American Bankers Association
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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:

The American Bankers Association (ABA)[1] 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.[2] Providing an opportunity to comment on a financial institution letter demonstrates that the FDIC recognizes the importance of this topic to both consumers and financial institutions. We share that view.

ABA supports interagency efforts to provide clear direction to depository institutions and examiners on the FDIC's supervisory expectations for the management and oversight of automated overdraft protection programs. The Board of Governors of the Federal Reserve's (the Board) recent amendments of Regulations E and DD – which went into effect a mere six weeks ago – required significant business model adjustments and operational changes. Because these sweeping changes were made in a relatively short period of time, all will benefit from clear statements of supervisory expectation that confirm the standards articulated and the policies established by the new regulations.

However, there is a fine line between articulating supervisory expectations and imposing new regulatory obligations. ABA cautions against the use of the financial institution letter format to impose new regulatory requirements, particularly onerous obligations that will add significant compliance burdens to the detriment of customer choice. Establishing arbitrary definitions of "excessive or chronic use" coupled with mandated intervention or requiring caps on the coverage elected by customers are supervisory expectations contrary to the policies of customer choice embedded in the Board's regulations and are tantamount to *ultra vires* rule-making by the FDIC.

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[1] The American Bankers Association represents banks of all sizes and charters and is the voice for the nation's $13 trillion banking industry and its two million employees. ABA's extensive resources enhance the success of the nation's banks and strengthen America's economy and communities.
[2] FIL-47-2010 (August 11, 2010) *available at* http://www.fdic.gov/news/news/financial/2010/fil10047.html.

At this time, the current state of overdraft services across the industry is unsettled. Consumer response to – and experience with – overdraft practices under an opt-in regime is entering a new phase. During these initial months following the implementation of the new rules, banks anticipate that many consumers will make changes to their initial opt-in /out choices and that institutions will make additional changes to their products and services to adjust to the preferences of their customers. Until the impact of the amendments to Regulations E and DD have been thoroughly examined and understood, ABA recommends that the FDIC avoid the pronouncement of supervisory expectations based on presumptions about bank practices and consumer choices that have not been tested under the new regulatory framework. Layering additional requirements on top of this framework only injects unnecessary complication, confusion, and uncertainty into overdraft compliance for bankers, consumers, and examiners. Moreover, we believe that the proposed FDIC guidance may be based upon a model of industry programs and consumer preferences that has become out of date.

**The FDIC should not independently impose burdensome new regulatory requirements under the guise of conforming past supervisory guidance.**

ABA supports interagency efforts to provide direction to depository institutions and examiners about supervisory expectations for the management and oversight of automated overdraft protection programs. Although the *2005 Joint Guidance on Overdraft Protection Programs* (2005 Interagency Guidance)[3] remains relevant in some areas, much of the guidance was superseded by the regulatory changes to Regulations E and DD. ABA was encouraged when banking agency representatives at the June 2010 ABA Regulatory Compliance Conference mentioned interagency discussions to draft exam procedures and to update the 2005 Interagency Guidance. However, both the OTS and now the FDIC have apparently departed from this path before the FFIEC exam procedures for Regulation E have even been drafted. ABA does not support individual agency efforts to supplement existing guidance; 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.

The recent amendments to Regulations E and DD precipitated significant changes to the business model for standard overdraft protection services and required significant operational, communications, and compliance changes in a relatively short time period. Many institutions have re-evaluated their decision to offer standard overdraft services. Some institutions have discontinued offering debit card overdraft services, while others have introduced it. Those choosing to offer debit card overdraft services had to ensure that significant changes to core processes were made in order to distinguish "recurring" debit card transactions from "one-time" debit card transactions.

[3] 70 Fed.Reg. 9127 (Feb. 24, 2005).

They also had to establish procedures to record and track opt-in and revocation decisions, to train employees, and to design customer outreach materials to explain the impact of the new rules to customers. Even those institutions that did not knowingly pay debit card overdrafts had to make adjustments and incur costs to ensure that fees are not charged for one-time debit card overdrafts that the institution cannot avoid.

Having just completed such major changes, bankers appreciate the fact that by providing direction to examiners, a financial institution letter promotes consistency across examinations. To the extent that the proposed letter embodies interagency expectations with respect to new regulatory requirements and provides direction to examiners, we support it. Where it is not the subject of interagency agreement, then it sets up disparate supervisory treatment. Moreover, we caution against the imposition of additional compliance obligations over and above those required by the comprehensive amendments to Regulation E and DD.

