



July 17, 2008

To: Board of Governors of the Federal Reserve System and other agencies of the Federal Financial Institutions Examination Council (FFIEC)

By e-mail to: regs.comments@federalreserve.gov

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
10th Street and Constitution Avenue, NW
Washington, DC 20551

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G. Street, NW
Washington, DC 20552

Re: Docket Number: R-1315; Truth in Savings (Federal Reserve Board);
and R-1314; UDAP (Federal Reserve Board)

Dear Sir or Madam:

Please accept this letter on behalf of BancorpSouth Bank, headquartered in Tupelo, Mississippi. My position is Senior Vice President over the Information and Transaction Services Group, which includes all transaction processing.

This letter is intended to supplement the letter of even date herewith from Vice Chairman Larry Bateman of BancorpSouth who more broadly and generally addresses grave concerns over the broadness of the above rule-making proposals and the unfortunate and unnecessary potential use of Uniform and Deceptive Trade Practices Act principals to otherwise legitimate processes at BancorpSouth. I strongly join in the comments of Mr. Bateman. I likewise join in the comments of our General Counsel, Pat Caldwell, who is likewise commenting from a legal perspective on the inappropriate use of UDAP, and his urging that alternative means exist through other regulatory structures to address concerns. While I have read and concur with the premise of Mr. Caldwell in his letter concerning the overall need for more targeted "cures" via other regulations, like Regs E, DD, or CC, "things are not broken" at BancorpSouth. Thus, while we stand ready to abide by more "bright line" regulatory requirements, at least at BancorpSouth and for its customers, even non-UDAP new requirements are not only unnecessary, but if invoked, a substantial lead time to implement same is necessary. Therefore, I offer the following specifics linked to the UDAP proposal as it applies to overdrafts and the Reg DD corresponding proposal.



1. The payments infrastructure is an intricate system that has been built over the course of decades. The driving factors have always been efficiency and customer convenience. As we all know, if the customers do not use a certain payment type, there is no way for it to become efficient. Innovation in payment processing has provided significant benefits to consumers. Just a few obvious examples are online bill payment, debit cards and online/electronic account transfers. Customers used to have the expense and headache of buying checks, mailing bills, and going to the bank to move money from one of their accounts to another. A vast majority of customers take advantage of these innovations.
2. By taking the path of “unfair practices” in the proposed changes, innovation will be stifled. Historically, the customer has held the responsibility to initiate the transaction therefore the responsibility to know if they have or should have (example - ACH draft authorization is the customer assuming they will have the funds each month for the draft) the funds in the account. The proposed changes purport to eliminate customer responsibility.
3. The NSF/OD fee has been a punitive fee. For most customers, this fee incenses them to remember their responsibility.
4.
 - A. The section in the proposed changes related to debit card transactions in which the bank does not have the opportunity to 'authorize using customer balance' is a concern. Why would the bank be in the position to take all of the risk and the customer have no responsibility?
 - B. The “stand-in process” was created because customers demanded the ability to use their atm/debit card at any time and banks were agreeable to take the risk knowing the business model included customer responsibility. Removing customer responsibility changes the business model. This may lead to changes in the process that create customer inconvenience. As a majority of the customers never overdraw their account, this inconvenience is not fair to them.
 - C. The infrastructure to support the electronic network required to authorize and process debit card transaction has occasional issues which create disruptions to service. The merchant, processors and banks have built a 'stand-in' mechanism to support these disruptions. The 'stand-in' process provides limits for both PIN and signature authorizations. Due to these disruptions, actual account balances would not be available and therefore “opting out” would not be available.
 - D. Removal of the stand-in process would create significant negative customer service issues.



5. The “partial opt-out” appears to create an even more confusing process. By using the “unfair practices” reg, will AG's, etc., begin to attempt to set their own set of payment types for “opt-out,” who will determine whether future payment types should be available for “opt-out.”
6. Partial opt-out will be confusing to customers. As a practical matter, it would be extremely costly and impractical for us to offer partial opt-out rights and to distinguish between credit holds and purchases. Lending institutions, current payment systems and information systems do not permit these distinctions.
7. The question also becomes the ability to do a customer-specific versus company-wide implementation; either, even if feasible, obviously being expensive and time intensive.
8. Debit card signature authorizations do not always occur, merchants may set floor limits which do require an authorization, therefore the customer would not have the option to opt out of the transaction.
9. Many customers utilize their debit card to securely pay for recurring services (example: monthly cell phone bill). As a debit card can be replaced by simply destroying the old card and obtaining a new card, customers prefer to use debit cards rather than provide their bank account number. These recurring transactions do not provide the option for the customer to opt out each transaction.
10. We recommend the Board eliminate the requirement for account balance disclosure at non-owned ATMs. This is not something that the account-holding institution can control. Data fields available for transmitting balance information to another institution’s ATM will essentially include multiple balance fields, but the account-holding institution cannot control how the institution owning the machine may display information with any form of prominence indicators. If potential problems exist with balances that appear on receipts after a withdrawal is made at another institution’s ATM.
11. The Sample Disclosure needs significant work. While the proposal leaves it optional for the bank to add the “bounced” check scenario consequence, if UDAP does not go away, we will be at risk by not having a “bright line” regulatory-approved sample in this regard, as well. This also ignores the responsibility detailed in several points above which must be added to the mix. An informed consumer cannot be more guided if not given the consequences of the two options. Thus, a revised B-10 Opt-Out sample form, “redlined” from your model, and drafted in consultation with our legal counsel, is attached.



