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August 1, 2008

Ms. Jennifer J. Johnson, Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> St. & Constitution Ave., NW  
Washington, DC 20551  
**ATTN: Docket No. R-1314**

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

**Re: Unfair or Deceptive Acts or Practices: Proposal on Credit Card & Overdraft Services**

The Kansas Bankers Association (KBA) appreciates the opportunity to comment on the proposal covering Unfair or Deceptive Acts or Practices (UDAP). Specifically, the proposal addresses certain credit card and overdraft protection practices that it seeks to prohibit. The KBA is a nonprofit organization with 332 of the 334 Kansas banks as our members.

As we review these proposals in very general terms, it appears that there is a very negative presupposition that these services as a whole are harmful to the consumer, and that life before either credit cards or overdraft protection was invented was better for the consumer. As we stated in our earlier comment letter regarding proposed amendments to Regulations Z and DD, these services provide a convenience to the consumer. Consumers who do a decent job of managing their accounts – whether it be the credit card account or the checking account - recognize the benefits of these services. Even those consumers who do not manage their accounts well have benefitted from these services, but find themselves having to pay more fees due to their own mismanagement of funds.

If it were actually possible to turn back the hands of time, would the majority of consumers really be better off?

Our comments will be organized according to topic.

**American Bankers' Association Comment Letter on Overdraft Services Dated July 30.**

We would like to lend our support to the comments of the ABA in its comment letter dated July 30, 2008, regarding the UDAP proposal and overdraft services. We believe that the letter does an exceptional job of relating the general background of overdraft services, and expanding on the general comments above reiterating the fact that overdraft fees are avoidable and are not unfair, but are paid in exchange for a service to the consumer. In addition, we would offer the following comments:

Opt Out Requirement. We know of no bank that requires its customers to accept overdraft protection services. If a consumer does not want overdrafts covered by the bank, they currently can opt out of that service. There is no reason to have a standardized method that all banks of every shape and size must use. Depending on the size and technological abilities of the bank, each has chosen the method which best suits the bank and the bank's customers.

Partial Opt Out. We know of no technology that is currently available that would allow an institution to apply overdraft services to only cover certain types of transactions, but then to return payments on others. This just is not feasible and it would be unjustly costly to require banks to check each debit item per account to accommodate such a rule.

Debit Holds. Once again, the technology to determine whether an account was overdrawn based on a hold being placed on the account is just not available. Short of requiring a bank to examine the activity of every account that has had an overdraft, we know of no technology that could make that determination. Consumers who are concerned about running low on funds do have an alternative. They can choose not to pay at the pump, for example, but go inside after pumping gas to pay. Consumers can be educated about such choices so they can make good decisions where the management of their funds is concerned.

Transaction Clearing Practices. It is clear that the Uniform Commercial Code allows a bank to choose the order of the payment of items presented. According to UCC rules, the drawer has issued the order to pay, and the bank is to pay all items presented. If a consumer were to think about the transactions that occur monthly on his or her account, the larger dollar items would most likely be of the highest importance to be paid. For example, typically the rent or mortgage payments, insurance payments, and car payments are the largest dollar amount items for which nonpayment could result in default, license suspension or repossession. While the proposal suggests that a bank could use one rule for its clearing order and one rule for processing overdraft fees, this is not feasible. Once again, other than performing this task manually, it cannot be done for every account in the bank that is overdrawn.

### **Credit Card Services**

In order to better respond to these issues, we asked the largest issuer of credit cards located in Kansas to provide some specific data asked in the proposal:

With regard to credit card accounts in 2007, more than 2,800 phone payments per month were processed. In addition, between 2,500 and 3,600 internet payments, and between 45,000 – 55,000 paper checks were processed each month on credit card accounts. All statements are sent by mail. Customers do have electronic access to their account information including balance, payment due date, and minimum amount due, but no e-statements are available yet.

With regard to delivery of statements, 97% of the time or higher, statements are in the mail by at least the 2<sup>nd</sup> day after the billing closing date. Their service provider has contractual service levels that require them to mail statements no later than 3 days or risk monetary penalty.

