



P. Terry Tuggle
Chairman of the Board & CEO

March 25, 2009

Jennifer J. Johnston
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Ave., NW
Washington, DC 20551

Re: Docket No. R-1343

Dear Ms. Johnson:

On behalf of Fort Hood National Bank, we appreciate the opportunity to provide comments to the Board of Governors of the Federal Reserve System ("Board") on the proposed amendments to Regulation E, which implements the Electronic Funds Transfer Act, Docket No. R-1343.

Fort Hood National Bank is a federally chartered bank headquartered in Fort Hood, Texas. Fort Hood National Bank provides full service banking products and services to our military customers at Fort Hood.

I. SUMMARY

The Board is proposing several amendments to Regulation E that would limit the ability of financial institutions to assess an overdraft fee for paying automated teller machine (ATM) withdrawals and one-time debit card transactions that overdraw a consumer's account, unless the consumer declines the right to opt out of the payment of such overdrafts. As an alternative approach, the Board is proposing to limit the ability to assess overdraft fees for such transactions unless the consumer opts-in to the institution's payment of overdrafts. The proposal would also prohibit financial institutions from assessing overdraft fees in connection with certain overdrafts incurred due to debit holds.

It is certainly a worthy goal to assist consumers in understanding overdraft services and to ensure consumers have the opportunity to limit overdraft costs where such services are not needed. However, aspects of the Board's proposal would create substantial implementation challenges, would lead to greater consumer confusion, and would result in unjustifiable costs to financial institutions, especially smaller institutions.

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We first address the issue of the types of transactions to which the consumer's option should apply, then address the alternative opt-out and opt-in approaches, and finally address debit card holds.

II. FINANCIAL INSTITUTIONS SHOULD RETAIN FLEXIBILITY IN DETERMINING THE TYPES OF TRANSACTIONS COVERED BY THEIR OVERDRAFT PROGRAM.

We are concerned about the significant technological and cost hurdles we will face if the application of a final rule is limited to ATM withdrawals and one-time debit card transactions. This would require that we reconfigure our systems, to the extent possible, to differentiate check and ACH transactions from other transactions, and also one-time debit card transactions from other transactions such as recurring debit card transactions. These issues are even more worrisome for smaller institutions such as ours with operational components that are unique to our institution. Also, banks' systems interpret both one-time debit card purchases and recurring debit card transactions as single instance transactions and are not able to distinguish between them. Additional changes (beyond the control of banks) by merchants, card processors, and card networks would be required to separately identify one-time debit card purchases and recurring debit card transactions. Furthermore, we would have to change core banking applications to process these transactions differently. As a smaller bank, we have less ability to absorb the costs that would be incurred to reconfigure our systems to accommodate the necessary distinctions in the different types of transactions and to link those different types of transactions to different overdraft rules.

Additionally, the complexities of this limited applicability would undoubtedly lead to disclosure challenges, consumer confusion and resulting customer complaints.

Given these challenges, we should be permitted to decide whether to limit overdraft services on all transactions, or on certain transactions that we can accommodate, should a consumer wish to decline some overdraft services. We understand the concern that there will be a "chilling effect" – that consumers may want to opt out of overdraft services for some types of transactions but will choose not to because they want overdraft services for certain other transactions – but we should not be forced to choose between (1) incurring crippling costs to reconfigure our systems or (2) declining to offer overdraft services altogether (which would significantly hurt our ability to compete for customers with larger institutions).

III. THE OPT-OUT APPROACH WOULD BEST SERVE CUSTOMERS' AND FINANCIAL INSTITUTIONS' INTERESTS.

A. Benefits of the Opt-Out Approach

Overall, the opt-out proposal will lead to significantly less customer confusion and will be less burdensome for us to implement than the opt-in approach. We currently use and do not get customer complaints about the opt-out approach. From our experience, customers expect that overdraft services, including overdraft services in connection with ATM transactions, will be available. They would not expect to have to opt in to the service. Given the small number of customers who choose to opt out of our overdraft services, it makes little sense to require that the

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larger majority of customers wanting overdraft services affirmatively opt in. Additionally, an opt in approach would increase our recordkeeping requirements and leave more room for error in properly applying customer elections.

