

THE FINANCIAL SERVICES ROUNDTABLE

Financing America's Economy



1001 PENNSYLVANIA AVE., NW
SUITE 500 SOUTH
WASHINGTON, DC 20004
TEL 202-289-4322
FAX 202-628-2507

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E-Mail info@fsround.org

H www.fsround.org

Robert E. Feldman
Executive Secretary, Attention: Comments
Federal Deposit Insurance Incorporation
55017th Street N.W.
Washington, D.C. 20429
via Email: OverdraftComments@fdic.gov

Re: Overdraft Payment Programs and Consumer Protection

Dear Mr. Feldman:

The Financial Services Roundtable¹ (“Roundtable”) submits this letter in response to the Federal Deposit Insurance Corporation’s (FDIC) request to receive public comments on Financial Institution Letter FIL-47-2010 issued August 11, 2010. The Roundtable supports and shares the FDIC’s goal that bank overdraft programs conform to all applicable laws and regulations. The Roundtable appreciates the opportunity to share its comments with the FDIC regarding the agency’s supervisory expectations of bank overdraft protection programs.

General Comments:

The Roundtable believes that the availability of overdraft protection services that are managed properly and easily understood is in the best interests of consumers. Many consumers feel that these are valuable services that allow them to continue to make necessary or desired purchases when their account balance is unexpectedly insufficient. Most institutions offer options to automatically transfer funds from regular savings or money market accounts and access a line of credit linked to a checking account. While terms vary from bank to bank, these programs are intended to protect consumers by avoiding the embarrassment, cost, and the unintended consequences of having a payment returned or declined.

In its August 11th letter, the FDIC cites its November 2008 study of bank overdraft programs. A number of events have occurred since the FDIC released its 2008 study. Specifically, in November 2009 the Federal Reserve announced new regulations requiring consumers to consent or “opt-in” to a financial institution’s overdraft service for ATM and one-time debit card transactions before the institution can charge a fee for that service. The Federal Reserve’s rules became effective July 1, 2010 for new accounts, and August 15, 2010 for existing accounts. This opt-in requirement does not apply to check, ACH, or recurring debit card transactions

¹ The Financial Services Roundtable represents 100 of the largest integrated financial services companies providing banking, insurance, and investment products and services to the American consumer. Member companies participate through the Chief Executive Officer and other senior executives nominated by the CEO. Roundtable member companies provide fuel for America’s economic engine, accounting directly for \$74.7 trillion in managed assets, \$1.1 trillion in revenue, and 2.3 million jobs.

because consumers indicated that they would prefer to have these items paid and will generally be charged the same fee by the financial institution whether or not a check is paid. The Roundtable believes the Federal Reserve struck the proper balance between providing enhanced consumer protections while affording the financial services industry appropriate flexibility to meet the needs of its customers.

Financial Literacy

The industry has been proactive in providing financial literacy education to its customers, including informing them about overdraft protection services. The Federal Reserve's overdraft regulation included a model notice to consumers. In addition, the regulation calls for informed consent. Thus, the industry has been meeting this challenge by providing consumers with background information, including clear disclosures, to make knowledgeable and sound decisions regarding overdraft protection services. Further, it is important to note that the Federal Reserve's final rules allow customers who choose to use overdraft protection services to change their mind at any time – without penalty. In short, the Roundtable supports the Federal Reserve's goals of empowering consumers by providing them the tools to make informed decisions.

Limits

The Roundtable believes that setting arbitrary limits on overdraft transactions would have a negative impact on overdraft programs and, ultimately, consumers. It is impossible to predict when a customer may need to access overdraft protection services. Artificially setting a limit on overdraft protection programs undermines the service itself, can result in great consumer inconvenience and may eventually lead consumers to use non-chartered and non-supervised financial institutions to meet their financial needs.

Customer Follow-up

We do not believe that requiring institutions to contact customers after a specific number of overdrafts is necessary or advisable and believe that doing so could potentially undermine customer intent. As described above, consumers will not be assessed overdraft fees for ATM and debit card transactions unless they have *affirmatively* opted-in to a bank's overdraft protection service for these transactions. In addition, for transactions that fall outside of the aforementioned categories, the Federal Reserve expressly decided not to require customers to opt-in to those transactions. Further, consumers are made aware of an institution's overdraft fees through Regulation DD, which requires that each periodic statement disclose overdraft and insufficient funds fees assessed for each statement period and during the year-to-date.

We also believe that in the event that the financial institution needs to contact a customer, the institution, which knows and understands their customer's needs, should retain the flexibility to contact its customers in the manner most appropriate for the customer and the institution.

Posting

The Roundtable does not support manipulating transactions in a way that intentionally increases fees that consumers incur when assessing overdraft protection services. Moreover, we believe most banks do not engage in such practices. However, banks must have the flexibility to process large volumes of transactions in an effective and efficient manner without undermining

the needs of its customers. The Roundtable believes it is appropriate for banks to disclose their posting order practices so customers can make informed decisions about whether to bank with a particular institution.

Harmonization

The Roundtable respectfully requests that the FDIC coordinate with the Federal Reserve and other agencies to avoid duplicating efforts on overdraft protection services. The Roundtable also urges you to allow affirmative industry reforms to proceed before additional regulatory mandates are proposed. Additional burdens/restrictions placed on the industry will undermine the positive steps already undertaken by the financial services industry and will severely limit the options available to consumers, ultimately hampering banks' ability to serve the diverse needs of their customers.

The Roundtable appreciates the opportunity to comment on overdraft protection. Thank you in advance for considering the Roundtable's comments. If you have any questions, please feel free to contact me or Brian Tate at (202) 289-4322.

Sincerely,

A handwritten signature in black ink that reads "Richard M. Whiting". The signature is written in a cursive, slightly slanted style.

Executive Director and General Counsel