STATE OF NEW YORK
BANKING DEPARTMENT
ONE STATE STREET
NEW YORK, NY 10004–1417

RICHARD H. NEIMAN
Superintendent of Banks

June 4, 2010

Federal Deposit Insurance Corporation
550 West 17th Street, N.W.
Washington, D.C. 20429

Re: Safe Account Template Comments

Dear Sir/Madam:

The New York State Banking Department ("Banking Department") appreciates this opportunity to comment on the Federal Deposit Insurance Corporation's ("FDIC") proposed templates for safe, low-cost transactional and basic savings accounts for low and moderate-income ("LMI") individuals as a means of encouraging the unbanked to become banked. The need for these affordable products among the LMI and underserved consumers is great. In fact, in 1994 the New York State Legislature found that the costs associated with transactional accounts were such a significant barrier to consumers opening an account, that it passed legislation[1] requiring all New York banking institutions[2] to provide a low-cost "basic banking account."

The proposed transactional account template in many ways mirrors New York State's "basic banking account." Like the FDIC's proposed account, New York's basic banking account caps the opening balance deposit requirement at $25, however the monthly minimum balance requirement is lower for these accounts ($.01 vs. $1). Other requirements include: a fee cap of $3 for the monthly maintenance charge, and a minimum of at least eight monthly withdrawals with no charge.[3]

[1] Banking Law §14-f.

[2] A "banking institution" is defined in the statute as "any bank, trust company, savings bank, savings and loan association, or credit union, or branch of a foreign banking corporation the deposits of which are insured by the [FDIC], which is incorporated, chartered, organized or licensed under the laws of this state or any other state or the United States, and in the ordinary course of business, offers consumer transaction accounts to the general public or, in the case of a credit union, to its members."

[3] Unlike the FDIC proposed account, the New York basic banking account does not distinguish between check-based or electronic withdrawals and specifies that all types of withdrawals (i.e., checks, ATM/debit card and debit card purchases) can be counted in calculating the monthly minimum of eight.

FDIC's Proposed Banking Account Templates for LMI Consumers Should Allow Institutional Flexibility

While we support establishing basic criteria for low-cost accounts, we urge the FDIC to leave room for some institutional flexibility. New York's basic banking statute builds in such flexibility by allowing a banking institution to provide an alternative low-cost account to the basic banking account, provided that the Banking Department determines that the account to be offered is "*at least as advantageous to consumers*" as the basic banking account. As a result, an institution is free to be more innovative in structuring its low-cost account.

For example, our statute would allow a banking institution to offer the account with the minimum withdrawal number set at 12 transactions and the monthly maintenance fee set at $4 instead of eight withdrawals for $3. Such flexibility is good for both the consumer and the institution because it provides an institution a multitude of options to make the account cost-effective, while keeping it affordable for the consumer. The FDIC's proposed transactional account template would fit comfortably within New York's basic banking statute as an alternative account, and a banking institution would be free to distinguish between check-based and electronic withdrawals provided that the minimum number of withdrawals allowed and the monthly maintenance fee charged proved to be at least as advantageous to consumers as the features of the basic banking account. A similar degree of flexibility needs to be built into the template account.

Low-Cost Basic Bank Accounts Must Be Affordable for Consumers to Set Up and Maintain

Based on data from the past 15 years since the basic banking account was introduced by the New York Legislature, we find that the account is not a "loss-leader" for banking institutions. Although a banking institution is allowed to require direct deposit and charge overdraft and non-sufficient fund ("NSF") fees under New York's basic banking statute, features which are not allowed for the proposed transactional account, we do not believe that the proposed account features would be unprofitable for banking institutions. Our experience has been that even in those instances where a bank has required direct deposit for a basic banking account, the bank has either waived or reduced other fees, usually the monthly maintenance fee. As the FDIC found in its 2008 survey of overdraft programs, overdraft and NSF fees have disproportionately impacted low-income consumers, and we support prohibiting their use in low-cost accounts. In fact, recent federal legislation and regulation have limited the ability of banks to utilize overdraft charges by requiring consumers to affirmatively opt into any bank's ATM or debit card overdraft program. The FDIC has proposed sound alternatives to overdraft and NSF charges, including prohibiting a bank from honoring a check where a consumer does not have sufficient funds in her account to cover the check amount and linking transactional accounts to a savings account or line of credit to cover overdrafts. In the latter instance, we strongly encourage that the consumer be provided adequate information about this feature, perhaps through a community-based organization working in partnership with the banking institution to better ensure that the account would be managed responsibly.

