From: "Nancy Blackwell" <nblackwell@fcbfl.com> on 11/04/2008 03:40:03 PM

Subject: Regulation AA

Nancy Blackwell
Pinellas Park, FL 33782-4423

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Jennifer Johnson
Board of Governors of the Federal Reserve System
20th St. and Constitution Ave. N.W.
Washington, DC 20551

Dear Jennifer Johnson:

As a Florida banker, I appreciate the opportunity to comment on proposed changes intended to help customers better understand overdraft protection programs. The Federal Reserve ("Board") has proposed new rules to implement the Federal Trade Commission Act's provisions against unfair or deceptive acts or practices (UDAP). In connection with the UDAP proposal, the Federal Reserve is proposing new mandatory disclosures for overdraft protection under the Truth-In- Savings Act; Regulation DD.

Our mission as Florida bankers is to have a positive influence on the economic well being of all Floridians. I am very concerned that this proposal may have unintended consequences and negatively impact the consumers.

Use of term "overdraft services." The model form refers to "overdraft services." I strongly recommend that the Board not use the term "overdraft services" as many customers will not fully understand its meaning and indeed may be misled. My concern is that many customers will erroneously assume that the term refers to an overdraft line of credit, which is a very different product, with different functions and fees. In effect, the Board is regulating what is a traditional bank practice familiar to customers that has simply evolved as checking accounts have. Banks originally paid only check overdrafts when those were the only means of payment. As other channels developed, such as the automated clearinghouse ("ACH"), customers quickly learned that transactions made through those new channels may be paid when there are insufficient funds as part of that traditional practice. The term "overdraft services" suggests that the product is separate from this traditional practice. The Board should test consumers on their understanding of the meaning of "overdraft services." One option for a label might be "payment of overdrafts."

Notices: Generally, I think it is appropriate to provide customers with information about overdraft protection services and allow them a reasonable opportunity to opt out from overage. However, overdraft fees can be avoided by consumers without requiring a specific advance notice and opt-out followed by repeated periodic opt-out reminders. Also notices

about overdraft protection services should be allowed to be sent along with other normal bank communications to the customer, such as the monthly statement, ECT.

Categories of transactions covered. The proposal requires that the notice include "the categories of transactions for which a fee for paying an overdraft may be imposed." The model form reflects this requirement with the list, "ATM withdrawals, debit card purchases, checks, and in-person transactions." I suggest that the model form provide more clarity and completeness about the types of transactions covered so that customers understand what transactions may be paid when there are insufficient funds and the impact of opting out. It is not sufficient that this list only be presented in the list of items banks will pay. Banks should be able to make clear that if the customer opts out, such transactions will not be paid if there are insufficient funds, especially as many customers will expect and want these important transactions paid, and there may be significant consequences if they are not. Indeed, according to a recent survey by Ipsos-Reid conducted between July 11th and 13th 2008, of the 20 percent who paid an overdraft fee in the last year, 85 percent said that they were glad the payment was covered. Accordingly, to avoid any deception when explaining the consequences of opting out, banks should be permitted to explain specifically what transactions will not be paid if the customer opts out so that customers may make an informed choice. Banks offer overdraft options without burdensome compliance that exercise a formal one-size-fits-all opt out requirement. Requiring the notice each time there is an overdraft, or each statement cycle there is an overdraft, would be costly and burdensome and, unfortunately, if the notice is sent too frequently, more likely to be information overload on consumers.

Full opt out: Banks should be able to inform their customers completely and accurately of the consequences of opting out completely so there will not be confusion. Customers need to understand that if they do opt out completely they may still have to pay a fee if they make transactions that are returned unpaid. It is important that customers are fully aware that not only will they incur a fee from the bank in these circumstances; they are likely to have to incur a fee or other changes from the person they are paying. Customers should be aware that opting out means that certain transactions, such as debit card bill payments, will not be paid.

Consequences of opting out. The proposed Commentary to the regulation provides that banks may "briefly describe the consequences of the consumers' election to opt-out of the institution's payment of overdrafts." The proposed Commentary continues, "For example, the institution may state that if a consumer opts out, the consumer's payment may be denied, or returned unpaid, and that the consumer may incur returned items fees from both the institution as well as the payee." The proposed model form only states perfunctorily, "If you do [opt out] you may have to pay a fee if you make transactions that are returned unpaid." I believe that banks should be able to inform their customers completely and accurately of the consequences of opting out, so as not to cause misunderstanding and confusion. As mentioned, the recent 2008 survey found that 85 percent of those who had an overdraft fee in the past year were glad the payment was covered. The proposed model language and proposed regulation's limits on how banks may explain the consequences of returned items are grossly inadequate and biased. It is also important that customers understand that not only will they incur a fee from the bank in these circumstances, but they are likely to incur a fee or other charges

from the person they are paying. This fact is not clear from the model language, which banks are most likely to use to avoid potential violations for varying from the script of that model. Yet, in many cases, customers will indeed incur a hefty penalty, from the merchant, government, or mortgage lender, for example. The model should specifically state, "If you do [opt out], you will have to pay a bank fee if you make transactions that are returned because there is not enough money in your account when they are processed. In addition, you may have to pay a fee or penalty to the person or entity you had intended to pay."

Partial opt out: The proposal for a partial opt-out of ATM and debit card transactions, while retaining coverage for checks and ACH, is not technically feasible under many processing systems and could not be implemented without numerous exceptions due to processing system complexity. This would also negatively affect consumers who use debit cards for recurring payments.

Debit Holds: The proposal covering debit holds is far too complicated to be implemented or for consumers to understand. The problem is really one that involves merchants and the card networks and cannot be solved by putting the onus only on banks who are simply acting in a safe and sound manner to assure funds are available for authorized transactions. Merchants often extend holds beyond the initial hold period. Merchants also forward charges in a bifurcated way resulting in a mismatch of the amount of hold that has been preauthorized. This results in even longer holds because the bank can not readily match the amounts. During all of these timeframes, it will be almost impossible to monitor an account's overdraft status without creating overdrafts during the hold period. Merchants should be required to inform consumers of the amount and the length of the hold placed on the consumers debit account.

Account Balances: I question whether permitting disclosure of a second balance would be particularly useful. Specifically, the proposal requires that banks must provide a balance that "solely includes funds that are available for the consumer's immediate use or withdrawal" and may not include additional amounts that the institution may provide to cover an item when there are insufficient or unavailable funds. Banks may provide a second balance that includes any amount that may cover overdrafts. I believe the two balances will cause customer confusion with the proposed language. Determining "available" balance is very complex. While generally the balance provided through the automated system will only reflect funds that are available for the consumer's immediate use or withdrawal, it is conceivable that, due to operational glitches or lags in updates, there may be instances when this might not be true. I also believe the Board should clarify the requirement in connection with ATMs. Banks should be required to transmit the balance information in a standard format, but not be responsible if the disclosure is not translated properly by the ATM owner or operator.

Effective Date: The number of new regulatory burdens that will be placed on banks will be staggering. I anticipate a complete overhaul of new programming resources and new requirement additions to Regulation DD. I respectfully urge the Board to take into consideration the regulatory burdens that will be imposed on banks when determining effective dates for final revisions of Regulation DD. I believe it be appropriate to provide banks with a mandatory compliance date of at least a year after revisions are published.

Conclusion: Overdraft accommodation is a customer friendly practice for banks to offer that are financially sound

Thank you.

Sincerely,

Nancy Blackwell