



July 18, 2008

**VIA EMAIL**

Ms. Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW.,  
Washington, DC 20551

Docket No. R-1315

**Re: Proposed Rule to Amend Regulation DD, which implements the Truth In Savings Act, Docket No. R-1315.**

Dear Ms. Johnson:

The Wisconsin Bankers Association (WBA) is the largest financial trade association in Wisconsin, representing approximately 300 state and nationally chartered banks, savings and loan associations, and savings banks located in communities throughout the state. WBA appreciates the opportunity to comment on the proposed revisions to Regulation DD which implements the Truth in Savings Act (TISA).

The Board of Governors of the Federal Reserve System (FRB) has proposed amendments to Regulation DD, and the staff commentary to the regulation, to provide additional disclosures about account terms and costs associated with overdrafts. The proposed amendments would set forth content and timing requirements for a notice to consumers about any right to opt-out of an institution's overdraft service. FRB's proposal would also broaden certain periodic statement disclosures to all deposit accounts for which a fee for payment of an overdraft or for returning an item unpaid has been charged against the consumer's account. The proposal would also amend account balance disclosures in response to consumer inquiries.

WBA and its members share FRB's desire to ensure consumers are provided with accurate and timely consumer deposit account disclosures. We recognize the efforts of FRB to routinely review such matters and provide guidance when prudent. However, WBA believes existing account disclosure and advertisement requirements sufficiently inform consumers of an account's features, including fees. We argue that any addition to these disclosure requirements would merely be unnecessary duplication resulting in extensive regulatory burden and substantial increased costs to financial institutions—costs which most certainly would be passed on to consumers. WBA believes these new burdens excessively outweigh the benefits FRB perceives the proposal provides. Therefore, WBA vehemently opposes FRB's proposal in its entirety and strongly discourages FRB from adopting the proposed Regulation DD amendments.

WBA wishes to remind FRB that consumers are free to contact their banker at any time to pose questions regarding their deposit accounts and to further discuss

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available overdraft services and discontinuation of such services, if the consumer so chooses. As such, we believe FRB's prescribed opt-out notice and timing requirements unnecessary. WBA strongly recommends FRB withdraw its proposal and instead permit financial institutions to continue to work within the parameters provided in the February 2005 joint guidance issued by the federal banking regulatory agencies (Agencies) on overdraft protection programs. Should FRB unadvisedly finalize its proposal, WBA offers specific comments for FRB's consideration following a brief discussion of Regulation DD's background.

## **Background**

The purpose behind TISA and Regulation DD is to assist consumers in comparing deposit accounts offered by depository institutions, principally through the disclosure of fees, the annual percentage yield (APY), the interest rate, and other account terms. The account disclosures must be provided upon a consumer's request and before an account is opened. Institutions are not required under TISA or Regulation DD to provide periodic statements; however, if they do, the periodic statement must include fees, yields, and other information.

Historically, if a consumer engaged in a transaction that overdraw his or her account, the consumer's depository institution used its discretion on an ad hoc basis to determine whether to pay the overdraft, and usually imposed a fee for paying the overdraft. Over the years, many financial institutions have largely automated the overdraft payment process, including setting specific criteria for determining whether to honor overdrafts on the consumer's deposit account and setting limits on the amount of coverage provided under the overdraft payment program. Whether the overdraft service is managed via bank officer review, or via a more automated method such as through a computer program, the result for the consumer is the same—a courtesy payment of an item despite creating an overdrawn deposit account balance. Regardless of how the decision is made to make the courtesy payment, a fee is incurred by the consumer, as it is a service provided by the institution which poses a risk to that institution. Such fees also act as a deterrent to discourage consumers from routinely overdrawing their account. Without such overdraft services, whether manual or automated, an item presented against a consumer's account, would be returned unpaid and cost consumers additional fees, embarrassment and other hassles.

As the availability and use of these overdraft services increased, the Agencies stated concerns about certain aspects of the marketing, disclosure, and implementation of some of the overdraft program services. In response to some of those concerns, the Agencies published joint guidance on overdraft protection programs in February 2005, as noted earlier. The guidance addressed three primary areas: (1) safety and soundness considerations; (2) legal risks; and (3) best practices. The best practices focused on the marketing and communications that accompany the offering of overdraft services, as well as the disclosure and operation of the program features—including the provision of a consumer election or opt-out of the overdraft service. FRB's current proposal seeks to incorporate that opt-out election into Regulation DD disclosure requirements.

