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NBA Nebraska Bankers Association

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March 30, 2009

Ms. Jennifer J. Johnson
Secretary
Federal Reserve Board
20th and C Streets, NW
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,

On behalf of the Nebraska Bankers Association (NBA), I appreciate the opportunity to comment on the Federal Reserve Board's (FRB) proposed amendments to Regulation E, which implements the Electronic Fund Transfer Act (EFTA), published January 29, 2009 in the *Federal Register*. The NBA is a professional non-profit organization representing 240 of the 242 commercial banks and 13 of the 15 savings associations in the state of Nebraska.

We agree with the FRB that Regulation E is the appropriate regulation to address overdraft accommodation programs. To ensure that customers continue to have choices and access to a service that the FRB's testing showed customers expect and value, we recommend that the final rule permit banks flexibility when providing an election not to cover debit card transactions in their overdraft accommodation programs—permitting either an account level opt-out or a partial opt-out limited to debit card transactions that properly recognizes how debit cards are used and processed. In addition, we urge the FRB to allow banks to satisfy the opt-out requirement by offering alternative accounts that are reasonable or customary.

Many banks in Nebraska exercise some discretion to cover overdrafts for certain customers. The overdraft protection program utilized by a number of Nebraska banks is a safe and sound program that extends their ability to cover inadvertent overdrafts to a majority of their customers. These overdraft accommodation practices are successful because they provide desirable back-up for customer payment decisions, and they are sustainable because customers want the bank to recognize that when they inadvertently overdraw their account they can be trusted to make it right and are prepared to pay for the bank's accommodation.

I. THE FINAL RULE SHOULD PERMIT BANKS FLEXIBILITY WHEN PROVIDING AN ELECTION NOT TO COVER DEBIT CARD TRANSACTIONS IN AN OVERDRAFT ACCOMMODATION PROGRAM.

Today, debit cards – frequently referred to as "check cards" – enable bank customers to make individual purchases and to pay bills separately or even on a recurring basis. By the same token, unexecuted debit card bill payments due to insufficient funds are as likely as bounced checks to incur merchant and payment recipient late fees. Therefore, banks should be allowed to offer customers a single account-wide opt-out for overdraft accommodation that sensibly places the emphasis on customer account management, not payment method management – especially when the different devices are used interchangeably to conduct the same types of transactions. This emphasis on account level treatment puts overdraft accommodation on the same plane as other types of overdraft protection – e.g., linked deposit accounts, line of credit, or credit card back-up – all of which are applied across the account independent of the payment method used to conduct the transaction.

Whether an individual overdraws into a line of credit by use of a debit card or by a check, the treatment is the same. Overdraft accommodation programs should be allowed to be on a similar all-in or all-out basis. We are also concerned that many of our smaller, community banks may not be technologically capable of offering opt-out on a partial basis. The FRB should take this item into consideration in making its final decision on the amendments to Regulation E.

In addition to allowing an account wide opt-out from overdraft accommodation, banks that can provide a partial opt-out should be permitted to design an understandable partial election of overdraft accommodation that enables the customer to decline coverage only for ATM and all other debit card transactions. To do so effectively, the option would have to be for all debit card transactions, not just purchases. From a processing standpoint, one-time bill payments are indistinguishable from any other one-time debit card transaction. This means that the choice for customers is to have all one-time debit card transactions paid or declined – whether the transaction is for purchase or bill pay purposes.

In order to avoid customer confusion, the Final Rule should make clear that declining overdraft debit card services applies to **all** debit card transactions, not just purchases, and that customers understand that it applies to purchases, bill-pay, and other transactions. Given the multiple variations in how and where debit cards may be used and how they are processed, it would be difficult, if not impossible, to explain the nuances and variations in a manner customers will understand. At the same time, we believe that they will easily understand "debit card transactions" with an explanation that it incorporates both purchases and bills paid using the debit card or debit card number.

II. THE FINAL RULE SHOULD ENABLE CUSTOMERS TO "OPT-OUT" OF OVERDRAFT ACCOMMODATION AND ALLOW BANKS TO OFFER ALTERNATIVE ACCOUNTS AS AN OPTION.

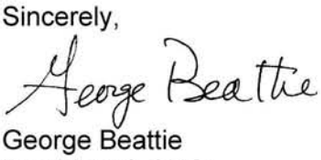
Automated overdraft accommodation is an innovation that benefits the vast majority of customers who are covered by it and value its presence when they inadvertently err in their otherwise responsible account behavior. Therefore, it warrants being applied in opt-out form so that the minority who choose to decline its benefit may act on that preference without disadvantaging the majority of customers or the payment system itself.

Overdraft protection programs employed by Nebraska banks are designed to avoid bad customer experiences and unpleasant conversations with customers. Opt-out minimizes the negative potentials when there are insufficient funds to cover a transaction initiated by a customer. Both opt-in and opt-out will potentially result in an irritated call to the bank, but with opt-out, the result is more likely to turn positive; the transaction the consumer initiates and authorizes is processed and a fee possibly waived in order to keep the customer happy. By contrast, with opt-in, the transaction is denied and cannot be rectified after the fact.

We appreciate the FRB recognition that there are legitimate reasons for account terms or conditions to vary depending on whether the customer has or has not declined overdraft services. We also understand and agree that any flexibility to vary terms or conditions not permit banks to circumvent the right to decline overdraft services by providing an illusory choice that would be overwhelmingly unattractive to most customers. A requirement that account alternatives be "customary" while "reasonable" would discourage terms that would render the right to decline overdraft services meaningless or illusory.

We would encourage the FRB to recognize the evolving nature of electronic payments and the need to continue to place the responsibility for account management on the account holder. While their transactions settle in near real-time or by daily batch processing, the customer is still the only one who knows what transactions they have conducted. We firmly believe that to best benefit the customer, banks must be allowed to implement their discretionary overdraft accommodation programs in opt-out form so that the minority that choose to decline its benefit may act on their preference without disadvantaging the majority of customers who strongly desire this protection.

Sincerely,



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