

March 27, 2009

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Re: Docket No. R-1343, Regulation E – Overdraft Fees

Dear Ms. Johnson:

Branch Banking and Trust Company and its affiliated banks and subsidiaries of BB&T Corporation (BB&T) appreciate the opportunity to comment on the Board's proposed amendments to Regulation E related to overdrafts and overdraft fees.

BB&T, with more than \$152 billion in assets, is the nation's 11th largest financial holding company and operates more than 1,500 financial centers in eleven states and Washington, D.C.

BB&T's Current Overdraft Practices

BB&T currently offers its depositors several alternatives for handling overdrafts, including plans that automatically transfer funds from the depositor's BB&T credit card, home equity line, overdraft line of credit, or another of the client's BB&T deposit accounts. If a depositor does not participate in one of these overdraft plans, or if the overdraft plan does not have sufficient funds available, BB&T may cover overdrafts on a discretionary basis, using a number of defined criteria to make both automated and manual payment decisions. However, any client may opt-out of the discretionary payment of overdrafts. This opt-out choice is disclosed, along with instructions for opting out, in the depositor agreement provided to all depositors.

We believe that most consumers handle their deposit accounts responsibly by availing themselves of numerous methods to track their available balances. There is the traditional method of tracking transactions in a check register, reviewing periodic statements, and regularly reconciling bank statements with check registers. In addition, BB&T depositors may use many convenient methods for determining real-time available balances and activity in their accounts to avoid initiating transactions that would result in an overdraft. These access methods are available to BB&T clients 24 hours a day at no cost and include:

- A toll-free automated telephone inquiry system
- Balance and transaction inquiries from a cell phone or mobile device
- Balance inquiries at BB&T ATMs
- BB&T OnLine® banking
- Automated alerts, via e-mail or text message to a cell phone or mobile device, notifying the depositor if the account available balance falls below a specified dollar amount, or providing the available balance on a daily or weekly basis

An important note regarding the available balances reported by BB&T's automated systems is that they exclude any additional amounts available from overdraft plans. The available balances also do not include amounts potentially available through the bank's discretionary payment of an overdraft. "Pending" transactions, such as debit card purchases which have been authorized, but not yet posted to the consumer's account, are available through BB&T OnLine® banking and automated telephone inquiry systems.

With these tools, even consumers who do not maintain a check register or otherwise do not keep track of account activity can easily avoid unintentional overdrafts. This position is supported by the November 2008 FDIC Study of Bank Overdraft Programs, which found almost 75 percent of consumer accounts had no NSF transactions during the 12-month period examined.

Comments on specific aspects of the Board's proposal follow.

BB&T Supports the Opt-out Alternative

For a number of reasons, we urge the Board to adopt the opt-out alternative outlined in its proposal. We believe that an opt-out requirement best meets the needs and desires of most consumers.

First, as noted above, consumers have access to a variety of tools for avoiding overdrafts and a majority of depositors do in fact avoid overdrafts. For this majority, the discretionary payment of an occasional overdraft in an emergency or for an unexpected essential purchase is an effective form of "protection". For the smaller segment of depositors who do not wish overdrafts to be paid and choose to not routinely use the available tools to monitor their balances, it seems reasonable to ask that they opt-out of overdraft payments.

Secondly, discretionary payment of overdrafts has been commonplace for decades and many consumers assume that they will be afforded this courtesy, whether or not it is explicitly disclosed. Suddenly altering this time honored practice and declining transactions unless consumers affirmatively opt-in would undoubtedly catch many consumers by surprise.

For many depositors their first NSF transaction may not occur until years after making an opt-out election; they are likely to not recall their earlier decision, or may not even be the

depositor who made the decision in the case of joint accounts.

Consider a scenario where, years after opening an account, an opt-out depositor wishes to use his or her debit card to pay for a week's supply of groceries that has been scanned and bagged, or is out of town and needs to get cash from an ATM in an emergency. If either of these transactions is paid overdrawing the account, and this is not what the depositor wished, it would be common at many banks to refund the overdraft fee for a first occurrence and the account can then be coded to decline future transactions that would result in an overdraft, making the consumer whole.

With the opt-in alternative, if the depositor failed to enroll, the withdrawal or debit transaction will be declined. The consumer may have no other method of obtaining cash, and the grocery store may not be willing to accept a check (particularly since the card transaction has just been declined), resulting in a very embarrassing and potentially very inconvenient situation. The damage is done, and the depositor is likely to place the blame with the bank.

