

Jennifer J Johnson, Secretary  
Board of Governors of the Federal Reserve  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551

Re: Docket No. R-1343  
Electronic Fund Transfers – Overdrafts

Submitted electronically via [www.regulations.gov](http://www.regulations.gov)

Dear Sir or Madam,

UMB Financial Corporation appreciates the opportunity to comment on the regulations proposed by the Board of Governors of the Federal Reserve. UMB Financial Corporation is a multi-bank holding company with approximately \$9 billion in total assets. Headquartered in Kansas City, Mo., UMB offers complete banking, asset management and related financial services to both individual and business customers nationwide. Its banking subsidiaries own and operate 135 banking centers throughout Missouri, Illinois, Colorado, Kansas, Oklahoma, Nebraska and Arizona.

#### **General Comments on Overdrafts**

We acknowledge the agencies' removal of the overdraft provisions from the previously proposed requirements under UDAP as an indication that there is agreement that the discretionary payment of overdrafts could not constitute an unfair practice. We appreciate this action.

However, while we recognize that the increased use of ATMs and debit cards has introduced new, lower dollar amount transactions into the mix, the recent legislation and resulting regulations appear to put all the responsibility of account management on the banks without emphasizing a stricter control of a consumer's own funds by the consumer himself.

Currently, UMB discloses to its customers within its Terms and Agreements: *"If you do not have sufficient collected funds in your account to cover payment of checks you have written on your account or other debits when they are presented to the Bank for payment, the checks or debits will be posted to your account pending any decision to return or pay them. There will be a charge for each check or debit item so posted. We will reverse the posting and return the check or debit item unless you have arranged to be covered by Overdraft Protection, or unless in our sole discretion we decide to pay the check or debit item and create an overdraft in your account. Whether we decide to pay the check or debit item and create an overdraft will depend on various factors. These factors include the amount of the check or item and your banking history with us. The fact that we have paid an item and created an overdraft does not mean that we have a duty to continue to do so."* The section immediately following this section of our agreement discusses the Overdraft Protection alternatives.

By disclosing this to our customers we believe we have made the effort to educate and inform them that an overdraft could occur by any means and that it is entirely within their control to prevent them.

### **Opt-In vs. Opt-Out**

Although we believe that the requirement to provide an ‘opt in’ or ‘opt out’ for certain types of overdrafts to be a decision that the consumer should make prior to entering into one of these transactions, we provide the following comments related to such requirements.

First, of the two approaches proposed, the “opt out” option appears to carry the most responsibility by the customer to make the decision not to overdraw his/her account. The model notice for this option appears fairly clear in its explanation that there is no guarantee to pay any overdraft and that by opting out they will be declined for these types of transactions.

The “opt in” model notice is less clear in this respect and gives the impression that the customer is signing up for guaranteed overdraft protection. Although it states that “having overdraft coverage does not guarantee that we will pay your overdrafts”, if consumers are not currently reading their disclosures and agreements with banks where overdrafts and insufficient funds are discussed, why would this disclosure be any clearer?

Secondly, by providing alternatives under either approach that allow for special account terms, more explanation of what differences in terms are deemed to be “so substantial that they discourage a reasonable customer from exercising his or her right to opt out of the payment of such overdrafts.” According to the proposal, a requirement for an “all or nothing” opt out would be considered substantial? The proposal states: *“For example, if an institution’s internal criteria would lead the institution to pay a check overdraft if the consumer had not opted out of the institution’s overdraft service, it must also apply the same criteria in a consistent manner in determining to pay the check overdraft if the consumer has opted out. This provision is not intended to create a contractual requirement for the institution to pay overdrafts on checks, ACH transactions, or other types of transactions.”* Yet, this is exactly what it could appear to the customer to do. The institution would have to question why a consumer would want to specifically opt out of the payment of what are defined in the proposal as “discretionary purchases,” and not opt out of all overdrafts. And, since many of these purchases will fall under the floor limits of merchants and ultimately end up as overdrafts regardless of whether or not they have opted out, they could potentially encourage more of this activity since a fee cannot be charged. This partial opt out could have the negative impact of encouraging more bad financial behavior.

### **Debit Holds**

Debit holds involve parties that are not included in the current reach of the agencies and this proposal—card systems and merchants. Numerous exceptions would need to be devised to address the variety of presentation contingencies. Additionally, the proposal does not address the risk arising from the consumer conducting transactions subsequent to the one that generated the hold and while that hold is outstanding. Failing to recognize that restricting when in the decision-making process banks can charge fees for overdrafts that follow in time those debit card authorizations that generate open holds creates a burdensome and unworkable clearance and fee assessment process.

We at UMB again state our appreciation for the opportunity to comment on the proposed Regulations. We sincerely hope that our comments will be given consideration in defining any final rules.

Sincerely,

**Nance McFarland, CRCM**

April 1, 2009

Vice President and Director  
Banking Services and CRA Compliance  
UMB Financial Corporation

April 1, 2009