

From: Flora Bank & Trust, Daniel Graham  
Subject: Electronic Fund Transfers

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Comments:

1. Right to "Partially" Opt-Out or "Partially" Opt-In, Versus a Required Opt-In.

- a. We support the provisions in the Proposal that would increase disclosure of overdraft programs.
- b. We allow all consumers to opt-out (entirely; not partially)
- c. Our consumers value overdraft privilege as an efficient way to ensure that important transactions would go through. This saves our consumer any embarrassing moments.
- d. If adopted, an opt-in requirement would impose additional administrative burdens on financial institutions without any countervailing consumer benefit.

2. Partial Opt Out

- a. The partial opt-out would allow consumers to retain overdraft privilege services for checks and ACH transactions, while declining other type of transactions, such as "ATM withdrawals" and some but not all "POS debit card transactions. This will be impossible to convey to consumers. We believe consumers will conclude that exercising a "partial" opt-out right means they will never be charged an NSF or overdraft fee.
- b. Any partial opt-out or any opt-in requirement will always be confusing to and misunderstood by consumers.
- c. A partial opt-out approach would not only be difficult to explain to the consumer, would also be hard for the consumer to remember .
- d. It would be impossible to implement technologically.
- e. The proposal bans financial institutions from varying accounts terms between accounts that provide partial opt-outs and accounts that do not. This requirement would invite legal claims and regulatory actions over whether an account term is varied.
- f. We believe the Board should implement a regulation that allows financial institutions to offer discretionary overdraft payment services on a "all-or-nothing" basis and that does not punish them for varying the terms on accounts that do not offer overdraft services.
- g. At the present customers making an ATM withdrawal which will result in an overdraft are given notice that the transaction will result in an overdraft and a fee. They have the option to cancel that transaction or proceed. Additional regulatory burden to this process is both costly and unnecessary.

3. Exceptions to Opt-Out Requirements

- a. The proposal includes exceptions to the general rule that a consumer

cannot be charged an overdraft fee if he has opted out of overdraft privilege.

b. It is unreasonable and impractical to forbid overdraft fees in situations where the financial institution reasonable believes it must honor a transaction that turns out to be drawn on insufficient funds.

c. We believe it is impossible to track, control and comply with exceptions with current technology.

d. The necessary technology to comply with the safe harbor rule will be very expensive, especially for small-and mid sized institutions like ours.

e. It would be unfair to pass these fees thru to our overdraft privilege customers.

Just because a customer opts out of overdraft services does not mean The bank has no cost associated with the maintenance of the account. Overdraft offenders create additional personnel and data processing expense. Should the government decide we can't charge opt out customers, then we will be forced to find other means of meeting the costs associated with maintaining these accounts, or not offer these accounts. We see two options here. We will be forced to access a monthly maintenance fee on these accounts, which will result in non-overdraft customers paying the costs for the overdraft offenders. The other option would be simply closing the accounts of these customers due to the additional costs.

4. Debit Holds. The proposal would prohibit financial institutions from assessing an overdraft fee if the overdraft was caused by a debit hold in excess of the actual transaction amount and the actual transaction amount would not have caused the overdraft.

a. We support the concept of a two-hour safe harbor, but we believe that implementing the necessary technology to comply with a complex safe harbor rule will be very expensive.

b. Presently it is our bank's policy to refund any fee created from a debit hold that exceeded the actual transaction amount and resulted in an overdraft. We believe the responsible customer's service is part of the competitive process and institutions who do not act responsibly in these matters will lose business. We believe the Federal Government should not try to regulate competitive behavior that only results in additional regulatory burden and costs on good corporate citizens, and costs that are ultimately passed on to consumers.

IN CONCLUSION: What ever happened to personal responsibility? Neither the bank, nor the Federal Government should be the keeper of the American public, unless we truly have evolved to a Socialist Government. No banker that I know of has ever forced or encouraged a customer to write a check, or to complete and electronic transaction that would result in an overdraft. Consumers should be held responsible for knowing how much money they have available in their account, and should they choose to write a check in excess of those funds the bank should be compensated for their time, systems, personnel, and risk used to monitor such activity.

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