

By electronic delivery

Jennifer J. Johnson Secretary
Board of Governors
of the Federal Reserve System
20th St. and Constitution Avenue, N.W.
Washington, D.C. 20551
Regs.comments@federalreserve.gov

Regulations Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, D.C. 20552
ATTN: OTS-2008-0004

Re: Board Docket No. R-1314;
OTS Docket No.
OTS-2008-0004;
Unfair or Deceptive
Acts or Practices-Overdraft Services

Dear Sir/Madam:

I am writing on behalf of the Virginia Bankers Association (the "VBA") to comment on the proposed new rules under the Federal Trade Commission Act (the "FTC Act") relating to overdraft services. The VBA represents the interests of nearly all of the commercial banks and savings institutions doing business in the Commonwealth of Virginia.

As justification for this proposal, the agencies find that assessing overdraft fees before a consumer has been given notice and a reasonable opportunity to opt-out of overdraft services appears to be an unfair act or practice under the FTC Act. The agencies further assert that: 1.) consumers incur substantial monetary injury due to the fees assessed in connection with overdrafts; 2.) such injury is not reasonably avoidable; and 3.) such injury is not outweighed by countervailing benefits. The VBA disputes these findings.

First, no overdraft fee is ever assessed on a consumer who does not write checks, initiate debits, or otherwise withdraw funds in excess of the amount he or she has on deposit at the bank. A consumer who does not want to incur an overdraft fee is easily able to do so. All the

consumer has to do is keep track of deposits to, and withdrawals from, his or her account. Monitoring one's account has never been easier with the instant access to account information afforded through Internet banking, mobile banking, and telephone services. Overdrafts can be avoided.

Moreover, there are other alternatives to the overdraft services the proposal targets which consumers can elect in order to avoid overdraft fees. For example, our banks offer lines of credit attached to checking accounts from which funds are automatically transferred to cover overdrafts. There are also products that facilitate the transfer of funds from a savings account to a checking account to cover an overdraft. Also, our bankers tell their customers to keep a "cushion" of money in their checking account to avoid an inadvertent overdraft. Thus, we believe the proposal's assumption that "injury is not reasonably avoidable" is seriously misguided.

Second, for those consumers who do incur fees for overdrawing their account, we do not believe there is "substantial monetary injury." How can there be such injury when the alternative is much more costly to the consumer? If the payment of a customer's mortgage check will cause an overdraft, would the customer be better off if the bank dishonored the check, such that the customer incurs a \$100 late fee and a \$50 returned check fee from its mortgage company plus other fees and possible credit report issues? Or would such customer be better off if the bank covers the check, even though there are insufficient funds in his account, and charges a risk-based fee of \$20 for doing so? We believe the answer is obvious and so do our bank customers. Thus, we question how the agencies have concluded that consumers incur "substantial monetary injury" due to the fees assessed for overdrafts.

Third, we contend that the benefits to consumers of having overdrafts covered for a fee are significant. As indicated above, it is often in the consumer's financial best interests for a bank to cover an overdraft for a fee. In addition, consumers like avoiding the embarrassment and other problems that result when a check is dishonored for insufficient funds. Customers tell our banks that they appreciate the benefits of overdraft services, and surveys back this assertion up. Thus, the VBA simply does not agree that the "injury is not outweighed by countervailing benefits" with respect to overdraft services.

The agencies' findings are significant because it is these findings that are used to support this unprecedented use of the FTC Act to address banking practices deemed unfair or deceptive. We believe these findings are flawed and do not justify regulatory intrusion into risk-based services which banks have delivered in a safe and sound manner for the benefit of their customers.

With regard to the mechanics of the “opt-out” proposal, our banks are concerned about new compliance burdens and costs. For example, the proposed partial opt-out for ATM and debit card transactions, under which a consumer could direct the bank not to cover overdrafts on those transactions, but cover overdrafts for check and ACH transactions, would present significant operational challenges for our banks and would be difficult to implement. This simply would add a layer of complexity to the payments system which we believe is totally unwarranted.

Finally, we do not believe it is fair to impose new and costly regulatory burdens on banks when state-chartered credit unions would not be subject to the same requirements. If not all market participants are going to be subject to such requirements, then none should.

In sum, we believe the analytical underpinnings for this proposal are weak, the practical problems it would present significant, and the competitive inequity it presents vis-à-vis state-chartered credit unions unacceptable. For these reasons, we urge the agencies to withdraw this proposal.

Sincerely,

A handwritten signature in cursive script, appearing to read "Bruce T. Whitehurst".

Bruce T. Whitehurst
President and CEO