



# South Carolina Bankers Association

August 4, 2008

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

Regulation Comments  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street, NW  
Washington, DC 20552  
ATTN: OTS-2008-0004

Re: BOARD Docket No. R-1314; OTS Docket No. OTS-2008-0004;  
Unfair or Deceptive Acts or Practices; *73 Federal Register* 28904;  
May 19, 2008 (UDAP Proposal)

Ladies and Gentlemen:

The South Carolina Bankers Association (SCBA) provides these comments on the rule proposed by the Federal Reserve Board (Board), and the Office of Thrift Supervision (OTS) covering Unfair or Deceptive Acts or Practices (UDAP) involving overdraft protection service fees. SCBA represents almost 100 South Carolina banks and is pleased to offer these comments on their behalf.

## **Overdraft Fees – Opt-Out Provisions**

South Carolina banks have always exercised discretion to cover overdrafts for good customers and have developed safe and sound programs that extend that accommodation to virtually all of their customers. However it must be remembered that these programs are an accommodation based on the banks' exercise of risk-based discretion—there is not a contract to pay overdrafts.

As such, customers understand that it is their responsibility to systematically review and balance their accounts—and the present fees provide both an incentive to do so and a user charge when they inadvertently fail to do so. Overdraft fees are not an injury to the customer; instead they are the price for the bank's accommodation in fulfilling a payment choice, rather than denying a transaction. In many instances, customers are saved from paying merchant fees for refused items and avoid being identified as unreliable payors by community merchants because banks provide them this accommodation – or worse yet, facing criminal charges as writing bad checks is a crime in South Carolina.

Finally, overdraft fees can be avoided by customers without requiring a specific advance notice and opt-out followed by repeated periodic opt-out reminders as proposed by the regulations. Customers regularly manage their accounts to avoid overdrawing them and

banks offer overdraft options today without the burdensome compliance exercise of a formal one-size-fits-all opt-out requirement.

### **Partial Opt-Out of ATM and Debit Card Transactions**

The proposal for a partial opt-out of ATM and debit card transactions, while retaining coverage for checks and ACH, is problematic since it is not technically feasible under many South Carolina banks' systems. Additionally, it would adversely affect customers who use debit cards for recurring payments.

Some South Carolina banks do not have the technology that allows differentiation between debit card transactions and ACH or checks at the customer account level and some South Carolina banks do not have the technology that allows differentiation between debit card Point-of-Sale transactions and debit card recurring payment transactions covering items such as cell phone bills, other utility obligations, insurance premium payments, etc. This means that a partial opt-out for debit cards will be too broad for many customers because an inadvertent overdraft caused by a recurring debit card payment would not be paid for someone who exercised a "partial opt-out."

Affording a "partial opt-out" for debit cards may confuse customers that somehow they will be entitled to have check and ACH overdrafts paid even though their account agreements make it clear that paying any overdrafts is always up to the discretion of the bank—and there is no contractual obligation to do so.

### **Debit Holds**

Although the SCBA and South Carolina's bankers are sensitive to the consumer's concerns with debit holds (our members and employees are consumers also), this problem is really one that involves merchants and the card networks and cannot be solved by putting the onus only on banks who are simply acting in a safe and sound manner to assure funds are available for authorized transactions. In fact, merchants and card issuers such as Visa are presently working on market-based solutions to this problem. The SCBA urges the Board and OTS to let the market institute these solutions instead of implementing a system that could complicate matters further.

### **Conclusion**

In summary, the SCBA asks the Board and the OTS to conclude that the banking industry's overdraft practices are not unfair to consumers. Thank you for the opportunity to submit these comments.

Respectfully submitted,



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Senior Vice President and Counsel