IBC
International Bank of Commerce

DENNIS E. NIXON
President

March 27, 2009

Via Electronic Filing and First Class Mail

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

Re: Docket No. R-1343

Dear Ms. Johnson:

The following comments are submitted on behalf of the bank subsidiaries of International BancShares ("IBC Banks"), a multi-bank financial holding company headquartered in Laredo, Texas with over 260 facilities and more than 400 ATMs serving over 100 communities in Texas and Oklahoma. IBC is the largest minority owned financial holding company in the continental United States with over $12 billion in assets. IBC banks offer overdraft courtesy to their customers included within a bundled package of free services. Based on our experience, we would support an "opt-out" notice at time of account opening or in the case of existing customers an opt-out election that may be exercised by a notice to the bank. Opt-out should be offered on an "all or nothing" basis for all channels due to the many technical challenges for both customers and the IBC banks. Furthermore, the opt-out model form should be tweaked slightly to reflect more accurately the proposed rule.

Before addressing the specific proposals, we would like to briefly provide a description of the overdraft courtesy programs as implemented by IBC banks. We would also note that in the preamble to the proposed rules, it is very clear that the Federal Reserve staff have paid careful attention to the technology challenges and the actual practices of institutions. For example, the problems posed by stand-in processing were acknowledged in the preamble. We greatly appreciate this awareness and willingness to take the practicalities into consideration in crafting a rule that will actually work effectively not only to protect consumers but also to function for participating banks.

In order to provide helpful information on this proposed rule, the IBC banks performed their own study of their overdraft programs and compared their results to the FDIC study of bank overdraft programs. See attached Exhibit A. The four IBC banks have 303,064 retail domestic accounts. In the first half of 2008, 64% of those accounts had no NSF transactions. However, among the customers that had 15 or more NSFs in a 12-month period there were 9% compared to 4.9% in the FDIC study. Most of the customers that had overdrafts only had one to five NSFs in a 12-month period. This constituted 17.5% of accounts.

Overdraft courtesy is offered both for paper checks and for electronic transactions. Debit cards can be used at ATMs and point of sale both on a signature basis and PIN. In the case of stand-in processing, typically the stand-in is for two hours or less and occurs in the middle of the night during maintenance windows. In the event of a disaster such as a South Texas hurricane, the stand-in can be for a significantly longer period of time.

However, this is an extremely rare occurrence and one in which IBC banks work as carefully as they can with their customers to provide access to funds in a timely manner.

With regard to debit holds, IBC does not hold funds for transactions taking place at pay-at-the-pump/convenience store locations. However, funds are held for most other debit purchases such as restaurants or other retail locations. This debit hold may stay on for up to three days on a signature transaction that has been pre-authorized. As noted in the preamble discussion, debit holds can be longer for hotel stays or rental cars. Again, these transactions are more commonly paid through credit cards. However, there are scenarios in which a customer utilizes a debit card. It is important that the rule acknowledge this and not punish an institution for honoring a pre-authorization in this situation even when it will overdraw an account for a customer who has otherwise opted out.

One important change to use of debit cards at ATMs is the requirement in the current rules that if a balance is shown at an ATM transaction then that balance must be the actual available balance. Under bulletins from PULSE and our understanding of the commentary to Regulation DD, providing the balance with overdraft courtesy added in would create a promotion of overdraft protection necessitating additional disclosures. It is our understanding that the PULSE network and other ATM networks cannot provide those extensive additional disclosures at all ATMs such as foreign ATMs, i.e., ATMs not operated by the cardholders' bank. Therefore, the practice of providing the balance with overdraft courtesy added is virtually nonexistent at this time. We believe that many of the transactions triggering a fee in excess of the value of the transactions have occurred at ATMs when small cash amounts were withdrawn by a consumer who believed that their balance was large enough to cover the cash withdrawal. This is particularly true for younger customers but is no longer a problem.