In May 2005, FRB separately issued final revisions to Regulation DD and its staff commentary to address concerns about the uniformity and adequacy of institutions' disclosure of overdraft fees generally, and to address concerns about advertising

overdraft services in particular. Under the 2005 rule, all depository institutions are required to specify in account disclosures the categories of transactions for which an overdraft fee may be imposed, and include in their advertisements of overdraft services, certain information about the costs associated with the service and the circumstances under which the institution would not pay an overdraft. The final rule also requires institutions that promote the payment of overdrafts in an advertisement to disclose separately on their periodic statements the total amount of fees or charges imposed on the account for paying overdrafts and the total amount of fees charged for returning items unpaid. These disclosures must be provided for the statement period and for the calendar year to date. FRB's current proposal seeks to expand this provision to require all institutions, regardless of whether they promote the payment of overdrafts, to disclose this aggregate cost information.

## **Specific Comments on Proposal**

### *Balance Inquiries*

To ensure consumers are not confused or misled about the amount of funds in their accounts when they request their balance, FRB has proposed that institutions be required to generally disclose the amount of funds available for the consumer's immediate use or withdrawal, without incurring an overdraft. The proposal applies to balance inquiries made through *any* automated system, including, but not limited to, an ATM, Internet website, and telephone response system. Institutions would be permitted to provide a second balance that includes any additional funds that an institution may advance to cover an overdraft if this fact is also "predominately" disclosed to the consumer, along with the balance information.

WBA is concerned about the use of the new term "predominately" because it is inconsistent with existing terminology in Regulation DD disclosure standards, such as "clear and conspicuous." WBA is concerned the new term will create a new examination threshold. WBA suggests FRB use similar terminology to that already used in Regulation DD regarding disclosures and advertisements. These existing terms relating to disclosure standards are already understood by institutions and have served consumers well. If FRB is unwilling to do so, then it should provide examples in the staff commentary on what would be considered "predominately" disclosed to the consumer.

### *Opt-out Disclosure Requirements for Overdraft Services*

FRB has proposed that an opt-out notice must be provided to the consumer before assessing a fee or charge for the overdraft service, and on each periodic statement reflecting the assessment of any overdraft charge. (For periodic statements, the opt-out notice must be provided in close proximity to the aggregate fee disclosures required under section 230.11 of the regulation. The broadened application of 230.11 requirements to all financial institutions is discussed later.) FRB believes institutions should provide the consumer with the notice of the right to opt-out of their institution's payment of overdrafts at a time when the consumer is more likely to be focused on the cost impact of the service—specifically, after the consumer has overdrawn the account and fees have been assessed on the account.

FRB's proposal requires that institutions provide the same content for all opt-out notices under all timing requirements to ensure uniform notices, and to allay FRB's

concern that consumers may not see the initial opt-out notice. The proposed opt-out notice must include: (1) categories of transactions when a fee is imposed; (2) costs of the overdraft service; (3) a statement informing consumers that overdraft fees could be charged in connection with an overdraft as low as \$1, or the lowest dollar amount for which the institution could charge a fee; (4) maximum costs that could be incurred in connection with the overdraft service, or, if no limit, a statement of that fact; (5) an explanation of the consumer's right to opt-out of the overdraft service and how to exercise such right; and (6) a statement that the institution offers alternatives for the payment of overdrafts including a line or credit, if that is true. Financial institutions would be required to provide an opt-out notice in a format substantially similar to FRB's proposed model opt-out notice.

WBA argues the opt-out notice requirements are excessive and unwarranted. WBA opposes the creation of a new prescribed disclosure because consumers already have an opportunity to simply contact their financial institution at any time to pose any questions regarding their account and any fees associated with the account, and inquire about available overdraft services or alternatives. We believe a simple conversation between a consumer and their banker is the most effective and efficient solution to how a consumer may learn more about the institution's overdraft payment services and how to opt-out of the overdraft program. WBA argues the costs institutions would incur to implement the proposed disclosure greatly outweigh the benefit FRB perceives the proposal provides. WBA does not believe the majority of consumers wish to opt-out of such programs; therefore, to subject institutions to additional regulatory burden imposed by the proposal when it is unwarranted makes no sense.

We also oppose the prescribed format of the opt-out notice and the requirement to insert the notice in each periodic statement for which there is an overdraft charge. Again, all the consumer must do is contact the financial institution regarding any questions he or she may have regarding their deposit account to get the needed answers to make an informed decision and then communicate such decision. The proposed periodic statement disclosure requirement will require financial institutions to restructure periodic statement computer programs to be able to recognize which accounts each month need the new disclosure. In addition, the proposed requirement would increase the length of each statement. To comply with such requirements would definitely result in substantial costs that would inevitably be passed on to consumers.

Additionally, we are concerned that if the proposed opt-out notice must be inserted into certain periodic statements, consumers will be overwhelmed with the lengthy statement and not read the disclosure—not the result FRB is seeking. WBA argues that subjecting financial institutions to the significant costs of implementing FRB's proposal is extremely burdensome and impractical, particularly when the best solution is for the consumer to simply contact the financial institution to discuss his or her questions and options.

