REGIONS

March 30, 2009

Via electronic delivery

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenues NW
Washington, D.C. 20551
Attn: Docket No. R-1343

Re: Proposed Rule to Amend Regulation E; Docket No. R-1343

Dear Madam:

Regions Financial Corporation[1] submits these comments on the proposal by the Federal Reserve Board to amend Regulation E, which implements the Electronic Fund Transfer Act. The primary proposal would limit the ability of financial institutions to assess an overdraft fee for paying ATM withdrawals and one-time debit card transactions that overdraw a customer's account unless the customer is given notice of the right to opt out of the payment of such overdrafts and the consumer does not opt out. There are numerous alternatives to this basic proposal, including rules about account features as well as notification requirements. In addition, there are limits on charges that would not have occurred except for certain debit holds placed on a customer account.

[1] Regions Financial Corporation is a member of the S&P 100 Index one of the nation's largest full-service providers of consumer and commercial banking, trust, securities brokerage, mortgage and insurance products and services. With $146 billion in assets, Regions serves customers in 16 states across the South, Midwest and Texas, and through its subsidiary, Regions Bank, operates 1,900 Regions banking offices and 2,336 ATMs. Its investment and securities brokerage, trust and asset management division, Morgan Keegan & Company Inc., provides services from 332 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 Federal Reserve's "targeted rule covering overdraft services" under Regulation E is a better approach than the 2008 proposal under Regulation AA. The various alternatives under consideration need to be limited in their scope so as not to overburden banks in a time of economic and financial stress, confuse or harm customers, or create rules that stifle economic innovation and transactions in the marketplace. As the Board recognizes in its proposal, overdraft services (i.e., the bank's decision to honor a payment that overdraws the account) can be beneficial to customers; thus, any effort to alter the products and services developed in a crowded marketplace, in which customers have scores of competitive offerings from which to choose, should be approached with caution. Banks have long exercised the discretion to cover overdrafts for customers. While the incidences occasionally occur, customers understand the value of the bank's decision to stand behind their payment decision. In seeking to limit charges related to one type of overdraft service—those related to ATM and one-time debit card transactions—the Board may provoke unintended consequences on account features and payment decisions. In fact, it would be preferable for the Board not to regulate, or limit, the type of transaction, but leave that to the discretion of the bank, and simply adopt an opt out provision instead. Moreover, any regulation should allow banks at least 18 months for implementation.

Customer Impact
Any effort to amend Regulation E affecting overdraft services should be enacted by allowing the customer to opt-out of a bank's existing policy. This fundamental point is based on several core principles: (1) customers already receive clear guidance about a bank's overdraft policies; (2) the opt-out method is the typical method for the implementation of most consumer policies; and (3) it will have the least macroeconomic impact.

Customers, absent any change to existing regulations, have sufficient information to avoid overdraft fees. When they open an account at Regions, for example, customers receive an "Account Disclosure" that lists the fees that may be assessed when an overdraft or non-sufficient funds incident occurs as well as a "Deposit Agreement" that provides information about overdraft protection.[2] The Board has implemented numerous regulations intended to ensure that customers have adequate information about their accounts so that they can appropriately maintain account balances.[3] With the convenience of telephone or electronic inquiries, customers have sufficient information about their account balance and thus the means to avoid overdrafts. In fact the Federal Financial Institutions Examination Council emphasized the importance of personal financial management in the recently released Inter-agency consumer brochure, "Protecting

[2] Regions customers may elect to use overdraft protection, in which another deposit account, line of credit or credit card is linked to their checking account, to avoid overdraft fees. It's worth noting that just one in seven Regions customers have elected to use overdraft protection services.
[3] Newly adopted changes to Regulation DD give customers clearer information on account balances through automated systems.

Yourself from Overdraft and Bounced-Check Fees."[4] Customers have the tools to manage the balance in their accounts and thus avoid overdraft charges. Given this access to information, Regions believes that the customer has the best ability to determine if a specific transaction will lead to an overdraft. They also have the responsibility to maintain sufficient funds in their accounts and not to initiate transactions that might overdraw their accounts. A fee may serve as an incentive for customers to pay attention to their account balances.

Given these parameters and the consumer's role in understanding the integrity of their account, we believe that it is the default principle that if a customer initiates a transaction then they want the transaction to occur. In fact, the vast majority of Regions customers demonstrate this responsibility in the millions of transactions the bank processes each week. Moreover, numerous studies indicate, including one by the FDIC, that overdraft fees impact a minority of bank customers. In many cases as well, customers want a purchase—or ATM transaction—to be completed even if the bank has to cover the overdraft.[5] 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 could overdraw their account.[6] These results match surveys from the American Bankers Association 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 deny the transaction. One reason for these results is that a significant percentage of debit card purchases are for core needs like groceries, gas and health-care products. The Consumer Bankers Association estimates that these purchase types account for more than half of all debit card transactions.[7]

Moreover, most customers do not put themselves in the position to overdraw their account, but if it happens they want to be able to complete the transaction. That is why Regions' policy 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. In fact, the Board recognizes this principle. In the proposal under review the Board acknowledges that "for customers who rarely, if ever, overdraw their accounts, the occasional coverage of overdrafts, by their institutions may be a positive benefit."

