



It's our name . . . and our promise.

August 1, 2008

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20 and C Streets, NW
Washington DC 20051

RE: Docket Number R-1315, Proposed Rules to Regulation DD
Docket Number R-1314, Proposed Rules to Regulation AA

Dear Ms. Johnson:

The Board of Governors has requested comment on the proposed changes to both Regulation DD, the regulation that implements *Truth in Savings*, and Regulation AA, the regulation that implements *Unfair or Deceptive Acts or Practices*. Because the rule changes pertaining to "Overdraft Services" are closely related, we are commenting on both proposals in this letter.

We offer the following comments for your consideration:

Opt-Out Notice

Timing Requirements

When consumers open new accounts at our bank, they do not qualify for discretionary payment of overdrafts until they have an established transaction history. When an account is overdrawn, we consider the length of time the account has been open, the number of overdrafts the customer may have had previously and the duration of those overdrafts, and whether the account is regularly funded (for example, by direct deposit), to name a few of the criteria. The current proposed rules, as written, require the initial opt-out notice not be given at account opening, but rather closer to the time in which the overdraft services would be added to the consumer's account. We have concerns with the following in relation to the timing requirement:

1. Under the proposed rules regarding the timing of the initial opt-out notice, we would either be required to (1) provide discretionary overdraft services to new accounts at opening, or (2) we would need to maintain manual tickler files to review accounts after some defined criteria, such as a 60-day history, has been established. The first option would place the bank at greater risk for new account losses and could be construed as promoting overdraft services. As a mid-sized bank with substantial volumes, the second option would be far too burdensome.

2. Our overdraft services are truly discretionary, and we do not promote the payment of overdrafts. The initial opt-out notice puts bankers in the awkward position of having to explain the discretionary nature of the services.

We suggest allowing the initial opt-out notice be given at account opening and that the content be altered as outlined in the next section, *Content Requirements*.

Content Requirements

1. The current proposed content requirements incorrectly imply that opting out of overdraft services is less costly to the consumer. Because the consumer could incur returned check charges imposed by the merchant, and because the check or item could be re-presented multiple times through multiple payment channels, the opt-out notice should provide greater detail concerning the potential cost and impact of opting out of overdraft services.
2. Because the payment of overdrafts is a discretionary service offered on accounts with an established transaction history, we suggest changing the first sentence in the model form from:

We provide overdraft services for your account.

to:

After you have established a transaction history with the Bank, and at our discretion, we may provide overdraft services for your account.

The conditions under which we will not pay overdrafts -- mismanagement of the account, for example -- are detailed in full in our *Consumer Terms & Conditions of Your Account* brochure.

3. Operationally, an abbreviated second notice to opt-out would be less burdensome than requiring the full content of the initial opt-out notice. An abbreviated notice could be clearly included in conjunction with the aggregate fee disclosure on the periodic statement and, as the Board has noted, information such as the fee assessed for an overdraft, is already available to the consumer on the statement.

Additional Considerations

1. We suggest the Board address how banks should handle consumers who opt in and out of overdraft services in an attempt to control which items are paid and which are returned.
2. Operationally, our bank is able to accommodate a consumer opt-out of debit card transactions only.

Debit Cards

Exceptional Circumstances

The Board requested comment on exceptional circumstances in which a debit card transaction may be approved for consumers who have exercised their right to opt out. The two circumstances not addressed in the proposed rules include:

1. Transactions where no preauthorization is required. The consumer has the right, under Regulation E, to dispute the transaction, but it may not be returned non-sufficient funds.
2. Our bank provides an offline limit on debit cards to allow consumers access to a small amount of cash (\$100) in the event of a system maintenance or failure. We would either need to set the offline limit to zero and the consumer would have transactions declined in those situations, even if funds are technically available, or allow the account to become overdrawn regardless of whether the consumer has exercised the opt-out option.

Debit Card Holds

While we do not currently charge overdraft fees when an account is overdrawn due to debit card holds, our overdraft decision process is entirely manual. As overdrafts are reviewed, bankers must determine whether or not the account is overdrawn due to a debit card hold and, if so, waive the fee and suppress the overdraft notice from printing. We have engaged a vendor to provide automated overdraft services to us because it will relieve the burden on bank staff of manually processing overdrafts and provide more uniformity and equity to customers. The automated service, however, is unable to distinguish whether an account balance is overdrawn due to a hold posting or a transaction posting.

We sincerely appreciate the opportunity to comment on the proposed changes to overdraft services. We trust that working together, banks, consumers, and the Board will find resolutions that are fair and equitable to consumers, while allowing banks to continue safe, sound business practices.

Respectfully,



Kathy Burrows
Bank Compliance Officer I
Bankers Trust Company, N.A.
(515) 245-2891