REGIONS

August 4, 2008

Via electronic delivery

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Attn: Docket No. R-1314

Re: Unfair or Deceptive Acts or Practices; Docket No. R-1314

Dear Madam:

Regions Financial Corporation[1] submits these comments on the proposal by the Federal Reserve Board and other regulatory agencies to classify certain "overdraft services" as unfair and deceptive practices (UDAP) under the authority of the Federal Trade Commission Act. The proposal, in part, would declare certain commonly accepted and widely used "overdraft services" as unfair and deceptive unless the consumer is given notice and an opportunity to opt out of them. Under an alternative, "partial opt-out," approach, consumers must be give the right to opt out of overdraft services for ATM and debit card transactions but not check or ACH transactions. Also, the proposal would prohibit banks from considering funds subject to a "hold" when determining if a consumer overdrew an account. There are limited exceptions to these requirements.

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[1] Regions Financial Corporation is a member of the S&P 100 Index and Forbes Magazine's "Platinum 400" list of America's best big companies. With $144 billion in assets, Regions is one of the nation's largest full-service providers of consumer and commercial banking, trust, securities brokerage, mortgage and insurance products and services. Regions serves customers in 16 states across the South, Midwest and Texas, and through its subsidiary, Regions Bank, operates more than 2,000 Regions banking offices and nearly 2,600 ATMs. Its investment and securities brokerage, trust and asset management division, Morgan Keegan & Company Inc., provides services from over 400 offices. Additional information about Regions and its full line of products and services can be found at www.regions.com.

General Comments

Regions believes that the proposal is unnecessary and inappropriate because it does not accurately consider consumer and operational benefits of current practices or their substantive impact on financial institutions. Furthermore, the use of UDAP authority represents a dramatic shift in the way the agencies regulate consumer affairs. Relying on UDAP authority, instead of disclosure requirements as is typical of recent regulatory efforts, may lead to numerous state court lawsuits against banks that would require significant resources to defend. The agencies should consider the unintended consequences of the proposal (including the method of regulation) as well as its potential impact on customers and financial institutions during this current economic environment.

Regions disagrees with the proposal's characterization of "overdraft services" (i.e., the bank's decision to honor a payment that overdraws the account). Banks have long exercised the discretion to cover overdrafts for customers. While the incidences occasionally occur, customers understand the value of the bank's action to stand behind their payment decision. The bank, for instance, may cover a monthly mortgage payment, saving a late payment fee and keeping the customer off a delinquency list. So contrary to the agencies' UDAP analysis, Regions does not agree that consumers incur substantial injury due to overdraft fees that is unavoidable without the opt out, that consumers lack sufficient account information to avoid overdrafts, and that there is no countervailing benefit associated with the absence of the opt out. Moreover, the "partial opt out" provision undermines the agencies' contention that long-standing overdraft services are unfair and deceptive because the "partial opt out" recognizes that honoring some payments that overdraw accounts can benefit consumers.

Consumer Impact

Customers, absent an opt-out provision, have sufficient information to avoid overdraft fees. When they open an account at Regions, customers receive an "Account Disclosure" that lists the fees that may be assessed when an overdraft or non-sufficient funds (NSF) incident occurs as well as a "Deposit Agreement" that provides information about overdraft protection. Regions customers may elect to use overdraft protection, in which a savings account, line of credit or credit card is linked to their checking account, to avoid overdraft fees. It is the consumer who has the best ability to determine if a specific transaction will lead to an overdraft. The agencies have implemented several regulations—Regulations DD, CC, and E, for example—intended to ensure that customers have adequate information about their accounts so that they can appropriately maintain account balances. Now, more than ever, with the convenience of telephone or electronic inquiries, consumers have sufficient information about their account balance and thus the means to avoid overdrafts.[2]

[2] The Federal Financial Institutions Examination Council (FFIEC) recently emphasized the importance of personal financial management in the recently released Interagency consumer brochure, "Protecting Yourself from Overdraft and Bounced-Check Fees." FFIEC noted that the best way to avoid fees is "keeping an up-to-date check register, recording all electronic transactions and automatic bill payments, and monitoring account balances carefully." Regions, moreover, makes numerous efforts to educate consumers, sponsoring nearly 100 financial literacy programs, for instance.