Thirdly, opt-out is consistent with a number of other consumer protection rules, such as privacy rules and "do not call" lists, which require the consumer to take simple steps if they do not want their information shared or do not wish to receive solicitation calls.

If the Board chooses the opt-in alternative, we strongly recommend that it be applied only to new accounts opened on or after the effective date of the amendment, and that the current procedures used by banks be applied to existing consumer accounts.

Notification To Consumers

If the Board adopts an opt-in approach, the sixty-day period following enactment does not allow sufficient time for existing consumers to be adequately advised and educated to make an informed opt-in decision. Undoubtedly many consumers who have become accustomed to having occasional overdrafts paid by their bank will be surprised when the bank "suddenly" makes a 180-degree change by now rejecting overdrafts because that depositor did not affirmatively opt-in. **Again, we believe an opt-out approach is more consumer-friendly, and that existing depositors would be best served by being notified of the opt-out alternative at their first overdraft occurrence following the amendment's effective date.**

Opt-out Methods

The Board's proposal allows depositors to exercise their opt-out rights using a mail-in form, calling a toll-free number, or visiting a bank's designated internet site. We believe that all of these alternatives are appropriate and should be permitted. As a practical matter, banks should be permitted to offer one or more of these methods at their sole discretion. We note that the proposal specifies only written or electronic methods for revoking or changing a consumer's decision. **We suggest that the permitted methods**

for opting out and changing the opt-out should be consistent.

Partial or Full Opt-Out

The Board requests comment on whether the opt-out election should apply to ATM withdrawals and one-time debit card transactions (“partial opt-out”); or if the opt-out right should also extend to checks, ACH debits, and recurring debit card transactions (“full opt-out”). **Due to the implementation challenges that a partial opt-out would create, we support a full opt-out.** Many banks, including BB&T, currently do not have the capability to selectively pay or reject overdrafts by payment type.

A full opt-out would be significantly easier for consumers to understand and for banks to support. The variety and complexity of payments methods today make it extremely difficult for banks to implement a partial opt-out and to explain clearly to the average consumer the impact of the partial opt-out by payment type. For example:

- For a recurring transaction, did the merchant code it as such?
- Do consumers understand that even though they have used their debit card to pay a recurring bill at the biller’s website every month for years, the transaction is not considered a recurring debit card payment?
- Do consumers understand that their debit card is a “decoupled” debit card, and that transactions on their card aren’t authorized in advance by their depository bank and are submitted as ACH debits?
- Do consumers using their debit card to make an online or telephone purchase know if the merchant submits the transaction on paper vs. electronically?
- Do consumers using their debit card for a small in-store purchase know what the merchant’s “floor limit” for obtaining authorizations is?

Each of the situations described above are likely to result in a potential overdraft being either paid or rejected in a manner that may be inconsistent with the consumer’s election.

We believe the “full” opt-out alternative will result in more consistent processing of consumer transactions and minimize consumer confusion, and we urge the Board to allow financial institutions to apply a consumer’s opt-out election to all types of transactions. If, however, the Board rules that banks must offer the “partial” opt-out alternative, we recommend that it apply to both one-time and recurring debit card transactions.

Either the “partial” or “full” opt-out alternatives should apply only to debit card transactions that are first submitted to the issuer for authorization, giving the issuer the opportunity to decline those which would result in an overdraft. Otherwise the bank’s only alternatives are to pay the overdraft, without being able to collect a fee for the risk assumed in overdrawing the account, or return the transaction to the merchant as a charge back, which typically entails additional manual processing and payment of card network chargeback fees.

Finally, if the “partial” alternative is adopted (and we strongly recommend that it not be), a bank should be afforded the flexibility to use its discretion in making decisions to pay or return any and all NSF check and ACH items.

Variation in Account Terms and Pricing

The Board requests comments on possible restrictions on a financial institution’s ability to vary account terms and pricing based on a consumer’s opt-out decision. BB&T currently does not impose variations in account terms and pricing based on the consumer’s opt-out choice. **However, we believe that the Board should not restrict the bank’s ability to design product terms and pricing to meet its clients’ needs, market opportunities, and its own goals. To that end, the proposed amendment should allow financial institutions wide latitude to vary product terms and pricing.**

