

By electronic delivery

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Jennifer J. Johnson
Secretary
Board of Governors of the Federal
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Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW.,
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ATTN: OTS-2008-0004

Re: BOARD Docket No. R-1314; OTS Docket No. OTS-2008-0004;
Unfair or Deceptive Acts or Practices; 73 *Federal Register* 28904;
May 19, 2008 (UDAP Proposal)

Ladies and Gentlemen:

I am the compliance officer for Community South Bank, Parsons, Tennessee and would like to comment on the overdraft proposal currently being considered by the Federal Reserve, the OTS and the NCUA.

It is the position of the agencies that "assessing overdraft fees before the consumer has been provided with notice and a reasonable opportunity to opt out of the institution's overdraft service appears to be an unfair act or practice." Customers are provided an account agreement and disclosures at account opening explaining the circumstances under which overdraft fees will be assessed. Not only that, every person should be responsible enough to know the balance in his/her account and realize that if funds have not been deposited to cover their transactions, a fee *should* be charged. Overdraft fees are intended to be punitive and consumers should not be given rights to encourage them to be irresponsible. I realize the proposal is not providing that a fee cannot be charged, however, to extend rights to consumers that go beyond fiscal responsibility at the expense of banks should not be an option. Overdrafts represent an unsecured loan which could result in losses to the bank; accordingly, fees are necessary and consumers should not be expected to be notified every time a transaction could result in a fee. Even if it was not disclosed at account opening (which it is), customers should exercise "common sense."

The overdraft privilege programs that have evolved over the last few years are actually of great benefit to customers who inadvertently overdraw their accounts. Financially responsible customers are grateful that transactions are paid where they may have failed to make a deposit timely or made an error in the balancing of their accounts. They also expect to pay for such convenience. This service actually saves consumers costs in that they are not charged fees by merchants for returned checks/transactions. No embarrassment is suffered by way of community merchants who "post their names" in their businesses not to accept checks or debit cards on those particular consumers.

Banks have always practiced discretionary overdraft decisions. Current practices simplify the methods by which it is accomplished. Previously, every overdraft was reviewed each day and a decision made to return or pay it. Customers are now afforded a maximum balance whereby the account can be overdrawn and the bank will not return the transactions unless there are other extenuating circumstances that should warrant a return. Banks still exercise the right to return items even if within the overdraft privilege limit. This is disclosed at account opening.

A “partial opt-out” covering ATM and debit card transactions is not feasible to put into practice. And as already stated, neither should customers expect such a service. An overdraft is an overdraft, it does not matter how it occurs, whether by check, ACH, ATM withdrawal or debit card transaction. The only difference in the transaction method is that three are electronic and one is a paper-based transaction. They are all withdrawals from an account where a customer should be financially responsible to have deposited funds to cover their transactions.

Our technology will not allow us to distinguish debit card transactions from other type transactions. Banks should not be expected to incur substantial system change costs to provide opt-out notices that customers have already been provided. It would be very difficult to design programs that would allow some customers’ debit card transactions to overdraw the account but decline other customers’ debit card overdrafts. The agencies are relying on surveys that show the majority of people would rather a bank disapprove a debit card transaction if their account has insufficient funds. It is unreasonable to expect banks to accommodate customers in such a manner. Customers should know whether they have funds to cover their transactions or should not make them. And if they choose to do so, should expect to be charged for the convenience of the bank not returning the transaction as is afforded in overdraft privilege programs.

Banks are for-profit businesses, not public service organizations. There are costs associated with processing transactions, for handling overdrafts and returns. Banks provide jobs to many consumers and are entitled to make a profit. If consumers do not want to be charged overdraft fees, the simple solution is not to overdraw the accounts. Discretionary overdraft service is of great benefit to consumers, however, if they choose not to use it, they can maintain account balances to cover transactions.

Community South has followed the 2005 Interagency guidance on overdraft programs as I am confident most banks have. Compliance with this guidance should be sufficient.

On the proposal that customers be allowed to choose alternative payment processing order would be impossible to manage. Order of recognition on payment of items varies from bank to bank to take advantage of system efficiencies and risk management. Some transactions, such as ATMs, cannot be returned, therefore, banks choose to process those and similar items first. There are benefits to processing low-to-high as well as processing high-to-low. If a bank process high-to-low, a consumer’s larger and important payments, such as mortgage and car payments, are more likely to be paid. However, to allow customers to choose, as mentioned previously, would be operationally impossible.

In conclusion, Community South opposes any regulatory revisions to overdraft programs. These practices are not unfair but rather provide benefit to customers. Customers who do not want to take advantage of the service can easily do so by exercising normal care to manage their finances.

Thank you for the opportunity to comment on this proposal.

Sincerely,

Penny Vise
Director of Compliance