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MEMBER FDIC

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July 31, 2008

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

Via Fax: 202.906.6518

Re: OTS-2008-0004

Jennifer J. Johnson, Secretary
Board of Governors of FRS
20th Street & Constitution Ave NW
Washington, DC 20551

Via Fax: 202.452.3819

Re: FRB Docket No. R-1314

This comment letter is in response to proposed rules published in the 73 Federal Register, beginning on page 28,904, regarding overdraft protection programs. While we certainly appreciate the concern of consumer groups such as the Consumer Union to "protect" the public from perceived "unfair practices," we believe the proposed new rules would create an undue hardship on financial institutions and could cause direct harm to certain consumers that depend on their financial institutions to "take care" of their financial affairs.

We do not offer a public marketable overdraft protection service to our customers as many banks do, since it could be perceived as encouraging overdraft spending. Instead, through the use of algorithms and available data, we honor accidental overdrafts up to certain internal limits to protect our customer's credit standing, which would be affected by returned items. Our process also allows us to streamline our honor or return decision, which preserves our company assets and improves our safety and soundness. Since we do not have a disclosed, formal overdraft protection service, we do not have a formal "opt out" process as our customers do not know what internal limit is assigned to the account or even if they have a limit. But if a customer asks that we always return items that would create an overdraft situation, we mark the account, and within the limitation of the system, honor the request. There are times, however, in which we cannot avoid the overdraft situation because of pre-authorized transactions that must be honored even though there are insufficient funds. The proposed rules, unfairly in our opinion, would prohibit us from charging an overdraft fee in these situations even though outside our control. We would then be at risk on collection of the overdraft and receive no fee for compensation of the efforts.

We also take issue with the ability of the consumer in the proposed rules of opting in or opting out at will. The consumer could manipulate their right and create a hardship on the bank without fair compensation by using pre-authorization purchases or ATM withdrawals.

We also are not "on-line real-time" and are often in a position of allowing "stand-in limits" for merchants when systems are down, which makes it difficult for our system to determine if an POS or ATM transaction will create an overdraft situation. The proposed rules seem to create too many possibilities for a small community bank to adequately comply and would create more hardships on the banking industry at a time when the banking industry is already struggling.

Our overdraft protection process is a courtesy to our customers. Many of our customers have voluntarily taken advantage of our other bank products to protect themselves from an accidental overdraft on their account. Use of any overdraft protection service or process is voluntary and totally within the customer's control, regardless of whether it is an opt-in or opt-out program. Customers can totally avoid the program by not overdrawing their account, which can be done by simple management of their account. The proposed rules seem to remove any incentive for the customer to manage the account to ensure an overdraft situation does not occur.

Because of the above concerns, we are generally opposed to the proposed rules and view them as unfair and unworkable in the proposed myriad of opt-in and opt-out options with resulting prohibition on fees. Any final rules on opt-out, if done, should be structured to allow for situations where a fee can still be collected if the overdraft could not be avoided. Otherwise, we would be faced with the difficult decision of withholding convenient payment methods such as debit cards and possibly future mobile banking for those who opt-out. Attempting to program the possibilities either way seems impractical and perhaps impossible in our current payment market. These proposed rules on "opt-out equals no overdraft fees" would be quite simple if we rolled back the clock 40 years to the day of only checks or cash, but I'm sure our government does not want that to happen.

Our final comment is on the order of honoring checks, which was in the request for comments (not a proposed rule). We have relied on the research of a company that surveys consumers on what they want and that company decisively concluded that the average consumer who is not intentionally overdrafting wants the highest dollar check honored first. This is because mortgage, rent, and installment debt payments are normally the highest dollar checks written and are most likely to impact a person's credit score. Since our process is designed to not encourage overdrafts, and is rather a protection for accidental overdrafts that could damage credit scores, we firmly believe high to low is in the best interest of our customers even if it could create some additional fees. We have had very few complaints about this ordering. To force an ordering that attempts to minimize fees, but that could destroy credit worthiness, does not seem to be fair to the average consumer. Assuming ordering could be done at the account level, which I have no idea if it could, allowing the customer to pick the ordering would be the fairest method for all. This assumes the customer has not opted-out (if that rule goes through) and that our bank would even honor the check, which we would not have to do.

Thank you for the opportunity to comment. As stated above, we see multiple issues with the proposed rules that require much more study by the OTS and the Federal Reserve System. Perhaps you should closely review the studies done by independent research firms, such as Moebs and Associates of Chicago, to determine what the average consumer really wants and if attempting to protect them from themselves is really in their best interest and needed at this time.

Sincerely,

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