

By Electronic Delivery

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**Woodhaven
National
Bank**

6750 Bridge Street
Fort Worth, Texas 76112-0816
P.O. Box 24248
Fort Worth, Texas 76124-1248
T: 817-496-6700
F: 817-496-4122

Jennifer J. Johnson
Secretary
Board of Governors of the Federal
Reserve System
20th St. & Constitution Avenue, NW
Washington, DC 20051
Regs.comments@federalreserve.gov

Regulation Comments
Chief Council's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552

RE: BOARD Docket No. R-1314; OTS Docket NO. OTS – 2008-0004;
Unfair or Deceptive Acts or Practices: 73 *Federal Register* 289004;
May 19, 2008 (UDAP Proposal)

Ladies and Gentlemen:

Woodhaven National Bank, as a Community Bank in the state of Texas, provides these comments on the rule proposed by the Federal Reserve Board and the OTS (Office of Thrift Supervision) covering Unfair or Deceptive Acts or Practices (UDAP) involving overdraft protection service fees.

We are concerned that this proposal will have a detrimental effect on our abilities to safely and soundly exercise risk-based discretion to pay inadvertent overdrafts that are reasonably avoidable by depositors as they manage their accounts in a responsible and prudent manner.

We exercise discretion to cover overdrafts for good customers and have developed a safe and sound program to extend this service to the majority of our customers. This service has been successful and is appreciated by our customers as a back-up should an inadvertent overdraft occur.

We strongly disagree that our service to customers to pay inadvertent overdrafts and the fees associated with that service are unfair to the customer. Depositors are responsible for managing their accounts wisely by keeping track of their transactions (paper or electronic) and changes in their account balances, to avoid overdraft fees. Only they know what checks they have written, automatic payments they have authorized and debit card transactions they have conducted. Today customers have many avenues available to check their transactions and balances: i.e. telephone, at the ATM or online.

The service of overdraft accommodation is a customer driven service that our customers appreciate. The cost of rejecting a transaction or returning the check, the inconvenience and embarrassment to the customer and fees charged by the merchant or payment recipient is so much greater than the fee charged by the bank for paying the check.

Overdraft protection services today are automated and the total amount of the accommodation per customer at Woodhaven National Bank is \$300.00. At the time of opening the account, the customer is given the option to accept the service and signs an authorization form accepting or rejecting the service. Our customers value this service to avoid having a check bounce, a transaction denied and/or adverse information reported to a credit bureau or 'bad check' database.

The Board and OTS proposals are based on a premise that "assessing overdraft fees before the consumer has been provided with notice and a reasonable opportunity to opt out of the institution's overdraft service appears to be an unfair act or practice under 15 U.S.C. 45(n) and the standards articulated by the FTC."

We disagree with this assertion and believe that the overdraft accommodation and fees assessed for paying overdraft items are not unfair under Section 18(f), the mandate covering monetary or payment systems policies.

15 U.S.C. 45(n) states that the FTC may not declare an act unfair unless:

1. It causes or is likely to cause substantial injury to consumers;
2. The injury is not reasonably avoidable by consumers themselves; and
3. The injury is not outweighed by countervailing benefits to consumers or to competition.

Overdraft accommodation fees are not substantial injuries

Giving customers a better deal cannot be considered injury. The bank charges the same fee for honoring a check, ACH or recurring debit card charge as for refusing payment when funds are not sufficient. This practice cannot be classified as an injury to the customer. The fee is less than the combined charge of the NSF charge for refusing payment and the additional merchant charge for writing a bad check. It is not an injury if the customer is assessed less money in total than would be assessed if he/she had no overdraft accommodation. The fee is neither coercive nor injurious. It is the price for the bank taking a risk when fulfilling the customer's payment instruction, rather than denying the transaction. It is a benefit not an injury.