Low-Cost Bank Accounts Can be both Affordable and Fiscally Sound

We also suggest that the issue of the template accounts' profitability be addressed directly, as it is in New York's basic banking statute. The statute explicitly provides that basic banking services be provided "consistent with safe and sound banking practices" and prohibits an institution from being required to offer such services at a cost that is "less than the actual cost to the banking institution to provide such services." Since the inception of New York's mandated basic banking account in 1994, no institution has ever shown that it was incapable of offering the account based on cost. By incorporating both flexibility and a requirement of sound banking practices, the proposed transactional account will be "affordable" for both consumers and banks.

Encouraging Savings Is Critical to Helping LMI Consumers Accumulate Wealth

The Banking Department is pleased to see the FDIC include an insured savings account in its proposal. Although no one would dispute the importance of transactional accounts in bringing the un- and under-banked populations into the financial mainstream, it is through savings programs that LMI consumers have an opportunity for true wealth creation. Such wealth creation also benefits banking institutions, not only by increasing their deposit base, but by providing a foundation on which consumers may build their relationship with the institution. Savings help consumers afford mortgages, credit cards and other financial products. And yet, because of the high opening and/or monthly balance requirements of many savings accounts, the idea of creating wealth seems farfetched to those in the LMI community who are largely living paycheck-to-paycheck.

The Banking Department encourages flexibility for low-cost basic savings accounts also. The point is not only to get the accounts opened, but also to encourage the account holders to leave money in the account and make repeated additional deposits. Thus, the low/no amount associated with the opening balance, monthly minimum balance and maintenance fee requirements are entirely appropriate to encourage the opening of the proposed savings account. But, to encourage active saving, we suggest that some consideration be given to tying balances to other services. For example, an institution might charge a lower fee for a specific number of money orders or international remittances where the consumer maintained a savings account with a balance of a certain amount. This would also allow the institution to charge rates for these services that are competitive with local non-traditional financial services providers who currently are the primary financial providers for many in the LMI populations.

In addition, the payment of interest on these savings accounts should encourage savings. For example, financial institutions might consider adding features to the account that resemble step-rate CD accounts where the interest rate increases the longer the account holder maintains a certain minimum balance. Although the rate would decrease again should the account holder's balance drop below the minimum, this does not have the same negative impact as incurring a fee for not maintaining a balance, and thus would not discourage the consumer from continuing to save.

Fees for Ancillary Services Should be Competitive, but not Excessive

The Banking Department agrees that ancillary transactional services (money orders, check cashing, wire transfers, etc.) should be available for a competitive fee relative to fees charged for comparable services provided by non-banks in the same market area. However, a banking institution should be allowed to charge different rates for services provided to its customers as compared to noncustomers. This would increase the benefit of opening an account at the institution. It also would provide an opportunity for innovative linkages to a consumer's accounts as noted earlier, (e.g., reduced fee for money orders where savings account balance exceeds a certain amount). Moreover, the provision of ancillary products at competitive prices offers the banking institution an opportunity to increase its customer base and thereby offset some of the costs associated with the low cost accounts. To ensure that the fees associated with the ancillary services do not become excessive, there should be a requirement that the fees not exceed the statutory limits that restrict the non-traditional financial services providers. For example, in New York, check cashers are restricted by statute from charging a fee above 1.83% of the face value of the check being cashed. Thus, using that ceiling, banking institutions would be prohibited from charging noncustomers more than the 1.83% fee for check cashing services, while customers would either be charged no fee, or a substantially reduced fee. This motivates a noncustomer to become a customer. And, if the banking institution also charged a lower fee for cashing municipal, state, or federally-issued checks because these checks are less risky transactions for the institution, then the institution would have a competitive edge over neighboring non-traditional financial services providers.

