

Massachusetts Bankers Association

October 16, 2006

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 210 commercial, savings, savings and loan, and cooperative bank 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) notice and request for comment entitled "Study of Overdraft Protection Programs." In the notice, the FDIC estimates the potential burden of the data collection on respondents and requests comments on whether the collection is necessary, ways to enhance the quality and utility of the information, and ways to minimize the burden on respondents.

MBA has serious concerns with the FDIC's intent to collect data on overdraft protection programs at this time. As you know, 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 one year ago.

Because banks have only recently implemented these two substantive rules changes, we believe it is premature for the FDIC to collect data to study their impact in the market. In particular, the recent amendments to Regulation DD (Truth In Savings) were specifically designed to provide customers with additional disclosures and fee information in an effort to influence customer use of overdraft products. Since these rules went into effect less than four months ago, many customers have only received three or four periodic statements containing the new fee disclosures. It is unlikely that these requirements have had their intended effect yet. We suggest that it would be more appropriate for the FDIC to postpone the data collection effort for at least 12-18 months. This will allow banks to fully implement the regulatory changes and will give consumers time to respond to the new disclosures.

We are also concerned with some of the questions in the survey. Specifically, the micro-data portion of the survey (Part II, Customer/Transactions Level Data Request) where the FDIC is proposing to require banks to provide census tract data on their deposit customers with an emphasis on identifying those customers in low- and moderate-income (LMI) census tracts that are frequent users of overdraft protection products. We believe this data will be misleading, and could skew the survey results in many cases.

As you know, the most current census data is over six years old. There have been considerable demographic shifts in Massachusetts and throughout New England since the 2000 census. In addition, we question the utility of this information. Many banks operate branches in LMI census tracts, so it would stand to reason that a significant number of customers using overdraft protection products who bank at

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>

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those branches would live in an LMI tract. Conversely, some institutions do not have branches near LMI census tracts. We do not believe that census data is an accurate income determiner and does not provide a realistic assessment of the use of overdraft products by a bank's customers.

MBA also believes the FDIC's estimates of three hours for respondents to Part I and 40 hours for respondents to Part II are inadequate. Banks may have numerous account types, with different products offered on each. Large institutions may have different offerings in different states or markets. This would add considerably to the FDIC's initial three hour estimate.

In Part II, the FDIC is requesting that respondents create unique customer and account identifiers and provide extremely detailed information on each customer. Depending on the number of customers, the number of account types, the bank's own data systems, and employee availability, this could take well longer than the 40 hours of employee time estimated in the notice. For a small community bank, having an employee use an entire week of work time to complete this survey is extremely burdensome. The fact that the FDIC will be scheduling a number of training conference calls to assist banks in completing the survey speaks volumes as to the degree of regulatory burden banks will face.

Finally, we are somewhat surprised that the FDIC is conducting this survey at all. In reviewing the questions in Part I, it seems that most, if not all of the information requested is available to the FDIC through the normal examination process. In fact, according to our informal discussions with some FDIC compliance officials, many of the topics examiners have been told to focus on during an exam are repeated in the survey. It seems that this effort will place a significant burden on respondent banks without providing new information relevant to the FDIC's mission. We have included comments on a number of the specific questions in the survey in an attached Appendix.

Conclusion

We respectfully ask the FDIC to reconsider issuing this survey at this time. If, however, the FDIC decides to move ahead with this effort, we believe the survey itself should be issued for public comment before it is finalized.

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 jskar@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.

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

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

Part II – Customer/Transactions Level Data Request

General Comments:

The FDIC estimates that banks will need approximately 40 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 far exceed the estimated 40 hours.

Specific Comments:

Table IA
Download I: Customer List
Section: Customer Profile
Field Number: 6 – Census Tract Number

Comments: As we noted in our comment letter, census tract data is not readily available for deposit customers. In addition, since the latest census data is from almost seven years ago, the accuracy of that

data is questionable. Aggregating this information for the FDIC will place a significant burden on community banks and the information collected may not be useful to the FDIC.

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.