



TCF FINANCIAL CORPORATION

July 18, 2008

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

Re: Docket No. R-1315: Regulation DD – Truth in Savings Act

Dear Ms. Johnson:

TCF appreciates the opportunity to comment to the Federal Reserve Board (“the Board”) on the Board’s proposed amendments to Regulation DD that propose new and revised requirements regarding overdraft services.¹ TCF Financial Corporation (“TCF”) is a \$16.4 billion Minnesota-based financial holding company with banking offices in Arizona, Minnesota, Illinois, Michigan, Wisconsin, Colorado and Indiana. TCF also conducts leasing and equipment finance in all 50 states.

Opt-Out Disclosure Requirements

The Unfair or Deceptive Acts or Practices rulemaking requires that consumers be provided with the right to instruct their financial institutions not to process payments that would give rise to an overdraft in the consumer’s account. This right is referred to as an opt-out right. The Board’s proposed Regulation DD amendments require institutions to disclose this opt-out right to their customers, and that this disclosure includes certain required information. The proposed amendments also provide a model form for the disclosures. While TCF generally does not object to the required or model disclosures, there are some areas that need clarification. First, the first two sentences of the model form imply that overdrafts will be paid, and the third full paragraph implies that overdrafts will be paid if the consumer does not opt-out. However, according to the terms of the account agreements with their customers, most institutions are not required to pay items that would result in an overdraft. Second, the model form implies that overdrafts will not be paid if the consumer opts-out. While that is the likely result in most cases, institutions may still pay overdrafts if a consumer opts-out, although they may not charge a fee for doing so, with certain exceptions. For example, under the

¹ This comment letter will be limited to the Regulation DD proposal and will not comment on the Unfair or Deceptive Acts or Practices rulemaking proposal that was issued for comment on the same date as this proposed rulemaking. TCF will file comments on that proposal separately.

proposed rulemaking for Unfair or Deceptive Acts or Practices, institutions may assess a fee for paying a debit card transaction that overdraws an account (notwithstanding a consumer's opt-out) if: (1) there were sufficient funds in the account at the time of the authorization but the actual amount of the transaction exceeds the amount authorized, and (2) the transaction is presented for payment by paper-based means and the bank has not previously authorized the transaction. Third, we think there should be a more balanced disclosure of the consequences to the consumer of opting-out, as the model form does not adequately address the consequences of returned checks. For example, many merchants charge a fee for returned checks, and the consumer's credit may be harmed as a result of returned checks. Additionally, it is worth noting that consumers who overdraw their accounts ordinarily are required to pay a fee whether or not a check is returned, so the benefit of opting-out for checks should not be overstated. We therefore ask that the following changes to the first and third paragraphs of the model form be considered:

~~We provide overdraft services for your account. This means that if there is a debit to your account when your account does not have sufficient funds, we may pay your overdraft. Under our account agreement with you, we may, but are not required to, pay checks, ATM withdrawals, and debit card purchases, and other items that cause your account to be overdrawn. This means that we may pay these items even if there are not enough available funds in your account.~~

~~You have the right to opt-out of this service and tell us not to pay any overdrafts. If you do, however, you may have to pay a fee if you make transactions that are returned unpaid. You also have the right to tell us not to pay overdrafts for ATM withdrawals and debit card purchases, but continue to pay overdrafts for other types of transactions. You have the right to instruct us not to pay any items which cause your account to be overdrawn. If you opt-out, we may return your checks unpaid and refuse to authorize ATM withdrawals and debit card purchases if you do not have sufficient available funds. Even though you opt-out, we may charge you a fee if you make transactions that are returned unpaid or refused because of insufficient available funds. In addition, many merchants charge a fee for returned checks, and your credit may be harmed if your checks are returned. If you opt-out, we may still pay an overdraft, but may not charge you a fee for doing so, with certain exceptions. For example, we may pay an ATM withdrawal or debit card purchase that causes an overdraft and charge you a fee for the transaction if: (1) there were sufficient available funds in your account at the time we authorized the transaction but the actual amount of the transaction exceeds the amount authorized, or (2) the transaction is presented for payment by paper-based means and we have not previously authorized the transaction. You also have the right to opt-out of overdraft services for just ATM withdrawals and debit card purchases, in which case we may continue to pay overdrafts for other types of transactions (although we are not required to do so).~~

The Board also requested comment on whether institutions should be required to provide a separate form with a check-off box that consumers may use to opt-out of overdraft services, and whether consumers should be allowed to opt-out electronically. Given the costs institutions will incur to implement the proposed rule and the overwhelming level of disclosures already provided to consumers, requiring yet another separate form for the opt-out is not outweighed by consumer benefit, in our view. Moreover, we believe consumers should be allowed to opt-out electronically only if the institution chooses to allow that method of opt-out. Institutions should be able to choose the best means of opting-out for their customers based on the experience of the institution with its customers base.