Subsequent Disclosures

We support the proposed provisions allowing banks to provide subsequent disclosures of a consumer’s opt-out rights in either a periodic statement or a notice sent at the time of an overdraft. The rule should also permit banks to use an abbreviated version of the initial disclosure. This version would include instructions for obtaining additional information about overdraft processing alternatives, such as by visiting a designated page on the bank’s website, calling a toll-free number, or visiting a branch. **Additionally, banks should be expressly permitted to provide subsequent disclosures to opt-out consumers in any statement period when an ATM withdrawal or debit card transaction has been declined due to insufficient funds.**

Online Banking Bill Payments

The proposed amendment does not specifically address consumers initiating transactions through their bank’s online banking and bill payment service. Consumers using these services are able to view the current available balance in their deposit account and make one time, recurring and future dated payments funded from the account. Therefore, a consumer initiating a bill payment that will overdraw the account should be presumed to be doing so intentionally; in fact, it is not uncommon for consumers to use online bill payment services to make last minute payments in order to avoid late charges and other fees from the biller.

Additionally, in cases where consumers initiate recurring and future dated payments, there may be sufficient funds available at the time the payment instructions are initiated, but not when the payment is scheduled to be submitted – at which point the bank has no practical means of obtaining a pay or decline decision from the consumer. **We urge the Board to exclude bill payment transactions initiated through online banking and bank bill payment services from the amendment, whether the underlying transaction is processed as a check, ACH transaction, or debit card transaction.**

Definition of “Overdraft Fee”

In its definition of “overdraft service” the Board makes reference to services in which a financial institution assesses a fee or charge for *paying* a transaction when insufficient funds are available in the consumer’s account. We believe there is an important and valid distinction between a fee for paying an overdraft and a separate fee assessed for accounts that maintain a negative balance for an extended period. Regardless of the transaction that may have initially resulted in an overdrawn balance or the consumer’s opt-in or opt-out decision regarding overdrafts, depositors have an obligation to promptly return their account to a positive balance. Banks incur expenses in sending reminder notices to overdrawn clients and in other efforts to collect the amount owed. **Therefore, we recommend that the final rule explicitly exclude fees assessed for accounts that remain in a negative balance in the days following the payment of an overdraft item.**

Debit Holds

The proposed rule contains a prohibition on assessing fees for an overdraft resulting from a debit card authorization hold, if the actual card transaction amount would not have caused an overdraft and the actual transaction amount can be determined by the merchant within a short period following the authorization. A fee may be assessed, however, if the bank has procedures in place to release these debit holds within a reasonable time, which the proposal defines as within two hours of the authorization.

We appreciate and agree with the logic of the Board’s proposal. However, we are concerned that merchants processing this type of transaction, which includes gas station pay at the pump purchases and restaurant sales, may not always submit the final transaction in a “reasonable” time period. If the bank releases its hold according to the proposal, but prior to submission of the actual transaction amount, which the merchant may delay for up to several days, the bank incurs risk for the entire amount of the transaction. **We recommend that a safe harbor time period for releasing authorization holds in these cases be extended to the end of the current processing day, and that the rule require merchants to submit the underlying transactions during this timeframe.**

Disclosures

In a proposed commentary, the Board would permit institutions to “briefly describe” to consumers the consequences of opting out of the institution’s overdraft services. We agree that such information would be valuable to consumers, but do not believe banks should be limited to just a brief description of the consequences, which can involve multiple scenarios that typical consumers might not envision when initially making a decision on participating in an overdraft service. **We suggest revising the commentary to allow financial institutions to describe the potential consequences of opting out in whatever detail and length they deem appropriate in their best judgment.**

Effective Date for Final Rules

The proposed amendment contains a significant number of provisions that, if enacted,

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will require a significant expenditure of time and resources by financial institutions. Extensive changes will be required to existing ATM and check card authorization programs. Deposit system posting programs will also be significantly impacted, including special coding to identify and properly process recurring vs. one-time and authorized electronic vs. unauthorized paper debit card transactions, as well as check and ACH transactions. Additionally, both paper and electronic versions of periodic statements will need to be redesigned to properly disclose client opt-out/opt-in rights. There is also the potential for changes to card and ATM network rules, which would need to be finalized before banks could begin to modify their systems to accommodate the rule changes. Account opening and disclosure forms will need to be revised, and client service staff will need extensive training on the new rules. **For these reasons, we urge the Board to make the new rules effective no sooner than eighteen months following their enactment.**

Thank you for your consideration of our comments, and please feel free to contact me with any questions.

Sincerely,

Joseph S. Blount
Senior Vice President & Payment Systems Consultant