If FRB finalizes its proposal, WBA urges that financial institutions should be held to the current disclosure standards under Regulation DD of not being misleading and to provide accurate information regarding overdraft services in a clear and conspicuous manner. WBA argues these standards can be met without a prescribed notice structure. WBA recommends financial institutions be permitted to establish a single opt-out procedure by which the consumer must notify the institution should he or she

elect not to participate in the overdraft service program. Such a procedure could be incorporated in the overdraft service introductory letter sent to the consumer.

WBA does not believe a required periodic statement disclosure would be effective, especially in the prescribed opt-out notice format proposed. WBA repeats its previous comment that consumers are welcome to contact their financial institution at any time to pose any question regarding their accounts, fees, and overdraft service options—including opting-out of such service. To that end, financial institutions already include their contact information to accountholders within periodic statements.

#### *Disclosure of Total Fees on Periodic Statements*

As noted earlier, the proposal would amend Regulation DD section 230.11 to require all institutions, whether or not the institution promotes the payment of overdrafts, to provide an aggregate dollar amount of fees for payment of overdrafts and fees for returning items unpaid on periodic statements. In addition to this broadened disclosure requirement, FRB has proposed that such fees be disclosed in tabular format and in close proximity to fees identified under Regulation DD section 230.6.

FRB stated one of its reasons for broadening the periodic statement disclosure of aggregate fees stems from a concern that the vast majority of institutions no longer pay overdrafts on an entirely ad hoc basis, but rather on an automated process, purportedly leading to the more frequent payment of overdrafts. WBA respectfully disagrees with FRB's analysis. While the process may be more automated for some institutions, the decision is still purely discretionary and within the safety and soundness considerations financial institutions have had in the past. WBA argues that the decision whether to permit an item to be paid or not is still an ad hoc decision which is decided upon a per incident situation; albeit decisions may be made via an automated system, it is still an item by item, account by account, consumer by consumer decision that may be changed at any moment on any item.

FRB also stated that another motivation for the proposal stems from inquiries triggered by the joint guidance regarding how institutions may provide notices to inform consumers about their ability to opt-out of an institution's overdraft service, or how to inform consumers of less costly alternatives to the overdraft service without "promoting" the service. FRB stated that some institutions hesitate to implement suggestions found within the joint guidance out of fear that they may inadvertently trigger the aggregate fee disclosure under section 230.11. WBA disagrees with FRB's conclusion that the broadening of overly burdensome periodic statement disclosures is the most effective and efficient answer to these inquiries. WBA respectfully suggests revision to the February 2005 joint guidance to address the opportunity for financial institutions to communicate opt-out or alternative overdraft services in a manner that would not be considered the advertisement or promotion of overdraft services.

If the proposal is finalized, WBA recommends FRB remove the requirement of aggregate overdraft or return fees be in close proximity to fees otherwise required within a periodic statement, and recommends the removal of the prescribed tabular format. Furthermore, WBA recommends institutions be examined under current Regulation DD requirements when providing periodic statement information. WBA argues that if the FRB finalizes the rule as proposed, institutions will be saddled with

unnecessary regulatory burden and will incur significant costs, which will be passed on to the consumer.

## **Conclusion**

WBA recognizes FRB's efforts to further review consumer deposit account disclosures and shares FRB's desire to ensure consumers are provided with accurate and timely consumer deposit account disclosures. We vehemently oppose FRB's proposal in its entirety and strongly encourage FRB to not broaden Regulation DD in the manner proposed. WBA believes existing account disclosure and advertisement requirements already sufficiently inform consumers of an account's features, including fees. Any addition to these disclosure requirements would merely be unnecessary duplication resulting in extensive regulatory burden and increased costs to financial institutions. WBA believes the new burdens excessively outweigh FRB's perceived benefits, and will only increase costs to consumers.

We remind FRB that consumers are free to contact their banker at any time to pose questions regarding their deposit accounts and to further discuss available overdraft services and opt-out options. Therefore, WBA strongly recommends FRB withdraw its proposal and instead permit financial institutions to continue to work within the parameters provided for within the February 2005 joint guidance on overdraft protection programs.

Should FRB finalize the proposal, WBA recommends FRB: (1) use terminology already found in Regulation DD, rather than creating a new threshold of "predominately" disclosed to the consumer for account balance inquiries; (2) remove the prescribed opt-out notice format; (3) remove the requirement to include the prescribed opt-out notice in periodic statements for which an overdraft fee has been charged; (4) permit institutions to provide accurate account information in periodic statements as already required under existing Regulation DD's clear and conspicuous standards; (5) permit institutions to create a single opt-out procedure by which consumers must notify the institution of their election to opt-out of the overdraft service; and (6) remove the requirement to broaden aggregate fee disclosures on periodic statements to all institutions, and remove the requirement that such disclosure must be in tabular format and within close proximity of fees already required to be disclosed under section 230.6.

Once again, WBA appreciates the opportunity to comment on FRB's proposal to revise Regulation DD.

Sincerely,



Kurt R. Bauer  
President/CEO