

July 14, 2008

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

Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, DC 20552

Mary Rupp, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

RE: Proposed Amendments to Regulations AA and DD

Dear Ms. Johnson; Chief Counsel's Office of the OTS; and Ms. Rupp:

We appreciate the opportunity to comment on the proposed amendments to Regulations AA and DD issued May 19, 2008. While we share the Board's concerns with the practices of some in the industry that may have misled consumers with respect to the true nature of discretionary overdraft protection services, we feel they will have a significant adverse effect on our institution and will not provide additional benefits to our customers. We hope that our comments will be valuable. Our comments on the Proposals are set forth below and are identified by the title of the section of the Proposal to which they relate.

Consumer Right to Opt Out

General Opt-Out Rights. The substantive opt-out right will prohibit financial institutions from charging any fees for providing overdraft services until the institution has provided consumers with (1) notice of his or her right to opt out and (2) a reasonable opportunity to exercise that right. The Proposal further includes a requirement that all depository institutions offer additional opt-out notices "at least once during or for each periodic statement cycle in which any overdraft fee or charge is assessed." We agree with the Agencies that consumers are entitled to receive a meaningful opportunity to opt out of services they do not want.

We already offer an opt out for consumer accounts; we believe that offer should be timely but not preemptive. Activation of our service includes an announcement mailing

and reminder mailings each time an overdraft item is paid. Each of these communications includes opt out language. Since some account holders fail to realize the impact of fees on their overall financial position, it may occur that the consumer's decision to opt out of the program follows rather than precedes their use of our overdraft program. Consumers are also educated about the resources available to them, including alternate sources of overdraft protection and the operational elements of our overdraft program. In the event they do not opt out before fees are assessed, we are responsive when they choose to opt out of future overdraft service usage.

We are also concerned with the Proposal's requirement that additional opt-out notices be provided at least once during every statement period in which the consumer incurs an overdraft service fee. We believe that providing an opt-out notice, which will in most cases be accompanied by an explanation of the potential harms that might result from the consumer's decision to opt out, would simply overwhelm consumers with information and impose a substantial compliance burden on the financial institution. Instead, we recommend that a brief statement of the consumer's right to opt out be placed on the consumer's periodic statement. Then, on an annual basis, a separate, full-length opt-out notice would be mailed to the consumer.

Partial Opt-Out Rights. In addition to creating a substantive right to opt out of overdraft services, the Proposal creates a partial opt-out right that would allow customers to opt out of the payment of overdrafts at ATMs and for debit cards transactions at the point-of-sale only. We find consumers have been extremely satisfied with the access to electronic channels (ATM and debit cards) as part of the overdraft service. An analysis shows that the percentage of electronic items increases annually while paper debits are declining at our institution. This partial opt-out ignores the convenience benefits provided by overdraft services, and would prove to be confusing and expensive. Any inconsistency in treatment among the various types of debit card transactions will generate confusion among consumers and financial institutions. As of today, electronic channel opt out is not yet possible through our technological resources and will require a substantial investment in new software and manpower.

Debit Holds

Activation of overdraft service on debit holds would result in significant manual handling of all overdrafts. Overdrafts handled at the teller line or in one of multiple daily ACH batches would require manual account review to determine if debit card holds are in place. If our institution was required to accommodate this change as drafted, it would require that we extend the processing window for items to minimize errors. We believe that the operational impact of this proposed change would create excessive costs, undue staff burden and increase the possibility of bank error.

Transaction Clearing Practices

Although no new rules governing the transaction clearing process have been created, the Proposal seeks comments on whether the Agencies should impose a requirement that would require financial institutions to pay smaller dollar items before paying larger dollar items when those items are received on the same day. The solicitation aims to address the perceived problem of financial institutions manipulating their posting methods to increase fee income. We understand the Agencies' concern; however, we are equally

concerned that the regulations would require consumers to consent to a specific method of clearing transactions. This ignores the reality of how transactions are actually posted and provide little or no benefit to consumers. In actuality, the items consumers would generally want paid first are usually their highest dollar items, i.e. mortgages, rent, car payments, credit card payments and utilities. Imposing this lowest amount first approach may leave the most important items unpaid, subject the consumer to two insufficient funds fees (one from the bank and one from the service provider) and could even damage the consumer's credit rating.

Thank you for the opportunity to express our comments during this period.

Sincerely,

Amy Pierce
Compliance Officer
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