During this period of early implementation, ABA urges all involved in the continuing consideration of overdraft programs to permit banks and consumers to assimilate and react to the regulatory changes just implemented before introducing new regulatory requirements. All that is certain is that prevailing practices and account features will be different from what they were before the program changes. We do not yet know the gaps, if any, that should be addressed. To guess at the predominant reactions, choices, and preferences of bank customers and the practices of the industry is to tilt at imaginary windmills. Imposing new requirements in effect means having to incur twice – and probably three times when policy predictions prove wrong – extensive compliance costs in a fragile economic environment with no measurable benefit to consumers.

To continue piling on regulatory requirements suggests a regulatory conclusion at odds with the Board's amendment of Regulation E. The Board's rule was based on extensive consumer testing that clearly showed consumers expect and want important payments, including checks, ACH, and recurring debit card transactions to be paid, but that customers were evenly divided on the payment of ATM and one-time debit card transactions that overdraw an account. The Board's strong but judicious amendment of Regulation E clearly acknowledges the value to consumers of bank overdraft programs and empowers the consumer with an affirmative right to choose overdraft coverage for one-time debit card transactions. Significantly, early reports of opt-in rates underscore the wisdom of establishing this boundary.[4]

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[4] In a recent ABA survey of more than 1000 randomly selected adults, forty-six percent of bank customers reported they did, or will, opt in to their bank's overdraft program, saying they are willing to pay a fee to cover debit transactions when their account is overdrawn. *See* Ipsos-Reid survey, August 14-15, 2010, *available at* http://www.aba.com/Press+Room/083110OverdraftProtection.htm.This confirms research conducted by the Board referenced in its proposal to amend Regulation E. *See* 74 Fed. Reg. 5212, 5215 (Jan. 29, 2009). Moreover, anecdotal reports of opt-in rates for frequent users are considerably higher, averaging between 70 and 80%.

**Regulatory efforts to define excessive use and to require prescriptive follow-up requirements impose significant costs contrary to customer preferences.**

The fact that the new regulatory framework empowers the consumer cannot be overstated. 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 regime complete with a model notice that *requires* each bank to inform customers of the existence of alternative "overdraft protection plans such as a link to a savings account, which may be less expensive than our standard overdraft practices. To learn more, ask us about these plans."[5]

Perhaps even more noteworthy than the opt-in provision is the option guaranteed by the regulation for customers to revoke their opt-in at any time.[6] Customers may change their mind 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 requirements of amended Regulation DD augment Regulation E's consumer empowerment by providing consumers with clear disclosures on periodic statements of all NSF and overdraft fees.[7]

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, we question what additional consumer benefit can be confidently foreseen to be gained from the imposition of prescriptive new requirements to monitor programs for "excessive or chronic" customer use and to respond in some fashion.[8] In effect, the FDIC proposal assumes that some customers made and continue to make the wrong choice, albeit an informed and manageable choice, that fits their needs. That would seem to us to negate customer choice rather than empower it.

Not only is the benefit to customers of such formulaic monitoring questionable, there are costs and practical challenges that should 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 the pronounced litmus test for excessive use – the "six-in-twelve"

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[5] *See* 12 C.F.R. §205.17, Appendix A, A-9 Model Consent Form for Overdraft Services.
[6] 12 C.F.R. §205.17(b).
[7] 12 C.F.R. §230.11(a).
[8] Consumer advocates insisted that an opt-in to overdraft protection be the so-called "default option," presumably because it so empowers the consumer. *See* CRC Comment to the Proposed Rule Proposed Rule Regarding Unfair or Deceptive Acts or Practices – Overdraft Practices (August 4, 2008), *available at* http://www.responsiblelending.org/overdraft-loans/policy-legislation/regulators/overdraft-comments-udap-final-as-submitted-w-appendices-080408-2.pdf.

requirement. 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? [9]

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.

Although the banking industry generally agrees that banks should consider whether they can serve frequent users of overdraft services better with alternative services, we urge the FDIC to avoid imposing prescriptive new monitoring and follow-up requirements. Indeed, we believe that the FDIC proposal would introduce a formulaic approach to monitoring that ignores the customer reminders established by Regulation DD’s periodic statement summaries of overdraft usage and the continuing ability to opt-out at any time. 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.

