



By electronic delivery

July 28, 2008

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

Re: FR Docket No. R-1314; OTS Docket No. OTS-2008-2004; Unfair of Deceptive Acts or Practices; 73 *Federal Register* 289004; May 19, 2008

As a community banker, I am writing to express my opposition to the above overdraft regulation proposal. I offer the following points for your consideration.

- 1) Overdraft fees can be avoided by consumers without requiring a specific advance notice and opt-out followed by repeated periodic opt-out reminders. Consumers regularly manage their accounts to avoid overdrawing them. Our bank offers overdraft options today without the burdensome compliance exercise of a formal one-size-fits-all opt-out requirement.
 - a. Fees for covering overdrafts are in the account agreement and customers are made aware of these fees as well as any maintenance fees and NSF fees at the time of account opening. In other words, they know in advance what the rules and the costs are for overdrawing an account; all without a formal opt-out notice.
 - b. Customers understand that it is their responsibility to balance their accounts; and the fees provide both an incentive to do so and a user charge when they inadvertently fail to do so. Overdraft fees are not injurious; they are the price for the bank accommodation in fulfilling a payment choice.
 - c. Customers who overdraw periodically are aware of the consequences of their conduct and are acting in accordance with

their preferences given that awareness. They do not need repeated notices that they can opt-out of the convenience they are choosing to accept. As a community bank we are always available (and make a point of reaching out) to work with customers who would benefit from alternatives for managing their transaction activity. Our bank promotes financial literacy among our customers for example by offering periodic "Fiscally Fit" seminars to the community as a method of providing education for sound personal financial management.

- 2) 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 our current processing systems and could not be implemented without numerous exceptions due to processing system complexity.
 - a. Customers who use debit cards for recurring payments would adversely be affected by this proposal. Many of our customers use debit cards as their primary method of scheduling recurring payments. These customers appreciate this service and understand that fees will apply if they overdraw their account.
 - b. Allowing a partial opt-out for debit cards may confuse customers that somehow they will be entitled to have check and ACH overdrafts paid even though our account agreements make it clear that paying any overdrafts is always up to the bank's discretion.

- 3) The proposal covering debit holds is far too complicated to be implemented or for consumers to understand. Payment clearance practices whether for debit holds or payment items generally, are complex and vary widely across the industry, but are driven by system efficiency and sound risk management and do not constitute unfairness to the customers. Besides, 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.
 - a. Overdraft fees are calculated based on following clearance systems designed to provide payment processing efficiencies that reflect technical capabilities and the varied risks banks face for handling different payment channels. These systems, and the clearance order they generate, change as technological advances occur, as payment channel mix alters to capture customer usage trends and as legal liabilities evolve. Letting an individual customer choose an alternative payment processing order or the right to alter the bank's clearance process would be absolutely impossible to manage.

- 4) The regulatory burden is significant for small banks and they are in great danger of being regulated right out of business. Any proposed rule such as this, that requires a battery of attorneys to interpret and an IT development team to implement, will only frustrate customers and contribute to the demise of community banks.
- a. Under the proposal, banks must provide a notice of the right to opt out before the bank may assess any overdraft fee and subsequently during or for each statement period, in which a fee is imposed. However, a notice to opt out of continuing a debit card transaction that will overdraw would not be required at a point of sale terminal or at an ATM. The monitoring and procedural impact of this change will have a negative impact on the operations of the bank. Such a change will affect customer service and place a drain on banks' resources.
 - b. The proposal would require banks to disclose on periodic statements the aggregate cost of overdraft services (separating NSF fees from overdraft fees). Also, the proposal would require banks to disclose only the amount of funds available for the customer's immediate use or withdrawal when customers inquire about their balance. The rule would apply to balance inquiries made through any automated system, such as ATM, Internet website, and telephone response system. New code and interfaces for systems and software would need to be written to comply with this new rule which will be a significant undertaking and have serious adverse consequences for community banks' earnings and for customer service.
 - c. Many bank forms and disclosures will need to be revised and reprinted from third party vendors, which only adds to the growing cost that this rule imposes on community banks.

This regulatory proposal will confuse customers with complex opt-out provisions, cause major operational challenges in payment systems and internal systems, and increase the overhead and cost for community banks. It's for these reasons and the reasons stated above, that I strongly oppose the overdraft regulation proposal.

Most importantly, regulations should be efficient and effective and this proposal meets neither criteria. It would be extremely expensive to implement as it requires a major reengineering of the payments system from the ground up and assures customers of the right to opt-out of having their overdrafts paid, which no customers want. A one sentence regulation following the practice at our bank would have sufficed. Put simply without the supporting legalese, "No personal deposit account balance as maintained and reported by the bank's primary and allied systems may be represented to be larger than the funds on deposit in the account plus funds on deposit in another account that may be

automatically transferred to the account under a pre-established arrangement plus funds that may be automatically advanced from a pre-established line of credit established in accordance with Regulation Z."

Thank you for the opportunity to comment on this important matter.

Sincerely,

A handwritten signature in black ink that reads "Julie A. Pearson". The signature is written in a cursive style with a large initial 'J' and 'P'.

Julie A. Pearson
Vice President
Operations