

Missouri Bankers Association

207 E. Capitol Ave.
Jefferson City, MO 65102

July 15, 2008

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

RE: PROPOSED AMENDMENTS TO REGULATION DD; DOCKET NO. R-1315

Dear Ms. Johnson:

These comments are being submitted on behalf of almost 400 Missouri banks and savings and loan associations by the Missouri Bankers Association (MBA), a Missouri trade association, as a result of the request for comment on the Federal Reserve System's proposed rules to amend Regulation DD with respect to overdraft services offered by financial institutions.

The members of the MBA appreciate the opportunity to comment on the proposed amendments to Regulation DD issued by the Federal Reserve System ("Board"). The MBA shares the Board's concerns with the practices of some in the industry that may have misled consumers with respect to the operation of discretionary overdraft protection services. While the MBA agrees with many of the provisions contained in the proposal, we also have concerns about some of amendments.

Opt-Out Disclosure Requirements for Overdraft Services

Among other things, the proposal sets forth content and timing requirements for the substantive opt-out right established in the proposed amendments to Regulation AA. Therefore, we strongly support the Board's decision to require all financial institutions to provide a meaningful opt-out opportunity to consumers.

Section 230.10(b)-Format and Content.

The proposal requests comment on the preferred channel for a consumer to exercise its opt-out right. We believe that the most practical approach would be to allow consumers to opt out by calling a toll-free number, visiting the financial institution's website, or by speaking in person with an employee of the institution at one of the institution's physical locations. We believe that a "mail in" form with a check-box would be both ineffective and inefficient while creating consumer identification issues.

We also strongly support the proposed amendment that would allow financial institutions to provide consumers with a brief explanation of the consequences of opting out of a discretionary overdraft payment program. However, the members of the MBA believe that the substantive opt-out right will likely confuse consumers by making them think that their decision to opt-out from discretionary overdraft services will prevent financial institutions from charging insufficient funds fees. Therefore, the opportunity for financial institutions to explain the consequences of an opt-out decision is necessary to afford consumers a chance to weigh the impact of their decision. We believe this aspect of the proposal would ensure that consumers have all the information necessary to make an informed decision about the merits of their overdraft services.

Section 230.10(c)-Timing

The proposal requires that opt-out notices be given before a financial institution assesses any fees for providing overdraft services and requires that subsequent notices be provided in one of two ways: the institution could either include the notice on the consumer's periodic statement or on a separate overdraft notice submitted shortly after the overdraft has been paid. Regardless of which method the institution chooses, the consumer must receive an opt-out notice at least once during each statement period in which an overdraft service fee is assessed. While we agree that subsequent opt-out notices may benefit some consumers, we do not believe that a lengthy, detailed notice should be included on each periodic statement. We fear that providing such notice, which will almost certainly be accompanied by an explanation of the potential harms that might result from the consumer's decision to opt out, would both bury consumers with information while imposing a substantial compliance burden on financial institutions.

Instead of requiring such a large amount of information to be included in each periodic opt-out notice, we recommend that the final version of the proposal allow financial institutions to place a concise statement of the consumer's right to opt out on the consumer's periodic statement, with a more detailed explanation mailed to the consumer on a less frequent basis. The concise opt-out notice, which would be printed in close proximity to the aggregate fee disclosures might read as follows: "If you have questions about the fees associated with your discretionary overdraft services, or if you would like to opt out of your discretionary overdraft protection service, please call us at XXX-XXX-XXXX." Thereafter, financial institutions could mail a separate opt-out notice on a less frequent basis (annually or bi-annually). We believe that this approach, substantially similar to a financial institution's annual disclosure of the institution's privacy policy, would offer a practical way to address the Board's concerns while avoiding a policy that inundates consumers with mountains of information on their periodic statements.

Section 230.11(a). Disclosure of Aggregate or Total Fees on Periodic Statements.

