

CALIFORNIA REIVESTMENT COALITION

July 24, 2008

Via Electronic Transmission:

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

Re: Regulation AA – Unfair or Deceptive Acts or Practices [R-1314]

Dear Ms. Johnson:

California Reinvestment Coalition (“CRC”) welcomes and appreciates the opportunity to file comments pertaining to Regulation AA – Unfair or Deceptive Acts or Practices [R-1314], the recent proposal to curb unfair and deceptive credit card and overdraft practices. However, CRC is extremely concerned that the protections against unfair practices in bank overdraft programs are insufficient to ensure fairness, understanding, and transparency for those who contend with bank overdraft practices.

CRC is a state-wide membership organization of more than 250 non-profit organizations and public agencies who work together on federal Community Reinvestment Act (“CRA”) issues, which includes a focus on affordable housing, community and economic development, and financial services for low-income consumers.

CRC supports the following provisions from the proposal, but we believe that the rule can go much further to protect consumers from unfair practices regarding overdraft loan programs. It is a very common practice for banks to enroll consumers in these programs automatically, regardless of whether the customer requests or understands this expensive form of credit. These services result in fees, which average \$34 per transaction, when the bank covers a transaction that would have overdrawn the account. Banks frequently claim that these alleged services are for the benefit of consumers. But the truth is that overdraft programs are very expensive small loans. The situation is further complicated since banks don’t offer sufficient distinction and clarification about the difference between overdraft loan programs and overdraft lines of credit, which the customer applies for based on his or her creditworthiness. The overdraft line of credit is not available to everyone, nor is it offered to everyone.

Opt Out of Overdraft Loan Programs

The proposal creates an opt-out right for overdraft loan programs. It requires banks to provide consumers with notice and an opportunity to opt out of the payment of overdrafts, once before an overdraft fee or charge is assessed, and again during any statement period in which an overdraft fee is assessed.

The provision does not go far enough. The consumer often incurs more fees from an overdraft loan program than if the check, debit or Point of Sale transaction were denied. As a result, CRC believes that the consumer should make the affirmative choice to “opt-in” to an overdraft loan program. Short of that optimal alternative, overdraft loan programs would be less unfair if the consumer was given the opportunity to opt-out of the program before the first fee is charged.

Debit Holds

The proposal will prohibit banks from assessing an overdraft loan fee when the overdraft would not have occurred but for a debit hold placed on funds in the account that exceeds the actual purchase amount.

Although this provision is a step in the right direction, it does not do enough to curb an unfair practice – the proposal is incomplete. The Proposal ignores the issue of overdraft fees and bounced check (NSF) fees caused by a check hold rather than by a debit hold. A check hold is a delay in the use of deposited funds. Consumers whose banks choose to impose long check hold times may still end up with overdraft fees or bounced check fees due to this practice. The rule should be strengthened in light of the reality that it is unfair for banks to charge an overdraft or bounced check fee for a problem caused by the bank’s decision to place a hold on the consumer’s check deposit, not an act of negligence or malfeasance by the consumer.

Joint Guidance on Overdraft Protection Programs

In addition to these two provisions, CRC encourages the Federal Reserve to incorporate the issues it has already examined, along with the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, and the National Credit Union Administration in the “Joint Guidance on Overdraft Protection Programs,” issued on February 18, 2005 (“Joint Guidance”). The Joint Guidance provided the best explanation for why the current proposals do not go far enough, “Clear disclosures and explanations to consumers of the operation, costs, and limitations of an overdraft protection program and appropriate management oversight of the program are fundamental to enabling responsible use of overdraft protection. Such disclosures and oversight can also minimize potential consumer confusion and complaints, foster good customer relations, and reduce credit, legal, and other potential risks to the institution.” (Joint Guidance, p.8)

The Joint Guidance offer other best practices observed or recommended by the industry, which CRC believes should be incorporated into the proposed rule changes. The recommended best practices that CRC endorses are as follows:

- Avoid promoting poor account management – don’t market overdraft loan programs in a way that promotes or encourages routine or intentional overdrafts;
- Fairly represent overdraft protection programs and alternatives;
- Train staff to clearly explain program features and other choices;
- Clearly explain that banks have discretion not to pay an overdraft;
- Distinguish overdraft protection services from “free” account features – banks shouldn’t promote overdraft programs in a way that suggests they are free of charges;
- Clearly disclose program fees;
- Demonstrate when multiple fees will be charged;

- Alert consumers before transactions trigger fees – provide a specific consumer notice that the completion of the transaction may trigger overdraft fees.
(Joint Guidance, p. 9-10)

CRC also recognizes that the needs and concerns of consumers who are non-English speaking. The proposed rules should also include provisions that mandate that any safeguard created be available in the language of the customer. Every customer should be protected, not just those who speak, read, and write in English.

CRC appreciates the opportunity to discuss our concerns about the overdraft provisions of the proposed rule changes. We look forward to the continued work of the Federal Reserve Board and its partner agencies to address issues of concern for consumers in this area.

Sincerely,
/s/ Kimberly S. Jones

Kimberly S. Jones, Esq.
Policy Advocate
California Reinvestment Coalition
474 Valencia Street
Suite 230
San Francisco, California 94103