By Electronic Delivery

August 4, 2008

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, D.C. 20552

Attention: OTS-2008-0004

Re: Unfair and Deceptive Acts or Practices; Proposed Rule
12 CFR Part 535 (May 19, 2008)

Dear Sir or Madam:

Principal Bank welcomes the opportunity to comment on the proposed rules regarding the Unfair and Deceptive Acts or Practices. We have reviewed the proposal and believe the following sections warrant additional consideration. Our comments follow below.

Advance and Periodic Opt-Out Requirements

Proposal

To state that it is an unfair act or practice for an institution to assess a fee or charge on a consumer's account for paying an overdraft unless the institution provides the consumer with the right to opt out of the institution's payment of overdrafts and a reasonable opportunity to exercise the opt out, and the consumer does not opt out. This opt out right would apply to all transactions that overdraw an account regardless of whether the transaction is a check, ACH, ATM withdrawal, recurring payment, or debit card purchase at point of sale.

Comments

Fees for overdrafts and items returned for non-sufficient funds are very clearly delineated on our Schedule of Fees, which is provided at account opening and always available online. Additionally, we do not advertise, promote, or encourage customers to overdraw their account in any way, and believe overdraft and NSF fees act as a deterrent to this practice. We also charge the same amount whether we choose to pay a check or return it NSF, so we don't think many (if any) of our customers would choose to "opt out" of having a check paid when the alternative is the same fee AND it is returned, leading to additional fees, embarrassment, and potential prosecution for writing bad checks.

Additionally, we provide a free option for customers to open a savings account and link it to a checking account for "protection" against inadvertent overdrafts caused by checks or billpays, thus avoiding a fee altogether if the savings account balance is sufficient. If a customer has a home equity line of credit (HELOC) with us, they may also use that account as protection for their checking account, and any interest charged is captured and disclosed under the normal Reg Z rules for their HELOC.

We agree that there could be harm to consumers if certain banks are unscrupulously marketing courtesy overdraft programs, with dollar limit promises and excessive program fees. However, in the absence of these types of situations, we believe banks should have the ability to pay overdrafts ***if and when*** they choose for their customers without having gone through an extensive opt out notification process. When we pay an overdraft rather than return a check, we truly believe customers see this as an occasional benefit for being responsible account owners, and understand the downside if we did not pay the item.

Partial Opt-Out of ATM and Debit Card Transactions

Proposal

To provide consumers a partial opt out for overdrafts resulting from ATM and point of sale transactions.

Comments

A partial opt-out allowing customers to tell us to "return" POS items or disallow any ATM or POS items that would cause overdrafts is not necessary or feasible.

The necessity is limited because in most cases, overdrafts are not actually caused by the debit transaction, but rather by the checks that are paid after electronic items. If a debit transaction would cause an overdraft by itself, the transaction would not go through in the first place as our systems do not add any "overdraft protection" balances to the customer's account.

The feasibility issue stems from the fact that our systems don't allow us to "return" a debit transaction. If a customer has a recurring payment set up with their debit card, and that transaction cause an overdraft, we do not have the ability to return the transaction. In this situation, the customer would have an overdraft even if they "opted out", and not allowing the bank to charge a fee seems harsh. While the proposal recognizes there may be exceptions where fees could be charged even after an opt out, such as when the actual amount exceeds the preauthorized amount, explaining these situations adequately to consumers may be extremely difficult.

Besides the system issues related to this proposal, we also believe that it can undermine our clearly stated position that the payment of overdrafts is at our discretion. By allowing a customer to "opt out" of ATM and debit card transactions, they may erroneously believe that all other overdrafts will be paid. We clearly state in our customer agreement that the payment of overdrafts is at our discretion. Additionally, after the issuance of the 2005 OTS guidelines regarding Overdraft Protection, we added a section to our customer agreement that notes our payment methodology so the customer can be clear on the order we pay checks (and other items) and understand why one check may be paid and the next might cause an overdraft or be returned unpaid.

Finally, we believe that the payment processing details should continue to be bank-specific and not dictated by customers. If certain banks are using practices that are discriminatory, unfair, or specifically geared towards maximizing fees, those banks will either be pressured to change by the free market system, or could be dealt with individually by regulators.

Debit Holds

Proposal

To prohibit an institution from assessing an overdraft fee if the overdraft is caused solely by a hold that exceeds the actual purchase amount of the transaction, unless this purchase amount would have caused the overdraft.

Comments

The issues surrounding debit holds is complicated, and not easily understood by anyone except the most experienced operations personnel. The amount of a hold placed by a merchant when a customer is using a debit card could vary depending on whether it is a PIN-based transaction or a signature-based transaction. These two types of transactions settle using different payment networks. The best way to address overdrafts caused by holds would be improve the process between merchants and payment systems.

For example, if a hold for $75 is placed on an account with a $50 balance, an overdraft is created and a fee is charged. However, if the actual transaction is $25, and the overdraft wasn't "real", our system cannot automatically reverse the fee. Moreover, if the hold amount doesn't exactly match the actual amount, the hold does not drop off our system for three days, and could potentially cause other overdrafts to occur. Unfortunately, current bank systems do not allow for any automated method of tracking and correcting these issues, so this aspect of the proposal seems particularly onerous to banks.

Conclusion

To the extent that any of the proposals are finalized, we would encourage adequate time be provided to implement any requirements, as programming, training, and communication may be extensive. Additionally, current fee structures and payment practices may need to be reviewed to determine if the new requirements would require changes to cover our costs and risks. Thank you again for providing the opportunity to comment.

Please forward any questions to the undersigned at 515-883-9190, or to Bill Hayen, Assistant Director – Compliance, at 515-883-9188.

Sincerely,

Jill Lorenz

Jill Lorenz
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Principal Bank Compliance and Operational Risk Department