[4] The report notes 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. Regions' on-line banking channel offers free up-to-date account information.

[5] FDIC, "Study of Bank Overdraft Programs" (November 2008). The report noted that three-fourths of customers did not overdraw their accounts in the previous twelve months. Moreover, just over 10% of all customers accounted for 93.4% of total charges.

[6] 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."

[7] Even the Board notes in its own proposal that "the consumer may use a debit card to purchase essential groceries or medicine and have no other means of payment." At Regions, almost 60% of all debit card use is for food and groceries, gas and ATMs.

Regions customers receive a timely notice when they overdraw their accounts. This notice reminds the customer of existing bank policy and allows them to evaluate their own circumstances as it related to overdraft services. An opt-in provision, for instance, would limit this customer flexibility, a point the Board acknowledges in its proposal. Moreover, the Board recently adopted new rules, which go into effect on Jan. 1, 2010, that clarify disclosures and provide additional information to customers after each overdraft. The amendments to Regulation DD require banks to disclose on periodic statements the total fees (for the interim period and year-to-date) charged for paying items when there were insufficient funds or the account was overdrawn.

In addition, the opt out method is preferable to the opt in alternative because it is consistent with other consumer protection measures, such as the "do not call" list and the ban on unsolicited commercial email. It is best to remain consistent with experience, especially examples that show consumers will opt out if they believe that decision benefits them. The opt out also is used under Regulation P (rules related to the Fair Credit Reporting Act and the Fair and Accurate Transactions Act) and Regulation V as well as the FACT Act.

Impacts on Financial Institutions

In its proposal, the Board seeks to distinguish ATM and one-time debit card transactions from "preauthorized EFTs" as well as checks and ACH transactions. In part this distinction results from the Board's apparent belief that the payment of checks that occasionally overdraw accounts may be beneficial to customers. This distinction may create customer confusion because customers might assume that pre-authorized EFTs or checks always will be covered by a bank. These transaction-specific decisions remain at the discretion of the financial institution. Moreover, current operating systems do not allow for banks to distinguish by transaction type.

With its Regulation E proposal, the Board seeks to balance its view that overdraft services can be beneficial to clearly informed customers with the idea that some low-dollar purchases (made with debit cards) should be exempted. Regions, as noted, believes that consumer responsibility—knowing one's account balance—is the first protection against overdrafts.[8] In pursuing a policy that would force banks to consider debit card differently from checks and other forms of electronic transactions (such as ACH), the Board assumes that no operational barriers exist. This is not the case. At present, all the bank could offer today is an all or nothing choice about overdraft fees.

[8] "The 2007 Federal Reserve Payments Study" noted that two-thirds of all noncash transactions were electronic transactions, including debit cards, credit cards and ACH. Still there were 5 billion more check transactions than debit card transactions in 2006 (even though debit card PIN transactions were the fastest-growing category). Nonetheless, debit cards accounted for about 1% of the value of all transactions; checks, 55%. The FDIC overdraft study found that 47% of all overdrafts occur at ATMs or during debit card transactions. Still, if one extrapolates the value of these transactions for the Federal Reserve data, the Board is seeking to add burdensome regulations to address a small value of total-dollar transactions, while effectively endorsing the use of overdraft services for higher-value transactions.

Altering the bank's operating system to achieve the parameters proposed by the Board would take hundreds of hours of programming time at significant cost to the company during a recessionary economic environment when bank operating earnings are under pressure. Given the current environment this would cause delay in other bank programs that rely on this level of technological support. The Board needs to adequately weigh the costs of the proposal versus its benefits. At the least, it needs to give banks ample time to implement any changes—eighteen months at minimum, which is consistent with processing rules changes enacted by card companies.

Moreover, there are operational issues even if the Board wants to adopt the partial proposal that separates one-time debit transactions from preauthorized EFTs. The proposal assumes that in all cases banks can distinguish between one-time and recurring transactions. This is not true in all cases because banks are dependent on merchants to complete the appropriate code to distinguish among these types of transactions. Merchants do not always complete the three digit Electronic Commerce Indicator value. Therefore, banks cannot guarantee that they will handle the two types of debit card transactions differently. Given the difficulty in explaining this distinction, and the potential liability banks face if forced to distinguish among transactions that they do not control, it is best to treat all debit card transactions the same under any final rule.

