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**Proposal:** Regulation AA - Unfair or Deceptive Acts or Practices

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**Comments:**

By Electronic Delivery 7/21/08 Jennifer J. Johnson Secretary Board of Governors of the Federal Reserve System 20th St. and Constitution Avenue, NW. Washington, DC 20551

regs.comments@federalreserve.gov Regulation Comments Chief Counsel's Office Office of Thrift Supervision 1700 G Street, NW., Washington, DC 20552 ATTN: OTS-2008-0004 Re: FRB Docket No. R-1314; OTS Docket No. OTS-2008-0004; Unfair or Deceptive Acts or Practices; 73 Federal Register 28904; May 19, 2008 We are a \$285 million community bank located in Bastrop, Texas. We have served the people of our county since 1889 and have 120 dedicated and hardworking employees. The Federal Reserve Board along with the Office of Thrift Supervision and National Credit Union Administration has proposed rules intended to prohibit unfair credit card and overdraft protection practices. The proposed rules, among other things, requires institutions to provide consumers with notice and an opportunity to opt out of the payment of overdrafts, before any overdraft fees or charges are imposed on consumers' accounts. Under the proposal, banks would be prohibited from charging overdraft fees unless the customer has been given the opportunity to opt out of having fees charged for overdrafts. The bank could still

return the items and charge an NSF fee, and could decline to approve debit card transactions. This would be a horrible injustice to America's consumers who would end up paying additional returned check charges at the merchant level and possibly even going to jail. This would be a horrible injustice to America's banks that would be wasting valuable resources, paper and postage sending out another nonsense notice that would be ignored by consumers. Many never even look at their bank statement – much less an opt-out notice that will be viewed as fine print gibberish. This is another example of the government trying to fix a system that is not broken and that is a good service to our customers providing a financial and embarrassment safety net. Overdraft fees can be avoided by consumers without requiring a specific advance notice and opt-out followed by repeated opt-out reminders. Overdraft fees can be avoided by a very simple, tried and true device – a check register. Consumers have used this device for years to keep track of their checks, deposits and debit card transactions and, if the addition and subtraction is done correctly, it works extremely well. At our bank we even give away free calculators to make sure “everything adds up.” We also offer automatic transfers from customers' other accounts to avoid overdrafts. The overdraft protection program we offer today is appreciated by our customers. It provides them with the piece of mind that if they make a mistake, they will not have a check bounced – an expensive, embarrassing and illegal proposition. We observe the 2005 Interagency guidance and best practices and by doing so it should not render our program unfair now. The proposal for a partial opt-out of ATM and debit card transactions, while retaining coverage of checks and ACH is an even worse idea. It is technically not feasible with our processing system, is complex, and is outdated because it does not recognize the overwhelming success of debit cards. World-wide, debit card usage now eclipses paper checks. It would never make sense to the millions of folks who use their debit cards instead of checks. It just does not make sense that a bank may pay non-debit card transactions such as ACH and checks, but deny debit card transactions that overdraw the account. The proposal does not define “point of sale transaction.” It may include not only “card present” transactions but all debit card transactions. Folks use their debit cards for secure online purchasing and for paying reoccurring bills such as their mortgage payments and telephone bills. These transactions are not distinguishable from “card present” transactions, so how would we know we could pay those transactions and not “card present” transactions? The proposal covering debit holds is far too complicated to be implemented or for consumers to understand. The problem is one that involves gas stations, hotels, rental car companies, restaurants and card networks and cannot be solved by putting the burden only on banks who are acting in a prudent manner to assure funds are available for

authorized transactions. As we enter tougher economic times ahead, consumers will need their community bankers to be there for them, watching their accounts and paying their overdrafts (which we do at our own risk, as many turn up uncollectible and are charged off as a loss). With all the problems facing the regulatory agencies at this time, it seems absurd to be dealing the prospect of sending out another useless, unread disclosure – or in the absence of the disclosure – returning checks on our customers who are honest and just trying to make ends meet. The overdraft proposal is bad for the economy, bad for consumers, and bad for financial institutions. Sincerely, Reid Sharp President/CEO First National Bank of Bastrop P.O. Drawer F Bastrop, TX 78602 (512) 321-2561