

August 2, 2004

Ms. Jennifer J. Johnson,
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Docket No. OP-1198

Dear Ms. Johnson:

Westamerica Bank would like to avail itself of the opportunity to comment on the proposed guidance of overdraft protection programs. While the bank believes such guidance is much needed since there are many different overdraft programs available to the public and many of which are poorly described to the consumer, the guidance is inadequate in several ways.

Definition of an overdraft protection program

The guidance would clearly benefit with the inclusion of a definition of an over draft protection program. While every bank allows overdrafts in some form, the banking industry is widely divergent in the way overdrafts are treated. Some institutions have overdrafts programs that are tied to very sophisticated analytical tools. These programs actively promote the ability to overdraw an account to consumers. These programs do create an anticipation on the part of the consumer that certain overdrafts will be honored. However, many banks like ours do not engage in that practice. Westamerica Bank discloses to its customers that they are expected to not overdraw their account but if they do, the bank may or may not honor such overdraft. This program does not create an anticipation on the part of the customer that any overdraft will be honored. In fact the customer is advised that they are expect to not overdraw their account. Any proposed guidance should differentiate between these two overdraft practices.

“Provide election or opt-out of services”

The guidance states that customers should be provided the ability to select to participate or not participate in an overdraft program. This incorrectly assumes that a financial institution can honor a customer request to “opt-out” thereby can prevent all overdrafts.

Even if a bank’s policy was to return all items drawn against insufficient funds, an account could still be overdrawn. For example when a deposited check is returned and credit had already been given. Additionally, not all transactions originated through ATM/Debit card systems can be

returned. For example, a simple transaction in purchasing gasoline can result in an inadvertent overdraft. When a customer “swipes” their card they receive permission to pump the gasoline. The swiped authorization can occur with as little as \$50 in an account. However, since the authorization occurs prior to the pumping of the gas, the system can not determine what the actual charge may eventually be. In this example, the customer could fill the tank of an SUV, generate a bill of \$75, and thereby overdraw their account.

The institution is very much concerned over the implications in accepting an opt-out, then having overdraft, then enforcing repayment of the amount or collection of the overdraft fees. We are concerned that this would be exposing the institution to a large number of consumer complaints and litigation risk.

We strongly recommend that any guidance allow an institution to disclose that it will take reasonable steps to prevent overdrafts but not require the institution to disclose that it can allow a customer to opt out of all overdrafts.

Disclosure of other overdraft credit products should be encouraged but not mandated:

“When informing consumers about an overdraft protection program, inform consumers generally of other available overdraft services or credit products, explain to consumers the costs and advantages of various alternatives to the overdraft protection program, and identify for consumers the risks and problems in relying on the program and consequences of abuse.”

Requiring the advertisement of overdraft lines of credit with demand accounts would create an expensive burden on the institution. This would result in advertisements becoming a long list of products which would trigger both the Truth in Saving and Truth in Lending Act. Finally, if the intent is to inform customers of all overdraft options then institutions would need to also inform customers of the consequence and costs of having a returned check sent back to the merchant.

“If the overdraft payment is discretionary, describe the circumstances in which the institution would refuse to pay an overdraft or otherwise suspend the overdraft protection program.”

This would be very problematic for the institution. By informing a consumer when the institution would not pay an overdraft would obligate (at least the consumer perspective) the institution to pay all overdrafts that were not described in the disclosure. Many consumers would then anticipate the institution to honor certain overdrafts that had not been described. Additionally, we are concerned that circumstances may arise (as described above) when an institution exceeds the disclosed overdraft amount. We are concerned that this could result in consumer complaints and possible litigation.

“monitor accounts of individuals who may be excessively reliant on the product”

This requirement incorrectly assumes that institutions routinely gather sufficient financial information from deposit customers to determine if a customer becomes excessively reliant on an overdraft feature. For some consumers two overdrafts per month may indicate a negative trend, for others eight overdrafts per month may be negative. Without specific financial

information regarding the consumers debt and income there is not adequate information to make this determination. The bank would like its customers to have good financial management skills and the bank agrees that financial literacy training is important to our communities but does not believe a rule that creates customer monitoring can achieve this objective.

Disclosure of fees for overdrafts

The bank believes that existing regulations adequately require the disclosure of overdrafts fees and the additional disclosure requirements stated in the guidance will cause additional costs without providing the consumer additional benefits.

“The proposed Guidance specifically provides that overdraft balances generally should be charged-off within 30 days from the date first overdrawn.”

30 Days is insufficient time to determine if all overdrafts should be charged off. Complaint research can take up to 90 days and check presentment disputes with other institutions can also take up to 90 days to resolve. Additionally, the cost of reprogramming the system would be significant. The bank believes that 90 days is a more reasonable time period.

“Alerting customer a non-check transaction triggers any fees.”

There is only one instance where prior notice may be feasible and that is at a domestic ATM and that is unclear if the network rules would prevent a bank from entirely controlling the transaction. In most instances, such as POS transaction and preauthorized debits, providing a notice is impossible.

“Prominently distinguish actual balances from overdraft protection funds availability.”

The bank agrees completely that disclosing a combined total of the balance in a deposit account and balance in an overdraft line program is misleading to a consumer.

Thank-you for providing the opportunity of Westamerica Bank to submit comments on the proposal.

Sincerely,

Brian Scrip
Compliance Manager
Westamerica Bank