Significantly, reports from member banks that have had conversations with frequent overdraft program users demonstrate that these customers as a rule understand and value automated debit card overdraft protection. For example, one bank reported that when it contacted a customer who had incurred significant overdraft fees, the customer explained that she was a single mother of two with a busy law practice and did not have time to balance her account. She expressed her gratitude for the overdraft protection and evinced no interest in other products. Another bank reported that a customer who received income from several investment properties and had incurred $15,000 in overdraft fees explained that it was cheaper for him to pay the overdraft fees than to hire a bookkeeper to manage cash flow.

Yet another bank reported that a customer was willing to incur repeated overdraft fees to ensure that his child has access to emergency funds while away at school. Another bank reported that during an account opening campaign at a local university, a significant number of parents of incoming freshmen opted in to ATM and debit card overdraft protection for their student’s account, expressing a desire that the student always have access to emergency funds—and to leave the parent to discipline the student for incurring any “excessive” fees as defined by the parent.

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[9] We note that the FIL provides no explanation for its arbitrary announcement that six overdrafts in a rolling twelve-month period is excessive. What is wrong with a customer having two overdrafts in a quarter?

In addition, many banks report that frequent users choose overdraft protection over alternative products because it offers a unique combination of protection and discipline. Unlike an advance from an overdraft line of credit or a credit card, an overdraft transaction must be repaid within a few days and does not present the possibility and temptation of longer-term indebtedness that would come from a variety of loan options to overdraft services. It does, however, provide a welcome cushion when needed, however often that may be needed or desired. Other customers choose overdraft protection and reject linking their checking account to a savings account because it prevents them from depleting their savings.  These examples demonstrate that the vast majority of multi-occasion users understand the product and have consciously chosen to use it on a regular basis, however "irrational" the choice may seem to others.

Other conversations with frequent users uncover situations in which overdraft payments provide an economic bridge between paychecks. Some customers cannot qualify for an overdraft line of credit or may prefer not to draw from their savings; however, these customers express a desire to maintain the overdraft program coverage as an emergency cushion. Banks report that customers needing the occasional short-term accommodation are embarrassed by having to explain their non-sufficient funds transactions, and regular calls inquiring about "excessive" overdrafts may drive them from the bank. This is especially true if incurring overdraft fees six times a year is not what the customer thinks of as "excessive."

Indeed, the prescriptive monitoring and follow-up regime proposed by the FDIC could very well result in more customers being pushed out of the banking system. Many of our members 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. However, 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. ABA knows of no empirical evidence that demonstrates that customers want the government to impose limits on their voluntary use of overdraft services and to compel banks to contact those customers repeatedly when they use the service they have freely elected.

We believe that the proposed monitoring regime will devolve into an expensive, formulaic form of compliance with institutions tracking overdraft transactions and routinely issuing a standard notice of alternatives. Bankers fear that painstaking examiner review of overdraft usage reports and documentation of follow-up action based on arbitrary government imposed standards will consume resources better applied to more effective programs to identify and communicate available options to overdraft users on an individualized basis.  Over time, this report will just add to the general weight of routine regulatory burden unrelated to actual customer benefits.

ABA urges the FDIC to avoid this result and instead permit financial institutions to exercise discretion with respect to the identification and treatment of excessive overdraft users. In other contexts – for example, the identification monitoring, and disposition of high-risk customer accounts for Bank Secrecy Act purposes – banks have demonstrated the ability to exercise this discretion effectively and responsibly. We believe that banks should be accorded similar latitude to determine what constitutes chronic or excessive use and the flexibility to determine the most effective means of communicating with those customers to ensure that they are aware of available overdraft accommodation options and have made an informed choice to continue to participate in an overdraft protection program.[10]

**The FDIC should not impose a new regulatory requirement – "daily limits on consumer costs."**

The FDIC states that it "expects" its 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." Although ABA believes banks may consider imposing daily limits on overdraft fees in developing their respective programs, we do not support the FDIC's announcement of a new regulatory requirement in the form of a statement of supervisory *expectation* for the implementation of daily limits or caps. Indeed, we believe that the new rules attenuate any need for daily caps. Moreover, imposition of such a requirement through the mechanism of a financial institution letter seems to be one of the clearest examples of misuse of the purpose of a FIL.

The recent amendments of Regulation E and DD are a strong endorsement of consumer choice and responsibility. They empower each and every customer to elect overdraft protection affirmatively for ATM and one-time debit card transactions and provide customers with the information appropriate to make and manage that choice. Customers receive monthly reports of overdraft and NSF fees and have been granted an unfettered right to opt-out from an overdraft program at any time. Those who do not want to pay overdraft fees for ATM or one-time debit card transactions, or who find after incurring multiple fees that they want to avoid such occurrences in the future, are free to revoke their opt-in and establish a hard cap against such fees.

