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July 30, 2008

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

Re: FRB Docket No. R-1314; Unfair or Deceptive Acts or Practices; 73 *Federal Register* 28904; May 18 2008

Dear Ms. Johnson:

I strongly encourage the Board to reconsider the overdraft payment opt-out option requirements in the proposed changes to Regulations AA and DD. The expense of implementing and complying with these proposals will be significantly greater than the benefits.

The perceived need to require opt-out options ignores three basic conditions.

1. Banks are providing customers with several convenient and accurate methods to verify their balances before making a payment. In addition to the monthly statements that have always been provided, a customer may obtain current balance information by phone, Internet, ATM, or visiting a branch. Each of these opportunities to verify a balance is offered free of charge to customers. Such ubiquitous and easy access to information is entirely inconsistent with the characteristics of any unfair or deceptive practice.
2. Many banks don't currently have the technical ability to provide partial opt-outs. To require all banks to divert resources to implement technology and systems to provide partial opt-outs is problematic for two reasons. First, it requires capital expenditures from banks in a particularly challenging banking environment, despite the fact that these banks have already provided multiple convenient options for their customers to know their balances. Second, an opt-out requirement denies a potential competitive advantage to those banks that have already created such opt-outs to meet a perceived market demand.
3. The rush to demonize the practice of paying overdrafts ignores the benefit these payments offer the customer. These payment accommodations allow customers to avoid merchant fees and the embarrassment of being identified as an unreliable payor. These payments also reduce the likelihood that a customer will face criminal charges for writing a bad check.

Proper bank regulation should either protect the Deposit Insurance Fund, by ensuring banks' assets are responsibly managed and underwritten, or protect consumers. These proposed changes achieve neither objective, yet they will cost banks an untold amount of time and dollars to implement and comply.

Banks that don't currently have an opt-out plan will incur significant expense to create one. All banks will then be required to absorb the ongoing cost of compliance. It is not reasonable to expect banks to incur these significant expenses simply to relieve customers of the obligation of verifying they actually have the money they are about to spend.

Given the fact that many banks, including ours, currently offer some type of overdraft opt-out today and all banks provide multiple free and convenient options for customers to verify their balances, this proposal suggests a remedy that is completely out of proportion to the suggested ailment.

Customers must assume the ultimate responsibility for how they handle their own accounts. Banks have an obligation to provide customers with the necessary information to manage those accounts. I believe our bank and our industry do an outstanding job of providing our customers with easy access to balance information. We clearly would not do this if deception was our goal.

The current proposal provides little benefit to customers, yet would cause significant expense to banks. If more customers have their payments rejected at point of sale or checks returned, this proposal will hurt more customers than it helps. This regulation implies that a bank's payment of an overdrawn item is a bad thing for the customer. This implication seems to ignore the significant fees the local grocer or national retailer is likely to charge for a returned item. Any potential benefits to the customer will come not only at significant costs to banks, but also be more than offset by the personal embarrassment and financial cost of merchant overdraft charges. Rather than protecting customers, this proposal seeks to absolve customers of the responsibility of properly maintaining their accounts. The Law of Unintended Consequences will surely find fertile ground in this proposal.

Regarding changes to Transaction Clearing Practices, a change requiring banks to pay small items before larger ones would add unnecessary complexity for banks without necessarily helping customers. Our bank would not only be required to alter its current procedure of paying items in the order they were received, but would be required to do so in a manner that would require integrated payment order sorting requirements that don't necessarily exist today for a variety of payment channels. Allowing customers to choose an alternate payment processing system would just make this bad idea worse. Systems like those used by community banks, like ours, were simply not engineered to contemplate customized payment orders for customers. Most importantly to the customer, any requirement to pay large items last increases the possibility that the customer's most important payments, such as a mortgage, will be returned unpaid.

It is my hope that the proposed regulations relating to overdraft protection programs will be removed from the proposed changes to the Unfair and Deceptive Acts and Practices. In no way do I object to the idea of banks giving customers an opt-out option. However, I do strenuously object to mandating this option. The complexity of establishing partial opt-outs for a variety of payment methods will be burdensome for banks. It should be the market, and not regulations, that react to customer demand for opt-out options. We need to use our financial, technical and compliance resources on more critical issues than efforts to relieve customers of the responsibility of keeping track of the condition of their accounts.

Respectfully,



Ken Honeck
Senior Vice President, Retail Banking

cc: Sen. Christopher S. Bond
Sen. Claire McCaskill
Rep. Sam Graves