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July 18, 2008

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Ms. Mary Rupp, Secretary
National Credit Union Administration
1775 Duke Street
Alexandria, Virginia 22314-3428

Re: **Overdraft Practices**
Board Docket No. R-1315 (Regulation DD)
Board Docket No. R-1314 (Regulation AA)
NCUA RIN 3133-AD47

Dear Ms. Johnson and Ms. Rupp:

This letter is submitted in response to the joint proposal regarding Overdraft Services under Regulation DD (Truth in Savings) and Regulation AA (Unfair & Deceptive Practices). Securian Financial Group is a provider of credit insurance programs to the bank and credit union industry, and administers debt cancellation contracts and debt suspension agreements to our clients. We are also a lending and deposit forms provider to our credit union clients, and as such, provide closed-end and open-end consumer and home equity loan forms and deposit forms to approximately 300 credit unions nationwide. It is with this background and knowledge that this letter is submitted. We appreciate the opportunity to provide this information.

The following will provide specific comments to each of the proposed revisions.

REGULATION AA & NCUA PART 706 – CONSUMER CREDIT PRACTICES
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The Agencies are proposing two provisions prohibiting unfair acts or practices related to overdraft services in connection with consumer deposit accounts. The first would make it an unfair practice to assess a fee without first providing the consumer an opt-out procedure. The second would prohibit institutions from assessing an overdraft fee if the overdraft was caused solely by a debit hold.

OPT-OUT PROCEDURES

Definitions – 706.31 & 227.31. We agree with the proposed definitions and believe it is appropriate to exclude lines of credit, HELOCs, and credit cards as well as transfer services, from the overdraft rules.

General Rule – 706.32(a) & 227.32(a). We will respond to the following requests for comment:

- *Whether the scope of the consumer’s opt-out right under §__.32(a)(1) should be limited to ATM transactions and debit card transactions at the point-of-sale. Under this alternative approach, institutions would be permitted, but not required, to provide consumers the option of opting out of the payment of overdrafts for check and ACH transactions.*
- *The potential costs and consumer benefits for implementing a partial opt-out that applies only to ATM transactions and debit card transactions at the point-of-sale.*

We fail to see the need to complicate the rule by limiting its scope. Requiring opt-out on some transactions, but not others, will be administratively burdensome (or impossible) for the institution, and confusing to the consumer. Most institutions do not, or cannot, treat the type of transaction or item differently with regard to overdrafts. Most institutions’ systems do not differentiate overdraft services per the item type. In other words, institutions have no way of knowing and tracking which items’ overdrafts are to be paid, and which are not. For a system to know, and accurately pay, Susie Customer’s checks and ACH transactions but not her ATM & POS debit transactions, and to do the opposite for Joe Customer, would be cost-prohibitive, even if it were technologically possible. Additionally, ATM/debit cards are generally requested by the consumer at the same time as the deposit account is opened, and are an integrated part of the deposit account. To treat transactions out of the same account differently (e.g., to pay overdrafts on checks but not debit purchases) will not make sense to consumers, will cause extreme burden in re-programming systems, and will provide less benefit to consumers. Moreover, if one institution allows overdrafts on checks and ACH transactions, and another institution does not, a consumer can easily forget which institution covers which overdrafts, which could cause the consumer to inadvertently bounce items and incur fees. It could also expose the institution to customer relations issue and potential complaints, if the consumer is confused as to which overdrafts the institution would cover, and which it would not. Finally, we would assume that if a consumer initially opts-out of only ATM/Debit transactions, that at any point in the future she can choose to opt-out of checks and ACH. This will cause more administrative burden and confusion when the institution, and the consumer, must revise and track which opt-outs are in place and which are not.

The simpler the rule, the easier the compliance burden. We would request that the rule require opt-out of all items and transactions under the account, and that consumers be required to either opt-out of all transactions, or no transactions. To do otherwise would put an extremely unfair, if not impossible, burden on the institution while providing little or no additional value to the consumer.

Debit Holds – 706.32(b) & 227.32(b). We have no objections to this provision.

- *Other Comments*

We provide the following additional comments regarding the proposal.

