Florence Savings Bank
85 Main Street, Florence, MA 01062

July 29, 2008

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

Ref. Docket No. R-1314
Docket No. R-1315

Dear Secretary Johnson:

Florence Savings Bank is a state-chartered bank located in Florence, Massachusetts with approximately $1 billion in assets and 8 branch offices. The bank is pleased to submit the following comments on the proposed amendments to Regulation AA, which implements the Unfair or Deceptive Practices Act, and Regulation DD, which implements the Truth in Savings Act, as they pertain to Overdraft Protection Services.

1. Background Information

Florence Savings Bank maintains its Overdraft Protection Service consistent, to the extent possible, with the best practices listed in the FFIEC Interagency Guidance published in 2005. Bank customers are provided with a welcome letter notifying them of their eligibility in the program. The letter describes the program features, including the amount of the overdraft fee, program alternatives (i.e. overdraft line of credit, and automatic savings transfers), the categories of transactions that may create an overdraft, and how the customer can opt-out of the service if they choose to. Additionally, the bank has appropriate signage at all proprietary ATMs that alerts the customer to the fact that an overdraft fee will be charged if the customer overdraws their account balance at the ATM. Periodic statements include monthly and year-to-date totals for overdraft fees. The bank charges the same fee for a transaction returned for insufficient funds as the fee charged for paying an overdraft.

2. Opt Out Disclosure Requirements

The proposed rules set forth the content, format and timing requirements for notices consumers would receive informing them of their right to opt-out. Banks would be prohibited from charging an overdraft fee until after a consumer has been given a reasonable opportunity to opt out of the service. The proposal addresses periodic statement disclosures and other notice disclosures that would be required to remind consumers of the ability to opt out, and also provides model clauses that banks would use as a safe harbor.

The model clauses used in the sample form state: *You have the right to opt out of this service and tell us not to pay any overdrafts. If you do, however, you may have to pay a fee if you make transactions that are returned unpaid.* In fairness, the customer <u>will</u> have to pay a fee if the transaction is returned unpaid. Additionally, the customer is likely to have to pay a fee and/or a penalty to the third party who did not receive payment. This is the underlying value of this service to the customer. The required disclosures should provide the consumer with a clear and fair understanding of the consequences of opting out.

The model clauses also state: *We also offer less costly overdraft payment services that you may qualify for, including a line of credit.* In fact, not all customers may qualify for a line of credit, and in some cases, a line of credit, depending upon how it is used, and the terms and conditions of the account, may not be less costly than the overdraft payment service. Alternatively, many banks provide an automatic transfer service to move funds from a savings account to a transaction account to cover insufficient funds. However, arcane rules under Regulation D (Reserve Requirements) continue to limit the number of transfers-out permitted under this service. The Agencies should consider lifting the cap on these transactions.

The model clauses go on to state: *We may charge you this fee even if your overdraft amount is as low as $___.* To require disclosure of a low-amount overdraft, without regard to the amount of the transaction that overdraws the account is unbalanced.

Despite the inadequacies noted above, the model language could be considered reasonable in terms of the initial letter used to notify customers of their eligibility in the program, and the terms of this discretionary service. However, to incorporate the same model language into the bank's periodic statement and overdraft payment notice is not practical for the following reasons:

- The proposed opt out disclosure requirements are lengthy. The overdraft payment notice that most banks use is the size of a mailing envelope. To try and incorporate the required disclosures into a form of this size is unreasonable. To require an additional insert is costly.
- The disclosure requirements re-state some of the terms of the Overdraft Protection Service, but not all terms. Considering that the intent of the proposal is to periodically provide the consumer with adequate opportunity to opt out of the service, the rationale and need for re-stating certain terms (i.e. the amount of the fee) of the service, but not all terms of the service, on periodic statements and notices is unclear, and may be a disservice to consumers.
- Generally, banks use the same form of notice for the Overdraft Protection Service as that used for insufficient funds for customers who do not have the service. Incorporating the proposed language into the notice would only create confusion for customers who do not have this service.

Simply put, required periodic statement and notice disclosures could state:

If you have an Overdraft Protection Service and you would like to opt-out of this service, or if you would like information about alternatives, contact the bank at 1-800-xxx-xxxx, or write us at [insert address].

2. Limited Opt-Out

The proposed amendments would require a limited opt out specifically for ATM and debit card transactions, as an alternative to requiring a full opt out of all transaction types that could overdraw the account. In general, most bank computer systems are not able to distinguish between the types of debits that can result in an overdraft. To re-tool computer systems to provide this functionality would be cost prohibitive. Further, we believe consumers using debit cards would overwhelmingly prefer to have their purchases honored at the point-of-sale, rather than rejected. This proposal could have the affect of discouraging customers from using debit cards for third-party payment purposes.

In closing, Florence Savings Bank supports the Agencies' efforts to enable consumers to make more informed decisions regarding overdraft protection services. Our customer service employees work hard to make sure our customers understand this service up-front, and we closely monitor activity to make sure customers are not misusing the service. As an alternative to greater regulation, we strongly encourage the Agencies to consider updating the FFIEC Interagency Guidance and provide "expected practices" banks should adhere to, taking into consideration the capacity and limitations of computer systems, networks and technologies. Further, we encourage the Agencies to consider the excessive paper-burden already placed on the industry and consumers.

We appreciate the opportunity to comment on the Agencies proposals relating to Overdraft Protection Services.

Sincerely,

Margaret M. Murray
Vice President