



August 1, 2008

By electronic delivery

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Regulation Comments
Chief Counsel's Office
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Attn: OTS - 2008-0004

RE: BOARD Docket No. R-1314; OTS Docket No. -2008-0004; Unfair or Deceptive Acts or Practices; 73 Federal Register 28904; May 19, 2008 (UDAP Proposal)

Ladies and Gentlemen:

I am writing today to voice my concerns about the above referenced proposed regulation. Fee programs have generated as much misinformation as the Overdraft Protection or Courtesy Pay system.

I will provide specific concerns about the proposed regulation. But I first ask that we remember that none of the overdraft protection programs could be offered, or regulated, if accounts were not overdrawn. The courtesy pay programs provide a specific service. They ensure that consumers who transact business without sufficient funds are protected from the collection activity, credit implications and fees that result when an item is returned drawn on non sufficient funds.

The proposed regulation has several elements which are either effectively impossible to implement or would require significant costs which would ultimately be passed to the consumer.

Of primary concern is the partial opt-out proposal. I am not aware of any bank core processing system which currently supports an opt-out based on the type of transactions. Absent an automated solution, the partial opt out would be an entirely manual process. This is likely to have one of two consequences: Either the Overdraft protection system will be abandoned or the per item charges will be increased to cover the additional costs. The partial opt-out is also unlikely to accomplish the intent of protecting transactions like mortgage, loan payments or rent checks. Consumers make these payments in a variety of manners. Some of our clients use automatic payment, ACH debit and even their debit cards. So an opt-out based on transaction type would not ensure the "vital" payments would be subject to courtesy payment.

WE MAKE DREAMS COME TRUE

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SEQUIM



Likewise the suggestion that consumers should select the payment clearing order is currently not possible on the primary software systems used by banks, thrifts and credit unions. Clearing payments are presented to us at a variety of different times, depending on the source and type of payment. We cannot dictate the time tables for the Federal Reserve Bank or the other networks to which we belong. In order for a consumer to select pay checks ahead of ATM transactions we would have to delay posting all incoming transactions and then attempt some ordering of the transactions to comply with the individual consumer's preference. The only possible way this could be done would be to post everything and if an overdraft occurred, reverse and repost the items in compliance with the predetermined posting preference. Clearly we would abandon the courtesy pay program before we would undertake this kind of development expense. And, delayed posting exposes risk of additional overdrafts and impinges on our ability to return items within the regulated deadlines. Increased losses will result in more returned checks at higher fees.

The proposal covering debit holds is extremely complicated. For the most part we are not the originator of the hold. The hold is generated by the merchant and remitted to us. We cannot determine if a gas station sends us an authorization for \$75 if the client is actually purchasing that much gas . . . we can only agree to the transaction and place the hold. Frequently pay at the pump transactions, rental car transactions and hotel transactions are processed for an estimated amount. Subsequently, the transaction is processed for the specific amount of the transaction. While this may result in holding more than the consumer has spent, we have no manner in which to identify the hold with the subsequent transaction when the amounts vary. Regulation controlling or limiting this process much be directed at the merchant not at the receiving banks.

I appreciate the opportunity to comment on the proposal. I think it contains several reasonable requirements and ones that are "best practices" for our bank. For example, we allow clients to opt-out and we limit the maximum amount of daily fees. We also allow every client to have one free paid item every year so the occasional mistake is not penalized and we have an opportunity for client education.

Sincerely,

Laurie Stewart
President/CEO

LLS/sb