

## Unfair or Deceptive Acts or Practices (UDAP) Meeting with Members of Public

August 5, 2008

OTS staff met with representatives of the American Bankers Association (ABA) to discuss the May 19, 2008 proposed UDAP rule.

In attendance for OTS: John Bowman, Montrice Yakimov, April Breslaw, Richard Bennett, Scott Bailey

In attendance for the ABA: Richard Riese, Nessa Feddis, Oliver Ireland (Morrison and Foerster), Cecelia Calaby (Chevy Chase Bank), and Ken Bonneville (Wells Fargo)

The ABA expressed concern about the potential for costly litigation under state UDAP laws arising from the agencies' rulemaking. They indicated that preemption of state UDAP laws could partially address the concern about litigation.

They emphasized the need to apply new restrictions prospectively only. They expressed concern that the rationale stated in the preamble for labeling practices "unfair" could be extended to additional practices not addressed in the agencies' rulemaking, particularly to a variety of fees besides overdraft fees.

They urged OTS to refrain from addressing overdrafts under the UDAP proposal and to consider that some overdrafts are unavoidable. They indicated that the proposal on overdrafts would lead to more returned checks, which will make merchants less likely to accept checks, and institutions closing more accounts for customers with overdrafts.

They urged OTS either to issue guidance instead of rules or to issue rules that require "reasonableness" with safe harbors instead of prescriptive requirements. They also encouraged using other authorities instead of UDAP, such as Truth in Lending.