First Citizens

Electronic Delivery

August 4, 2008

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

RE: Federal Reserve System 12 CFR Part 227: ***Docket No. R-1314***; 12 CFR Part 230: Docket No. R-1315

Ms. Johnson,

First Citizens Bank and Trust Company Inc. (First Citizens) appreciates the opportunity to comment on the proposed rules published by the Board of Governors of the Federal Reserve System, the Office of Thrift Supervision, and the National Credit Union Administration (collectively, the "Agencies") in the Federal Register on May 19, 2008.

First Citizens shares the goal of the Agencies to provide consumers with the information and tools they need to manage their finances and make informed choices about the selection and use of various products and services. However, we are concerned that certain provisions of the proposed rules will provide only minimal benefit to a small percentage of consumers, while at the same time causing disruption to the various financial payment systems and imposing substantial costs on all consumers, merchants and financial institutions. Our following comments are focused on those provisions which we believe would be the most counter-productive to the goal of protecting the interests of consumers.

ODP Program Disclosures

We believe that it is incumbent on our customers to manage their accounts responsibly and insure that they have sufficient funds to pay for all transactions they initiate or authorize against their account. However, we realize that at times our customers encounter situations that cause an inadvertent overdraft. First Citizens offers overdraft protection products to our customers to fund overdraft items and avoid the expense and potential embarrassment of non-payment.

Because some customers are not eligible for our overdraft protection products and to further increase customer protection, we also employ an automated overdraft payment decision "matrix" to pay occasional overdraft items as an accommodation to our customers. While our automated overdraft matrix was implemented to provide a service to our customers and has been developed over time, its design emphasizes prudent, risk-based banking practices that also protect the safety and soundness of the bank. As such, we charge an overdraft fee that offsets and is commensurate with the credit risk represented by the payment of items through the overdraft matrix.

The proposal's focus on overdraft fees overlooks the larger disadvantages that consumers could face without the service. A customer who opts out of the service and subsequently has a check returned for insufficient funds will likely incur both an NSF charge from the bank and a Returned Check charge from the merchant. The total of both charges would typically be more than the one charge from utilizing an overdraft service.

There is also intangible value of the service in reducing the risk of embarrassment and distress that returned checks and denied electronic transactions can cause a customer. The "buyer beware" emphasis in the opt-out process and associated disclosure does not present a balanced perspective to allow the typical consumer to make an informed choice about the relative benefits and costs of an overdraft service. Also, undue emphasis on "less costly" overdraft payment services could have the unfortunate effect of causing a customer to opt out of the overdraft matrix service, only to learn that they do not qualify for a more formal overdraft protection product.

Our day-to-day experiences with customers tell us that our approach to overdraft products and services already provides consumers with the appropriate information and choices to assist them in properly managing their finances, while providing tangible benefits when an overdraft does occur. We are able to offer an array of services because we are not encumbered by the burden of a "one size fits all" regulatory approach to how we manage our various overdraft services.

We disclose our overdraft fees to all customers upon account opening, when any change in terms is required, and upon request. Where feasible, such as at the time of ATM debit requests, we also provide notice and opt-out for potential overdrafts. Conversely, we do not promote, advertise, or otherwise encourage the utilization of our automated overdraft matrix.

To the extent the Agencies are concerned that banks may be engaging in unfair and deceptive practices in order to increase fee income through overdraft charges, we believe that the current scope of the applicable Regulation DD provisions appropriately includes those institutions that communicate and/or promote their overdraft payment services to consumers. We feel that the goal of this current proposal could be better served by providing similar coverage.