Customers have the tools to manage the balance in their accounts and thus avoid overdraft charges. They also have the responsibility to maintain sufficient funds in their accounts and not to initiate transactions that might overdraw their accounts. In fact, the vast majority of Regions customers demonstrate this responsibility in the millions of transactions the bank processes each day. Overdraft fees are not a product but they are part of an operating service designed to streamline decision-making and make it consistent. They also serve as a reminder to customers who don't pay attention to their account balances. Yet Regions recognizes that people make mistakes. The bank waives the fee on the first overdraft on a new account. Regions also has a tiered fee schedule so customers with few overdrafts pay lower fees. Moreover, customers who overdraw their accounts are made aware of the consequences of their actions. They receive a notice explaining the overdraft or NSF fee.[3]

The opt out proposal also may hinder consumers, such as those who understand check float and the delay in settling signature debit transactions. According to the Consumer Bankers Association, some member bankers report that a sizeable percentage of transactions that are authorized when there are not enough funds in the account have enough money in the account when the transaction is settled. In light of this evidence that some savvy customers understand banking procedures, it's worth noting that just one in seven Regions customers have elected to use overdraft protection services. In many cases as well, customers want a purchase—or ATM transaction—to be completed even if the bank has to cover the overdraft. Recently, Regions reviewed ATM transactions and in every day of the weekly study, more than two-thirds of customers chose to complete the transactions after being warned that it would overdraw their account.[4]

The proposal has other drawbacks that could harm consumers if they were to opt out and a payment was not honored. While the customer would avoid an overdraft fee, the bank would charge an NSF fee if the customer did not have the funds in the account at settlement to cover the transaction. The bank fees would be similar in either case; however, if the customer opted out they would face other negative consequences, including a returned check fee (from the merchant) or possibly being reported to a bad check database or another consumer reporting agency. If the payment was for a crucial item like a mortgage, a returned check could have negative impacts on a consumer's credit score. Consumers might face other hardships, such as not being able to pay for a week's worth of groceries at the checkout line or not being able to buy gas to go to work or pick up one's children. In addition, the proposal will lead to more checks being returned, which would not be good for either merchants or consumers.

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[3] The notice mailed to the customer includes the beginning balance at the time of the occurrence, a listing the items that were presented for payment and the action taken. The customer's resulting balance and the assessed fees are included on the notice. In addition, the account's monthly statement includes the charges. Also, the notice is posted immediately for online banking customers.

[4] A Regions customer at a Regions ATM receives a message if the funds requested would overdraw the account. The customer can cancel or continue the transaction. The message reads: "Funds for the requested transaction are not available in your account at this time. By continuing this transaction you may incur an overdraft charge." These results match surveys from the American Bankers Associations and a consumer group (the Center for Responsible Lending) showing substantial majorities agree that they would prefer banks to pay an overdraft and charge a fee rather than denying the transaction.

The goal of the proposed regulation appears to be to stop overdraft fees on small debit card transactions. The proposal is a blunt, unwieldy means to achieve that objective. While Regions agrees that consumers should not make purchases for which they cannot pay, the proposal takes a constricted view of debit card use. Regulators seem intent on making sure that customers do not receive a bank fee for charging a $3 cup of coffee. At Regions, this is not the typical debit card overdraft. Meanwhile, credit and debit card use continues to grow—and to replace check payments—and most of these are not small, impulse-driven decisions. (A Federal Reserve System report published in late 2007 noted that there were 50% more transactions by credit and debit cards than checks in the last year of the study.) Consumers now use debit cards for recurring utility or insurance payments when in the past they may have paid by mailing a check.

<u>Impact on Financial Institutions</u>

The proposal—particularly the "partial opt out" provision—does not give adequate attention to its potential impact on banks. Regions, for instance, currently does not have the technological process to distinguish between check and debit card transactions when determining overdrafts. Implementing systems changes to meet such a requirement could mean significant costs. The agencies contend that they understand the technological limitations but they claim that the dubious (and unmeasured) consumer benefits outweigh the acknowledged programming and operational costs.

