

 **EMPRISE BANK®**

257 North Broadway
P.O. Box 2970
Wichita, Kansas 67201-2970
316-383-4400

July 25, 2008

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

RE: Docket No. R-1314
Unfair or Deceptive Acts or Practices

To Whom It May Concern:

I would like to comment on the proposal regarding the overdraft services contained in Unfair or Deceptive Acts or Practices. Emprise Bank has been offering an overdraft coverage service since 2001 under the Strunk and Associates guidelines which complies with the 2005 interagency guidance and best practices. Since initiating the program we have received numerous letters from our customers thanking the bank for covering their overdrafts and working with them when they were having financial difficulties.

Year to date 22.37% of our customers have taken advantage of the overdraft coverage at least once. The analysis of overdraft services published in the Federal Register, Vol 73, No. 97, Monday, May 19, 2008 states *"many consumers may be automatically enrolled in their institution's overdraft service, without having been given an adequate opportunity to opt out of the service and avoid the costs associated with the service"*. This is an unfair statement when you consider that if the check was returned due to insufficient funds the consumer would have also incurred the merchant fees associated with a returned check and/or reclearing fees that can amount to triple the cost of what we would have charged by paying the item the first time and the embarrassment and time involved with contacting the merchant to arrangement final payment.

Requiring banks to receive "affirmative" consent prior to allowing overdraft coverage to be used at a point-of-sale would be an inconvenience and embarrassment to the customer. Emprise customers and the customers of many other financial institutions are provided notice of their qualification for overdraft coverage and their right to opt out. Many customers regularly manage their accounts to avoid overdrawing them. If consumers had to take the time to request the service, it would place an unnecessary burden on consumers and financial institutions.

Limiting the use of overdraft coverage to checks and ACH transactions and requiring institutions to allow partial opt-out for debit card transactions is technically not feasible at this time. Therefore financial institutions and transaction processors would incur significant system changes with the proposed rule. Our core system software provider and debit card processor are currently evaluating the time and expense should this burdensome requirement be imposed. Additionally for those customers who use their debit card for recurring payments, the ability for them to opt out if there were insufficient funds in their account, at the time the payment is presented, would be virtually impossible.

At the very least, exceptions should be in place to allow financial institutions to impose a fee or charge for paying an overdraft as mentioned in the proposed rules, even if the consumer has opted out of the institutions overdraft coverage.

The proposal on debit card holds is far too complicated to be implemented or for consumers to understand. As opposed to the financial institution being penalized for managing their risk to ensure funds are available for authorized transactions the onus needs to be on the merchants and card networks to be timely with their presentments.

The processing order proposal would be a micro-managing disaster because we do not always "know" in a batch environment which item came in first. There are various orders of processing across the country for transactions based upon time zones, cutoffs of processors, transportation requirements, and time of day when transaction was initiated. Allowing customers to choose an alternative payment processing order would be absolutely impossible to manage due to system limitations. Financial Institutions are able to post large volumes of transactions daily, but it requires standardization of payment order for automation. If financial institutions are required to make significant investment in new software to support personalization of payment order the cost of the software would need to be passed to the consumer because financial institutions operate on very small margins.

If such a burden is placed on financial institutions it would be very important that we have 18 to 24 months time for development and testing of systems to ensure consumers do not have undue negative impact from poorly designed software and processes the result of insufficient design time.

Sincerely,



Cynthia Fleming
Vice President

Cc: Representative Todd Tiahart
Senator Pat Roberts