Partial Opt-Out for ATM and Debit Card

The proposal to create a partial opt-out that applies to only ATM and debit card transactions would create confusion for consumers, and moreover it is not technically feasible in the current payment processing environment. Our current systems do not differentiate debit card Point-of-Sale transactions from certain other transactions, nor do they accurately capture debit card transactions that are converted to other payment types prior to our receipt. For example:

- At the consumer's option, merchants can process a debit card purchase as either a debit card or credit card transaction. If the consumer elects to process as a credit card, we cannot recognize the transaction as originating from a debit card
- If a consumer uses a debit card to establish a recurring payment, we cannot distinguish this from a point of sale transaction.
- Similarly, we cannot distinguish debit card transactions initiated through Online Banking site from point of sale transactions

This complexity will make it impossible for banks to accurately implement a debit card opt-out without significant re-programming of the various bank, vendor and merchant payment systems involved. Should a consumer opt-out of overdraft payments for debit cards, it will be very confusing when some transactions initiated with a debit card are paid and charged an overdraft fee while others are not.

The Federal Reserve Board estimated that it would only take a bank, on average, 40 hours to re-program and update their systems to comply with the proposed disclosure requirements. We believe that this is a gross underestimate for our bank, and we would suggest also for many of our peers. While it is not possible to develop an accurate cost estimate within the short comment period provided, the actual cost to our bank in programming man-hours for disclosures and data collection is forecast to be much higher. This creates an unfair and detrimental expense during a period of high volatility in the market.

Due to the number of integrated systems involved, as well as their multiple data exchange points and databases to be modified, we feel that the Agencies should allow for more discovery to determine the true impact that this provision will have on the industry, so that both the expense and required timeframe to implement can be accurately determined.

Debit Holds

The proposal covering debit holds is far too complicated to be implemented or for customers to understand. The problem that the Agencies seek to address in this provision rests largely with merchants and the card networks and cannot be solved by putting the onus only on banks.

As an example, a consumer with a balance of $100 uses his debit card at a gas pump to purchase fuel. The merchant processes an amount of $75 against the account to authorize the transaction. The consumer then purchases $50 of fuel. The merchant then processes a second transaction for $50, using a different code to identify the transaction than the code used for the initial $75 pre-authorization transaction. This causes both transactions to generate temporary holds against the account totaling $125 and causing the account to be overdrawn.

Banks place holds against pending debit card transactions in the interest of operating in a safe and sound manner by insuring funds are available to pay authorized transactions. We cannot control the practices of merchants or identify when this type of situation exists. By restricting when we can charge fees for overdrafts caused by debit card authorizations, the Agencies will impact the nature of risk management decisions. Banks will be motivated to decline debit card transactions that would overdraw the account.

When a debit card is declined, in many cases neither cash nor check will be a viable alternative for that transaction, leaving the customer without the ability to complete the purchase. Therefore, the proposal would adversely affect our customers. This could easily lead to greater consumer dissatisfaction and an increase in complaints of unfair practices regarding debit cards. Overdraft accommodations are a sound banking program that is successful because customers want it and recognize that it provides real value. However, banks assume a level of risk in paying overdraft items and must be allowed to offset that risk through overdraft charges.

Posting Order of Transactions

First Citizens established our current posting order by grouping different types of items based on a priority that protects the bank from loss. For example, electronic transactions which result in an immediate transfer of funds are processed real time. Within daily "batch" processing, cash transactions for which the bank generally has already approved payment of funds are posted first, while paper items received through the Federal Reserve and other clearing houses, which are primarily checks, are posted last.

Within each group, we generally pay the highest dollar items first. We believe that these larger items typically represent those payments that are most important to the consumer, such as mortgage payments, rent, and other contractual obligations. Smaller dollar items typically represent incidental purchases and are therefore less important to the consumer, even though paying these items last may result in more unpaid items and associated fees. Our experiences and interactions with customers tend to confirm this approach.

We believe our current posting order is based both on sound banking practice and the best interest of the customer. Moreover, we can operationally and systematically only support one payment processing order. Permitting consumers to choose an alternative posting order would be impossible to manage. We strongly urge the Agencies not to incorporate any additional requirements that would govern posting order.

Thank you again for the opportunity to provide our comments. We hope that you will find this information helpful in making changes to the final rule which will benefit the Agencies, financial institutions and our customers.

Sincerely,

Todd Nichoalds
Director of Compliance
First Citizens Bank and Trust, Inc.