely,

S. Joe DeHaven

President & CEO

Indiana Bankers Association