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Ms. Jennifer J. Johnson
Secretary
Board of the Governors of the Federal Reserve System
20th St. and Constitution Avenue, NW
Washington, D.C. 20551

**Re: Docket No R-1197
Proposed changes to Regulation DD
The Truth in Savings Act
June 7, 2004 Federal Register 31760**

Dear Ms. Johnson,

The American Bankers Association (“ABA”) is pleased to submit our comments to the Federal Reserve Board’s (“Board”) proposed changes to Regulation DD (Truth in Savings Act) related to bounced-check protection programs and practices.

The ABA brings together all categories of banking institutions to best represent the interests of this rapidly changing industry. Its membership – which includes community, regional, and money center banks and holding companies, as well as savings associations, trust companies, and savings banks – makes ABA the largest banking trade association in the country.

Background.

The Board is requesting changes to Regulation DD to address concerns about the uniformity and adequacy of information provided to consumers when they overdraw their accounts. It describes bounced-check protection as “an automated service that is sometimes provided to deposit account consumers as an alternative to traditional line of credit.” The Board proposes to address concerns by:

- expanding the prohibition against misleading advertisements to cover communications with current consumers;
- requiring additional fee and other disclosures about automated overdraft services;

- imposing new requirements to aggregate by period and year-to-date non-sufficient fund (“NSF”) fees and overdraft payment fees.

ABA generally agrees with the Board that any concerns about the fee and terms associated with overdrafts on deposit accounts should be addressed in Regulation DD rather than Regulation Z (Truth in Lending Act.) Overdraft fees are related to deposit accounts and are not viewed as credit charges either by banks or their customers. We generally support most of the proposed additions and changes to Regulation DD and believe that they will help to ensure that consumers are aware of the means, cost, and consequences of overdrawing an account. We offer a few recommendations, including deletion of the proposed requirement to aggregate NSF and overdraft fees.

Section 230.6(a)(3)(ii) Periodic statement disclosures.

The proposal adds a new requirement that depository institutions must disclose in periodic statements “a total dollar amount for all overdraft fees and a total dollar amount for all returned-item fees for the statement period and for the calendar year to date.” We strongly oppose this proposed addition. It simply will not assist or enlighten consumers in any meaningful way. Moreover, it will only add unnecessary costs to the business of providing bank accounts.

The Supplementary Information indicates the Board’s belief that aggregating the fee for the period will “assist consumers in better understanding the costs associated with overdrawing their accounts,” and that providing year to date sum will “highlight the overall cost to consumers of presenting items on an account with insufficient funds on a routine basis.” We respectfully disagree.

Aggregating fees will potentially only affect that very small percentage of consumers who frequently overdraw their account, and we believe that it will only assist that small percentage marginally, if at all. Yet, the entire industry will incur significant costs to reprogram and redesign systems in order to disclose those sums.

We believe that the small percentage of customers who frequently overdraw their accounts are made well aware of the monthly and overall costs of overdrawing their accounts. Imposition of the fee is typically first disclosed in a special notice advising customers of the overdraft or NSF, the associated fee, and the need to bring the account into balance. Customers are reminded of the fee when they see it deducted in their periodic statement. For those customers incurring multiple fees, the sheer visual effect of multiple line items of the same fee has the greatest impact. A periodic aggregated amount will add little. Furthermore, consumers know the costs and impact of multiple overdraft and NSF fees much as someone who is ticketed for illegally parking in the same spot a few times

each month is aware of the sum of those penalties, even though the city does not provide a monthly or yearly total.

Lengthening statements unnecessarily also has the effect of discouraging customers from the important task of reviewing their statements. Accordingly, they are less likely to understand their account costs and to detect unauthorized activity and errors. The statement may be further complicated and lengthened as others argue that other fees are more important or are imposed more often and should also be aggregated. This, again, will further discourage statement review.

Finally, any value to disclosing fees in aggregate, whether periodically or year-to-date, is already limited and will become more limited because, in growing numbers, bank customers are reviewing their checking account activity online, relying less on periodic statements to do so. Online review provides a more up-to-date view: the monthly statement is usually somewhat dated by the time of receipt because of the lag between the end of the statement period and receipt of the statement. For this growing population of customers who rely on online banking to review account activity, disclosing the aggregate numbers will be meaningless.

Section 230.8(f) Advertising: Additional disclosures in connection with automated overdraft services.

We generally agree with the proposal that “an announcement, solicitation, or advertisement promoting” an overdraft service disclose certain information. However, the proposed provision only applies to “automated overdraft services.” We do not believe that application of this provision should hinge on whether or not the bank uses technology.

It is unclear the significance of a program being “automated” in terms of the proposed requirements. Many banks have automated the traditional practice of paying overdrafts on a discretionary basis. It is little different from providing the same courtesy manually, except that it is more efficient and less subjective. Moreover, even with automated systems, there can be manual intervention. There are no apparent reasons for requiring disclosures for automated systems and not doing so for systems that accomplish the same task manually. Such a distinction is artificial, confusing, and meaningless. Accordingly, it should be deleted.

The proposal requires banks promoting overdraft services to disclose in the advertisements, “The time period by which the consumer must repay or cover any overdraft.” If this requirement is adopted, the final regulation should make clear that “Due immediately,” “Due upon receipt,” and similar terms are acceptable. These are common in deposit account agreements today.

Under the proposal, banks promoting overdraft services must also disclose “the circumstances under which the institution would not pay an overdraft.” We strongly disagree that the bank should describe the circumstances in which the institution would refuse to pay.

There are numerous and ever-changing reasons why the bank may refuse to pay. Many banks do not disclose those reasons because they do not want fraudsters to take advantage of the system. Moreover, requiring disclosure means that even though there may be a justified reason not to pay, the bank may be obligated to pay if that reason was not specifically disclosed. Furthermore, listing the reasons for not paying implies a commitment to pay, absent one of those enumerated reasons. This suggestion is contrary to ABA’s recommendation that banks make clear that they will not automatically pay overdrafts, so as not to mislead consumers. The suggestion that payment is not discretionary also may implicate other regulations such as Regulation Z.

Comment 10 to Section 230.8(a). Advertising: Misleading or inaccurate advertisements.

The proposal adds examples of advertisements that would ordinarily be misleading or inaccurate or misrepresent the deposit account. The list includes representing that an overdraft protection services is a “line of credit” unless it is subject to Regulation Z and representing that the institution will honor all checks when the institution retains discretion not to honor checks or authorize transactions. The list also includes describing a service solely as protection against bounced checks when it is being promoted to allow overdrafts by other means such as by debit card. We agree with these additions. Most mirror recommendations we have made to our members.

Conclusion.

ABA appreciates the opportunity to comment on this important proposal. We believe that the Board is correct in addressing any concerns related to overdrafts on deposit account in Regulation DD rather than Regulation Z. Overall, we support the proposed additions and modifications, although we oppose the proposal to add a requirement to aggregate NSF and overdraft fees on a periodic and year-to-date basis.

Regards,



Nessa Eileen Feddis