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[10] ABA urges the FDIC to permit banks to exercise discretion— based on their knowledge of their customer—to determine what constitutes "meaningful and effective" follow-up action. This follow-up action might include an in-person discussion, a telephone conversation, a letter, a statement stuffer notice, or an email notice to those customers who have agreed to receive electronic communications from their bank. Many of our members report that they already identify and communicate with customers who have had frequent overdraft transactions. These banks recognize that by reaching out to frequent users, they have an opportunity to do what they do best, communicate with individual consumers to identify how to effectively serve the banking needs of that individual.

As noted by ABA's Overdraft program Task Force in its report, *A New Framework for Overdraft Program Compliance,* [11] a corollary of the new regulatory framework's endorsement of consumer choice is the responsibility of consumers to make rational comparisons between overdraft program elements offered by competing institutions. This, in turn, empowers financial institutions to compete for customers by providing more options than the simple opt-in. Banks can incorporate within their overdraft programs design elements that make consumer choice more competitive. Increasingly, banks are choosing to introduce daily or monthly aggregate limits into their standard overdraft programs without a regulatory mandate, and in this way are empowering their customers to determine the limitations on the program that they prefer.[12] Market-wide, this will likely result in an array of customer choices responding to the range of preferences that are likely to be found among the population. No regulation can provide that kind of flexibility. Rather than imposing a regulatory requirement for banks to adopt daily limits, ABA believes 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. Again, 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 defer articulating supervisory expectations about payment order until the Board concludes its review.**

The FDIC also states that it expects institutions to "review check clearing procedures to ensure they operate in a manner that avoids maximizing customer overdrafts and related fees through the clearing order. Examples of appropriate procedures include clearing items in the order received or by check number." This brief directive belies the complexities of presentment, settlement, and payment order and the myriad issues presented by such a review. It also ignores established consumer preferences that important payments – which tend to be large – be paid.[13] In addition, the recent ability of customers to choose not to have debit card overdrafts paid changes the discussion of whether a particular order is "better" or not, given that debit card transactions tend to involve small dollar amounts that will now simply be denied for

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[11] *A New Framework for Overdraft Program Compliance,* August 2010, *available at* http://www.aba.com/NR/rdonlyres/DCA9AE8F-E203-4789-B26C-67C0A9857D50/68168/NewFrameworkforOverdraftCompliance2010.pdf.

[12] Moebs $ervices, Inc., an independent economic research firm, reports that 15% of banks and 11% of credit unions surveyed (statistical survey done in July/August 2010 of 2,284 banks and credit unions) instituted program changes "beyond" those required by Regulation E and DD, including instituting caps or overdraft thresholds. *See* Webinar Series, "What's Happening in the Market Place," August 25, 2010, *available at http://www.moebs.com/WebinarSeriesRebroadcasts/tabid/210/Default.aspx*

[13] The Federal Reserve Board's consumer testing found that overwhelmingly, consumers want important payments paid and are willing to pay for overdraft protection in order to avoid other penalties imposed by the payment recipient, the inconvenience of making another payment, and the embarrassment. Bill payments tend to be relatively larger payments. *See* "Review and Testing of Overdraft Notices" submitted by Macro International to the Board of Governors of the Federal Reserve System, December 8, 2008.

those who do not opt-in. In such cases "high to low" may be preferred. Finally, the Board is in the midst of a thorough examination of payment order issues and is considering whether to promulgate a rule on payment order. To avoid unnecessary and costly core processing system and disclosure changes and to avoid further confusion for consumers, we urge the FDIC to omit this statement of supervisory expectation and to wait until the Board concludes its review.

**The FDIC should clarify that follow-up communications with customers do not constitute unlawful targeting or steering.**

The financial institution letter reminds banks of the following admonition in the 2005 Interagency Guidance:

> Under the Equal Credit Opportunity Act (ECOA) and Regulation B, creditors are prohibited from discriminating against an applicant on a prohibited basis in any aspect of a credit transaction. This prohibition applies to overdraft protection programs. Thus, steering or targeting certain consumers on a prohibited basis for overdraft protection programs *while offering other consumers overdraft lines of credit or other more favorable credit products or overdraft services,* will raise concerns under ECOA. (emphasis added)

