



Central Bank

Central Bank & Trust Co.
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July 30, 2008

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW,
Washington, DC 20551

Re: Proposed changes to Regulation DD -- Truth in Savings Act

Dear Ms. Johnson:

Central Bank is submitting its comments to the Federal Reserve Board's proposed amendment governing the processing of overdrafts. We are addressing concerns regarding the following:

- The content, format and timing requirements for initial and subsequent notices informing customers of the right to "opt-out" of "overdraft services."
- The requirement for banks to provide separate totals of overdraft fees and nonsufficient fund fees by period and year-to-date to all banks, with additional formatting requirements.
- The proposal for a partial opt-out of specific ATM and debit card transactions on an individual customer basis.
- The disclosure by banks of the amount of funds available for consumers' immediate withdrawal without incurring an overdraft.
- Proposals to enable customers to select the order of processing for their transactions.

Opt-out disclosure requirements for overdraft service.

The Board is proposing to provide bank customers with a right to opt-out of a bank's "overdraft service" before the Bank can assess a fee for the service. We have provided an opt-out to consumers since 2006 as part of the "best practices" recommended by the Interagency Guidance on Overdrafts and have found it to be a consistent, effective means of addressing this issue. Providing the opt-out at account opening must be clear and concise, without overemphasizing its significance to the consumer relative to account terms such as fees, minimum balance requirements and interest rates. Since most customers do not overdraw their accounts, or, only do so infrequently, we agree with the proposal from the American Bankers Association and recommend that the notice include:

- ***Overdraft policy.*** The categories of transactions for which a fee for paying an overdraft may be imposed;
- ***Fees imposed.*** The dollar amount of any fees imposed for paying checks, withdrawals or transfers when there are insufficient or unavailable funds and the account becomes overdrawn.
- ***Potential impact of fee.*** A statement that a fee may be charged for overdrafts as low the lowest dollar amount for which a bank may charge an overdraft fee;
- ***Limits on fees charged.*** The fact that a fee may be imposed for each item overdrawn and whether the bank limits the daily amount of fees that can be imposed.

- **Disclosure of opt-out right.** The consumer's right to opt-out of the payment of overdrafts, must be exercised at the time of account opening, or expressed in writing to a representative of the Bank subsequent to the account opening.
- **Alternative payment options.** As applicable, a statement that the Bank offers a service for the payment of overdrafts via the bank's credit card accounts, subject to the Board's Regulation Z (12 CFR part 226). While we believe that the notice should be as simple and brief as possible, it is important for it to be complete and informative without overwhelming or confusing customers.

Use of term "overdraft services". The model form refers to "overdraft services". We strongly recommend that the Board not use the term "overdraft services" as we believe that many customers will not fully understand its meaning and indeed may be misled. Our concern is that many customers may erroneously assume that the term refers to an overdraft line of credit (visa credit card), which is a very different product, with different functions and fees. One option for a label might be "discretionary coverage of overdrafts".

Clarification that payment of overdrafts is discretionary. We suggest that the model language clearly communicate the discretionary nature of overdraft policies. We suggest language stating that, "we may pay your overdraft at our discretion", so that customers are more likely to understand the discretionary nature of the policy.

Categories of transactions covered. The proposal requires that the notice include "the categories of transactions for which a fee for paying an overdraft may be imposed". The list should include, "ATM withdrawals, any debit card transaction, electronic bill payments, checks, and in-person transactions". Customers should understand that pre-authorized recurring transactions and electronic transactions, including those made through ACH and debit cards, are included.

Banks should be able to make clear that if the customer opts out, such transactions *will not be paid* if there are insufficient funds. Our experience has been that many customers will expect and want these important transactions paid, and there may be significant consequences if they are not.

Disclosure of opt-out right. The proposal requires that the notice contain an explanation of the consumers' right to opt-out and the methods by which the consumer may exercise that right. The opt-out notice should make clear that even if the customer opts out, there might be occasions when transactions that cause overdrafts will nevertheless be paid and an overdraft fee imposed to avoid any false expectations. To ensure that customers understand that an opt-out cannot guarantee there will be no overdrafts, the notice should permit a general caution that in some limited circumstances, it may not be possible for the bank to stop authorized transactions (including debit card transactions) from overdrawing an account.