Current regulations require financial institutions that promote or advertise the payment of overdrafts to list on each customer's periodic statement the aggregate dollar amounts for overdraft fees and for returned item fees incurred by the customer, both for the statement period and for the calendar year to date. The proposed rule would discard the distinction between those financial institutions that promote overdraft services and those that do not,

imposing instead a requirement on all institutions to disclose on their periodic statements the aggregate dollar amount for overdraft and returned item fees assessed. MBA represent a range of banks within Missouri; some would welcome this approach and others would not.

If the proposal's aim is to improve consumers' access to information about the costs of their overdraft services, then whether or not financial institutions advertises its overdraft services has no bearing on the fees they will incur for using those services. In fact, making the aggregate fee disclosure requirements contingent upon whether or not a financial institution advertises its overdraft services greatly diminishes the total amount of overdraft costs and fees being disclosed to consumers. However, for some financial institutions, a simple approach is best and they wish to avoid additional confusion with additional disclosures.

Section 230.11(c). Disclosure of Account Balances.

The proposed rule also sets forth an amendment to counter potentially misleading account balance disclosure practices. Under the proposal, if a consumer makes a balance inquiry through an automated system, such as an ATM, website, or automated telephone response system, into the balance of his or her account, the proposal would prohibit institutions from including in the consumer's disclosed balance any funds the institution may provide to cover an overdraft item. Instead, institutions would have to disclose an account balance that solely includes funds that are available for the consumer's immediate use of withdrawal, and may not include any additional amount that the institution may include to cover an overdraft.

However, the proposal would allow an institution to disclose a second balance that includes funds that could be advanced through the institution's overdraft service. This "second balance" would have to be accompanied by a prominent disclosure indicating that it includes funds provided to cover overdrafts.

The MBA agrees with the proposal's treatment of automated account balance disclosures. But we believe that this particular provision would be more useful if the Board were to include safe harbor language in the final rule. Such safe harbor language would provide examples of what the Board considers to be a "prominently disclosed" notice that a given amount includes funds provided to cover overdrafts.

Appendix B to Part 230.

Finally, we disagree with one aspect of the model opt-out notice included as Appendix B to the proposed amendments to Regulation DD. One of the clauses listed in the model notice states: "*We also offer less costly overdraft payment services that you may qualify for, including a line of credit.*" We believe the phrase is unnecessary and misleading. Traditionally, most financial institutions have offered multiple overdraft protection products/services.

Therefore, it is more likely than not that most consumers have been, and continue to be, offered multiple, alternative overdraft protection products. However, the actual cost of any overdraft product depends on many variables, making it impossible to state with any certainty which product is the “less costly” alternative in all circumstances. For example, if a consumer's overdraft protection stems from a line of credit arrangement, the cost of that service will depend on the amount of the overdraft, the interest rate charged on the line of credit, and the amount of time the customer takes to repay the overdraft amount. Such an arrangement could prove to be more expensive than paying a one-time discretionary overdraft payment fee.

Conclusion

The MBA supports the Board's requirements to give consumers a meaningful opt-out opportunity both before and after the consumer incurs fees for overdraft services. We do, however, urge the Board to reduce the number of times that the opt-out notice must be provided. Under the proposed rule, future periodic statements will also contain additional aggregate and periodic overdraft and NSF fee disclosures. To add an additional requirement to include an opt-out notice with every such periodic statement will heap even more data onto wary consumers and will place new compliance burdens onto financial institutions, burdens that will eventually be borne by consumers. The MBA believes that a brief, concise statement notifying customers of where they can easily find more information about opting out, placed on each periodic statement, and followed by a more detailed annual (or even bi-annual) opt-out notification, would effectively inform and protect consumers and provide them with abundant information about the costs of their overdraft services.

Thank you for the opportunity to comment on the above notice of inquiry. If I can be of additional assistance, please let me know.

Sincerely,

/Signed

Max Cook
President