



*That's my bank!*

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***By electronic delivery***

August 1, 2008

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

Regulation Comments  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street, NW  
Washington, DC 20552  
ATTN: OTS-2008-00004

Re: FRB 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:

We respectfully submit the following comments for consideration of the proposals regarding overdraft services:

Our bank currently provides customers the opportunity to opt-out of overdraft protection services. Customers receive a separate disclosure when opening the account that clearly and concisely explains how the overdraft protection program works, including the methodology for posting transactions, the access through ATM or debit cards, and the fee for using the service. The opt-out option applies to all transactions due largely to the limitations imposed by the complexity of processing systems, but also to prevent any confusion on the part of the customer.

Only a small number of our customers (less than 1.2%) have opted out of the overdraft protection program. Many customers manage their accounts to avoid overdrafts, but want the service should they make a recordkeeping error or need access to the funds. Those who elect to use the service have indicated the associated cost is far less than alternate solutions, such as cash advances, payday loans or other short-term finance amenities in our market.

While bank management does not necessarily object to the subsequent opt-out notification proposal, those reminders will have no real benefit. Based on our experience, customers who do not want the service manage their accounts to avoid overdrawing them. We do have concerns that the subsequent notice could mislead the customer into believing a current fee will be waived despite language to the contrary.

The success of our overdraft protection program stems from delivering a service customers not only want, but understand mainly because of its simplicity. Limiting the opt-out right to ATM transactions and debit card transactions at the point of sale, or requiring a partial opt-out for these transactions, present significant, if not impractical and unmanageable, processing issues. Additionally, it would be impossible to provide "clear" and understandable disclosures of the circumstances that could cause a permissible opt-out exception given the various payment channels, posting sequences, return item deadlines, and merchant settlement practices. Although permissible, failing to meet the customer's expectations will ultimately harm the relationship and leave an impression of deceptive banking practices.

The partial opt-out proposal would adversely affect customers as banks explore more efficient and manageable alternatives within the FTC codified standards. These alternatives would likely involve arrangements outside the definition of "overdraft services" resulting in higher costs to the customer. While radical, customers may even be denied ATM or debit card services, have services cancelled, or be required to open a separate account for these transactions if the opt-out election is made. The term "overdraft services" excludes funds transferred from another account, which appears to provide a loophole.

Bank management has followed the 2005 Interagency Guidelines to enhance a sound banking program that satisfies a service requested by customers for its value. We provide a variety of tools at no charge for customers to obtain their actual balance and manage their transactions to avoid overdrafts. The only charge for our overdraft protection service is the standard fee for returning an insufficient item. Product awareness is a critical factor for customer satisfaction. For this reason, flexible refund practices have been implemented. Given our efforts to meet the regulatory guidelines, the proposed rule seems unreasonable, particularly given the codified FTC standards available to address abusive practices. We believe additional account disclosure requirements may prove more beneficial, and less likely to have an adverse affect on our customers. If the proposed rule is finalized, we ask that the Agencies provide model opt-out forms, especially with respect to the partial opt-out requirements, to insulate the bank against the potential claims customers will have for the permissible exceptions.

Sincerely,

A handwritten signature in cursive script that reads "Allen Mabry".

Allen Mabry  
Compliance Officer