

July 17, 2008

Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve Board  
System 20<sup>th</sup> Street and Constitution Ave.  
NW Washington, DC 20551  
Via e-mail: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

RE: Docket No. R-1314, Proposed changes to Regulation AA (UDAP)  
Docket No. R-1315, Proposed changes to Regulation DD (TISA)

To Whom This May Concern:

I am writing concerning the Board's proposed amendments to Regulation AA, which implements the Unfair and Deceptive Acts or Practices (UDAP) rule, as well as Regulation DD, which implements the Truth in Savings Act (TISA). As the Branch President of First Security Bank, West Yellowstone, MT., a locally owned community bank system with \$490 million in assets, I am very concerned about the impact of the proposed changes to both my financial institution and the customers we serve. We work hard to take good care of our customers and our community, and have achieved an "Outstanding" CRA rating for our efforts.

At First Security Bank, all overdrafts are handled entirely on a discretionary, ad hoc basis. We have handled overdrafts in this manner for the past 90 years, and it has served the bank and our customers well. In addition, we offer traditional overdraft lines of credit, made in accordance with all Reg Z (Truth in Lending) requirements. Lastly, we also establish automatic transfers (sweeps) between accounts to accommodate customers who wish to have funds moved from another account to cover overdraft items. This service is maintained strictly within the confines of Reg D transfer limitations. We strive diligently to meet the needs of our customers in a fair and compliant manner.

Despite these efforts, however, we will effectively be penalized under the proposed changes. Even though we have purposely avoided offering a "bounce protection" overdraft service program, we will be forced to behave as if we have one. The February 2005 Joint Guidance recommended best practices concerning overdraft service programs, which excluded ad hoc overdraft payments. It made good sense. Those institutions who were not delving into the new and questionable overdraft protection programs should not be made to address practices they did not conduct. The Board even stated that its intention was to "avoid imposing compliance burdens on institutions that pay overdrafts infrequently, such as institutions that only pay overdrafts on an ad hoc basis."

However, both the UDAP and TISA proposals make no such exclusion. In fact, the proposed definition of “overdraft service” in 12 CFR 227.31(c) is “a service under which an institution charges a fee for paying a transaction... that overdraws an account. The term covers circumstances when an institution pays an overdraft pursuant to a promoted program or service or under an undisclosed policy or practice and charges a fee for that service.” The fee our bank charges a customer is not a fee for providing an overdraft service or for paying an item. It is a non-sufficient funds fee charged because the customer overdraw their account. This distinction goes beyond semantics. The Agencies are concerned about service fees on overdraft programs for which consumers are automatically enrolled and encouraged to use. In contrast, our fee is the consequence of presenting an item on non sufficient funds. If anything, it represents an encouragement NOT to overdraw an account.

Because this poorly worded definition has been written so broadly, it could be interpreted that ad hoc payments represent an undisclosed policy or practice. Prior to the “bounce protection” issues of late, ad hoc payments were the norm, were widely accepted, and caused no trouble. Why are they now suddenly just as evil as the problematic automatic overdraft service programs?

I am hopeful that the Agencies’ failure to exclude traditional ad hoc payments is merely an oversight. Contrary to the sentiment expressed in the proposal, there are still banks that choose to make individual decisions every day on their overdrafts. Please don’t lump us in with the “majority” of banks who automate their processes. By forcing us to offer a confusing opt-out to our customers, you establish an immense new burden on our operations, and create a true disservice for our customers. I fail to see how the opt-out concept would help our customers.

Let’s imagine the proposal passes, we offer an opt-out, and the consumer exercises it. They subsequently bounce a check and we return it, per their opt-out request. We will still charge a fee (since the item did try to clear on non sufficient funds), and the customer will also likely incur a fee from the recipient of the check. The consumer has received no relief. In fact, they are more detrimentally harmed than if they had never opted-out in the first place. Had they done nothing, we may have honored the item (very likely if it was an inadvertent overdraft), and the customer would not have received a returned check fee from the recipient.

Please reconsider the scope of the proposed definition of “overdraft service”. Please include “ad hoc basis” payments as an exclusion from the definition (joining lines of credit and automatic account transfers as exceptions). Please don’t punish our bank for conducting business in the same upfront, fair, and ethical manner we have been employing since 1919.

Respectfully, Mike Polkowske  
Branch President  
First Security Bank  
PO Box 550  
West Yellowstone, MT 59758  
Ph: (406) 646-7646  
Fax: (406) 646-4977  
[mikep@ourbank.com](mailto:mikep@ourbank.com).