Consequences of opting out. We strongly believe that banks should be able to inform their customers completely and accurately of the consequences of opting out, so as not to cause misunderstanding and confusion. The ABA's recent 2008 survey found that 85 percent of those who had an overdraft fee in the past year were glad the payment was covered. It is also important that customers understand that not only will they incur a fee from the bank by opting out, but also they are likely to incur a fee or other charges from the person they are paying. They also should be aware that opting out means that certain transactions, such as debit card bill payments, would not be paid.

Timing

Under the proposal, the opt-out notice must initially be provided before the overdraft service is provided and overdraft fees are imposed on the consumer's account. We support the Board's determination that the initial opt-out notice would only be required for accounts opened after the effective date of the final rule and not for existing accounts. The cost of mailing notices to every checking account customer is staggering especially given that the

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The proposal concerning debit card holds is far too complicated to be implemented or for consumers to easily understand. Much of the confusion is driven by the sheer volume of debit card activity, which is growing by 15% per year for our Bank. Many customers are using a debit card for large purchases, such as hotel and airline reservations, instead of a credit card. The problem actually involves merchants and card networks, and cannot be solved by putting the onus only on the banks that are acting in a safe and secure manner to assure funds are available for customer authorized transactions of all types. Most certainly, a simple "all or none" type solution will not provide the answer to consumers, regulators or banks.

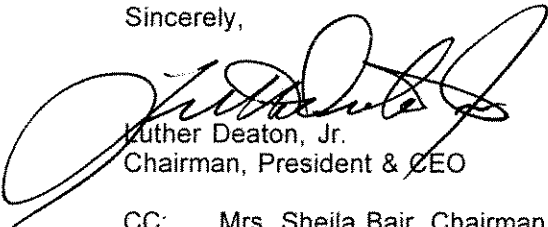
Comments on the order of payment clearance processing

We have disclosed the order of item processing to customers, who have responded they find it extremely confusing. Although we generally pay "lowest-to-highest", the order may be affected by electronic transactions that have a higher priority. It is our belief that this order of processing generally benefits the customer because it allows more transactions to be posted than a "highest-to-lowest" order would allow. We have found that this will generally result in lower overdraft fees for consumers. Various efficiency consultants have suggested to us that we change the processing order to benefit the bank's income but believe that what is best for our customers will ultimately be best for our Bank. In today's complex processing environment, no single processing rule can meet all the challenges and conditions faced by a commercial bank. With that said, the mere thought of allowing individual customers to select the processing order for their accounts would be absolutely impossible to achieve in a system that processes thousands of our customers' transactions daily.

Conclusion.

We sincerely appreciate the opportunity to comment on this important matter. We stress the importance of ensuring that customers understand the types of transactions that may cause an overdraft and which transactions will not be paid if they opt out. In addition, customers should be aware of the consequences of having payments returned or rejected, including the imposition of fees by the payment recipient. It is our belief that the Interagency Guidance on Overdrafts has already addressed these issues for almost three years and has proven to be an effective tool at educating consumers and reducing the number of account overdrafts. Additional regulation would be confusing to customers and expensive for banks to implement during challenging economic circumstances. We believe that customers already possess adequate means to monitor account activity and balance levels, in person, by phone or online. Attempts to give them additional means to manage their transaction flow will produce unnecessary delays and disruption in the payment system, as individuals struggle to make decisions on a case-by-case basis. We urge you address these issues by enforcing the existing regulations, not to duplicate them with new regulations that will be confusing, disruptive and expensive to implement.

Sincerely,



Luther Deaton, Jr.
Chairman, President & CEO

CC: Mrs. Sheila Bair, Chairman, Federal Deposit Insurance Corporation
✓ Mr. John Reich, Director, Office of Thrift Supervision
Honorable Mitch McConnell, Senator
Honorable Jim Bunning, Senator
Honorable Ben Chandler, Congressman
Honorable John Yarmuth, Congressman
Honorable Ed Whitfield, Congressman
Honorable Ron Lewis, Congressman
Honorable Geoff Davis, Congressman
Honorable Hal Rogers, Congressman
Mr. Ed Yingling, American Bankers Association