

***By electronic delivery***

March 30, 2009

Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue, NW  
Washington, DC 20551  
[regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

Re: Docket Number R-1343  
Proposed changes to Regulation E

Founders Bank appreciates the opportunity to comment on the amendments to Regulation E, as proposed by the Board of Governors of the Federal Reserve System. Founders Bank is a full service commercial bank operated under the guidance of the FDIC, in the State of Illinois.

**OVERVIEW OF OUR CONCERNS**

**RIGHT TO PARTIALLY OPT-IN OR PARTIALLY OPT-OUT VERSUS A REQUIRED OPT-IN**

Although we agree with most of the principles of offering opt-out provisions, especially the provision that would increase disclosure of the overdraft program, we do have a concern with the proposed content and timing requirements. We currently follow best practices of the program and do disclose our overdraft protection program to our consumers and allow consumers to entirely opt-out of the program. Our experience has been there is no consumer demand for an opt-in requirement in the manner we currently handle our program. Additionally, when offered the opt-out, very few customers have chosen to take advantage of this option and to date we have had no complaints about the program. An opt-in requirement would place additional administrative burdens on the financial institution and would ultimately not provide any additional benefit to the consumer

**PARTIAL OPT OUT**

Assigning opt out to select transaction types will only further confuse the customer. If the partial opt out is allowed, a customer will need to be responsible for identifying which transactions would be allowed and which would incur fees. More disclosures have historically proven to only confuse the customer with required regulatory language (i.e. current revamping of the privacy notice). Remaining consistent in the process is really making it easier for the customer and avoids any misunderstanding the customer may have about never being charged an overdraft or NSF fee.

In addition, with today's economic climate, the technology requirements would be burdensome and cost-prohibitive to our organization and could not be implemented easily.

**EXCEPTIONS TO OPT-OUT REQUIREMENTS**

We agree with these exceptions, however, we also feel it would be difficult to deploy the necessary technology to track, control and comply with the exceptions within the required timelines. We support the reasonable belief exception but would suggest the new rule not be implemented for at least two years, giving mid-sized banks like ours the opportunity to make the necessary program changes, implement and beta test the processes. In order to speed up this process, we encourage the Board to

consider adding an exception for any transaction the bank has not authorized.

### **DEBIT HOLDS**

If we receive a debit hold, the customer is actively using the card and the reality is that the account will be overdrawn if the funds are not available when the final transaction posts. We have no control over the preauthorization that a merchant would request, including the amount or the number of times they enter the transaction. If this aspect of the regulation is to be implemented effectively, merchants should be held to standards of processing within a reasonable time.

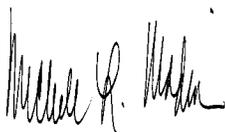
We support the concept of a two-hour safe harbor but do believe, the compliance and technology requirements would be burdensome and cost-prohibitive to our organization and could not be implemented easily. We would suggest the board new rule not be implemented for at least two years so that we would have ample time to make the necessary program changes, implement and beta test the processes.

### **CONCLUSION**

Founders Bank recognizes the importance of consumer education and awareness but feel this proposal will make the issues more difficult for the consumer to understand. In addition, given the enormous amount of system enhancements, customer documentation, procedural modification and employee education required to implement the proposals we recommend that this proposal be re-evaluated, based on our comments noted above.

We appreciate your consideration of our comments.

Sincerely,



Michele L. Madia  
Senior Vice President



Linda L. Boyer  
Vice President of Compliance