



## Maryland Bankers Association

August 4, 2008

Jennifer J. Johnson, Secretary  
Agencies of Governors of the  
Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington D.C. 20551

Chief Counsel's Office of Thrift Supervision  
1700 G Street NW  
Washington, D.C. 20551

**RE: Proposed Amendments to Regulation AA; Docket No. R-1314 and  
Regulation DD; Docket No. R-1315**

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

The Maryland Bankers Association (MBA) appreciates the opportunity to make comments on the proposed amendments to regulations AA and DD. MBA represents banks of all sizes and charters. Our members include 100 banks with over 1,700 branches across the state. Our charter members hold over \$85 billion dollars in deposits. As federally insured depository institutions, MBA's members (state-chartered banks, national banks & thrifts, state banks chartered outside of Maryland) are subject to State and national regulations.

MBA supports the Board's efforts to bring greater uniformity to the contents of opt-out notices and aggregate fee disclosures. MBA also supports the general principal of giving consumers a meaningful opt-out opportunity both before and after the consumer incurs fees for overdraft services. However, there are specific aspects of the proposal that concern MBA.

- **General Opt-Out Rights**

The Proposal would create a substantive right for consumers to opt out of "overdraft Services," which is defined as "a service under which an institution charges a fee for paying a transaction including a check, point-of-sale debit card transaction, ATM withdraw and other electronic transaction[s]." The Proposal also 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." Although we agree that consumers are entitled to receive a meaningful opportunity to opt out of services they do not want, the timing provisions are burdensome and unnecessary. Overdraft fees can be avoided by consumers without requiring a specific advance notice and opt-out followed by repeated periodic opt-out reminders. Consumers regularly manage their accounts to avoid overdrawing them. Maryland banks currently offer overdraft options without the burdensome compliance exercise of a formal one-size-fits-all opt-out requirement.

- **Partial Opt Out**

The partial opt out provision contained in the proposed amendments to Regulation AA is unnecessary. The partial opt-out would allow consumer to retain overdraft protection services for checks and ACH transactions, but allow them to decline coverage for other types of transactions, such as POS debit card transactions. This part of the Proposal would not only be difficult to explain in a manner that would allow it to be retained by consumers, it would be impossible to implement technologically, at least in the short run. Additionally, it would adversely affect customers who use debit cards for recurring payments.

- **Debit Holds**

The proposal would prohibit financial institutions from charging an overdraft fee for overdrafts that result from debit holds, unless the amount of the actual purchase for which the hold was issued would have caused an overdraft. This provision is too complicated to be implemented and will cause consumer confusion. In addition, it is unfair to financial institutions that (1) have always treated funds with a hold on them as if they were unavailable, (2) have no control over the pre-authorization amounts requested by merchants, and (3) have no technological system in place to conduct the overdraft analysis that would be necessary to assess a fee under the Proposal. The proposed solution burdens only banks that are acting in a safe and sound manner to assure funds are available for authorized transactions.

- **Transaction Clearing Practices**

Although it does not create any new rules governing transaction clearing practices, the Proposal solicits comments on payment clearance processing and the order of recognizing payments. MBA respectfully opposes any regulatory requirement on processing order. Order of recognition varies across the industry to take advantage of system efficiencies and a regulation would micro-manage the order of recognizing payments and burden the system. Currently, different types of items are presented for processing at different times therefore; no single rule (such as low to high) is practical. Allowing individual customers to choose an alternative payment processing order would be difficult, if not impossible to manage.

MBA respectfully requests you consider MBA's concerns on the proposed regulations. If you would like clarification of any of our comments, or has any questions, please do not hesitate to contact me. Thank you.

Sincerely,

Mindy Lehman  
Vice President of Governmental Affairs  
Maryland Bankers Association

