



August 31, 2010

The Honorable Sandra Thompson
Director of Supervision and Consumer Protection
Federal Deposit Insurance Corporation
550 17th St. N.W.
Washington, DC 20429

2010-08-31 15:00
Sandra Thompson

Re: Overdraft protection plans for consumers

Dear Director Thompson:

The National Bankers Association, a consortium of minority and women-owned banks, wishes to comment in this collaborative statement drafted with the input of a representative number of NBA banks.

As would be expected, a variety of overdraft plans and opinions about how to address the financial needs of many who live and work in economically distressed communities has emerged. The NBA has chosen a methodology that reflects a multi-pronged approach to overdraft accommodation as it attempts to synthesize the various methods in such a way that the FDIC can discern the common thread that connects the diversity of approaches, all designed to serve the needs of low-to-moderate income consumers. This would include the unbanked and the underbanked.

While NBA banks recognize the need to protect consumers – oftentimes from the consequences of their own irresponsible choices – the Association also affirms a simple principle of our laissez-faire capitalist system: the market (in this case, the choices of consumers) should dictate the kinds of financial services and the prices for those services. Who tells Coca-Cola how much to charge for soda *at the airport vending machine...is \$1.50 too much?* In addition, when banks or other

providers of products and services attempt to provide consumers with what they want or need, these businesses incur costs that must be assumed by those requesting such products and services.

A disproportionate number of consumers in low-to-moderate income areas have historically sought non-conventional means by which to have their financial needs met. NBA banks, the primary providers of financial services in these communities have gone to great lengths to accommodate many of the pressing financial needs of this population of consumers. In a capsule, there is a cost, an upfront investment of banks' capital to make numerous services and products available to those who historically have endured financial hardship. *Changes that might impact fee revenues might also disenfranchise those same customers we are trying to help by eliminating free checking or other products.* To illustrate how unprofitable it is to operate bank branches in many of these distressed communities, one need only to notice the relative scarcity of branches owned by major financial institutions whose motive for operating anywhere is solely driven by profit. However, according to the most recent GAO study on the subject – comparing the return on assets (roa) of NBA banks with their majority peers – NBA banks' profit margins are smaller because of the socio-economic status of most of their customers

Having put the discussion of how an NBA bank operates in a broader financial services sector context, the following is an effort to capture the various opinions and plans concerning – overdraft protection.

Issue One: It is of critical importance that regulators recognize that overdraft fees are an important component of many NBA banks' business models for operation. Any regulatory effort to erase this important source of revenue will have an injurious effect of those banks' bottom lines.

Issue Two: Following the stated expectations of the FDIC, virtually all NBA banks report that they are providing clear and meaningful disclosures and other communications about overdraft payment programs, features and options. *In addition, the consumer has many different*

opportunities to inquire as to his current balance or available balance via the telephone, on-line banking, or directly calling the bank.

Issue Three: There are essentially two levels of overdraft accommodation

- a) Overdraft protection (for higher dollar amounts that require credit qualifications). This addresses safety and soundness issues related to what amounts to micro-lending; and
- b) Overdraft protection that is simply a method of avoiding check-bouncing for lower dollar amounts – typically less than \$300.00

Issue Four: All NBA banks that participated in the drafting of this response reported that their customers are told that they must “opt-in” in order to receive overdraft protection and can chose to “opt out”.

Issue Five: These banks also represented that their customers are informed of the various options at their disposal and are not limited to overdraft protection accommodations.

Issue Six: These banks reported that they have compiled profiles on customers who use overdraft protection. Senior citizens, people on fixed incomes and those with minimum average daily balances are more likely to be extended overdraft protection.

Issue Seven: Why overdraft fees are necessary. In addition to the operational cost associated with overdraft protection, there are a number of free services extended to customers:

- Bill pay
- Check cards
- On-line banking
- Telephone services
- Free checking

One NBA bank explained that fees generated from overdraft protection allow him to charge less than the industry standard (18%) for installment loans.

Issue Eight: Alerting customers that they are excessively using overdraft protection. One banker reported that only 3.5% of his customers use overdraft excessively, *and 61% never use the overdraft privilege.* Of

the 3.5%, 91% opted to stay in the program. *What this basically means is that the consumer likes and wants this product.* Another banker who routinely calls the top abusers of overdraft protection was told that his decisions to use overdraft protection excessively were none of the banker's business.

A number of those who use overdraft protection cited recurring financial situations that warranted the availability of overdraft protection. To keep down customer cost of overdraft protection, some banks will limit the number of checks that they charge for while others routinely give rebates to customers who have reasonable explanations for some of their excessive overuse.

Mindful that, increasingly point-of-sale payments are made with debit cards, a number of NBA banks – after alerting customers of overdraft protection fees – are beginning to treat these financial transactions the same as check-writing.

Conclusion

While NBA banks recognize the regulatory requirement to give customers the opportunity to affirmatively chose overdraft protection, are monitoring incidents of overdraft abuse and see the need to process transactions in a manner that are designed to minimize cost to consumers, the Association adamantly opposes the unreasonable capping of service fees that are essential to the bank's ability to extend check-writing or debit using privileges for low – to moderate income consumers that were once only reserved for the well-heeled.

Sandra, the NBA genuinely appreciates your undisputed devotion to the spirit and the letter of FIRREA. Our members simply believe that in the instance of overdraft protection, consumers also have a responsibility to take ownership of how they are managing or mismanaging their finances.

Respectfully submitted,



Michael A. Grant, J.D.
President