We are also concerned that, although our overdraft services are not a guaranteed service to customers, customers opting in to overdraft services for ATM and one-time debit card transactions will mistakenly believe that we are contractually obligated to cover their overdrafts. Under some circumstances, we may choose to not honor overdrafts, for example based on the customer's account history, and we are concerned an opt in approach will contribute to customer confusion and dissatisfaction. We do not experience this with our current opt-out approach.

B. Small Dollar/"Under the Floor" Transactions

The preamble to the proposed rule states that overdraft fees could not be charged on small-dollar transactions that are not submitted for authorization (because they are "under the floor" amounts requiring authorization) if a customer opts out of overdraft services. Quick Payment Services ("QPS") used by many restaurants do not require the merchant to obtain an authorization from the customer's financial institution. Merchants benefit from this service through reduced transaction fees from EFT networks and may pass these savings on to their customers.

These transactions present special challenges for financial institutions because a hold is not placed on funds to satisfy these transactions thereby freeing those funds up to satisfy other transactions. The dollar amount for each of these transactions may be small but the aggregate amount of such transactions processed by financial institutions is significant. Financial institutions should be permitted to assess overdraft fees to offset the risk of loss associated with these transactions. Smaller institutions would be less able to absorb the costs that would be associated with the losses on these small dollar transactions and may be forced to seek exclusion from participating in QPS.

C. Segregating the Opt-Out Notice from Other Account Disclosures

The proposal would require use of a separate form for the initial opt-out notice. We do not find the notice need be segregated from the other account opening documentation for customers to be aware of their right to opt-out. We currently include an opt-out notice in our account opening agreement under a clearly marked header for overdraft services. Additionally, during the account opening process, employees of our financial institution review our overdraft program with each customer. The proposed addition of a separate form will increase our costs without any benefit to our customers. We suggest that the proposal be modified to provide that the disclosure must be conspicuously set apart from other information, but allow financial institutions to choose whether to include this information within existing documentation or as a stand-alone form.

D. Reasonable Time to Opt Out

The proposal currently provides as a safe harbor that 30 days is a reasonable period of time to allow a customer to opt out of overdraft services before overdraft fees may be assessed for any overdrafts occurring during the waiting period. We do not see the need to have a waiting period for

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customers to opt out, or alternatively for a period greater than five days. First, in our experience, the vast majority of customers who choose to opt out of our overdraft services do so months or years after opening an account. Second, to configure our systems so that overdraft fees are not assessed for a given period of time would be costly. Currently, new customers are set up in our overdraft program when they fund their account, for example, through direct deposit. Finally, customers rarely overdraw an account within the first month after account opening so there is little risk to customers. We see overdrafts within the first month only on rare occasions, as for example, when there is some delay in a direct deposit being credited to the account. When this occurs, we refund the overdraft charge.

E. Including the Opt-Out Notice on Periodic Statements

The proposal would require that financial institutions provide either the entire opt-out notice or an abbreviated opt-out notice on periodic statements when an overdraft is assessed. The Board asked for comment on whether financial institutions should be permitted to include the abbreviated notice on all periodic statements. To minimize production costs, we would prefer to print the abbreviated notice on every periodic statement as this would be easier for us to implement. Additionally, when we have conversations with customers regarding the opt-out right, we could direct them to their latest periodic statement for the abbreviated notice. We suggest that the proposal provide financial institutions with sufficient flexibility to determine the best method for the institution.

F. Revoking Prior Opt-Out Elections Orally

The proposal provides that once a customer opts out, the opt-out remains in effect until revoked by the customer in writing or electronically. Customers should be permitted to revoke their prior opt-out election through any customer service channel. In our experience, customers needing access to overdraft services are typically in immediate need, and delaying customers' access to this service could result in unnecessary hardship to customers.

