LouisianaBankers
ASSOCIATION

March 30, 2009

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

The Louisiana Bankers Association appreciates the opportunity to comment on the Federal Reserve Board's proposed amendments to Regulation E, which implements the Electronic Fund Transfer Act ("EFTA"), published January 29, 2009 in the *Federal Register*. The proposal, among other things, would limit the ability of financial institutions to assess an overdraft fee for paying ATM withdrawals and one-time debit card transactions that overdraw a customer's account, unless the customer is given notice of the right to "opt out" of payment of such overdrafts and the customer does not "opt out." As an alternative approach, the proposal would prohibit imposition of overdraft fees unless the customer has affirmatively consented or "opted in" to having such overdrafts paid.

Concerning the two alternative proposals of either allowing customers to "opt-out" of overdraft services or allowing customers to "opt-in", we strongly suggest the "opt-out" approach. We believe that generally customers of financial institutions appreciate the availability of overdraft protection services when overdrafts occur and the ability to complete the transaction in order to avoid NSF fees and other harmful economic consequences. The opt-out method is more consumer friendly and likely to ensure that important payments, including major checks and ACH transactions actually get paid. This opt-out proposal provides customers the opportunity to receive the service unless they determine that it does not suit their needs. The objective of financial institutions is to minimize negative customer experiences. From our perspective, the payment of important customer transactions with an assessed overdraft fee is the better, and expected, outcome for the average customer. The alternative is having the item go unpaid and returned with resulting fees, customer embarrassment, and other potential economic injury. The "opt-in" method will more often cause this negative result as many customers, especially at account opening, do not anticipate having nonsufficient funds, and may not fully examine the need to affirmatively "opt-in" to important overdraft services.

In sum, the "opt-in" proposal represents the preferences and behavior of most bank customers. As stated by the American Bankers Association in their comment letter, "Automated overdraft accommodation is an innovation that benefits the vast majority of customers who are covered by it and appreciate its presence when they inadvertently err in their otherwise responsible account behavior. Therefore it warrants being applied in opt-out form so that the minority who choose to decline its benefit may act on that preference without disadvantaging the majority of customers or the payment system itself."

The Board also has offered two alternative proposals related to the way financial institutions condition a customer's choice to decline overdraft services for ATM withdrawal and debit card overdrafts and other types of transactions such as checks, ACH transactions, and recurring transactions. Under the "all-in" alternative, financial institutions may condition the customer's choice to decline payment of overdrafts on debit card overdrafts on declining payment on all other overdrafts. Under the alternative approach ("partial opt-out"), the customer may decline overdraft protection services for ATM withdrawals and one-time debit purchases but have checks, ACH transactions, and other transactions covered by the banks overdraft program.

We strongly encourage the "all-in" approach. The partial opt-out is much more likely to confuse customers with detailed disclosures and explanations of what transactions are covered and those that are not. This is in contrast to the simplified and easily understandable "all-in" approach. Additionally, the vast majority of financial institutions and vendor payment systems lack the operational ability to carry out the "partial opt-out" approach.

The Board has also offered alternative proposals related to the ability of financial institutions to provide different account terms or conditions based on whether the customer has accepted or declined overdraft protection services. Under one approach, the terms applicable to accounts for customers who "opt-out" must be the same as the terms of accounts applicable to customers that choose not to opt-out. The second alternative permits financial institutions to vary terms and conditions on accounts that do not permit payment of overdrafts, provided the differences in the terms or conditions are not so substantial that they would discourage a "reasonable" consumer from opting-out of payment of such overdrafts.

We believe there are legitimate reasons for varying terms and conditions based on whether the account provides overdrafts services. Bank accounts are designed and priced based on numerous factors including expenses, income, and risks. Therefore, we believe reasonable variations in terms and conditions should be allowed to account for the differences between accounts where customers opt-out and those where the customer does not.

Thanks for your consideration in this matter.

Sincerely,

Joe Gendron
Director of Government Relations
Louisiana Bankers Association