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Regulation Comments
Chief Counsel's Office
ATTN: OTS-2008-0004
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

RE: Docket Number R-1315
Proposed changes to Regulation DD
Truth in Savings Act
73 Federal Register 28739, May 19, 2008

To Whom It May Concern:

The Nebraska Bankers Association (NBA) appreciates the opportunity to submit its comment to the Office of the Thrift Supervision (OTS) proposed amendment to Regulation DD, which implements the Truth in Savings Act. The NBA is a professional nonprofit organization representing 240 of the 242 commercial banks and 13 of the 15 savings and loan associations in the state of Nebraska.

RIGHT TO OPT-OUT

In general, the NBA is concerned that the proposed system of "opting-out" of overdraft fees may have adverse consequences for customers. Overdraft fees can be avoided by customers without requiring a specific advance notice and opt-out followed by repeated periodic opt-out reminders. Customers regularly manage their accounts to avoid overdrawing them.

NBA member banks offer a variety of overdraft options today without the burdensome compliance exercise of a formal one-size-fits-all opt-out requirement. We believe that it is important that an opt-out notice, if required, provide complete information to customers. Customers should understand the types of transactions that may result in an overdraft and which transactions will *not* be paid if they opt-out. They should also be aware of potential charges when items are returned unpaid, including fees imposed by the payment recipient. While customers should be aware of alternatives to avoid overdraft fees, it cannot be assumed that these alternatives are advantageous or less costly to the customer.

The NBA would caution against "throwing the baby out with the bathwater" in proposing extensive regulation of overdraft fees. Overdraft services provide countervailing benefits to customers and competition that outweigh the costs in fees. Bank customers desire the service and demonstrate that by utilizing it.

Overdraft fees can be reasonably avoided and are not unfair when assessed without a formal advance notice opt-out. Fees for covering overdrafts are addressed in the account agreement and new customers are made aware of these fees as well as any applicable maintenance fees

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and NSF fees at the time of opening their account. Bank customers know in advance what the rules and the costs are for overdrawing an account – all without the imposition of a formal opt-out notice.

Customers understand that it is their responsibility to balance their accounts – and overdraft fees provide both an incentive to do so and a user charge when they inadvertently fail to do so. Overdraft fees are not injurious, but rather are the price for bank accommodation in fulfilling a payment choice, instead of denying a transaction. Paying items rather than refusing them helps customers avoid merchant fees and adverse credit experience. If checks are returned, merchants may be less willing to accept checks from these customers in the future.

PARTIAL OPT-OUT

It would not appear that the proposal for a partial opt-out of ATM and debit card transactions, while retaining coverage for checks and ACH transactions, is technically feasible under the vast majority of processing systems of our members. The revisions to software that would be required by the proposal would require banks to incur significant expense and could not be implemented without numerous exceptions due to processing system complexity. The proposal would additionally have an adverse effect on customers who utilize debit cards for recurring payments.

DEBIT HOLDS

The proposal would prohibit financial institutions from charging an overdraft fee for any overdraft that results in a debit hold, unless the amount of the actual purchase (not any pre-authorized amount) for which the hold was issued would have caused an overdraft. This approach is unworkable for financial institutions because they have no control over the pre-authorization amounts requested by merchants and do not presently have technology to conduct the comprehensive, and retroactive, overdraft analysis that would be necessary to assess a fee as required under the proposal.

HIGH-TO-LOW DEBIT POSTING

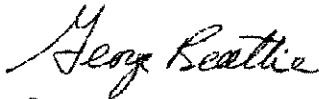
The NBA objects to any specific regulatory requirement regarding the order of processing transactions written on a customer's account. The order of recognizing and processing payment requests varies across the industry to take advantage of system efficiencies. Financial institutions are presently granted flexibility under the Uniform Commercial Code to adopt a system of posting checks and electronic debits to an account. Challenges to this flexible approach have been upheld consistently by various state courts. Comment 7 to UCC §4-303 states the policy underline payor bank discretion in establishing a posting order "[T]he drawer has drawn all the checks, the drawer should have funds available to meet all of them and has no basis for urging one should be paid before another."

Customers generally prefer to have their larger debits – such as home mortgage, apartment rent and car payments – paid first because they are most important. Many banks clearly disclose their posting method and provide advance notice of any change in their methodology. In such cases, customers may elect to accept the bank's method of posting payments or use their feet to open an account at a financial institution that employs a different methodology.

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In conclusion, providing accommodation for overdrafts does not cause "injury" to bank customers, but rather provides a benefit. Any fees for overdrawing an account are reasonably avoidable through the exercise of normal care by bank customers. Overdraft accommodation programs are successful because the benefits outweigh the disadvantages. They are sustainable because customers want the bank to recognize that when they inadvertently overdraw their account they can be trusted to make it right.

Sincerely,



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/tjs