

# ZIONS BANCORPORATION

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March 20, 2009

Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Ave, NW  
Washington, DC 20551

**RE: Regulation E; Docket No. R-1343; Proposed Rule**

Ms. Johnson:

On behalf of Zions Bancorporation ("Zions") I would like to thank the Federal Reserve for providing us the opportunity to comment on the proposed rules pertaining to Regulation E. Zions Bancorporation is one of the nation's premier financial services companies, consisting of a collection of great banks in select high-growth markets. Under local management teams and community identities, Zions operates over 500 full-service banking offices in Arizona, California, Colorado, Idaho, Nevada, New Mexico, Oregon, Texas, Utah and Washington.

Zions supports efforts to protect consumers from predatory financial services, including the implementation of a reasonable level of regulation to meet this objective. Zions believes that there are elements of this proposal that are warranted, and some components that fail to take into account the complexity under which these transactions are processed. Comments regarding the specific proposal elements follow.

**Opt-Out/Opt-In Alternatives**

The proposal outlined two separate alternatives for implementing a compliant program. The first alternative is for an opt-out and the second alternative for an opt-in program. Zions believes the opt-out program provides consumers with the information necessary to make an informed decision about how overdrafts within their accounts should be managed and is the most practical to implement. Zions also feels that it is most prudent to allow institutions the flexibility to use either of the alternatives at their own discretion. Both alternatives fulfill the purpose of the proposal in informing consumers of their options, and increased flexibility limits the burden associated with the implementation of these rules.

Zions encourages the Federal Reserve to publish examples of inadequate opt-out programs in an effort to outline acceptable standards for a bank to manage the opt-out program.

Zions does believe that the 30-day timeframe for consumers to opt-in or out is adequate, and encourages the Federal Reserve to consider reducing this timeframe to a 15 or 20-day timeframe. Zions believes that extending the timeframe may encourage consumers to delay

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giving notice to their bank. It also creates operational challenges for accounts that may overdraw within the initial period, and reducing this period would limit this challenge.

Finally, Zions believes that it would require less implementation and development effort if institutions were able to provide an all-or-nothing opt-out program, where consumers would have to opt-out of the payment of all sources of overdrafts. We do recognize, however, that consumer groups may advocate for a separation of transaction types that consumers may opt-out of.

### **Opt-Out Disclosure Notices**

Zions believes that a requirement to provide a separate disclosure to customers at account opening would be cumbersome and create an operational burden that would be disruptive to the account opening process. Zions feels that the requirement to provide the opt-out notice each time a consumer is charged for overdrafts due to the payment of ATM and one-time debit transactions will further empower consumers by making consumers clearly aware of the opt-out option. If consumers fail to fully consider the benefits and drawbacks of the service at account opening, they will repetitively be given opportunity to discontinue use of the service.

Zions does believe that institutions should have the flexibility to provide an opt-out notice at the time of each overdraft, and not just those overdrafts resulting from ATM and one-time debit transactions. Zions also supports a provision allowing the opt-out notice on each statement received by the customer. While some argue that a repetitive notice would lead consumers to ignore the notice, Zions supports responsible consumer financial behavior that includes reading and understanding the information found on their bank statements.

### **Debit Holds**

Zions is most concerned about the debit hold rules, and believes that they do not effectively take into account the complex nature of processing electronic transactions. Specifically, financial institutions are heavily reliant on merchants in order to effect transaction settlement. Zions, for example, uses a transaction ID to settle the preauthorization with the final transaction. Merchants occasionally submit a separate transaction rather than submitting the final transaction associated with the pre-authorization. This situation leads to transaction IDs that do not correspond for settlement purposes. If the transaction ID is not recognized, then the merchant name and dollar amount will be used to complete settlement, however, since the final amount is often different than the pre-authorized amount these transactions are unable to be matched. It is estimated that 20 percent of the transactions processed by Zions do not have the necessary information to settle properly further delaying the process. Financial institutions are dependant on merchants to facilitate quick settlement and the current proposal fails to adequately address their role in the process.

It is also Zions experience that preauthorization amounts are originated from a source other than the bank. This means that a gas station may determine to preauthorize for \$75 to limit their exposure to risk. This creates a situation where a debit hold could lead to an overdraft when the transaction is less than the preauthorization and the institution is reliant on the merchant. Merchants have the ability to set a pre-authorization amount up to \$500. As a practice Zions periodically reduces, but never increases, the pre-authorization amount to make certain customers are able to access the funds in their account. This prevents the customer from receiving overdraft fees when the cause of overdraft may be related only to a pre-authorization; it also has the unintended consequence of increasing the likelihood of account overdrafts. Again, the unfortunate dilemma created by this situation is a result of merchants'

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ability to set the pre-authorization amount—an amount they set to manage their risk. Merchants' primary interest is understandably to mitigate their potential loss, which may lead to negative effects on their customers' bank accounts.

While Zions understands the objective of the two-hour safe harbor rule, we believe that the complexity of the payment system network at this time makes the rule impractical. Zions believes the safe harbor rule should be designed to account for both the financial institutions responsibility and the responsibility of merchants or others involved in the processing networks.

**Other Proposed Rule Components**

Zions believes institutions should be able to allow the opt-out or opt-in at either the account or product level, within its discretion. Our institutions find it most practical to effect the opt-out at the account level; however, others may prefer this at the product level.

**Lead time**

Zions wants to underscore that the proposed changes will be onerous and require considerable time in development and implementation of a program compliant to the standards outlined in the proposal. It is Zions experience that an implementation date of at least 18-months following issuance of a final rule would be required to adequately scope, design, and implement the necessary changes to systems, operational processes, and account disclosures.

**Summary**

Zions would like to see that the final Reg E changes allow institutions the flexibility necessary to efficiently implement a program that meets the objectives of the proposal. Zions does, however believe that the rules outlined regarding debit holds fail to consider the depth and breadth of the complexities surrounding the card payment networks, and encourages the Federal Reserve to consider modifying those standards to ensure they match the many infrastructure components in the payments network.

Zions recognizes the importance of protecting consumers from harmful practices and supports appropriate measure to ensure such practices are not allowed in the banking system. On behalf of Zions, I express appreciation to you for providing us with an opportunity to comment on this proposed rule.

Sincerely,



Norman Merritt  
Executive Vice President and Corporate Compliance Director

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