12. While in the attached redraft, we do not attempt at this point to redefine “overdraft services” in the opt-out form, we are greatly concerned that this will come across sounding like the equivalent of one of the previously criticized marketed-type programs. We believe our customers may think of overdraft “services” as some kind of formal program which BancorpSouth has not had and does not plan to implement. Since the form requires us to tell our customers to explore other options, likewise, the phrase “overdraft services” could be incorrectly construed by our customers to include the other means of addressing overdrafts, for which there are qualification requirements, i.e., a line of credit. These alternative type services, while options, are not even the subject of any of the proposed rules.

As a result of these concerns and hurdles, it may force BancorpSouth to do the unnecessary choice of simply figuring a way to decline to accept any overdraft. It would have many an unintended consequence. Apparently, there are some egregious practices at some institutions which warrant targeted, case by case enforcement or bright lines rules to prevent such practices. If UDAP is the only solution for such more egregious practices, usually for marketed overdraft programs, BancorpSouth has no opposition to same. Yet they need to be bright line and specific, however, for example, requirement of disclosure of true balances at ATMs.

BancorpSouth *does* provide alternative means to address overdrafts: lines of credit, a link to a credit card or savings account. This in and of itself serves as ready examples of how a consumer can easily and reasonably avoid overdraft fees (other than the obvious, “balance your checkbook”). Selecting one of these products, one of our other account packages, or for that matter, selecting another bank that the consumer believes offers a more favorable mix of features or prices than that offered by BancorpSouth is a way to “avoid” fees.

We desire to retain our customers and do not want the latter choice to occur. But to claim that a consumer cannot avoid something and calling it “substantial injury” when they can simply go down the street to another bank cries out all the more to focus the current efforts on bright line, specific, and existing regulatory rules, forms, disclosures, and structure and use those regs to strike the appropriate balance of banking interests and consumer responsibility.

Customers can change banks at any time for any reason - - *and do*. Our bank competes for new customers everyday and competes to retain existing customers. Losing a customer is costly in terms of the outlay spent on attracting a new customer, therefore, we like to think that we serve as an alternative to the “marketed program” institutions. Yet, if UDAP is invoked, our more traditional, though automated, service that we do provide will likely end up “caught up in the net.” That would be unfortunate, indeed.



BancorpSouth[®]

Sincerely yours,

A handwritten signature in black ink, appearing to read "Jeff Jagers".

Jeff Jagers
Senior Vice President

Attachment

B-10 OVERDRAFT SERVICES OPT-OUT NOTICE SAMPLE FORM

We may provide overdraft services for your account. Whether we do so, or continue to do so is within our sole discretion. This means that if there is a debit, that is, a charge to your account, when your account does not have sufficient funds, we may pay your overdraft.

There are fees associated with our overdraft services:

- We will charge you a fee of \$ _____ (an OD fee) for each overdraft item or transaction that we pay, including ATM withdrawals, debit card purchases, other electronic forms of payment, such as monthly bill drafts, checks, and in-person transactions.
- The current OD fee for each item that we pay into overdraft is \$ _____. This is the same fee amount as when we return an item (NSF). We may change this fee by sending you notice as part of our Account Information Statement.
- We may charge you this fee even if your overdraft amount is as low as \$ _____.
- [We may also charge you additional daily fees of \$ _____ for each day your account remains overdrawn.]
- [We can charge you a maximum of \$ _____ in fees per day and \$ _____ per statement period for overdrawing your account.] [There is no limit to the amount of fees we can charge you for overdrawing your account per day/per statement period.]

You have the right to opt out of this service and tell us not to pay any items or transactions into overdrafts. If you do, however, you may still have to pay an NSF fee if you make transactions that are returned unpaid. ~~You also have the right to tell us not to pay overdrafts for ATM withdrawals and debit card purchases, but to continue to pay overdrafts for other types of transactions.~~ In addition to the NSF fee, consequences of opting out of our paying items into overdraft (in our discretion) may include your payment being denied, or returned unpaid ("bounced"), and you will incur our NSF fee, as well as a fee from the payee. If such an item "bounces," you may also be subject to civil or criminal laws concerning "bad checks."

We also offer ~~less costly~~ other overdraft payment services that you may qualify for that may be less costly, including a line of credit. To opt out of our overdraft service, or to obtain information about other alternatives, call us at 1-800-XXX-XXXX or write us at [insert address].