



**INDEPENDENT BANKERS
ASSOCIATION OF TEXAS**

1700 RIO GRANDE STREET
SUITE 100
AUSTIN, TEXAS 78701
P: 512.474.6889
F: 512.322.9004
WWW.IBAT.ORG

CLIFF M^CCAULEY
IBAT CHAIRMAN

CMCCAULEY@FROSTBANK.COM
FROST NATIONAL BANK,
SAN ANTONIO

MILTON M^CGEE

IBAT CHAIRMAN-ELECT
MMCGEE@CNBTexas.COM
CITIZENS NATIONAL BANK,
HENDERSON

ALLAN J. RASMUSSEN

IBAT VICE CHAIRMAN
JRASMUSSEN@HTBNA.COM
HOMETOWN BANK, N.A.,
GALVESTON

J. DAVID WILLIAMS

IBAT SECRETARY-TREASURER
JD.WILLIAMS@HCSB.COM
HCSB, A STATE BANKING
ASSOCIATION, KERRVILLE

DAVID SEITZ

LEADERSHIP DIVISION PRESIDENT
DSEITZ@FROSTBANK.COM
FROST NATIONAL BANK,
SAN ANTONIO

AL JONES

IMMEDIATE PAST CHAIRMAN
ABJONES@AMERICANBANK.COM
AMERICAN BANK, CORPUS CHRISTI

CHRISTOPHER L. WILLISTON, CAE

PRESIDENT AND CEO
CWILLISTON@IBAT.ORG

STEPHEN Y. SCURLOCK

EXECUTIVE VICE PRESIDENT
SSCURLOCK@IBAT.ORG

RAMONA JONES

IBAT SERVICES PRESIDENT
RJONES@IBAT.ORG

MARY E. LANGE, CAE

IBAT EDUCATION FOUNDATION
PRESIDENT
MLANGE@IBAT.ORG

JANE HOLSTIEN

SENIOR VICE PRESIDENT
JHOLSTIEN@IBAT.ORG

URSULA L. JIMENEZ, CAE

SENIOR VICE PRESIDENT
UJIMENEZ@IBAT.ORG

CURT NELSON

SENIOR VICE PRESIDENT
CNELSON@IBAT.ORG

July 18, 2008

Via Email – regs.comments@federalreserve.gov

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Re: Proposed Amendments to Regulation DD
Docket No. R-1315

Dear Ms. Johnson:

The Independent Bankers Association of Texas (“IBAT”) appreciates this opportunity to comment on the proposed amendments to Regulation DD. IBAT is a trade association representing approximately 600 independent community banks domiciled in Texas. Most of its members are involved in overdraft “privilege” programs similar to those described in the preamble to this proposal. The requirements of these changes to Regulation DD and to Regulation AA by separate docket will have a significant impact on IBAT members, and we believe the general public. Thus, we provide the following observations with regard to these proposed changes.

Before we engage in a discussion of the specifics of the regulation, we would point out that not every community bank actually offers an overdraft “privilege” program described in these proposals or in the Best Practices relating to overdraft programs. Some institutions still provide overdraft payment on a purely manual, ad hoc basis. We would strenuously recommend that those activities be absolutely excluded from Regulation DD as proposed.

It is quite true; however, that many, if not most, of the community banks in Texas provide overdraft privilege to their customers in connection with free checking accounts. In a typical Texas arrangement, the fee for the overdraft privilege is identical to the fee for an NSF item. In other words, whether the item is paid or returned, the customer pays the identical fee. In the case of a debit card transaction there is a fee for accepting the item. Without the overdraft protection, the card would be rejected at point of sale.

IBAT believes that overdraft protection programs provide extremely important coverage to consumers over the state of Texas ranging from blue collar workers to high network professionals and from students to families and to older customers. There is no one segment of the community that does not utilize and benefit from the overdraft privilege programs now in place.

It is also worthy of note that the individual fees charged by community banks tend to be significantly lower than those charged by large institutions. Further, the fee income is not as significant of a component of income as it is for some other institutions. However, this is still an important source of revenue, enabling community banks to provide important services to their entire customer base.

At the same time, customers benefit from these programs by avoiding merchant hot check fees in the case of paper items and in the case of debit cards having their transactions covered when they most need them. Texas law has always required that the fees be disclosed. We believe that Texas banks are very aware of the Best Practices and have implemented as many of these as are technologically feasible at this time.

