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March 30, 2009

Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

RE: Docket No. R-1343
Proposed Amendment to Regulation E

Dear Ms. Johnson:

On behalf of Emprise Bank, we would like to comment on the proposed amendments to Regulation E, specifically the Consumer's Right to Opt Out of Overdraft Coverage for ATM and one-time debit card transactions and Debit Card Hold provisions.

First, our customers do value, and even expect, that overdraft payment services will be available from their financial institution. Emprise Bank provides customers the opportunity to opt-out of overdraft coverage, and they overwhelmingly do not opt out. Granted, not every customer uses the service, but they do rely on it to be there if and when they need it – inadvertently or otherwise. Furthermore, those customers who do use the service enjoy the ability to avoid the subsequent costs associated with overdrafts, which are significant, as well as the embarrassment and inconvenience associated with denied transactions. As has been repeatedly pointed out, customers have the choice to use or to avoid any overdraft payment service, and there are a number of easy and accessible methods and options available to help them do so.

Second, Emprise Bank agrees with those who contend that the attempts to limit the transactions on which overdrafts can be paid will have significant unintended consequences. The board should not limit the scope of the opt-out to ATM withdrawals and POS transactions but should allow the opt-out to apply to all channels. Additionally, we believe consumers will be misled into believing that exercising a “partial” opt-out right means they will never be charged an NSF or overdraft fee. This belief is well supported by comments already received from consumers on the proposed regulation. .

Third, Institutions should have the choice of implementing the opt-out requirements at the product or account level, this should not be mandated by the rule. If the opt-out notice is provided at account opening and no additional opt-out notice is required, the notice should be segregated from other disclosures. Providing a standard disclosure is important for consistency and clarity to the consumer. Currently initial overdraft program notices contain the appropriate information listed in the Model form A-9 (A) and are not specific to transaction type. As stated above, institutions should be permitted, but not required, to include additional information, but not by transaction type in the initial overdraft notice.

It is the opinion of Emprise Bank that instead of including the opt-out notice on the periodic statement it would be more beneficial to have the opt-out notice on the insufficient funds notice that is mailed to consumers each time they overdraw their account or provide an annual opt-out notice. Including the opt-out notice on insufficient funds notices would be acceptable as long as 1)the notice could be provided regardless of what caused the overdraft, 2)only the second paragraph in the A-9(B) model opt-out form is used, 3)the location of the notice is left up to the discretion of the financial institution and 4)it is not required for ATM and POS transactions exclusively.

Fourth, Emprise Bank believes that the concerns in the proposal related to debit card holds are legitimate as excessive holds could cause a consumer to incur unreasonable fees. The Board should exercise its authority under

Section 904 of the EFTA to require merchants to promptly submit authorizations for all transactions and not be allowed to hold a transaction for authorization to ensure the consumer is afforded the best protection against erroneous fees. We also support the concept of a two-hour safe harbor.

In summary, Emprise Bank generally supports the objectives of clarity and fairness in how financial institutions market and administer overdraft protection. We support the 'all-or-nothing' approach to opt out; however, we do not support the partial opt out approach as it is not feasible or beneficial to our customers.

We support the abbreviated notice for subsequent notices so the consumers can quickly see the pertinent information about opting out. We also recommend that the notice be provided whenever an overdraft situation occurs or annually, not just with an ATM or POS transaction to provide the consumer with every opportunity to decline the service if this satisfies their individual financial situation and needs.

The methods of opt-out described in any notice should be at the financial institution's discretion whether it be orally, by telephone or in-person. No additional guidance is necessary on the "as soon as reasonably practicable standard" and should be sufficient guidance for financial institutions to comply with the request in a timely manner.

Due to the time it will take financial institutions to implement the proposed changes it would be very important that we have 24 months time for development and testing of systems to ensure consumers do not have undue negative impact from poorly designed software and processes, the result of insufficient design time.

We appreciate the opportunity to provide our perspective on the proposed amendments. We take customer satisfaction very seriously and work every day to provide an experience to each of our customers that meets their individual and unique needs. We hope that we can continue to do so with a reasonable approach to the payments of overdrafts.

Sincerely,



Cynthia Fleming
Vice President



Jeri Hewitt
Vice President/Compliance Officer

cc: FDIC
Representative Todd Tiahrt
Senator Pat Roberts