BANK MIDWEST

1111 Main St. • P O Box 26458 • Kansas City, Missouri 64196-6458
(816) 471-9800 • Fax (816) 472-5668 • www.bankmw.com

July 29, 2008

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

CC:
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 (UDAP); 73 *Federal Register* 28904;
May 19, 2008

I am writing in regard to the proposed UDAP regulations and the adverse impact it would have on consumers as well as financial institutions. There are many operational and technical obstacles to the proposed regulations that would render implementation very costly and in some cases impossible. While these obstacles are significant, equally as troubling are the underlying assumptions that form the basis of the proposed regulation.

A core assumption of the proposed regulation is that consumers are currently being subjected to unsafe banking practices through the processing of overdraft payments. The regulation further assumes that consumers are unable or unwilling to manage their banking and financial affairs without further regulatory assistance. Our experience shows that the vast majority of our customers rarely if ever create an overdraft. The minority that do overdraw their account generally are fully aware of what they are doing and would rather see their account fall into overdraft status rather than have their transactions returned. I believe the proposed regulation fails to recognize that consumers are fully aware of how they are using their bank accounts are doing so in a very intentional manner. In addition, consumers know they have a choice regarding how they use their bank account and where they bank. They are free to move their banking relationship if they are unhappy with the manner in which their current bank processes demand deposit activity.

The provisions of the proposed regulation requiring that consumers be continually asked if they want to opt out of having the ability of overdraw their account and the requirement to aggregate overdraft fees on periodic statements seem to imply that consumers do not currently understand their monthly account activity and do not review the details of their account statements. Bankers and bank regulators both rely on the fact that customers do in fact review their account activity and this assumption is a fundamental internal control against fraud. It is reasonable to assume that if customers are reviewing their account activity for fraud purposes they also see and understand when they create an overdraft and the resulting fees that are incurred. Requiring customers to be given the option of opting out of the ability to overdraw their account after each period in which they incurred an overdraft fee would be a disservice to the customer. The decision of opting out should not be made without full disclosure and consideration of the impact of this decision. It is not practical to have this discussion with customers on a periodic basis. It would be irresponsible to ask a customer to opt out without the benefit of this discussion.

Other obstacle or problems with the proposed regulation include, but are not limited to:

- Consumers have accepted and fully rely on the convenience of accessing their banking accounts through many different channels, which included: traditional check writing, point of sale electronic transactions, ATM's, ACH debits and credits and on-line checks and transfers. The consumer views these different channels as simply a means to access funds in their bank accounts. Consumers would be very confused and unhappy if there were different rules impacting how they could use each channel for purposes of completing a transaction. Requiring the option of opting out of the ability to create an overdraft for certain channels would require significant changes to operating systems and processes on the part of banks. In addition this requirement could slow the growth of electronic transactions, as consumers would have less confidence in their ability to complete these transactions.
- The proposed rules regarding debit holds are very complicated and it would be unreasonable to expect consumers to understand them and how they would impact their bank accounts.
- Requiring systematic changes in order to present overdraft fees on an aggregate basis would result in a significant expense for banks that seems to accomplish very little in terms of providing new information to consumers.
- It would not be technically feasible to give individual customers the ability to select the payment presentment and clearance process they want applied to their account. Bank clearance systems are based on a number of factors for each payment channel. If a customer is dissatisfied with the clearance processes of their current bank they are free to choose another bank.

Finally, with all of the current turmoil in the banking industry, which has put a significant premium on bank capital, this is an inappropriate time to force banks to incur significant new expenses to comply with these regulations, which will likely have little impact or benefit to consumers. The proposed regulations underestimate the consumers' ability to choose and understand how they are using their bank accounts.

Based on our experience we absolutely know that our customers would rather have their accounts go into overdraft status and incur a fee rather than see their transactions rejected and still pay a bank processing fee as well as incurring a merchant fee and also deal with all of the negative repercussions being a bad check writer.

Our experience shows that if we return a customers check because of insufficient funds, we can generally expect the consumer to close the account and stop banking with us.

The proposed regulations appear to be far too reaching and very likely would have negative consequences that would be much greater than the intended benefits. In 2005 inter-agency guidelines were issued which mandated new disclosures for banks that advertise or promote an overdraft program. It is unclear what has happened in the industry since the issuance of these guidelines that triggered a perceived need for such drastic new disclosures and requirements. It seems a more measured approach would be to allow customers to opt out of the ability to create an overdraft at the time of the account opening when all relevant factors can be considered. The additional disclosures and requirements of the proposed regulations should only be considered at a later date if and when there is a real and known need for such changes.

Sincerely:

Timothy M Connealy

Timothy M Connealy
Chief Operating Officer
Bank Midwest