EvergreenBank

July 31, 2008

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

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:

I am writing on behalf of EvergreenBank to share our views regarding issues in the Proposal.

To begin, I find it most troubling that the analytical underpinnings of the proposal's assertion is that customers cannot be expected to know with perfect certainty their precise account balance at all times and consequently should be absolved from responsibility for managing their accounts or conducting their transactions. This premise is anathema to the fundamental assignment of responsibilities that have been established by federal and state payments law.

The banking industry has always exercised discretion to cover overdrafts for good customers. Today, banks have developed safe and sound programs that extend this discretionary accommodation to the vast majority of our customers. Bank overdraft accommodation practices are successful because they provide desirable back-up for customer payment decisions, and they are sustainable because people want the bank to recognize that when they inadvertently overdraw their account they can be trusted to make it right and are prepared to pay for the bank's accommodation.

Right to opt out of overdraft services/other concerns

- The Proposal asserts that *"overdraft services are unfair if consumers do not have a reasonable opportunity to "opt out"*. Also under the Proposal the government would have the authority to *"prohibit banks from charging fees unless the consumer has an*

1111 Third Avenue
Suite 100
Seattle, WA 98101-3210
(206) 749-7300 or (800) 331-7922
www.EvergreenBank.com

opportunity to opt out". Under Regulation DD financial institutions are required to provide account disclosures to every consumer. These disclosures state the bank's right to pay or not pay an item drawn on insufficient funds and the associated fees. In addition, (our) overdraft protection program disclosures that are also given to the consumer at the time of account opening include an "opt out" provision from the OD program. We believe that since the consumer is informed at the time of account opening what the bank's policy and fees are related to overdrawing an account that the consumer has been given a reasonable opportunity to opt out. The consumer has a choice whether or not to open an account and whether or not to overdraw their account. If the consumer, after being given this reasonable opportunity to opt out, chooses to overdraw their account then they should be held responsible for that decision.

- The Proposal asserts that "*consumers suffer monetary harm by paying a fee for a service that, without an opt-out, they cannot reasonably avoid and that is not outweighed by countervailing benefits to consumers*" is grossly inaccurate. Consumers are notified (see bullet point above) in advance that debits may/may not be paid and a fee assessed; therefore taking the risk of being charged if they overdraw their account. Again, a choice made by the informed consumer. Secondly, it is more costly to the consumer to have their (payment) returned to the merchant as they will also incur a return item fee from the merchant and possible collection fees as many merchants now have returned payments sent directly to 3rd party collectors.

- The agencies are asking whether they should consider requiring banks to pay small dollar items before large dollar items allowing consumers to "opt in" to an alternative clearing process by the bank. The proposal also requires banks to provide a "partial opt out" to consumers where they are allowed to choose to have certain transactions paid and certain others declined. Absolutely NOT on both issues! Most bank systems are set up at the global level – not at the individual consumer account level. If consumers were allowed to pick and choose how and when they wanted their debits paid it would deteriorate the integrity of the banking system, not to mention creating a huge administrative nightmare and cost for banks.

Balance inquiries

- Our bank is already following the Proposal's requirements as we feel this is the right thing to do.

The majority of requirements in the Proposal would place undue burden on and significant cost to financial institutions. Don't make it onerous to the banks by removing the discretionary accommodations as it would be much easier for financial institutions to simply return any and all insufficient funds items on consumers' accounts. We don't believe this is in the best interest of the consumer or the banking industry.

Sincerely,

Bob Jennings
Senior Vice President, Retail Banking
EvergreenBank