Comment 1, Section 706.32(a)(1), “Form, Content, and Timing of Disclosure”. We note that the NCUA’s Commentary regarding the Model Form for the Opt-out Notice states that the form, content

and timing of the opt-out notice are “addressed under section 707.10 of this Chapter”. We assume that this is meant to cross reference the NCUA’s equivalent of Regulation DD section 230.10. However, NCUA Part 707.10 currently addresses Electronic Communication, and we can find no proposed amendments to re-number and/or add an equivalent to Reg DD 230.10 or to amend the Commentary to add the Model Form. We request clarification that federal credit unions are subject to these provisions, and, if so, we ask that these provisions be added to the NCUA Regulations.

We also note that federally-insured state-chartered credit unions are currently required to comply with NCUA Part 707. However, they are not currently required to comply with the proposed overdraft provisions of Part 706. We request clarification as to what, if any, requirements federally-insured state charters must comply with in regards to the proposed overdraft program requirements. Will they be required to comply with an equivalent of Reg DD, 230.10?

Finally, we note that the Board has proposed amendments to 230.11 regarding advertisements of overdraft services. Namely, the amendments would require that all financial institutions comply with 230.11, regardless of whether they advertise overdraft programs. Again, we can find no amendments to NCUA Part 707.11 to incorporate this change. We request clarification as to whether FCUs and federally-insured state charters need to comply with proposed section ____.11, and, if so, we ask that these provisions be added to the NCUA Regulations.

REGULATION DD & NCUA PART 707

Note: Although we can find no amendments to NCUA Part 707 in order to conform NCUA Part 707 to Reg DD., we address our comments equally to the NCUA for its consideration in anticipation of additional rulemaking and/or clarification of the current proposal.

FORMAT AND CONTENTS OF OPT-OUT NOTICE – 230.10 and Model form B-10. We provide the following comments.

Methods in which Opt-out Right May Be Exercised

- *Proposed § 230.10(b)(5) requires institutions to inform a consumer of the right to opt out of the institution’s payment of overdrafts, including the method(s) that the consumer may use to exercise the opt-out right. Such methods may include providing a tollfree telephone number that the consumer may call to opt out or allowing the consumer to mail in the opt-out request. See proposed comment 10(b)–2. Comment is requested as to whether institutions should be required to provide a form with a check-off box that consumers may mail in to opt out. Comment is also requested regarding whether consumers should also be allowed to opt out electronically, provided that the consumer has agreed to the electronic delivery of information.*

We do not believe that the Board should limit the ways in which a consumer can opt-out, including requiring institutions to provide a form with a check-off box that consumers can mail in. Any reasonable method should be allowed, including electronically. This will ease institutions’ compliance burden while still providing consumers with a reasonable and convenient method for opting-out. We also ask that the Board clarify that, if the opt-out notice is provided electronically, that the institution does not have to comply with the E-SIGN consent requirements, consistent with the Board’s amendments to the various regs in December, 2007. For example, if the opt-out notice is provided on or with an electronic application for deposit accounts or membership in a federal credit union, the E-

SIGN consent requirements do not need to be followed. Instead, for example, the opt-out notice can be designed in such a way that the consumer cannot bypass the notice, and must complete it (or decline it) in order to submit the application. This would be consistent with E-SIGN alternatives already approved by the Agencies, e.g., this procedure is consistent with the procedure for providing early HELOC disclosures with an electronic loan application.

We also request that the Board allow institutions to require the consumer to provide his exercise of the opt-out in writing, if the institution so desires. Many institutions will only be comfortable receiving the opt-out in writing, in order to avoid any confusion or complaints in the future.

Sufficiency of Content Requirements; Alternatives to Overdraft Services; Suggested Revisions to the Model Form

- *Comment is requested regarding whether the proposed content requirements provide sufficient information for consumers to evaluate effectively whether an institution's overdraft service meets their needs.*
- *Comment is requested on the content requirements of the opt-out notice, and the burden to institutions and benefits to consumers of providing all of the proposed content in each notice, including the information about alternatives to overdraft services.*

Use of the Term, "overdraft services". We find the use of the term, "overdraft services" in the model form to be problematic. This term is often misunderstood, and indeed it appears that the Board is using it to mean two different things within the form: the first mention of the term appears to refer to discretionary payment of overdrafts (i.e., with no written agreement with the consumer). However, when the form mentions alternative overdraft payment services that the consumer may qualify for, it is apparently referring to what is commonly known in the industry as "overdraft protection", which typically provides consumers with the option of electing to cover overdrafts through their choice of 3 automatic payment methods: transferring funds from a savings account; establishing a line of credit; or advancing funds from a credit card. We find the form confusing in that it appears to tell the consumer that he can opt-out of overdraft services, but can then also elect overdraft services. We believe the two programs should be distinguished somehow. For example, the discretionary payment of overdrafts could be referred to as "Payment of Overdraft Items".

