

Monday, March 30th, 2009

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20 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,

Thank you for “listening” to my opinion about the proposed Reg E amendments. Hopefully, you’ll find my views to be fairly straightforward.

First, the final rule should give banks some latitude with regard to overdraft (“OD”) accommodation programs, specifically as it relates to covering debit/check card transactions. The final rule should permit either an account level opt-out limited to debit card transactions. This way the rule can properly recognize how debit cards are used and processed. Additionally, the Board should allow banks to satisfy the opt-out requirement by offering alternative accounts that are reasonable or customary.

My financial institution (“FI”) has always exercised some discretion in covering OD’s for various customers based on the overall banking relationship, including multiple factors such as the length of time accounts have been held with the bank, the number of related accounts, normal balances carried, the number of prior OD’s and/or charge back items, etc. With the observance of this safe and sound criterion, we increase our ability to cover OD’s to a majority of our clients. **Our OD accommodation practices are successful because they provide a desirable safety net for customer payment decisions when they inadvertently overdraw their account.** Furthermore, they are sustainable because customers generally correct *their* errors promptly and understand the idea of being charged a service fee for the bank’s efforts to accommodate *their* mistake and to assist them in avoiding a potentially embarrassing situation.

With today’s technology, debit cards enable customers to make purchases and to pay bills one by one or even on a recurring basis. By the same token, unexecuted debit card bill payments due to non-sufficient funds (“NSF’s”) are as likely as bounced checks to incur merchant and payment recipient late fees. Because of this, banks should be allowed to offer customers a single account-wide opt-out for OD accommodation that sensibly places the emphasis on customer account management, not *payment method* management, especially since the different devices are used interchangeably to conduct the same types of transactions. This emphasis on account-level treatment puts OD accommodation on the same plane

as other types of overdraft protection (“ODP”) like linked deposit accounts, lines of credit, or credit card back-up, all of which are applied uniformly across the account independently of the payment method used to conduct the transaction. Whether one overdraws into a line of credit by use of a debit card or by a check, the treatment is the same. OD accommodation programs should be allowed to be on a similar *all-in or all-out* footing.

In addition to allowing an account-wide opt-out from OD accommodation, banks that can provide a partial opt-out should be permitted to design an understandable partial election of OD accommodation that enables the customer to decline coverage only for ATM and other debit card transactions. To perform *effectively*, the option would have to be for all debit card transactions, not solely just for 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 debit card OD’s *covered or not covered* by the bank’s discretionary accommodation program, regardless whether the transaction is for purchase or bill pay purposes.

Also, to avoid customer confusion, the final rule must make clear that declining OD accommodation applies to all debit card transactions, not just purchases, and further, customers need to understand that it applies to purchases, bill-pay, and other transactions. Because of the many variations in how and where debit cards may be used, and how they are processed, it would be difficult, if not nearly impossible, to explain (in a timely and concise manner) the nuances and variations in a fashion customers will readily understand. Conversely, we believe they will easily understand the phrase “all debit card transactions” coupled with an explanation that it includes both purchases and bills paid using the debit card or debit card number.

The vast majority of customers who are covered by an automated OD accommodation, appreciate its benefits and they greatly welcome its presence when they *inadvertently* err in conducting their transactions. Therefore, much like the Privacy Rule (of GLBA), the final Reg E rule warrants an “opt-out” choice rather than an overly burdensome “opt-in” requirement. Enacting an “opt-in” option would necessitate *only* the small minority who choose to decline the benefits of an OD accommodation program to take proactive measures without disadvantaging the majority of customers or the payment system itself.

The goal and practice of our bank is to avoid bad customer experiences. Opt-out minimizes the negative experiences when there are insufficient funds to cover a transaction initiated by a customer. Both opt-in and opt-out may potentially result in an irritated call to the bank, but with opt-out, the result is far 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. In stark contrast, with opt-in, the transaction is denied and cannot be rectified after the fact. We could implement an opt-out *on an account-wide basis (or for debit*

card only transactions) as early as today.

I appreciate the Board's recognition that there are legitimate reasons for account terms or conditions to vary depending on whether the customer has or has not declined OD accommodation. A requirement that account alternatives be "customary" or "reasonable" would discourage terms that would render the right to decline OD accommodation meaningless or illusory.

I encourage the Board to recognize the evolving nature of electronic payments and the need to continue to place the responsibility for account management on the accountholder. Whether 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. I firmly believe that to best benefit the customer, banks must be allowed to implement their discretionary OD accommodation programs in opt-out form so that the minority who choose to decline its benefit may act on their preference without disadvantaging the majority of customers who strongly desire this protection.

Sincerely,

Michael Cockrell, Compliance Auditor
AVP, North Dallas Bank & Trust Co.