

Member FDIC

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TEXAS

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July 18, 2008

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

Re: Docket No. R-1315  
Regulation DD Amendments

Dear Ms. Johnson:

The following comments are submitted on behalf of City Bank, a state chartered community bank with headquarters in Lubbock, Texas. Before we address the specific proposals in the regulatory changes, we would like to describe the overdraft privilege program offered by City Bank to its customers.

First, City Bank has incorporated as many of the Best Practices as are feasible under the technology available at this time. For example, when customers open a new account and are offered overdraft privilege, the customer is provided with a one page election disclosure. The consumer then chooses whether to opt in or out. In addition, City Bank rediscloses the program, including the required Regulation DD elements and the customer's "privilege" amount, twice a year. At that time, it also reminds the customers of their opt out rights.

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In addition, City Bank has developed several alternative products for its customers including a sweep arrangement between accounts as well as consumer line of credit programs. However, the alternatives are not as flexible and user friendly as the overdraft privilege account is for our customers. Each line of credit is underwritten based on creditworthiness and may not be available to a particular customer. The overdraft privilege is generally preferred by our client base which includes students and professors at Texas Tech University, small business people, farmers and ranchers, and the entire array of customers found in a community bank.

Our opt out experience has been very interesting. Out of approximately 55,000 accounts, approximately 4000 customers have elected to opt out of overdraft privilege. Many of those customers are located at three branches out of our 26 branch network. Those branches serve almost exclusively an Asian community, which includes customers of Vietnamese, Korean, Chinese, and Japanese descent.

In reviewing volumes of transactions for 2008 to date, City Bank has determined that less than 3% of all possible transactions (paper plus electronic) actually were insufficient. Approximately 40,000 accounts have overdraft privilege. Not all customers with this service actually access their protection, however.

City Bank has assured that for customers who are using proprietary ATMs, we provide a notice at the ATM before a transaction is completed letting them know the transaction will overdraw their account and asking whether they wish to continue. An affirmative choice then must be made by the customer before an ATM transaction at a proprietary ATM is completed that would overdraw the account and access their overdraft privilege.

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This particular notice and opportunity to opt out of a specific transaction can only be offered at our proprietary ATMs. It is impossible to offer this at foreign ATMs or at point of sale. In those transactions, neither the hardware nor the software is capable of managing the information flow or the option of discontinuing the transaction once it is initiated. In Texas, the ATM possibilities are enormous. Many machines are owned by Independent Service Organizations connected to convenience stores. Some are cash dispensers only which issue scrip that is redeemed by the cashier. Our customers utilize a variety of different ATM choices at least in part because City Bank reimburses all foreign ATM fees on certain account types.

We would now like to address specific issues raised in the proposed changes to Regulation DD.

**Opt Out Disclosure.** Based on our experience with opt out, we recommend that the opt out disclosure should be given at the time the account is opened. Furthermore, it is critical that the disclosure includes the consequences of opting-out. In our program, the fee for processing an insufficient fund item is the same as the fee for paying an item as an overdraft. However, if the customer is paying by check, then that customer will not only pay the identical fee to us but will also face the cost of a hot check fee by the merchant or other payee and other significant consequences including the potential of criminal proceedings. Furthermore, the customer's credit standing will be adversely affected.

Admittedly, while opting out of debit card protection could prevent the imposition of an NSF charge, it will result in the rejection of the transaction. Thus, the consequences

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include embarrassment and loss of the transaction at point of sale. We are very concerned that customers will not realize that the opt out for a debit card applies to all transactions whether they are at a restaurant, at any ATM, at the local grocery store, or purchasing gasoline in a remote area of Texas.

The disclosures should not overstate the potential options to overdraft privilege. For us, these options are somewhat limited. Unless Congress acts to change the Federal Reserve Act, a sweep arrangement is still limited to six transactions per month between a savings account and a checking account. For many customers this would be adequate. However, this will not always be true. Furthermore, some of our customers may not have a savings account. In fact, those that are most likely to access the overdraft privilege are also those that are less likely to have the savings account in place.

We are also very concerned with the proposal that the opt out disclosure be given on a periodic statement or at the time a transaction occurs. We believe that all the information relating to the consequences of opting-out are important. A disclosure on the periodic statement simply will not adequately convey the relevant information to the customer for them to make an intelligent choice. Perhaps a statement stuffer would be required. However, this would add another page to the statement, increasing the cost of processing through increased printing and postage.

Furthermore, providing an opt out notice the first time a fee is imposed may result in a decision that is visceral rather than well thought out. The customer may erroneously

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believe that by opting-out they will avoid the fee when in fact they will pay the same fee but not have the item paid or they will have their card rejected at point of sale.

Finally, we believe that opt out shall be on an "all or nothing" basis rather than by channel. Our customers use their debit cards for discretionary spending, but they also use them to purchase necessities like groceries and gas. The total social impact of opting out at point of sale must be carefully evaluated. The occasional expensive fast food purchase should not drive the amendments to this regulation. Approximately 50% of possible payment transactions are electronic, and continuing changing demographics and acceptance of electronic payments are causing this ratio to increase.

Another concern raised by the ability to opt out just for debit/ATM cards is the confusion that could be engendered by transaction clearing policies. Like all banks, City Bank clears electronic transactions first. This is because a point of sale transaction for us is usually processed in "real time." The merchant obtains a "pre-authorization" for the transaction, which indicates to the merchant that the item is being paid. Under the network rules, this payment, once pre-authorized, cannot be reversed. If the customer has checks that may overdraw the account presented after a pre-authorized debit card transaction, the unsophisticated debit card user may not understand why the debit card items (which might have been discretionary spending) paid and the checks were handled as accessing the overdraft privilege amount. Due to different forms of payment on a consumer account, overdraft protection opt out by channel is not feasible because debit card purchases are real time and checks are not.

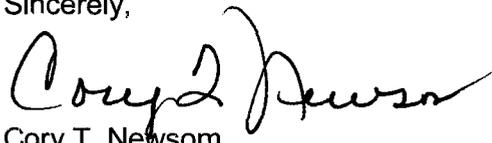
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**Opt Out Sample Form.** This form is inadequate. It states that if the customer opts out, they may have to pay a fee. That simply understates the matter. In virtually all programs with which we are familiar in Texas, the customer will have to pay the same fee to the bank. In addition, they may have to pay additional fees and be exposed to other consequences. The final paragraph in the opt out form discussing alternatives is potentially misleading. Alternatives may not be readily available or less costly. For example, a line of credit is only available to customers that are creditworthy. We would suggest that indicating that a line of credit is available is misleading, and thus this sentence should be deleted.

We urge you to provide banks with flexibility in designing the method for handling opt out notifications. Currently we handle this with a paper form given to the customer at account opening or when the service is added. The customer keeps a copy of the opt out form and returns a signed copy to the customer service representative with their selection. This works well for us at this time. Nonetheless, other options should be available including opt out on the bank's website. However, a customer should not be able to simply send an email message to anybody in the bank and consider that an effective opt out. The bank must have control over the direction of electronic messages to assure that they are received and acted on.

Thank you for this opportunity to comment.

Sincerely,



Cory T. Newsom  
President/CEO