Alternatives to paying overdrafts. We also object to, and request clarification for, the information regarding alternatives to overdraft services under 230.10(b)(6) and the Model Form. As currently proposed, 230.10(b)(6) states:

(6) *Alternative payment options*. As applicable, a statement that the institution offers other alternatives for the payment of overdrafts. In addition, if the institution offers a line of credit subject to the Board's Regulation Z (12 CFR part 226) for the payment of overdrafts, the institution must also state that fact. An institution may, but is not required to, list additional alternatives for the payment of overdrafts.

The Model Form states:

We also offer less costly overdraft payment services that you may qualify for, including a line of credit.

We believe that the Board is not mandating that the institution provide alternatives to overdraft services, but the text of the provision, and especially the Model Form, makes it sound as if it is. If we are understanding the requirements correctly, the institution is only required to disclose that it provides a line of credit for the payment of overdrafts, *if in fact it does so*.

We are also puzzled, however, as to why the Board is singling out lines of credit. We do not believe it is the purview of the Board, nor is it beneficial to the consumer, to steer them to one alternative over another. Moreover, a line of credit is not necessarily “less costly” than an overdraft fee. These lines of credit often require that advances be made in increments, which can be as high as \$200 or \$300 dollars, and typically have the highest APRs of any credit product offered, e.g., 18% or higher. This will be far more expensive than one or a few \$35.00 overdraft fees, and certainly more expensive than choosing to transfer funds from a savings account to avoid the overdraft. Finally, we note that all overdraft options have their advantages and disadvantages as well as fees, terms, and conditions. Institutions typically explain these alternatives and their terms in the account agreement or disclosures, and ask the consumer if he wishes to sign up for one or the other, and/or to indicate which option he wishes to utilize first, e.g., the consumer can instruct the institution to draw funds from a savings account first, and then if sufficient funds are not available in that account, to then draw from a credit card, and then from the overdraft line of credit. This provides the consumer with the most efficient way to make an informed decision when it comes to overdraft protection. The Model Form only partially explains the alternatives, which will only confuse the consumer and cause problems for the institution. It also mixes up which program the consumer can opt-out of with other optional programs that the consumer cannot opt out of.

With that said, we believe there is some benefit to informing the consumer, very generically, that other alternatives may be available. As such, we request that the Board revise these requirements as follows:

Section 230.10(b)(6):

(6) Alternative payment options. If the institution provides alternatives for the payment of overdrafts, the institution must state that fact, and must instruct the consumer as to how to obtain more information regarding those alternatives.

Model Form:

[We offer other alternatives to paying overdrafts that you may qualify for, such as transferring funds from a savings account or advancing funds from a line of credit or credit card. Please see your account documents or contact us at _____ for more information.]

As noted above, we seek clarification that institutions are not required to offer any alternatives to paying overdrafts. As such, we believe the disclosure on the Model Form should be in brackets.

Short-Form Opt-Out Notice

- *The Board’s proposal would require that all opt-out notices contain the same content, regardless of when the notice is provided. The Board is requesting comment whether the content*

requirements should differ when the opt-out notice is provided after an overdraft fee has been charged to the consumer's account.

We strongly urge the Board to allow for a “short-form” opt-out notice that would satisfy the subsequent notice requirement. As the Board notes, some of the information on the initial notice would be unnecessary and/or redundant on the subsequent notice, such as the fee(s) incurred. Additionally, the length of the initial notice makes it burdensome to include on the periodic statement and/or on a notice of overdraft. The notice of overdraft that institutions voluntarily send to the consumer are often about a third of a page, designed to fit into an envelope. This minimizes costs to the institution, which in turn minimizes costs to the consumer. We also note that if the initial notice is provided in writing at the time of account opening, the consumer will be instructed to keep it for her records, in which case she can easily refer back to it. As such we request that the Board allow for a short-form disclosure, and ask that it provide a model form. We suggest language such as:

Overdraft Opt-out Notice. You have the right to tell us not to pay any overdrafts. If you do, however, you may have to pay a fee if you make transactions that are returned unpaid. To tell us not to pay your overdraft items, or to obtain information about other alternatives for paying overdrafts, contact us at [*method of opting out.*].

We believe this provides the consumer enough information to take advantage of, or to decline, the overdraft opt-out choice, without overloading the consumer with unnecessary or redundant information. It also eliminates the need for an additional insert, which will help prevent additional costs to the institution for postage, printing, and material costs.

