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Subject: Regulation DD - Overdraft/Bounce Protection Services

Board of Governors of the Federal Reserve System

July 9, 2004

Re: Regulation DD; Docket No. R-1197
Proposed Rule

As a Community Bank operating in competitive major metropolitan market, we are always looking for ways to serve the needs of the customers who choose to do business with us while minimizing the cost of serving those needs. The traditional case-by-case method of deciding whether or not to pay checks presented to us when the account the item is drawn on has insufficient funds is costly to administer. Providing the service of paying most of these items is, however, highly valued by our customers. That is why we implemented an overdraft privilege program streamlining the decision process of whether or not an item is paid. And, we welcome the Board's decision to clarify that using a streamlined method of determining whether or not an NSF item is paid can be an acceptable practice.

There are, however, some areas in the Board's proposal to modify Regulation DD that will be costly to implement and appear to have little value for the consumer.

First of all, while there may be some benefit in encouraging banks to use more consistent terminology in the descriptive terms associated with the fees caused by presentment of checks against insufficient funds, the proposal as written may not meet this objective. As noted in the proposal, most banks, including ours, charge the same flat fee whether an item presented against insufficient funds is paid or returned unpaid. And, since it is generally quite clear to the consumer that an item was paid as opposed to being returned, distinguishing the fee by requiring two separate terms or phrases to be used, will probably only serve to make the charges more confusing to the consumer. Use of a consistent term such as "NSF Fee" clarifies that the fee charged was for the processing of an item presented against Non Sufficient Funds whether or not that item was paid.

Additionally, requiring that we clarify the type of item presented for payment by distinguishing the item as a check, ACH, POS, ATM, etc. would compound the confusion and make it more difficult for consumers to understand that any item presented for payment against insufficient funds, whether honored or not, is a debit for which funds should have been available before presentment. Indeed, with pending improvements in the check clearing process, it is beneficial for the consumer to understand that having funds in an account before issuing items for payments, including checks, is appropriate and necessary to avoid having that item dishonored.

The proposed requirement to disclose NSF fees in the aggregate, for the statement period as well as the year-to-date period, also has the potential for confusing the consumer and will be a costly requirement for banks to meet as it will require reprogramming of computer systems. As any long time banker will agree, most consumers do not thoroughly review any account documentation, including statements. The more complex the information presented is, the less useable it becomes to the consumer. Providing aggregate annual fees will lead to confusion when consumers reconcile their monthly statements (if they even do so).

And, our historical evidence suggests that consumers who take advantage of overdrawing their account because a bank allows the consumer to do so, aren't concerned about the fees. We have several case studies, including with our own employees who certainly have access to other financial options such as credit lines, that demonstrate that even consumers who are counseled on excessive use of overdrafts, do

not stop the practice regardless of the amount of fees associated with their behavior.

Therefore, as long as banks clearly indicate in disclosures, as required by the current Regulation DD, that there is a fee for presentment of items against insufficient funds, and as long as those fees are disclosed on statements in accordance with the current provisions of Regulation DD, we feel the consumer has adequate notification. No change is needed in the Regulation to assure that the consumer is made aware of the charges they incur due to transactions they have initiated. Banks do not need to spend their limited resources on programming changes that will have little or no benefit to the consumer.

We welcome additional clarity in defining what would be considered “misleading or inaccurate advertising,” as this is too often open to interpretation. We do, however, encourage the Board to remember that requiring a host of disclosures be included in an advertisement does not in any way assure that the consumer reads or understands the message. That said, the prohibitions on using language that suggests that a discretionary overdraft program is similar to an approved line of credit, or that consumers should intentionally write checks against insufficient funds because the bank will pay them when in fact the bank reserves the right to deny payment in all cases, are reasonable.

The requirement that advertisement or promotional material clearly specify the types of transactions other than “checks” which may be paid when presented against uncollected funds may be more confusing. Consumers need to understand that any type of order to pay, whether it be by check, ATM, Debit Card, ACH or other means, that the consumer initiates against their account will be honored or dishonored in a similar manner based on the sufficiency of funds in the account and the relationship the consumer has with the institution. We want to continue to encourage consumers to access their funds in whatever manner is consistent with the consumers’ needs.

On behalf of Peoples State Bank, I appreciate the opportunity to submit these comments for consideration.

Respectfully,

Tami Janowicz
Vice President
Director of Compliance
Peoples State Bank