The Board requested comment on whether the content of the initial opt-out notice should be the same as the content for the subsequent opt-out notice. The Board contemplates that subsequent opt-out notices may be provided at the same time as the notice to the consumer of the occurrence of an overdraft. Given the limited space available for the overdraft notice, the content for the subsequent opt-out notice should not be the same as the content for the initial opt-out notice, in our view. We request that any subsequent opt-out notice make reference to the initial opt-out notice and require only a statement regarding proposed 230.10(b)(5) and, if the institution chooses, a statement about the consequences of opting-out similar to that contained in the model disclosures.

Additional Disclosure Requirements Regarding Overdraft Services

The Board proposes to require all institutions to disclose on periodic statements to their customers the total fees for overdrafts paid and for items returned unpaid due to insufficient funds. Totals would be for the statement cycle and year-to-date. In our view, based on interactions with our customers, it is clear that most consumers are able to ascertain the total fees for the statement cycle without the need for aggregation of these fees by the institution. Therefore, the benefit to consumers of aggregating fees for the statement cycle does not seem worth the cost to the institution of programming for this. Aggregating the year-to-date fees could benefit consumers who frequently overdraw or attempt to overdraw their accounts on a regular basis. However, in our experience the vast majority of consumers do not overdraw their accounts with regular frequency. Therefore, again, it is our view that the benefit to consumers of aggregating fees on a year-to-date bases does not outweigh the cost to institutions of programming for this.

Disclosure of Account Balances

The Board proposes to require institutions who disclose balances to consumers by an automated system to not include the amount of any overdraft limit that might be paid by the institution. The proposal allows institutions the flexibility to include in the balance funds from deposits which are not yet available for withdrawal under the institution's funds availability policy pursuant to Regulation CC or funds that are held by an

institution to satisfy a prior obligation of the consumer (e.g. debit card authorizations that have not yet posted to the account or ATM withdrawals that were authorized but not yet posted to the account).

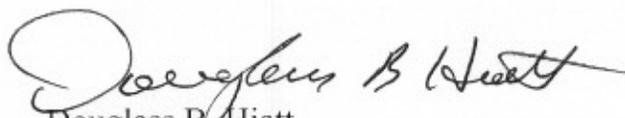
When it comes to balance inquiries, our experience is that every customer wants something different. Some want to know an account's ledger balance in real time, some want to know yesterday's ledger balance, some want to know only the amount available for immediate withdrawal, and some want to know if a particular check can be paid or not without causing an overdraft. As a result, institutions will provide balance information to their customers based on their customer service experience. Institutions learn over time which media customers use to check balance information and what type of balance information customers expect in each medium. If it is possible and cost justified, an institution will provide that balance information based on customer expectations.

For an institution that includes in its balance information amounts other than just the balance available under Regulation CC, the proposal would require significant programming hours, and training not just for the institution's employees but also for its customers who have grown to understand the balances disclosed by the institution. As a result, a customer awareness campaign of some sort would be necessary to avoid customer confusion and/or complaints. In some cases, it may not be possible to reprogram an existing system depending on the age of the software and hardware. We recommend that this requirement be abandoned because it is contrary to the best interest of institutions and their customers, and that institutions be allowed to provide balance information as they do today.

In the event some change is ultimately adopted, we recommend that it only require institutions to indicate to consumers that the balance may not include recent deposits, or other items such as checks, POS transactions, ACH transactions or other transactions that have not been presented for payment yet, but might be before the end of the day.

Thank you for considering TCF's views on these important issues. If you have any further questions or comments on this matter, please do not hesitate to contact me at (952) 475-5197.

Sincerely,



Douglass B. Hiatt
Corporate Counsel