230.10(b)(3) – Potential impact of fee in relation to overdraft amount. This provision requires the institution to state that a fee may be charged for overdrafts as low as \$1, or the lowest dollar amount for which the institution may charge an overdraft fee. We request a minor change to the model language to clarify that institutions can charge the fee on any amount (e.g., that institutions can charge an overdraft fee on overdrafts of less than \$1). We would suggest:

- We may charge you this fee [even if your overdraft amount is as low as \$___] [**regardless of the amount of the overdraft**].

Model Form B-10(a) Long-Form Opt-Out Notice:

Consistent with our various comments explained above, we respectfully suggest the following changes to the Model Form(s):

Payment of Overdraft Items. We may, but do not have to, pay your overdraft items. ~~We provide overdraft services for your account.~~ This means that if there is a debit to your account when your account does not have sufficient funds, we may pay your overdraft **rather than returning the item unpaid.**

There are fees associated with **paying your overdraft items** ~~our overdraft services~~:

- We will charge you a fee of \$__ for each overdraft item that we pay, including ATM withdrawals, debit card purchases, checks, and in-person transactions.
- We may charge you this fee [even if your overdraft amount is as low as \$__] **[regardless of the amount of the overdraft].**
- [We may also charge you additional daily fees of \$__ for each day your account remains overdrawn.]
- [We can charge you a maximum of \$__ in fees per day and \$ __ per statement period for overdrawing your account.] [There is no limit to the amount of fees we can charge you for overdrawing your account per day/per statement period.]

You have the right to ~~opt out of this service~~ and tell us not to pay any overdrafts. If you do, however, you may have to pay a fee if you make transactions that are returned unpaid.

~~You also have the right to tell us not to pay overdrafts for ATM withdrawals and debit card purchases, but to continue to pay overdrafts for other types of transactions.~~

[We also offer other alternatives to paying overdrafts that you may qualify for, such as transferring funds from a savings account, or advancing funds from a line of credit or credit card. Please see your account documents or contact us for more information.]

To tell us **not to pay your overdraft items**, ~~opt out of our overdraft service~~, or to obtain information about other alternatives **for paying overdrafts**, call us at 1-800-XXX-XXXX or write us at [insert address].

Model Form B-10(b) Short-Form Opt-Out Notice:

Overdraft Opt-out Notice. You have the right to tell us not to pay any overdrafts. If you do, however, you may have to pay a fee if you make transactions that are returned unpaid. To tell us not to pay your overdraft items, or to obtain information about other alternatives for paying overdrafts, contact us at *[method of opting out.]*.

We believe these model forms are more accurate for the programs currently offered in the marketplace, and less confusing for the consumer.

SECTION 230.11 – ADDITIONAL DISCLOSURE REQUIREMENTS REGARDING OVERDRAFT SERVICES

- *the Board is proposing to require all institutions to provide aggregate dollar amount totals of fees for paying overdrafts and for fees for returning items unpaid on periodic statements*

provided to consumers, pursuant to its authority under Sections 268 and 269 of TISA. See § 230.11(a)(1). As under the current rule, institutions must provide these totals for both the statement period and the calendar year to date. See § 230.11(a)(2). Comment is requested on the potential benefits to consumers and compliance burden for institutions for the proposed approach.

We have no objection to the format of the disclosures.

EFFECTIVE DATE

We believe 12 months is a reasonable effective date. However, we request that the long-form opt-out notice be required only for accounts opened on or after the effective date, and that existing accounts would receive only the short-form notice at the time any overdrafts are incurred. Providing the long-form notice to existing accounts would be overly burdensome and expensive, as institutions would have to build a new mechanism for delivering the long-form notice to existing accounts, which would probably require a mass mailing to thousands of existing accounts. The time and expense of doing so would be devastating. Institutions would also have dual requirements and dual procedures for new- and existing-accounts, which is administratively burdensome and has the potential for compliance error.

CONCLUSION

We urge the NCUA to clarify the requirements for federally-chartered credit unions and federally-insured state-chartered credit unions, and to revise its regulations accordingly. We also ask the Agencies to revise the long-form opt-out notice, and allow for a short-form notice. Finally, we ask the Agencies to eliminate the requirement that overdrafts arising from ATM transactions and debit card transactions be treated differently than check and ACH transactions.

Thank you for your consideration.

Sincerely,

/s/

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