IBC banks would strongly urge the application of an "opt-out" choice for customers. As to our existing customers, we do not believe that there is any need for a separate opt-out notice to be provided to them at this time. Rather, the opt-out notice should be provided going forward to all new customers either at account opening or before overdraft courtesy is added to the account.

The opt-out choice should be on an "all or nothing" basis. It would be expensive and difficult for IBC banks to track opt-out on a transaction type basis. Furthermore, we strongly recommend that opt-out not be extended to recurring debit card and automated clearinghouse ("ACH") transactions. Typically, those are payments that have been set up by our customers to cover their mortgage or utilities. These are exactly the sort of transactions that customers most need to have protected through overdraft courtesy. We are very concerned that permitting an opt-out on ACH transactions would be confusing and not well understood. Therefore, we applaud the proposed rule which does not apply to these ACH transactions and recurring debit card transactions.

We also strongly support the portion of the rule that acknowledges that a customer may not have adequate funds on deposit to cover an ATM withdrawal or a one-time debit card transaction even though at the time the transaction was authorized the funds were available. Permitting those to be covered by overdraft protection acknowledges that the institution has a duty under the network rules to honor pre-authorizations. Even if a customer has opted out of overdrafts, those transactions must be paid as contracted for.

Permitting an NSF charge on those items simply acknowledges the cost to the institution and the importance of compliance with the card system rules. It is possible for funds to appear to be available to cover a pre-authorized transaction and then later the balance to be reduced before settlement as a result of a charge-back or other unforeseen transactions. With expedited processing as a result of Check 21, this is becoming less common. However, these scenarios do occur from time to time. Permitting the institution to assess the fee is appropriate for these unusual situations which are not due to any failure of the bank's procedures and policies.

The model form is extremely helpful in assuring consistency of disclosure to our customers. Generally, the form tracks the requirements in the rule and is in plain language. We have a few observations relating to the form, however.

First, it begins with the statement "We currently provide overdraft coverage for your account." That statement will not be true as to new accounts, the situation in which this is most likely to be used. We recommend that that sentence be stricken. Then the next sentence should be modified to appropriately define overdraft coverage, assuring that the voluntary and discretionary nature is clearly disclosed. In the next section regarding "Your right to opt-out of overdraft coverage," we strongly recommend that the sentence in brackets be included. It is important that consumers understand the consequences of opting out.

In the section describing other ways of coverage, we would suggest that it is important to include an explanation that the alternatives may also be less flexible. For example, linking accounts is limited by Regulation D if the other account is a savings account. Therefore, it would be appropriate to include the following sentence: "However, there may be limitations in such alternative services."

Finally, it would be helpful to include model language for joint account opt-out. We agree that any one party should be able to opt-out for all parties in a joint account. It is technologically impossible to allow one to opt-out and the other to still be covered. Therefore, the consequence of one party opting out should be clearly explained in this form.

Thank you for the opportunity to comment on this important matter. IBC banks strongly believe in providing superior service to their customers. Overdraft Courtesy is an important part of that service. A rational rule that takes into consideration technological challenges is critical so that we can continue to provide that service in a prudent and consumer friendly manner.

Sincerely,

Dennis Nixon

Attachment

Exhibit A

FDIC STUDY OF BANK OVERDRAFT PROGRAMS
compared to
IBC OVERDRAFT DATA

FDIC Category	FDIC Data	IBC Data	IBC Category
# of banks in study	462	4	# of banks
# of Customer Accts	6.5 million	303,064	retail domestic accts
Accts with No NSF transactions	75%	56%	2007
Accts with No NSF transactions	no data	64%	Jan-Jul 3,2008
1-4 NSFs in 12 month period	12%	17.50%	1-5 NSFs
5-9 NSFs in 12 month period	5%	5.60%	6-9 NSFs
10-19 NSFs in 12 month period	4%	3.90%	10-14 NSFs
20 or more NSFs in 12 month period	4.90%	9.00%	15 or more NSFs