



FRANKLIN SAVINGS BANK  
Come to us for answers

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July 10, 2008

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

BOARD OF GOVERNORS  
OF THE  
FEDERAL RESERVE SYSTEM  
2008 JUL 23 A 11: 20  
RECEIVED  
OFFICE OF THE SECRETARY

RE: Proposed Rules for Unfair or Deceptive Acts or Practices

Dear Ms. Johnson,

This is to express our serious concern that the proposed rules on unfair or deceptive acts or practices with respect to deposit account overdrafts and the proposed regulations under the Truth in Saving Act on deposit account overdrafts that were issued on May 19, 2008 will have a significant adverse effect on our institution and will not provide additional benefits to our customers. In the past, federal agency guidance and regulatory changes have helped to improve our overdraft service as an important service to our account holders. Since the programs inception, we have utilized recommended best practices including such activities as paying items in check number order, not allowing access to ODP services through our ATM's or by over the counter in person withdrawals, avoiding marketing of the program and reviewing account activity for excessive use. In fact when we were chosen to participate in the FDIC survey regarding ODP programs we received many favorable comments. In light of the positive impact of prior regulatory changes, and our concern about the current proposals, we appreciate this opportunity to provide comment on these proposals.

**Proposed Changes to Reg AA Subpart D – Overdraft Service Practices (or Proposed Changes to 12 CFR Part 535 Subpart D – Overdraft Services)**

§ 535.32 Unfair overdraft service practices. (or § 706.32 Unfair practices involving overdraft services.)

(a) Opt-out requirement. (1) General rule.

We offer an opportunity for customers to opt out of the ODP program at account opening. We explain the features of the ODP program along with our less costly



overdraft transfer program (Companion Account Transfer). The Bank does not promote our ODP program in any marketing material or brochures. We do actively market our Companion Account Transfer program to our customers. Once the program is clearly explained and customers are aware that participating in the ODP program does not guarantee the payment of overdrawn items, they are provided with an opportunity to opt out of the program or to sign up for Companion Account Transfer.

We believe the opportunity for customers to opt out of this program should be timely. By discussing both the overdraft protection program and our Companion Account Transfer program with our customers in person and prior to opening the account, it allows them the best opportunity to have all of their questions sufficiently answered. This allows them to make the most informed decisions.

Activation of our service is not immediate. If customers maintain their account in a satisfactory manner (no excessive NSF activity) for a period of 60 days the program will be activated. We believe the delay in activation of the ODP program along with an explanation that we may not guarantee the payment of overdrawn items may encourage customers who may anticipate a need for excessive overdraft protection to explore alternative safeguards.

Our practice is to refund appropriate fees when customers notify us that they elect to opt out of the ODP program because they are not satisfied. As a result of doing so, this fiscal year we are currently over budget by approximately forty five percent in refunded NSF fees. As previously mentioned consumers are regularly educated about all resources available to them such as Companion Account Transfer. In the event that they do not elect to opt out before fees are assessed, we are responsive to them when they choose to opt out of future overdraft service usage. This process is fair to the consumer and should be expressly permitted by any final rules.

## (2) Opt out for electronic channels.

While we offer consumers the ability to opt out of the payment of overdraft fees for all types of payments as a matter of consumer choice, and we disclose this option to consumers, we do not see why the offering or the failure to offer an opt out for the payment of overdrafts due to checks or ACH transactions where the charge for returning the transaction would be equal to or higher than the charge for paying the overdraft is in any way unfair or deceptive. The consumer is simply not harmed by the payment of the overdraft. Indeed failure to pay the overdraft would ordinarily result in greater costs to the consumer.



We do not allow customers to overdraw their accounts through the ATM as our ODP program is intended for inadvertent overdrafts. We have found that our customers have been demonstrably satisfied with the access to electronic channels such as with their debit cards when used for purchases. Analysis of our volumes indicates that the percentage of electronic items increases annually while paper debits are declining in our institution. As of today, electronic channel opt out is not yet possible through our technological resources.

(a) Debit holds.

Activation of overdraft service on debit holds would result in significant manual handling of all overdrafts. Overdrafts handled at the teller line or in one of multiple daily ACH batches would require manual account review to determine if debit card holds are in place. If our institution was required to accommodate this change as drafted, it would require that we extend the processing window for items to minimize errors. We believe that the operational impact of this proposed change would create excessive costs, undue staff burden and increase the possibility of bank error.

**Proposed Changes to Reg DD, 12 CFR Part 230 – TRUTH IN SAVINGS  
§ 230.10 Opt-out disclosure requirements for overdraft services.**

(a) General Rule. (4) Limits on fees charged.

By listing the maximum amount of fees charged per day, consumers will be tempted to 'game the system' and try to time transaction debits to minimize fees. Once the daily maximum fee is incurred there may be no deterrent to incurring additional overdrafts on that day. We do not agree that there should be a maximum amount of fees charged per day, as recommended in the existing agency guidance. We have implemented a manual process whereby we review and identify customers who are excessively utilizing ODP services and are incurring excessive fees. In these instances customers are sent a series of letters. The first reminds them that the program is intended only for inadvertent overdrafts and encourages them to seek assistance from one of our representatives. The letter also includes information regarding opting out of the program. If customers continue to excessively overdraw their account during the subsequent month a second letter will be sent indicating that continued use of this service in a manner that it is not intended will result in the customer no longer remaining eligible to participate in the program. Continued excessive use in the third consecutive month will result in termination in the program. This practice is time consuming and burdensome, but does ensure that customers who are utilizing the program in a manner in which it was not intended are limiting the number of NSF fees resulting from ODP usage.



(b) Notice Format and content.

Our financial institution has made overdraft protection services available to our customers, but we have made a point not to promote this program in any of our marketing material. Our marketing for overdraft protection is limited to account transfers from companion accounts. Many of our account holders do not take advantage of this alternate source for overdraft handling even though they are less costly than our ODP service. When asked, most account holders report that they do not intend to have overdrafts or if they have overdrawn their account, that they don't intend to do it again. Although we do not market our ODP program, it is our role as a financial institution to assist and educate our customers as to the various costs and benefits of all our overdraft programs, but not to demand their use of these forms of overdraft protection.

To incorporate the language "We also offer less costly overdraft payment services that you may qualify for, including a line of credit." and to follow that with the redundant comment "To opt out of our overdraft service" on the periodic statement appears to recommend that the consumer activate one of these alternate services. We believe that subjective factors, including the sense of discipline that comes from not having an overdraft line of credit are important to consumers and that we should not substitute our judgments, or the regulators judgments for the consumers own judgment when they have been offered alternatives.

We recommend that the Board remove the first sentence of the final paragraph of Sample B-10.

Thank you for the opportunity to express our comments during this period.

Sincerely,

Joseph A. Thornton  
AVP Retail Operations Officer  
& Branch Administrator  
Franklin Savings Bank