

July 31, 2008

Jennifer J. Johnson
Secretary
Board of Governors of the Federal
Reserve System
20th Street and Constitution Ave, NW
Washington, DC 20551
regs.comments@federalreserve.gov

Regulation Comments
Chief Counsel's Office
1700 G Street NW
Washington DC 20552
Attn: OTS-2008-0004

Re: FRB Docket No. R-1314; OTS Docket No. OTS-2008-004; Unfair or Deceptive Acts or Practices;
Federal Register 28904; May 19, 2008

Ladies and Gentlemen:

This letter is written to provide First Hope Bank's view point on the proposal covering "Unfair or Deceptive Acts or Practices" involving overdraft protection service fees. The proposed guidance undermines the premise that the best practice to avoid overdraft fees is proper account management. It appears the intent of the regulation is to protect consumers from unfair practices. However, it is permitting the consumer to drive the operational functionality of banks in the payment of overdrafts. This is not the best method to protect the customer. Customers should exercise proper account management.

Currently First Hope Bank does not offer a formalized overdraft accommodation program. However, we have had some experience with such a program and continue to stay informed on the ever changing topics related to an overdraft consideration feature for our accountholders. During the process of reviewing overdraft protection services, we offered an initial opt-out notice to customers at the time of account opening. Our bank associates are trained to maintain an ongoing and open dialogue with our customers about the services they use and how we can assist them with their financial needs. To offer multiple opt-out notifications to customers seems repetitive and a misuse of manpower and supplies. A customer who continues to use and pay fees for overdraft protection services demonstrates their acceptance of the terms and conditions. Rather than use the overdraft protection program to over-extend themselves financially, they need to understand their financial position and what they can afford to spend. This is not the Bank's responsibility.

A customer has a choice to access funds via check, ACH payment, or with an ATM / Debit card. A partial opt out of an overdraft accommodation program may confuse customers by leading them to believe that they may have check and ACH overdrafts paid even though the account agreement clearly states that the payment of an overdraft item is still the bank's decision. Participation in an overdraft accommodation program does not guarantee payment of any item.

More importantly, a partial opt out is not feasible based on the way the merchant processing industry operates today. Additionally, the technology within the bank would not be able to support this function. There would be a substantial cost associated with developing such a sophisticated program and it would involve not only our core processor, but our EFT processor as well. This would be an expense to the bank. Typically, enhancements to a core processing system could take 18-24 months for development, testing, and implementation.

Payments as they stand today provide banks with sound risk management and are designed to be fair to customers. Holds are placed on funds for debit card authorization for both the merchant's and the bank's protection. Banks need to make decisions for transactions that are settling on a day to day basis for overdrafts caused by debit card authorizations. For example, merchants in the hospitality industry should alert customers that a hold may be put on accounts if they use a debit card at check in. The same applies to gas purchases however card system rules are evolving to address authorizations for gasoline purchases at the pump to make them virtually real time. With this knowledge, customers should be able to manage their funds to avoid overdraft scenarios.

The Bank assessed the order in which items post to a customer's account. We examined the varied risks banks face for handling different payment channels. For example, ATM withdrawals and Debit card purchases can not be returned to the merchant for an overdraft because the funds were available at the time the transaction was authorized. Therefore, these items are paid first. It is not appropriate to give individual customers the right to alter the bank's clearance process as it affects the operation of our business.

In conclusion, overdraft consideration programs were not intended to be an unfair and deceptive practice. They were designed to aid banks in streamlining the discretion of overdraft payments using a risk based model that will be fair to consumers as well as protect the bank from potential loss.

I support the ABA's position on this matter and I would like to thank you for the opportunity to raise our concerns about the proposed guidance. If you have questions concerning these comments or would like to discuss the comments further, please feel free to contact Ms. Cara Quick at (908) 459-4121 X4100.

Sincerely,

Norman E. Beatty
Chairman of the Board
Chief Executive Officer
And President

cc: Lori Chin, Assistant National Bank Examiner, OCC
Senator Robert Menendez (D-NJ)
Congressman Scott Garrett (R-NJ 5th District)
Richard Reise, American Bankers Association
John E. McWeeney, President and CEO, New Jersey Bankers Association