Opt Out Disclosure Requirements. IBAT supports a reasonable opt out notice and opportunity for bank customers. We would suggest that this occurs either when the account is opened or when overdraft privilege is added to the account, whichever is later. The opt out notice should clearly disclose the consequences of opting out. For example, it is important that the consumer realize that opting out will not eliminate the fee for a paper item. Similarly, for a debit item it will cause the card to be rejected. A retailer who receives a rejected debit card is likely not to accept a check since the account has already demonstrated that it is overdrawn through the rejection. Furthermore, in the case of a paper item, presenting a hot check is a crime in Texas. Thus, if the item is returned, there is an additional fee to the merchant and the potential for criminal proceedings. Many if not most of the Texas prosecutors in the state rely on hot check fee revenue for partial support of their offices. Thus, these are vigorously prosecuted in our state.

Timing. We would strongly suggest that including an opt out notice on each periodic statement will be confusing rather helpful. On the other hand, simply providing an opt out notice next to the NSF charge is likely to result in consumers making imprudent decisions. Thus, we would suggest that requiring opt out notices on periodic statements and with an overdraft notice itself is neither necessary nor helpful to the consumer.

Disclosure of Aggregate or Total Fees on Periodic Statements. The proposals would require this disclosure of aggregate dollar amounts for overdraft fees and returned items for the statement period and for the calendar year to date on both those institutions that promote overdraft services and those who do not. It is noted initially in this letter, there are still a number of Texas institutions that do not promote overdraft privilege. We would suggest that making a disclosure turn on whether or not the service is promoted is the wrong test. Rather, the disclosure should depend on whether the service is manual/ad hoc or automated.

Sample Form. Appendix B-10 provides a sample form of opt out notice. This form includes the following statement: "We also offer less costly overdraft payment services that you may qualify for, including a line of credit." We believe that this statement could be misleading and should be omitted from the form. First, many overdraft customers may very well not qualify for a line of credit due to lack of creditworthiness. This statement thus could be misleading to a number of customers.

Jennifer J. Johnson, Secretary
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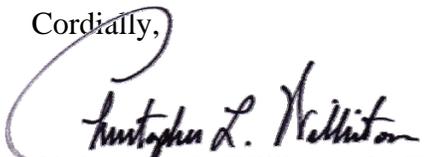
Perhaps more significantly in Texas, consumer lines of credit are not a common product in community banks. In 1983, the Texas legislature amended the credit code to cap interest rates on consumer lines of credit (including credit cards) at 14% with absolutely no fees permitted. As a result, that product became unavailable in Texas. Only recently did the Texas legislature increase the possible rate to 18% with some modest fees and a late charge capped at \$15.00. For many years, the forms companies providing forms to community banks in Texas simply did not produce an open end line of credit form designed for Texas banks. While this is now a product that is somewhat more attractive, it is still not one that has been added to all community banks line of products.

Thus, the alternative to overdraft privilege tends to be a sweep from another account. Unfortunately if that account is a savings account, then Regulation D limits the number of sweeps to six in a month. Thus, this alternative is not satisfactory for some customers. Also, many customers do not have both a savings account and a checking account. A few institutions permit sweeping from the checking account to credit card. However, since Texas banks do not as a rule issue credit cards, this is not a common product either.

Disclosure of Account Balances. The amendments would also deal with disclosure of account balances through an automated system such as a ATM website or automated telephone response system. The existing rules require certain additional disclosures if the balance includes the so called privileged amount as this would be considered a promotion. As a result of the current rules, most institutions no longer provide anything other than ledger balance. However, in the event it becomes feasible to disclose both balances, then we recommend that the rule be clarified to include examples of safe harbor situations in which the disclosures must be required. It is absolutely vital that the rule make clear that institutions need not reconfigure their data processing and other internal systems to provide "real time" account balances. Many institutions still engage in batch processing. It is important that this continues to be a recognized as an exception to the dual balance disclosure. Also, sample language for appropriate disclosures when both balances are provided would be helpful to assure clear compliance.

Conclusion. IBAT strongly supports responsible overdraft privilege programs that provide meaningful opportunities for customers to make rational decisions. We believe that our comments will assist in assuring that this occurs in a way most appropriate and most effective for banks including community banks. Thank you for this opportunity to comment.

Cordially,



Christopher L. Williston, CAE
President and CEO