

PROVIDENT BANKSHARES

C O R P O R A T I O N

July 31, 2008

By e-mail to: regs.comments@federalreserve.gov

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

**RE: Unfair or Deceptive Acts or Practices
Docket No. R-1314**

Dear Ms. Johnson:

Provident Bankshares Corporation, the parent company of Provident Bank, (“Provident”) is pleased to provide this comment letter to the Federal Reserve Board (the “Board”) in response to the proposed regulations designed to protect consumers against certain unfair acts or practices in connection with consumer credit cards and overdraft services for deposit accounts.

Provident is a state-chartered, non-member bank with headquarters in Maryland. With \$6.4 billion in assets, Provident serves individuals and businesses in the areas of Greater Baltimore, Greater Washington and Central Virginia through a network of over 140 offices in Maryland, Virginia, District of Columbia and Southern York County, Pennsylvania.

Summary of Comments

Provident does not directly issue consumer credit card accounts to its customers and, therefore, we have limited our comments to the proposed rules on unfair acts or practices regarding overdraft services.

First, we disagree with the proposal’s conclusion that overdraft services fit the definition of an unfair act or practice and are therefore subject to 15 U.S.C. 45(n) and the standards articulated by the Federal Trade Commission. We believe that if regulation of the payment of overdrafts is required, particularly with respect to debit holds, it is more appropriate to address this issue through Regulation DD and Regulation E.

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Second, we believe that the proposal does not consider the economic impact and other unintended consequences that may affect the consumer's liquidity as a result of the nonpayment of overdrafts and the debit holds. In fact, it appears that the proposal relies upon reports that the payment of such overdrafts are deemed to be abusive overdraft loans when, in fact, most overdrafts, if not paid, would be returned to the customer as unpaid and an overdraft fee would still be assessed. In addition, the consumer may also be assessed additional fees by the merchant or payee on the item.

Finally, we believe that it is imperative that all parties involved in the payment process (financial institutions, regulatory agencies, merchants) participate in the consumer awareness challenges that will result with the opt-out notice requirements and debit hold restrictions.

The Payment of Consumer Deposit Overdrafts is Not Unfair

Provident does not believe that its non-promoted overdraft program causes (or is likely to cause) substantial harm to its customers. By way of example, Provident's overdraft occurrence includes approximately 1.5 non-sufficient items (NSF) and 1.7 negative account balance fees (NABs). At \$34 per NSF and \$5 per NAB, that is a total cost of less than \$60 per occurrence. In addition, Provident currently offers its customers the opportunity to opt-out of the payment of all overdrafts or ATM and debit card overdrafts. Provident does not currently have the capability to permit its customers to opt-out of the payment of only check items. We recommend that non-promoted overdraft services be exempted from the final rule.

We also believe that our customers can reasonably avoid injury from overdraft fees. We believe that it is a reasonable expectation and a duty of our customers to be aware of their checking account balance. If a customer balances their checkbook and makes all entries to their checkbook on a regular basis, they should not incur any NSF fees. Financial institutions, such as Provident, provide their customers with several tools (such as on-line and telephone banking) to keep track of their checking balance. Ultimately, it is only the customer that can know how many paper-based checks will be presented for payment, thereby impacting available funds on the account during posting. In addition, certain merchants, such as airline, hotel and rental car agencies, request authorization holds disproportionate or inconsistent with the amount actually settled. Provident does not place these authorization holds on its customers' accounts.

Finally, we believe that only the customer can weigh the benefits of having a transaction paid when there are insufficient funds in their account. Whether the bank is authorizing the tank of gas to get the customer home or paying the mortgage payment the day before a customer's paycheck is deposited, only the customer can place a value on that transaction. In many cases, the late fees and penalty charges that a customer may incur from a merchant or payee for a returned item may be far greater than an NSF fee. Therefore, we believe that the benefits do outweigh any "injury" to the customer.

For these reasons, we disagree with the proposal's conclusion that overdraft services fit the definition of an unfair act or practice and are therefore subject to 15 U.S.C. 45(n) and the standards articulated by the Federal Trade Commission.

Consequences

Provident annually pays approximately 1.6 million items against insufficient funds that total over \$620,000,000. This is a great source of liquidity for our customers, especially in times where the economy is placing additional burdens on these individuals to meet their obligations. What are the implications to the economy if this source of liquidity is significantly curtailed? Who would the consumer turn to for this source of liquidity? The negative impact, in our judgement, would be material and immediate.

Consumer Awareness

As noted above, we believe that all parties involved in the payment of overdrafts and debit holds should participate in efforts to improve customer awareness. First, we recommend that the Board consider moving the rules for the regulation of overdrafts from Regulation AA to Regulation E. We believe that this change will permit the Board to engage all interested parties to improve consumer awareness, including merchants that request authorization holds on consumer accounts.

Second, in addition to the proposed opt-out notice at account opening, we recommend that the Board create a mandatory consumer disclosure, similar to the one developed for home equity lines of credit, that can be used as a consumer awareness piece prior to account opening. The inter-agency brochure: "Protecting Yourself from Overdraft and Bounced – Check Fees" (FRB-25000-0904) can be used as a starting point.

Third, we recommend that the Board consider implementing standards and parameters for the opt-out notification process. For example, consumers should be required to respond to the notice of opt-out within 72 hours of receipt of the opt-out notice and/or within 7 business days of the date of the notice. In addition, the bank's obligation to comply with a consumer's opt-out should be defined. The proposal provides that the bank must comply with the consumer's opt-out request as soon as "reasonably practicable after the bank receives it." A safe harbor of at least 5 business days should be set for the bank to comply with this request. We believe that these standards are necessary for consistent and efficient fulfillment of customer expectations by all financial institutions.

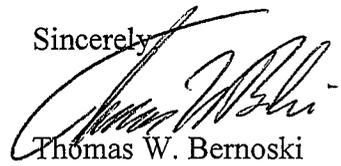
Finally, we recommend that merchants provide consumers with a notice of the methodology used for their respective daily debit authorization hold requirements.

Conclusion

At Provident, we consider the customer's banking experience with us to be paramount to the commitment that our institution has to the communities we serve.

Thank you for the opportunity to express our views with respect to this proposal.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas W. Bernoski", written over the word "Sincerely,".

Thomas W. Bernoski
Provident Bank of Maryland
Senior Vice President and
Compliance Officer