

From: SpiritBank, Robin L. Mayhugh
Subject: Electronic Fund Transfers

Comments:

By electronic delivery

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3/30/09

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20 and C Streets, NW
Washington, D.C.20051

Re: Docket Number R-01343
Proposed changes to Regulation E
Electronic Fund Transfer Act
74 Federal Register 28866

Dear Ms. Johnson,

SpiritBank appreciates the opportunity to comment on the Federal Reserve Board's ("Board") proposed amendments to Regulation E, which implements the Electronic Fund Transfer Act ("EFTA"), published January 29, 2009 in the Federal Register. SpiritBank is located in Oklahoma and has an asset size of approximately \$1.2 billion.

We believe that disclosure to consumers is vital to the banking industry, is good business and is a best practice. Additionally, we support regulations that are designed to protect consumer rights and prevent abusive banking practices. We agree with the Board that Regulation E is the appropriate regulation to address overdraft accommodation programs. However, various alternatives in the proposed changes to Regulation E are of concern. From an operational standpoint, some options provided in the proposed regulation have a significant impact on banks from a cost perspective. Training, procedural modifications and software development are among the associated costs. From the consumer standpoint, a lack of clarity in disclosure, and the encouragement of further consumer reliance on the bank for management of consumer spending are some overriding concerns in the proposed regulation changes.

We have provided overdraft payment opt-out notices, insufficient fee notices, and priority of item payment disclosures to our customers for several years even though we do not actively promote - or have ever promoted - discretionary overdraft services. We believe, however, that covering overdrafts on a discretionary basis is a valued service by the overwhelming majority of our customers. In fact, only .08% of our customers have elected to opt-out over the past four years.

Our current opt-out practice is simple to explain to our customers, and is supported by our current software system which matches the "all-in" approach in the proposed regulation. We urge the Board to allow banks, like us, the option of the "all-in" alternative in the final regulations. We support this

approach, and not the "partial" approach, for several reasons.

First, the all-in approach is less confusing for the customer. The "partial" approach would require additional disclosure and explanations of transactions in order for the consumers to clearly understand what transactions to which they are declining overdraft payment. Bankers would need to be able to explain to customers the differences between various payment methods, such as one-time vs. recurring check card transactions. We believe that this type of disclosure will be inherently confusing for the customer and will result in dissatisfaction and poor customer service. Conversely, the "all-in" approach is clear - an overdraft is an overdraft.

Secondly, current software systems would need substantial enhancement to accommodate the "partial" approach. Software would need to be redesigned to allow or disallow debit card overdrafts on an individual account basis. Until such time as the software enhancement can be made, the bank would be put in the position of disallowing check card overdrafts for all customers. Furthermore, current systems do not provide for distinguishing one-time debit card transactions from recurring debit card transactions.

Lastly, the overriding concern with the "partial" approach is that it further places responsibility on the bank, not accountholder, for managing the balance in the account. Providing for regulations that place the burden on banks to restrict transactions that the customer is knowingly approving is misplacing the accountability. Over the past year, we have made significant investments in our technology to allow our customer access to "real-time" balance information. This "real-time" balance information (which does not include any discretionary overdraft limit) is calculated using authorizations and other pending transactions that the bank has available at any given point in time. It is the customer however, that has access to the best balance information, not the financial institution. Only the customer has knowledge of all checks that have been written, debit card transactions approved, etc.

The proposed regulation also provides for two alternatives for selecting participation in discretionary overdraft participation, an "opt-in" or an "opt-out." We strongly encourage the Board to provide for the "opt-out" in the final regulation. Based on our experience with our current opt-out practice, participation is overwhelming selected. The "opt-out" will allow the majority of our customers to continue without disruption. Additionally, we believe that an "opt-in" approach may have unintended consequences. Customers may construe that an "opt-in" is a guarantee of payment in an overdraft situation.

Finally, we strongly recommend that the exceptions to prohibition against imposing overdraft fees (when a customer has declined overdraft services) be expanded in the final regulations. There are many situations in which the bank may not be able to avoid paying the overdraft and banks should be able to charge in those instances. Customers should understand that there will be unavoidable exceptions and that they are still responsible for keeping track of their account balances and monitoring transactions.

We request that these comments be considered before any final rules are issued.

Robin L. Mayhugh
Executive Vice President of Operations

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