Other Types of Accounts and Products that Are Attractive to Both LMI Consumers and Financial Institutions Should be Encouraged

We applaud the FDIC's intention to encourage banking institutions to use the proposed templates. Despite the concern raised by some, we have found via our Banking Development District program ("BDD") that banking institutions not only are capable of profiting from such low-cost products, but have been willing to develop their own. The BDD program, created in 1997, provides a monetary incentive to banks to promote the establishment of new bank branches in communities with no or few branches and thereby stimulate the opening of bank accounts by community residents. The program is administered by the Banking Department and the New York State Office of the State Comptroller and was created in recognition of the fact that banking institutions play an important part in promoting individual wealth, community development and revitalization. Although the Banking Department does not require any bank participating in the BDD program to offer a specific financial product, the Department does expect every BDD branch to provide affordable products to the communities the branch serves. The accounts opened at the BDD branches tend to be either basic banking accounts or alternative accounts pursuant to the basic banking statute. However, other new and innovative products also have been introduced to BDD communities. For example, one bank offers "Youth Account" savings accounts for elementary school students. Bank personnel work directly with the kids to encourage them to save. Participating schools appoint a program coordinator (a parent or faculty member) to serve as the coordinator for the program at the school. The account requires the co-signature of a parent or guardian to be opened, but the account reverts to a statement savings account upon the holder turning 18. These accounts are free, with no minimum balance requirements.

Other banks in the BDD program offer “Bank at Work” checking accounts to the employees of the bank’s business customers, and allow the employees to enroll in a bank product while at work. Under the program, customers receive discounts and benefits, such as:

- $25 cash bonus for opening a checking account
- $50 cash bonus for signing up for direct deposit
- $150 reduction in mortgage closing costs
- .125% discount on fixed-rate home equity loans
- free money orders and travelers checks
- free checks for the life of the account, and free online bill payments.

In addition to these transactional and savings accounts, some BDD bank participants also offer small dollar loan programs to families who do not qualify for conventional bank credit. The loans are given with a repayment period ranging from 12 to 36 months, have interest rates ranging from 0% to 3%, and are typically used for the purchase of used vehicles to provide transportation to and from work and/or school. Some other common uses for these loans include: the purchase of appliances, payments for childcare, security deposits, rent, mortgage arrears, housing repairs, and vehicle repair.

The banks work with a nonprofit community-based organization to identify applicants and assist in the preparation of the applications. When a loan is approved, the bank issues either a two-party check for the consumer and the vendor (car dealer, etc.), or issues a check for payment directly to the vendor. Families who repay their loans on time develop a positive credit history, which ultimately helps them to establish financial stability and access to credit in the future. We believe that programs like these benefit both the consumer and the banking institution, and we suggest that the FDIC encourage the implementation of similar programs to its constituency.

Eligibility Criteria Should Avoid Creating Barriers for the Immigrant Unbanked Population

We would also like to comment on the eligibility requirements for the proposed template accounts. The template encourages banking institutions to apply latitude and flexibility, as permitted by law, when forming a reasonable belief about each customer’s identity and when assessing the risk of opening a new account. Although we appreciate the need for flexibility in identification requirements, we also caution that varying requirements can themselves be an obstacle, particularly for immigrant populations seeking to open a bank account. The uncertainty of knowing whether alternative forms of identification will be accepted by an institution, and, if so, which ones will be honored, contributes to a distrust of banks and credit unions among the immigrant unbanked. Thus, we suggest that, in addition to encouraging insured financial institutions to offer safe, low cost accounts, that the FDIC affirmatively encourage the acceptance of specific alternative forms of identification (e.g., consular cards, ITIN numbers), otherwise an important segment of the unbanked population, i.e., immigrants, may by unable, or unwilling to benefit from these safe and affordable financial products.

Banks Must Make LMI Consumers Aware of their Low-Cost Accounts

Finally, we want to note that establishing low-cost bank accounts is not enough to meet the needs of underbanked consumers. Some inducement is necessary to ensure that banking institutions do not just carry the low-cost accounts, but also inform consumers of their availability. One problem that we have experienced with the basic banking account is that consumers do not know it exists because banking institutions do not market the account and each bank has adopted its own name for the account. This causes confusion for the consumer. The better practice is to require that the account be clearly identified as “the basic checking” or “the basic savings account” in addition to any other name the bank may associate with the account. This will reduce confusion and allow consumers to compare features across institutions to find the best products to fit their needs.

Again, thank you for giving us this opportunity to comment on the development of low-cost transactional and savings accounts for underserved consumers. If you have any questions about comments, please contact me directly at (212) 709-3501 or Dianne Dixon, Deputy Superintendent of Banks, Consumer Services, at (212) 709-3591 or Dianne.Dixon@banking.state.ny.us.

Regards,

Richard H. Neiman
Superintendent of Banks
New York State Banking Department

Richard H. Neiman