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August 4, 2008

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, DC 20551

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, DC 20552

Mary Rupp
Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428

Re: FRB Docket No. R-1314; OTS-2008-0004; NCUA RIN 3133-AD47

Dear Secretary Johnson, Deputy Director Bowman, and Secretary Rapp:

The Sturdevant Law Firm has extensive experience representing consumers who are victims of Bank's unfair business practices in California and nationwide. For 28 years, my firm has worked with consumers who are subjected to unfair and deceptive credit and banking practices, such as those addressed by Regulation AA. For example, in *Miller v. Bank of America*, we represent more than one million elderly and disabled bank customers who were subjected to Bank of America's practice of seizing exempt funds from Social Security direct deposit accounts. Paul Miller, the named plaintiff in the case, who was dependent on SSI benefits as his sole source of income and was assured of the safety and security of his directly-deposited benefits, had overdrafts and fees taken from his account resulting in several instances which left him with the inability to pay for the necessary expenses of life. Additionally, in *Yu v. Signet Bank*, we represented plaintiffs in a proposed statewide class action alleging that defendant engaged in a long-term unlawful business practice of filing collection actions against California consumer credit card customers in municipal courts in the State of Virginia. The Court of Appeal held that plaintiffs had sufficiently alleged claims for abuse of process and unfair business practices based on the banks' practice of suing California consumers in Virginia. After that decision, the case settled under an agreement which allowed credit card customers who had been victimized by the practice to claim and recover the full amount of money that had been collected from them.

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I write to address the proposed rule, Regulation AA, which is intended to curb unfair trade practices by banks. I appreciate that the Federal Reserve Board, the Office of Thrift Supervision, and the National Credit Union Administration (the Agencies) are addressing overdraft lending as an unfair trade practice under the Federal Trade Commission Act. The Agencies' proposals, however, do not go nearly far enough in protecting consumers against banks' unfair practices.

I urge that the proposed Regulation be revised to contain the following requirements:

Require banks to obtain consumers' affirmative consent to use overdraft loans. As it stands, the Agencies' proposal only provides the consumer with the opportunity to opt-out of overdraft loans. An opt-out provision, which is frequently buried in small print and complicated legalese language, is not an adequate mechanism to afford consumers meaningful choice. Accordingly, the final rule must provide for opt-in and it should be an unfair trade practice for any bank customer, new or existing, to be charged for a loan without having had the opportunity not to "opt in."

Require banks to comply with Truth in Lending cost disclosures and other TILA protections. Consumers need cost of credit information to make informed choices between alternate forms of credit whether the Agencies select opt out or opt in.

Require banks to provide overdraft loans only where consumers have meaningfully consented to this practice through a contract which spells out the type of transactions that will be covered, the repayment schedule for extensions of credit via overdraft, and other terms and conditions that apply to this transaction.

Expand the proposal that prohibits overdraft fees caused by the merchant's hold placed on accounts when debit cards are used to include overdrafts caused by deposit holds by banks.

Prohibit banks from ordering withdrawal processing to result in more overdrafts or insufficient funds transactions and fees. Banks should be prohibited from unilaterally, and without real and meaningful notice to consumers that describes the consequences, choosing the order in which deposits and withdrawals are processed for purposes of applying overdraft and insufficient funds fees.

In addition to the reasons discussed above, the Sturdevant Law Firm has reviewed and strongly supports the comments submitted by the Consumer Federation of America, the National Consumer Law Center.

Sincerely,



James C. Sturdevant