Overdraft accommodation fees are reasonably avoidable

Consumers do not lack sufficient information concerning their accounts to conclude from the analysis that "consumers cannot know with any degree

of certainty when funds from a deposit or credit for a returned purchase will be made available.” Our entire banking system relies upon the knowledge that people are responsible for managing their own bank accounts and their own financial affairs. It is not unfair to expect them to do so. Consumers are in the best position to know their balance as only they know what transactions they have made including those that have not yet reached the bank or been processed.

More current information and tools are available for consumers today, however their personal responsibility is paramount. Some customers, who choose to manage their accounts with little or no balance as a cushion, take a risk that they will sometimes be wrong either by uncertain presentment of transactions through different channels from numerous sources or arithmetic errors. The accommodation to cover inadvertent overdrafts is a benefit to customers and the fees can be avoided by the customer managing their accounts wisely.

Overdraft services provide benefits to consumers and competition that outweigh the costs in fees

Overdraft programs are popular with our customers because the benefits outweigh the disadvantages. Customers want their authorized transactions paid and express satisfaction and appreciation when it happens. Covering overdrafts is less costly to the customer than refusing the payment and returning the items would be. It helps them avoid an adverse credit experience and fees imposed merchants, creditors and the government. In some cases, when checks are returned, landlords and creditors may be less willing to accept checks from those customers and may require cashiers' checks for future payments.

Imposing unnecessary compliance costs on Banks impairs our efficiency and financial strength. The burden that would be placed on this popular bank service by imposing compliance costs for new controls, forms, procedures and monitoring will only raise the cost of the service without improving the benefit to the customer.

UDAP – Proposals on Partial Opt-Out and Debit Holds

The proposal for a partial opt-out of ATM and debit card transactions is not technically feasible under our processing system and cannot be implemented without numerous exceptions that would have to be handled manually. Opting out of debit card transactions would adversely affect the customer who use debit cards for recurring payments.

Currently, we allow customers to opt-out of paying overdrafts on an “all-or-nothing” basis at the time the account is opened or subsequently if they request it. The task to change that to partial opt-out is a difficult and

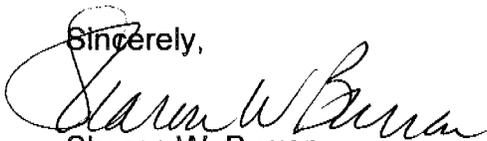
expensive task. Since we are a small community bank, the regulatory costs would be so significant that we may be forced to decline to offer the overdraft accommodation completely. This would then deprive the majority of customers who elect the overdraft coverage the benefit of having their checks paid in case of an inadvertent overdraft.

Even under the partial opt-out process, there will be times when the bank will end up paying a debit card transaction that may cause overdraft. For example, when deposited checks are returned unpaid, when computer systems go down or when the approved debit card charges are not processed by merchants on a timely basis. It would be unsafe and unsound for banks to assume these risks of debit card overdrafts without appropriate compensation.

The Debit Hold is a problem for banks because it does not include the two parties, the merchant and the card system, that are key players in this situation. It appears that card companies are making changes to reduce the processing time between authorization and clearance of items, that may in the near future enable banks to hold funds on these authorized transactions for as little as two hours. Currently, the bank authorizes the charge and the hold is placed on the account until the item clears. When the item clears, the hold is dropped, however if the item does not clear in three (3) days, the hold is released and other checks may be presented and pay before the debit card charge is presented. The bank is obligated to pay the authorized debit card charge that may cause an overdraft. Not placing a hold on those funds until the item clears is a risk for the bank as the customer has the option at any time to write checks on the balance and/or close the account.

We feel that this rule would adversely affect our customers and the Bank. The overdraft accommodation is a sound banking program this is successful because our customers want it and they recognize it provides real value. The overdraft accommodation is not an injury but a benefit and the fees associated with the service are avoidable by the customer by exercising normal care and responsible management of their account. Therefore, we request that the agencies conclude that overdraft practices are not unfair to customers and that the established regulations for electronic transactions, funds availability and account disclosures be used to evaluate any new regulations concerning debit card transactions.

Sincerely,



Sharon W. Burran
President & COO