Besides increasing programming costs, the proposal must adequately consider the risks that a bank takes when deciding to cover a transaction when customers do not have adequate funds in their accounts. In many cases, the bank takes the risk to smooth the transaction between the customer and the merchant, for instance. 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. Any attempt by the Federal Reserve or other regulatory agencies to redefine the parameters of this risk decision, including the partial exemption of overdraft services, might affect the way banks treat overdrafts or structure accounts. The Board, through this proposed rule, should not trample upon the discretion of banks to set their own terms to allow for overdrafts nor circumscribe banks' ability to define the terms of its accounts that have been agreed to by the consumer. The Board, in limiting the scope of the opt out to ATM and debit card transactions, should not force banks to offer the exact same terms for check or ACH-based overdrafts (which are at the banks' discretion) to all customers whether they have opted out or not. Moreover, the Board should not require that all accounts have the same terms, conditions and features, including interest rates paid and fees assessed, to customers whether they opt our or not. While Regions does not plan to restructure its accounts, this flexibility to act to develop new accounts should not be impinged. Because it appears that one aim of the Board is to keep down costs for the greatest number of consumers, the proposal may not meet that objective.

Regions, as mentioned, believes proper notification and disclosure about account policies is an important part of creating an informed and satisfied customer. Regions, for instance, notifies customers when they overdraw their accounts. We provide ample notice about account features and agree that if the Board adopts the opt out rule existing customers should get clear notice of their rights. Banks should be allowed to select a single method (among the options proposed) to communicate the opt out to avoid confusion. The Board, however, needs to reconsider the lengthy, detailed full-page initial notice. It would be better to adapt the "subsequent notice" form for this purpose. In addition, this would allow an institution to send a single, consistent, and concise notice in all cases and not have to manage so many different forms.

Exceptions

The proposed opt-out rule provides several exceptions under which a bank could still charge an overdraft fee for ATM or debit card transactions. These exceptions recognize the inability of the bank to determine whether all transactions might overdraw an account; however, Regions believes that additional exceptions should be considered. Current exceptions include: (1) the institution has a reasonable belief that there are sufficient funds available in the account at the time of the authorization (for instance, authorization balance not real time, deposited items returned, settlement amount exceeds authorization); or (2) the debit transaction is paper-based. Additional exceptions that reflect the role of merchants and card-processing rules also should be recognized by the Board. These instances include cases in which the merchant does not submit the transaction for authorization (the transaction is below a floor limit, for instance) or if a stand-in processor is used.

Debit Holds

Under the proposal, banks may not assess an overdraft fee if the overdraft would not have occurred but for a hold placed on funds in the consumer's account in connection with a debit card transaction if the actual amount of the transaction can be determined by the merchant within a short period of time after the bank authorizes the transaction. A bank may assess a fee, however, if the bank has procedures and practices in place designed to release a debit hold within a reasonable period of time. The rule generally will apply to gas pump and restaurant transactions, but not to hotel and car rental transactions.

In general, consumers should not incur overdraft fees if the overdraft fee is caused solely by the existence of the hold. However, as the Board recognizes, there are significant operational issues in many circumstances where it is not feasible to ensure that there will be funds to cover the transaction without causing an overdraft. In these situations, banks routinely waive the fee when the consumer notifies the bank. The rule should not apply to instances when the amount of the final transaction cannot be determined within a short period of time as is the case with car rentals and hotels. As the Board points out, overdraft fees are less likely to occur in these instances because consumers tend to use credit cards for these transactions. The Board also notes that it has received few complaints about overdraft fees incurred as a result of debit holds place in connection with hotel and car rental transactions.

For any proposed rule, "reasonable time" should be considered the end of the processing day and that the regulation require merchants to submit transactions by the end of the processing day of the authorization. The only way to begin to resolve the issue is to engage all relevant parties, which includes the merchant and the card issuing bank. While not a perfect fix, it will move the industry closer to a system that minimizes and perhaps ultimately eliminates the problem.

Closing Comment

Regions believes that any new regulation that limits a bank from assessing a fee or charge on a customer's account for paying an overdraft on an ATM withdrawal or debit card transaction should be enacted with concern for the operational hurdles and costs that a bank will face in implementing it and balanced against actual benefits to customers. Moreover, we have noted cases in which the rule could have negative consequences for the consumer. The proposal should not try to distinguish among different types transactions, not even for different types of debit card transactions because banks are not always responsible for the coding the distinctions. It is the customer's responsibility to know their balance and avoid overdrawing their account. Federal rules provide clear disclosure to customers about overdraft policies. For this reason—and to be consistent with other regulatory actions—the implementation of any new policy should be through a customer opt out, if at all. Continued disclosure about overdrafts should be part of standard notices, as currently required; no new procedures are necessary.

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

Sincerely,

Chris Scribner
Vice President, Issues Management