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

Re: Proposed Rules Regarding Credit Card and Overdraft Services

Thank you for the opportunity to present comments on the above-stated proposals. The Kansas Bankers Association is a non-profit trade organization having 332 of the 334 Kansas chartered banks as members. As such, membership represents many demographics within the state, as well as representing a spectrum of asset sizes.

Before delving into the specifics of each proposal, it is important to note that the topics of these proposals have much in common. Both services were developed by banks and bankers to provide a convenience to their customers. Credit cards offer a most convenient method of payment – one that is accepted universally. Overdraft services help the customer who under other circumstances, would have their payment returned for insufficient funds. Instead, the bank pays the item which causes an overdraft for the convenience (and saves the embarrassment) of the customer.

There will always be those who abuse such conveniences – those who cannot or will not balance their accounts and become habitually overdrawn; and those who cannot manage their credit well and hop from card to card, leaving unpaid balances in their wake. And while there have been some abuses on the other side of the transactions, we find ourselves here today, justifying services that came about because of a need for convenience, and practices that have mostly been shaped and molded by the habits of the users of these services.

This is the proverbial thin line between love and hate. Customers love the convenience of the services which are the subject matter of these proposals, but hate when fees happen. The danger in crossing this thin line is to upset the balance between costs and convenience, which would likely end in less convenience being provided to fewer consumers.

Our comments will be organized according to topic and Docket Number.

Docket No. R-1315: Proposal Regarding Overdraft Services; Reg DD

Disclosures: Initial Opt Out. The proposal would require institutions to provide consumers with the ability to opt out of the payment of overdrafts as a prerequisite to imposing a fee for paying an overdraft. The notice is to be given prior to overdraft fees being assessed, and this requirement would only apply to those accounts opened after the effective date of the regulation. We would ask that this notice be allowed to be delivered electronically to those customers who prefer that method of communication. In addition, we would request that the opt out could occur electronically for those same customers. The sample form currently allows a toll free telephone method and a written, mailed option. Many consumers today prefer to complete their banking transactions electronically, and would prefer this method over the others.

In addition, the sample form does indicate one of the consequences of opting out of the institution's overdraft service – that a fee may be incurred as a result of the payment being returned. However, we would request that mention also be made about the potential of incurring another fee from the merchant that will go unpaid as a result of the item being returned.

Finally, we believe that allowing a “partial opt out” – so that the consumer could request the institution to pay overdrafts for all types of transactions except ATM withdrawals and debit card purchases is a logistical nightmare. There is not a bank small enough (and able to check each debit item per account), nor one large enough (with technology available to do the same) capable of sorting these items without there being a huge burden in cost and likelihood of error. We believe the opt out should be universal per customer, per account.

Disclosures: Additional Opt Out Requirements. The proposal would require institutions to also provide a notice of the ability to opt out of the payment of overdrafts after the consumer has overdrawn the account and fees have been assessed. This could be accomplished either by supplying the notice on the periodic statement in the period in which an overdraft occurred, or by a separate notice sent after paying an overdraft. We would ask that if the institution chooses the notice on the periodic statement, that the notice could appear every period, regardless of whether an overdraft occurred or not. It would then serve as a constant reminder of the consumer's ability to opt out of the overdraft services. It would once again, be logistically impossible to single out those statements which contain an overdraft fee for this special disclosure.

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Disclosures: Aggregate Overdraft Fees. Currently, only institutions that choose to promote or advertise the overdraft service they provide, must disclose on periodic statements, the aggregate dollar amounts charged for overdraft fees and for returned item fees. Contrary to popular belief, most institutions do not want to encourage their customers to overdraw their accounts. Those institutions have an overdraft service as a convenience to those customers who occasionally do overdraw, but the institution itself, has chosen not to advertise the product. The proposed requirement for all institutions to now have to make these additional disclosures will cause these institutions to incur additional costs, and will be contrary to their philosophy. In fact, the proposed requirement could actually encourage institutions that have previously chosen not to advertise the payment of overdrafts to decide to actively promote the service as they will incur the cost of disclosure anyway. This rule as it stands is fair. We would request that it not be changed.

Disclosures: Account Balances. The proposal would require institutions to provide account balance information through any automated system to disclose only those amounts of the customer's funds that are actually available for withdrawal, discounting the additional funds that may be available to cover overdrafts. We appreciate the flexibility maintained by the proposal with regard to the various methods that institutions used to determine available balances.

Docket No. R-1286: Credit Card Services; Reg Z

Timing of Payment. The proposal would prohibit a bank from treating a payment as late unless the bank has sent a periodic statement at least 21 days prior to the payment due date. The industry standard in our state is not less than 20 days – typically contracts call for between 20 to 25 days. We would request that the safe harbor time period be no less than 20 days to match industry standards. Customers should be familiar with that standard having signed contracts using that time period for a very long time.

Due Dates for Mailed Payments. The proposal would provide that mailed credit card payments received as late as 5:00 PM on the due date be considered timely, and if the due date falls on a Sunday or a holiday, that a payment received by mail on the next business day would be considered timely. We must point out here that with the typical credit card, as pointed out above, the consumer has 20 to 25 days, depending on the contract, to make the monthly payment.

We believe that as long as the due date and time at which a payment must be received is disclosed in the contract, the bank has done its job of informing the consumer. A consumer who wishes to use a credit card with a 5:00 PM deadline can shop for a card with that feature, but it should not be the industry standard. Each bank has a reason for setting the deadline – whether it be staffing issues or payment delivery issues, and each consumer should be shouldered with some responsibility to know that and to meet it. In addition, should a consumer find that he or she is up against the deadline, most if not all credit cards have a feature whereby the consumer can call in the payment and avoid the late payment fee. There is a nominal fee for this feature – typically \$5 to \$10 – which is usually less than the late fee.

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Credit Card Holds. The proposal would prohibit banks from placing an over-the-limit fee on a credit card account if the reason the card holder exceeded his or her limit was due to a hold being placed on the card when the final dollar amount of a transaction is not known in advance. It is impossible to know in advance, in all cases, if the final sale amount submitted is going to be different than the authorization amount. Banks do not control the authorization amount or the final transaction amount. This is all under the control of the merchant. When this situation does occur, the consumer has the ability to contact the bank and ask that the fee be waived.

Conclusion. Again, the KBA appreciates the opportunity to comment on these proposals. There is a cost to convenience, and the practices of the whole are reflected in that cost. Industry standards have been established over time and should not be disregarded without serious consideration of the implications. We hope our comments have been helpful to you as you consider these very important matters.

Sincerely,

Charles A. Stones
President

Terri D. Thomas
SVP-Director of Legal Dept.

Kathleen A. Olsen
SVP General Counsel