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

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW
Washington, DC 20552
ATTN: OTS-2008-0004

Re: FRB Docket No. R-1314; OTS Docket No. OTS-2008-0004; Unfair or Deceptive Acts or Practices; 73 Federal Register 28904; May 19, 2008

Dear Ms. Johnson and Chief Counsel's Office of the OTS:

First Federal Bank appreciates the opportunity to comment on the proposed rule on Unfair or Deceptive Acts or Practices as it pertains to Overdraft Programs.

The proposed rule is designed to address concerns by the bank regulatory agencies and consumers that certain aspects in marketing, disclosing, and implementing overdraft services may be unfair and may not provide the consumer with the opportunity to opt out and avoid associated costs. The proposed rule would impose substantial new requirements that are of concern to First Federal Bank.

It is our position that additional regulation of overdraft practices is unnecessary. The agencies issued Guidance on Overdraft Protection Programs in 2005 that included a number of best practices. In 2006, Regulation DD was revised to include additional disclosures regarding overdraft protection at account opening, in periodic statements, and in promotional materials. Like most banks, we have adhered to the Regulation DD revisions and have implemented a substantial number of the practices outlined in the Guidance.

Our program is discretionary, and customers must maintain a deposit account in good standing for 30 days. Customers are provided with the opportunity to opt out of the program at any time. At account opening, the customer is provided a brochure describing the service. This document clearly states the discretionary nature of the program, the fees that can be assessed, and alternatives that are available. Not only are fees associated with paying overdrafts clearly disclosed at account opening, the fees assessed are clearly disclosed on periodic statements. We do not charge an overdraft fee in addition to the fee that is charged for a returned item, and there is no additional fee for each day the account remains overdrawn. NSF notices that include reminders of the expenses the customer incurs when insufficient funds are paid are generated and mailed to the customer the next business day following its occurrence for each NSF item. The available balance provided at the ATM does not include an overdraft limit, and our ATM's have signs physically posted that indicate usage of overdraft privileges will result in an overdraft fee. It is difficult to comprehend how, with the disclosures and information already

provided, paying overdrafts and imposing a fee is an unfair act or practice or how injury is not reasonably avoidable.

We have not received negative comments from our auditors or examiners for our overdraft practices, nor have we experienced any major customer complaints. Most of our customers have expressed appreciation for a service that pays their bills rather than returning the check.

The alternative to not paying an overdraft item is, in most cases, to return the item and assess a fee. It is unlikely that this alternative is a benefit to the consumer. In many cases, the consumer may also incur merchant fees for the returned item. Paying the item is no greater cost, and it saves the customer embarrassment. ATM withdrawals and POS transactions are an exception but the customer has been adequately informed before the transaction as well as afterward and has received sufficient information to make informed choices concerning their account.

The proposal would require us to provide the opt-out option and allow the consumer a reasonable time to opt out before a fee is assessed. The difficulty with this is the subjective interpretation that may be given to a "reasonable" time to opt out among regulators and among banks, leaving everyone in a guessing game. Customers who withdraw periodically are aware of their conduct and are acting in accordance with their preferences given that awareness. They do not need reported notice that they can opt-out of the convenience they are choosing to accept – assessment of the fee is what gets their attention.

The option of providing the customer with the opportunity for a partial opt-out that would result in declining POS and ATM transactions while allowing other transactions to be paid is something our system cannot currently handle. The required development would involve considerable cost for our institution and probably most institutions that would ultimately be passed on to the customer.

Inconvenience and embarrassment also happens to the consumer when a recurring payment or a debit card payment at a retail store is rejected. There is difficulty in understanding which types of transactions will be covered by overdraft protection and which ones will not. An unintended result may again be increased cost to the customer for services, such as overdraft protection, that a bank provides where it has incurred expensive programming costs. Consider that at some point, it may not be cost effective for some small and mid-sized community banks to offer an overdraft program at all.

The proposed rule would also prohibit banks from assessing overdraft fees if the overdraft is caused solely by a hold placed on funds in an account that does not have sufficient available funds to cover the actual purchase amount of the transaction. This seems to imply a bank may charge a fee only if the amount of the transaction ultimately presented for payment would have caused an overdraft. In practice, this is impossible for current processing systems to determine on a timely basis. The holds placed on the account are committed to be honored by the bank effectively reducing the customer's rights to these funds.

The agencies also requested comments on the impact of requiring banks to pay smaller dollar items before larger dollar items for the purpose of assessing overdraft fees if the consumer opted in to an alternative clearing process.

Most banks do not have the system capabilities for alternate item processing for overdrafts. We would need to change our item clearing process to just one method. If large dollar items are paid last to satisfy requirements for assessing overdraft fees, the impact to consumers will be negative rather than positive, as their desired payments would possibly be returned.

Our bank has always exercised discretion to cover overdrafts for good customers – today we have developed safe and sound programs that extend that accommodation to virtually all our customers. But neither customers nor regulators should lose sight of the fact that our program is an accommodation based on the bank's exercise of risk-based discretion. The additional regulatory burden of this proposed rule may very well cause many banks, particularly small or mid-sized community banks like ours, to reconsider whether it is feasible to continue to offer an overdraft program. The costs associated with pursuing technological solutions and the necessary monitoring may outweigh the benefit. The result will be the loss of a service that a majority of consumers consider beneficial, as well as providing a competitive edge to the large banks that can afford to invest in the technology.

In closing, First Federal Bank is strongly opposed to the proposed rule concerning overdraft programs.

Sincerely,

FIRST FEDERAL BANK IDENTICAL MULTI-SIGNATORIES

1. Bell, Joan
2. Brown, Johnny
3. Mallioux, Ross
4. Richardson, Tommy
5. Quattlebaum, Rick
6. Brandt, Jeff
7. Billings, Sherri
8. Brandt, Larry J.