Proposed disclosure requirements—under Regulation DD and also published in the *Federal Register* on May 19—contain additional impediments. Aside from the fact that consumers do not need multiple overdraft fee disclosures, the proposal would impose significant costs on banks in the form of additional compliance obligations, significant time to redesign and rewrite statementing code, and an increase in the mailing costs to provide statements to customers. Regions doesn't share the Board's apparent belief that a consumer must receive a lengthy special notice, including the opt-out request, if the consumer incurs an overdraft charge as opposed to any other fee or charge. Current rules do not require a bank to inform a customer how to avoid incurring a fee for an optional service in any other circumstance. Because other account disclosures are sufficient to inform the consumer of the features of a checking account at account opening, the same should be true for overdrafts.[5]

All the bank could offer today is an all or nothing choice about overdraft fees. Besides increasing programming costs, the proposal does not adequately consider the risks that a bank takes when deciding to cover a transaction when customers do not have adequate funds in their accounts. This risk, among other aspects, helps to smooth the transaction between the customer and the merchant, for instance. Any attempt by the Federal Reserve or other regulatory agencies to redefine the parameters of this risk decision, including the "partial opt out," might affect the way banks treat overdrafts.

[5] If the Board were to require these overdraft disclosures, they require modification. The content and the format of the disclosure, for instance, inappropriately and inaccurately suggest that the benefits of opting out of the payment of overdrafts outweigh the harms. Also, the prominence of the disclosure for a fee that most consumers will never incur is disproportionate to the prominence it receives in the proposed form.

Banks likely would return all checks without true overdraft protection. Moreover, the proposal implies that the “partial opt out” for ATM and point-of-sale debit card would be responsible to cover all check and ACH transactions. This would create further confusion among consumers. Overdraft fees are a legitimate cost for the bank taking the risk to cover overdrawn payments and many consumers recognize the value in that decision. Banks also might have to reconsider pricing of all accounts, including adding monthly maintenance fees. Because it appears that one aim of the agencies is to keep down costs for the greatest number of consumers, the proposal may not match that objective.

Exceptions

The proposal notes some exceptions that would permit the bank to assess an overdraft charge; however, the list is incomplete. There may be many circumstances in which the bank is forced to overdraft a consumer’s account, regardless of the consumer’s opt out and should be permitted to charge a fee. A bank may authorize a debit card transaction because, at the time of the authorization, the transaction would not overdraw the account. However, after the authorization, the bank may post several items to the account. The authorized transaction may settle several days later, putting the account into an overdraft status. Or, it may be that there is no authorization involved in the debit transaction, and it is “force posted” to the consumer’s account. There may be other similar circumstances, again reflecting the fact that the proposal needs to be reconsidered.

Debit Holds

The proposal also would prohibit a bank from considering funds subject to a “hold” when determining if the consumer overdrew an account. In some cases marketplace changes have presented solutions, leaving further regulation unnecessary. The agencies properly recognize that there need to be exceptions to this proposal because banks do not control merchants’ policy about holds and there are operational issues to consider in matching holds and actual transaction amounts.

Regions, like several other banks, does not charge overdraft fees for holds placed by hotels and several other travel-business entities. Also, Visa adopted new rules related to debit holds at gas stations (with MasterCard expected to follow), a major source of confusion about debit holds.

Nonetheless, it should be noted that a bank has no way of knowing the amount of the actual transaction until after it is processed. Moreover, it seems that the proposal assumes that a bank can determine the precise authorization that resulted in the overdraft. Signature debit transactions can take several days to settle, for example, and it would be onerous to expect a bank to determine whether an overdraft resulted from the difference between the authorization and settlement amount. The overall complexity of debit holds discourage simple solutions that start with banks when the matter depends first on card systems and merchants, both outside the reach of the proposal. Indeed, a logical starting point to address this issue would be through regulatory action directed at merchants, such as through Regulation E.

Closing Comments

Regions believes that the proposal should not be enacted because it may impact consumers in unintended ways, raise unreasonable expectations and add unnecessary operational and economic burdens on banks. If the agencies determine that a bank must provide an opt out to overdraft services, they should impose such a requirement outside the context of UDAP regulations. Honoring overdrafts and charging a fee—regardless of whether the consumer can opt out—is not an unfair practice. If the agencies believe the practice should be regulated, the agencies have authority under Regulation DD and Regulation E. The best approach would be additional disclosure that makes sure that customers understand the practice.

Regions appreciates the opportunity to comment on this significant proposal. If you have further questions, please contact me at (205) 264-5521.

Sincerely,

Chris Scribner
Vice President, Issues Management