

**From:** "Finkboner, Susan" <sfinkboner@blackhawkbank.com> on 07/17/2008 03:45:12 PM

**Subject:** Regulation AA

July 17, 2008

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

RE: Proposed Rules for Unfair or Deceptive Acts or Practices

Dear Ms. Johnson,

This is to express Blackhawk State Bank's 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. In light of the positive impact of these 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**

§ 535.32 Unfair overdraft service practices

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

Blackhawk State Bank does not see the benefit of having an opt out requirement. Consumers are regularly educated about the resources available to them, including alternate sources of overdraft protection and the operational elements of our overdraft service. Blackhawk State Bank is responsive if they choose to opt out of future overdraft service usage. As with most banks, Blackhawk State Bank charges the same amount for paying the overdraft as they would if they returned the item unpaid. This is a valuable service for the client that in error inadvertently overdraws their account. The May 2005 final rule has provided consumers with the ability to easily understand their overdraft and NSF fees.

(2) Opt out for electronic channels.

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.

**As of today, electronic channel opt out is not yet possible through our technological resources. We do not know how we could implement this. We do not include the overdraft privilege amount in any account balances to the client.**

(b) 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. **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.**

(b) Notice Format and content.

Our financial institution has made overdraft protection services available to all new accounts and regularly promotes these services to account holders as part of our branch, marketing and web media campaigns. This product line includes transfers from other accounts and lines of credit. Most of our account holders do not take advantage of these alternate sources for overdraft handling although they are attractive and less costly than our overdraft service. When asked, most account holders report that they don't intend to have overdrafts or if they have overdrawn their account, that they don't intend to do it again. It is our role as a financial institution to assist and educate our consumer account holders, but not to demand their use of these forms of overdraft protection.

To require the disclosure "To opt out of our overdraft service" on the periodic statement is simply redundant. **This would be a huge hardship on the bank to implement this.**

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. Any request to opt out of the overdraft protection program is promptly implemented and alternate options are discussed with the client.

To incorporate the language "You also have the right to tell us not to pay overdrafts for ATM withdrawals and debit card purchases, but to continue to pay overdrafts for other types of transactions." **This would not be reasonable, especially**

**when it comes to ATM and POS as they are non-returnable.**

We strongly recommend that the Board remove the second sentence of the next to last paragraph of Sample B-10 and the first sentence of the final paragraph of Sample B-10.

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

Sincerely,

Susie Finkboner, CRCM, CRP

***Vice President - Compliance & Security***

***Blackhawk Bank***

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