



August 5, 2004

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street & Constitution Avenue, N.W.
Washington, D.C. 20551
[Regulation DD; Docket No.R-1197]

Re: Truth in Savings Proposed Rule
69 FR 31760 (June 7, 2004)

Dear Ms. Johnson:

America's Community Bankers ("ACB")¹ welcomes the opportunity to comment on the proposed rule by the Board of Governors of the Federal Reserve System (the "Board"), which would amend the Truth in Savings Act ("TISA") implementing regulations ("Regulation DD") to address concerns about the uniformity and adequacy of information provided to consumers when they overdraw their accounts.

In particular, the Board is responding to recent concerns about certain marketing practices relating to overdraft protection services. Specifically, the Board is proposing to amend Regulation DD to expand the prohibition against misleading advertisements to cover communications with current customers about existing accounts concerning overdraft protection services or features.²

The proposed rule also would require that institutions provide more uniform disclosures about overdraft and returned-item fees at account opening and on periodic statements. Finally, the proposed rule would revise the official staff commentary to include new examples of advertising for overdraft protection that may be viewed as misleading.

ACB Position

As an initial matter, ACB would like to affirm the Board's view that, except for specifically designated credit products, overdraft protection services should continue to

¹ America's Community Bankers is the member driven national trade association representing community banks that pursue progressive, entrepreneurial and service-oriented strategies to benefit their customers and communities. To learn more about ACB, visit www.AmericasCommunityBankers.com.

² 69 Fed. Reg. 31760 (June 7, 2004).

fall outside the scope of coverage of the Truth in Lending Act and Regulation Z. We believe that, with some modification, the Board's proposed amendments to Regulation DD, together with some aspects of the proposed interagency guidance on overdraft protection³, adequately speak to the concerns raised.

ACB seeks to reduce regulatory burdens whenever possible. At the same time, we support efforts to inform and educate consumers, helping them improve their financial literacy. While we are concerned that the Board is seeking to add new regulatory requirements, even as it seeks opportunities to reduce regulatory burdens elsewhere, we believe the proposed amendments to Regulation DD, with some modification, can help existing customers and consumers better understand overdraft protection and its costs. This better enables consumers to use such services responsibly.

ACB supports the view that informed customers make better financial decisions and manage their finances more effectively. Accordingly, we support the proposed revision of the defined term, "advertisement" to include communications with existing customers for some purposes, including fees associated with overdraft protection services or features.

Although we are supportive of the proposed rule generally, ACB urges the Board to consider some specific revisions in order to avoid unnecessary customer confusion and additional costs for financial institutions without any likely corresponding benefit for consumers.

First, while we support the view that financial institutions should clearly disclose the full extent of fees associated with overdraft protection and returned items, we do not believe the proposed amendments to section 230.6 (Periodic Statement Disclosures) should mandate disclosing such fees on an aggregate basis for the statement period and calendar year. Section 230.6 already requires that periodic statements include required fee disclosures, itemized by type and dollar amount. In adding a specific aggregation requirement, customers will not gain any significant improvement in useful information; customers today can review periodic statements to confirm the total amount of fees associated with overdraft protection for the statement period or the year. At the same time, the proposed requirement will cause financial institutions to incur additional operational, programming and other costs associated with implementing such a change. We encourage the Board to eliminate this specific proposed requirement from any final rule.

Second, the Board's proposal would revise official staff comment 8(f)-2 regarding section 230.8 (Advertising) to require that disclosures include a description of the circumstances under which the institution would not pay an overdraft. Although ACB understands the laudable intent underlying this proposed change, we believe adding this required disclosure could give rise to an unreasonable expectation that a "safe harbor" for

³ 69 Fed. Reg. 31858 (June 7, 2004).

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overdraft protection exists when, in fact, none does. Unless specifically agreed to, it is the case that the decision to honor an overdraft remains discretionary and will depend upon a variety of circumstances, including some outside the control of the financial institution, such as instances when deposit items have been returned. We encourage the Board to modify this aspect of the proposed rule to simply require that advertising should include a clear and accurate disclosure of the discretionary nature of the overdraft protection service.

Finally, ACB requests that the Board provide for a reasonable compliance date for any final revisions to Regulation DD that may be issued. This will provide financial institutions a sufficient time period within which to implement any final changes.

Conclusion

ACB appreciates the opportunity to comment on this important matter. We stand ready to work with the Board to finalize revisions to Regulation DD to assist financial institutions in responding to customer needs when overdrafts occur.

Should you have any questions, please contact the undersigned at 202-857-3122 or via e-mail at mbriggs@acbankers.org; Charlotte M. Bahin, Senior Vice President, Regulatory Affairs, at (202) 857-3121 or via email at cbahin@acbankers.org.

Sincerely,

A handwritten signature in black ink that reads "Michael W. Briggs". The signature is written in a cursive style with a prominent dot above the 'i' in "Briggs".

Michael W. Briggs
Chief Legal Officer