Time to Make Payment. With regard to whether a 21 day “safe harbor” period between delivery of the periodic statement and the payment due date should become an industry standard, we believe that no bank should be held accountable for the delivery service of the post office. While customers typically have between 25 and 21 days to pay their accounts, banks cannot track, control or verify the delivery date of a statement. Keep in mind that many consumers have electronic account access which gives them daily access to their account information. These consumers know when their payment is due even before the paper statement arrives – making it seem an odd time to start regulating paper statements.

“Grace Period”. With regard to whether there should be a “grace period” after the due date within which a payment would not be treated as late and if so, how many days should this be (and should this be standardized with every institution), we believe this would be contrary to what is at the heart of many of the payment related issues. We do not believe that consumers are confused by the term, “due date”, but would be very confused by implementation of a “due date” and then trying to get across the idea of a later date at which payment is REALLY due in order to avoid late fees. The federal banking regulators cannot change customer behaviors by regulating the issuer of the credit card.

Human behavior is what it is: there are some people who are procrastinators and those who are irresponsible. They already have 25 to 21 days to pay their account in a timely manner. In addition, the electronic age now provides multiple ways to make a payment that will post in 1-2 days, including by phone and through the internet. We believe that most banks do have a “grace period” of 2 days before late fees will kick in, but advertising this will only encourage bad behavior and will confuse most consumers. Each institution should be able to decide what is best for them with regard to processing payments and with regard to their customers. Customers are always free to shop around if they do not like the card they currently have.

Reversing Effect of a Late Payment. There is a request for comment on whether a bank should be required to reverse a decision to treat a payment mailed before the due date as late upon request of the consumer, if the consumer can provide some evidence that it was sent on time. Again, this would make banks responsible for the delivery service of the post office with no way to track or verify the efficiency of that service. Today every issuer of credit cards already makes this decision in the interest of customer service on a case by case basis. This should continue to be a decision made on a case by case basis which just allows the bank to do the right thing for its customers. At the same time, the customer service representative can remind them of all their payment options, and impress upon them the importance of getting the payment in sooner if needed.

If this became a mandated feature, it would again encourage bad credit behavior with consumers relying on the fact that they can make late payments and not suffer the consequences. In addition, it provides one less way that a bank can differentiate itself from other credit card providers with its outstanding customer service. We should have a single, solid due date, post the payment based upon when it is received, and let the service solution work as it is intended.

Allocation of Payment. We do not believe that having a rule requiring banks to allocate payments (not in full) in a certain order would be beneficial to most consumers. The current practice is fully disclosed and the feedback of the largest issuer of credit cards in this state indicates that customers like the benefit of the interest savings from the lower promotional rate. The consumer is more savvy than given credit for as they intentionally transfers these balances from higher APR credit card accounts. When taken to the extreme, this current practice allows customers to continually transfer a balance from issuer to issuer as long as the promo APR saves them money. If mandatory allocation of payment is put in place, the industry will pull back from offering low promotional rates and the customer will be unlikely to find costs savings on high rate balances.

Over the Limit Fees Caused by Credit Holds. The proposal would prohibit banks from placing an over-the-limit fee on a credit card account if the reason the card holder exceeded his or her limit was due to a hold being placed on the card when the final dollar amount of a transaction is not known in advance. It is impossible to know in advance, in all cases, if the final sale amount submitted is going to be different than the authorization amount. Banks do not control the authorization amount or the final transaction amount. This is all under the control of the merchant. When this situation does occur, the consumer has the ability to contact the bank and ask that the fee be waived.

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**Conclusion.**

We do believe that most customers benefit from having both of these services: overdraft protection and credit cards. Trying to manage consumers' behaviors by controlling the features of these services seems to like the tail wagging the dog. We believe that consumer education and individual customer service is the better way to manage the best use of these services.

Thank you, once again, for the opportunity to comment on this most important proposal.

Sincerely,

Charles A Stones  
President

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SVP-Legal Dept.

Kathleen A. Olsen  
SVP-General Counsel