TO: Board of Governors Federal Reserve System

From: Fred Perry, Vice President-Loan Officer, Excel Bank

Subject: Comments on "Unfair or Deceptive Acts or Practices, Docket No. R-1314"

Date: August 5, 2008

The Federal Reserve, Office of Thrift Supervision (OTS) and National Credit Union Administration (NCUA) ("the agencies") have proposed rules on unfair or deceptive acts or practices (UDAP) for consumer credit card accounts and overdraft services. These changes will affect all community banks and our customers. Excel Bank is located in the heartland of America - Sedalia, Lee's Summit and Green Ridge Missouri. Our market area includes agricultural, small and medium sized towns and rural and urban environments. We feel these changes will hurt, rather than help our customers. We are a small $176 million dollar bank with four locations. We strive to give our customers personal service and products.

We are definitely concerned about the new UDAP rule regarding Overdraft Protection. We currently offer Overdraft Services to our customers. Our customers have welcomed our overdraft protection program which enables them to overdraw up to $500 without fear of us returning their checks, ACH, ATM, or debit card transactions as long as they maintain a satisfactory account with us. We have the right to return items at any time. They receive a notice in the mail when this happens. The customer has the right to refuse this service.

We feel the notice and an opportunity to opt-out is appropriate. However, requiring the opt-out notice in every statement cycle in which there is an overdraft is information overload for consumers and unnecessarily expensive and burdensome for the bank. Fee information on the statement should be enough and an annual notice and opt-out is sufficient and more likely to be noticed. We already provide cycle-to-date and year-to-date overdraft and return check fees information on the bank statements for personal accounts.

Right to Opt-Out Problem. A bank would be prohibited from charging a fee for overdraft protection services unless the consumer is given a clear and conspicuous notice about the program and a reasonable opportunity to opt-out from <u>all</u> overdraft protection coverage. More importantly, banks also would have to give customers the right to a partial opt-out so they could limit the opt-out to ATM or point-of-sale (POS) transactions only. The opt-out notice would have to be provided before the bank could charge a fee for the service and at least once in each periodic statement cycle when an overdraft fee is posted to the customer's account. Many customers have not been paying attention to the notices due to the number of notices required by law. Unfortunately, they fail to understand the importance of certain notices and the necessity to respond.

A partial opt-out is unworkable operationally for us. We are operationally unable to allow our customers to individually select which non-check transactions such as ATM withdrawals, automated clearing house (ACH) transactions, debit card transactions at point-of-sale, pre-authorized automatic debits from an account, telephone-initiated funds transfers

and on-line banking would be returned. Currently, debit card transactions are authorized and only returned if there is unauthorized use or fraud involved. If this changes, many merchants will discontinue broad based use of debit card transactions.

Another problem could occur, if a customer opts out and experience overdrafts for which the bank cannot charge a fee, the bank may be compelled to close the account, deny continued use of a debit card or otherwise restrict services to control risks.

Other Problems.

- Any restrictions should be under Regulation Z for credit cards or Regulation DD for overdraft and not UDAP
- Writing a rule based on UDAP will create an unlevel playing field since the requirements will be limited to depository institutions and not apply to non-bank issuers (the FTC does not plan to write rules for non-banks)
- UDAP should continue to be determined on a case-by-case basis only
- Using a UDAP rule to define practices as unfair or deceptive will set standards that litigants and state attorneys general will use to apply after the fact to activities that were not considered either unfair or deceptive when they occurred
- Restrictions will possibly eliminate providers that only earn marginal returns but currently offer products as a customer service
- Increased costs caused by the changes will harm marginal consumers
- To control risks, banks may be forced to deny some consumers access to certain services such as debit cards