

July 31, 2008

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

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

Mary Rupp, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

RE: Proposed Rules for Unfair and Deceptive Acts or Practices

Dear Ms. Johnson, Mr. Bowman, and Ms. Rupp,

Southside Bank appreciates the opportunity to provide comment on the proposed rules on unfair and deceptive acts or practices with respect to deposit account overdrafts and the proposed regulations under the Truth in Savings Act on deposit account overdrafts that were issued on May 19, 2008.

Southside Bank is a community-focused financial institution that offers a full range of financial services. These services include consumer loans including overdraft lines of credit; deposit accounts with discretionary overdraft privilege available; credit cards; ATM's; and an array of electronic services available through our website. Our customers are our most important asset and our mission is to understand and provide for our customers current and future financial service needs. We currently have 44 banking centers and 45 ATM locations. Our goal has always been to provide quality value driven financial products and services to the local communities that we serve. We have been in the business of serving the financial needs of our community since 1960 and we believe our success comes from an accurate understanding of what our customers need and want and hope that our perspective will be beneficial to you.

We feel that the current proposed rules will have a significant adverse effect on our institution and will not provide additional benefits to our customers. Our financial institution currently offers a discretionary overdraft program that fully complies with the best practices outlined in the interagency guidance issued in 2005 including the right to "opt out" of the program. We also offer a formal overdraft line of credit product. Bank staff are trained to inform customers of both available overdraft services and how the terms, including fees, for these services and products differ.

Most of our customers do not take advantage of the overdraft line of credit even though it is less costly because they don't intend to have overdrafts. For those that take advantage of our discretionary product and do not opt out, our experience is that they want this service and feel good about the protection it offers. Customers can change banks at any time for any reason--and do. We believe that if this product was harmful to our customers or deceptive in any way, they would not continue to do business with us. Overall, our customers successfully manage their accounts in a manner that avoids overdrafts. Customers who overdraw periodically are aware of the consequences of their conduct (assessment of the overdraft fee) and are acting in accordance with their preferences. They do not need repeated notice that they can opt-out of the convenience they are choosing to accept. We are always available (and make a point of reaching out) to work with customers who would benefit from alternatives in managing their transaction activity. Customers currently receive reminder mailings each time an overdraft item is paid and have the right to opt-out at any time.

After careful review of the proposal, we would like to offer the following comments.

1. **Opt-out requirement.** We agree that customers are entitled to opt-out of any service they do not want and as stated before we currently offer our customers this option. We believe the proposed opt-out requirements are unnecessary, will create a substantial compliance burden to the bank and will quite possibly create confusion for our customers since failure to opt-out suggests an entitlement that does not exist given that the underlying service is at all times a discretionary accommodation.
2. **Partial opt-out.** While we offer consumers the ability to opt out of the payment of overdraft fees for all types of payment as a matter of customer choice, we do not see why the offering or the failure to offer an opt out for the payment of certain types of overdrafts where the charge for returning the transaction would be equal to or higher than the charge for paying the overdraft is in any way unfair or deceptive. The consumer is simply not harmed by the payment of the overdraft. Failure to pay the overdraft would ordinarily result in greater costs to the consumer due to fees charged by the merchant for returned items.

We find consumers have been satisfied with the access to electronic channels (ATM and debit cards) as part of the overdraft service. The percentage of electronic items processed increases annually while paper debits are declining in our institution.

Further more, treatment of debit card and ATM transactions different from checks and ACH is technically very difficult and very confusing for the customer to understand.

3. **"Holds" on debit card transactions.** Accommodating debit hold requirements would be programmatically difficult as well as potentially inaccurate. Some pre-authorizations never become settled, thus we would be returning checks based on inaccurate data.
4. **Transaction clearing practices.** Defining payment order as smallest first can be troublesome. Our bank pays electronic items first, then by check number order. This gives the customer the greatest control over how items are paid, not the bank. By paying items in check number order, the consumer can write checks in the order they want them paid.

5. **Overdraft protection fees are not injuries.** Charging someone the same fee for paying a check (or ACH or recurring debit card charge) as for refusing payment when funds are not sufficient doesn't support the position that the overdraft fee causes "substantial consumer injury".

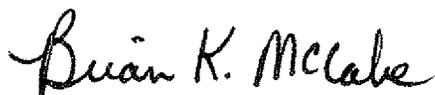
6. **Overdraft services provide benefits to consumers that outweigh the costs in fees.**

Paying items rather than refusing items helps consumers avoid merchant fees and adverse credit experience. If checks are returned, merchants may be less willing to accept checks from those customers in the future. Overdraft fees have a value in terms of signaling the cost of certain behaviors. After all, people are not supposed to be encouraged to overdraw their accounts. People are responsible for managing their financial affairs—and it is not unfair to expect that they do so. Knowing what moneys are in your account has always been the responsibility of the accountholder.

Finally, we do not feel that our discretionary overdraft program is unfair to consumers. Our experience and day-to-day interactions with customers confirm that our customers understand how the product works, manage their accounts well, and consider it a valuable service that is needed and appreciated. Overdraft privilege is enjoyed by the consumer because it gives them piece of mind and potentially saves them money by not having to pay returned check charges and being reported to credit bureaus and check collection agencies. Additionally, we feel it benefits the merchants and general payment process by reducing the number of returned NSF checks and the need to collect these checks. We further believe that the imposition of the current proposal will put banking agencies on the path of product feature micro-management at the expense of consumer choice and convenience.

We greatly appreciate the opportunity to comment on this very important issue and hope that this commentary serves useful.

Sincerely,

A handwritten signature in cursive script that reads "Brian K. McCabe".

Brian McCabe
Executive Vice President