ABA and its members understand the applicability of Regulation B to overdraft protection programs. However, we urge the FDIC to make it clear to its examination staff that bank communications with customers who have used overdraft protection programs in the past – including follow-up outreach to ensure that the customer received and considered the opt-in notice – does not, standing alone, constitute unlawful "targeting" or "steering."[14] Our membership has made every effort to communicate with consumers about the opt-in requirement in a transparent and responsible manner using the A9 Model Notice. That notice expressly informs customers of the existence of all alternative overdraft services offered by the bank, so no one is being steered "while offering other consumers overdraft lines of credit or [other alternative services.]"[15]

Moreover, reaching out to previous overdraft program users to ensure that they were not surprised by the loss of overdraft coverage for one-time debit card transactions is not discriminating against an applicant in any aspect of a credit transaction. Finally, we remind the FDIC that the only statistically sound study of the demographics of overdraft users found that the only reliable predictive factor of overdraft usage

[14] The fact that the opt-in notice requires institutions to provide information about alternative overdraft products should negate assertions of "steering."
[15] 12 C.F.R. §205.17, Appendix A, A-9 Model Consent Form for Overdraft Services.

is credit scores: gender, age, and income do not correlate to overdraft behavior.[16] There is no *ipso facto* targeting on a prohibited basis when approaching or communicating with customers that have used overdraft programs in the past.

**The FDIC should not use a statement of supervisory expectation to require institutions to offer an opt-out for overdraft coverage for check and ACH transactions**

In a related vein, we urge the FDIC to clarify that its statement that "institutions should allow customers to decline overdraft coverage (*i.e.,* opt out)" for check or ACH transactions is not a regulatory requirement. As previously discussed, the Board's decision to impose an opt-in regime only for ATM and one-time debit card transactions was based on extensive consumer testing which revealed that customers want, appreciate, and expect important payments to be paid and not returned. The Board found that consumers value the ability to avoid the embarrassment, hassle, costs, and negative reporting to checking account management databases and adopted a policy direction only against overdraft protection for ATM and one-time debit card transactions. Although many banks *choose* to permit their customers to opt-out of overdraft coverage for check and ACH transactions; other banks provide different account feature bundles that do not include standard overdraft services. Customer choice is protected by customers having the ability to select among account options rather than by modifying account features by opt-out.[17] In any case, it would be inappropriate for the FDIC to seek to impose opt-out as a regulatory requirement through a statement of supervisory expectation.

**The FDIC should not require annual approval of overdraft program features by bank boards of directors**

ABA cautions the FDIC against the further blurring of managerial and board responsibilities in its expectation for "ongoing and regular board and management oversight of program features." Although bank boards may be encouraged to review broad statements of policy regarding overdraft programs and practices, 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. Bank efforts to design overdraft products responsive to changing

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[16] Moebs $ervices, Inc.,(Ibid.). *See* 2009 study on the demographics of overdraft program use (over 1 million checking accounts examined) "Who Uses Overdrafts", June 29, 2009, *available at* http://www.moebs.com/Pressreleases/tabid/58/mid/380/SearchTerm/who%20uses%20overdrafts/Default.aspx.

[17] For example, a bank might offer an account consistent with the FDIC Safe Transaction Account Template (that does not allow overdrafts), rather than provide for opt-out of a competing proprietary transaction account with standard overdraft services for checks or ACH.

markets and consumer priorities will be needlessly constrained by a requirement for annual board oversight of program features.

This expectation is another example in a long line of banking agency staff proposals to elevate management responsibilities to an already over-worked board of directors. ABA has written to the agencies on repeated occasions about this unwarranted trend in both safety and soundness situations and in compliance circumstances[18]—and we have been assured that regulators are being mindful of these concerns. We point out that directors do not manage bank compliance and are not the source of expertise for approving customer account features. The FDIC's proposal would march directors down the path of product design and marketing reviews. We urge the FDIC to recall that during the ID Theft Red Flags rule-making, the agencies proposed a requirement for continuing board of director approval of ID Theft Program changes. Consistent with concerns raised in ABA comments, the agencies wisely withdrew that requirement in the final regulation. Unwise assignment of managerial responsibilities to the board of directors—whose time and attention are better devoted to the strategic guidance and corporate governance of the business— should not be imposed in the overdraft operations context, and certainly not as a supervisory expectation by a financial institution letter or other general agency guidance.

**Conclusion**

ABA 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. ABA 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, replacing the 2005 Interagency Guidance with new guidance that integrates the changes to Regulations E and DD. 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 than can be provided by an inconsistent patchwork of individual agency mandates.

[18] *See* April 28, 2005 ABA letter to Governor Bies, *available at* http://www.aba.com/aba/documents/Compliance/Bies_SupTrends_05.pdf

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Sincerely,

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