IV. DEBIT CARD HOLDS

Under the proposal, regardless of whether a customer elects to participate in an overdraft service, financial institutions would be prohibited from charging overdraft fees for overdrafts caused *solely* by an excess debit hold when the actual transaction amount can be determined by the merchant within a short period of time — an overdraft fee could be charged if the account is overdrawn for other reasons. This would be difficult to implement due to challenges in determining which overdrafts would fall within this category. The exceptions in the proposal require institutions to review transactions days after the overdraft occurred to determine if the overdraft is permissible under the proposal. These exceptions would be confusing to banks and consumers. Explaining the distinctions clearly to customers would be almost impossible. Furthermore, this proposal would not address merchant issues in regard to holds, and would unfairly raise costs to financial institutions and disproportionately impact smaller institutions.

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A. Purchase Amount Determined Within "A Short Period of Time"

The standard, transactions for which the amount can be determined "within a short period of time," is ambiguous. We recommend that the Board provide a more exact standard or specify that the prohibition applies to gas and restaurant purchases only. This will allow financial institutions to disclose to customers which transactions will be released under the "safe harbor" two-hour period discussed below and which transactions could have holds placed against the account for longer periods of time.

B. The Proposed Safe Harbor and Merchants

The proposal includes a safe harbor for institutions that release holds for the covered transactions within two hours of authorization. This safe harbor does not offer sufficient protection to financial institutions and would increase the likelihood that inaccurate balances would be presented to customers. This also does not take into consideration the role of merchants who do not submit a settlement transaction within the two-hour time period. Please note that, if merchants do not provide us with the actual transaction amount, we have no way of knowing whether the hold is in excess of the actual transaction amount. If we make those funds available to the customer, we would be forced to take on greater risk in connection with the transaction. This would have unintended consequence of allowing a customer to overdraw his or her account based on the release of holds and subsequent approval of transactions using an inaccurate balance.

Merchants should be required to submit gas and restaurant purchase amounts to the appropriate financial institution with sufficient information to match the actual transaction to the authorization within the safe harbor period. Furthermore, financial institutions should be provided adequate protection against risk of loss from those merchants. To reduce customer complaints regarding holds, many banks perform real time matching of transactions to authorizations to minimize the risk that holds will result in overdrafts. Our institution removes merchant-submitted duplicate authorization records and NEVER increases merchant-submitted authorization amounts. Merchants often change vendor names, authorization numbers and other information making it more difficult for bank systems to match authorizations with transactions. To address this issue to the extent we are able, we perform automated routines hourly (performing searches by various factors) in an attempt to match transactions to authorizations. Merchants should be required to submit sufficient information so financial institutions are able to match transactions rapidly and accurately.

V. EFFECTIVE DATE

As a final point, we ask that the Board set an effective date for a final rule that gives financial institutions ample time to identify appropriate means of complying and making the necessary changes to systems. We anticipate that our bank would require at least 18 months to analyze our systems and make the necessary programming changes.

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VI. CONCLUSION

Fort Hood National Bank appreciates the hard work undertaken by the Board with respect to crafting this proposal and it shares the Board's interest in making sure consumers have sufficient information about a financial institution's overdraft program to evaluate whether it is a product they wish to utilize. However, Fort Hood National Bank urges the Board to consider the foregoing comments and the extent to which some aspects of the proposal could lead to significant regulatory and financial burden on financial institutions and increased consumer confusion.

We agree the customer should be well informed and be able to make individual decisions on the use of overdraft services. We believe the best time to make this choice is when they are opening an account and have the opportunity for trained, informed bank personnel to address any questions. We request that merchants be required to meet the regulatory goals of the Board by submitting transactions within the recommended safe harbor windows. Merchants should also be required to present appropriate transaction data to match authorizations as enforcement of data standards is beyond the control of financial institutions.

Thank you for the opportunity to comment on the proposal.

Sincerely,



P. Terry Tuggle