July 17, 2008

To: Board of Governors of the Federal Reserve System and other agencies of the Federal Financial Institutions Examination Council (FFIEC)

By e-mail to: regs.comments@federalreserve.gov

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
10th Street and Constitution Avenue, NW
Washington, DC 20551

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

Re: Docket Number: R-1315; Truth in Savings (Federal Reserve Board);
and R-1314; UDAP (Federal Reserve Board)

Dear Sir or Madam:

Please accept this letter on behalf of BancorpSouth Bank, headquartered in Tupelo, Mississippi. My position is Senior Vice President over the Information and Transaction Services Group, which includes all transaction processing.

This letter is intended to supplement the letter of even date herewith from Vice Chairman Larry Bateman of BancorpSouth who more broadly and generally addresses grave concerns over the broadness of the above rule-making proposals and the unfortunate and unnecessary potential use of Uniform and Deceptive Trade Practices Act principals to otherwise legitimate processes at BancorpSouth. I strongly join in the comments of Mr. Bateman. I likewise join in the comments of our General Counsel, Pat Caldwell, who is likewise commenting from a legal perspective on the inappropriate use of UDAP, and his urging that alternative means exist through other regulatory structures to address concerns. While I have read and concur with the premise of Mr. Caldwell in his letter concerning the overall need for more targeted "cures" via other regulations, like Regs E, DD, or CC, "things are not broken" at BancorpSouth. Thus, while we stand ready to abide by more "bright line" regulatory requirements, at least at BancorpSouth and for its customers, even non-UDAP new requirements are not only unnecessary, but if invoked, a substantial lead time to implement same is necessary. Therefore, I offer the following specifics linked to the UDAP proposal as it applies to overdrafts and the Reg DD corresponding proposal.

1. The payments infrastructure is an intricate system that has been built over the course of decades. The driving factors have always been efficiency and customer convenience. As we all know, if the customers do not use a certain payment type, there is no way for it to become efficient. Innovation in payment processing has provided significant benefits to consumers. Just a few obvious examples are online bill payment, debit cards and online/electronic account transfers. Customers used to have the expense and headache of buying checks, mailing bills, and going to the bank to move money from one of their accounts to another. A vast majority of customers take advantage of these innovations.

2. By taking the path of "unfair practices" in the proposed changes, innovation will be stifled. Historically, the customer has held the responsibility to initiate the transaction therefore the responsibility to know if they have or should have (example - ACH draft authorization is the customer assuming they will have the funds each month for the draft) the funds in the account. The proposed changes purport to eliminate customer responsibility.

3. The NSF/OD fee has been a punitive fee. For most customers, this fee incenses them to remember their responsibility.

4. A. The section in the proposed changes related to debit card transactions in which the bank does not have the opportunity to 'authorize using customer balance' is a concern. Why would the bank be in the position to take all of the risk and the customer have no responsibility?

   B. The "stand-in process" was created because customers demanded the ability to use their atm/debit card at any time and banks were agreeable to take the risk knowing the business model included customer responsibility. Removing customer responsibility changes the business model. This may lead to changes in the process that create customer inconvenience. As a majority of the customers never overdraw their account, this inconvenience is not fair to them.

   C. The infrastructure to support the electronic network required to authorize and process debit card transaction has occasional issues which create disruptions to service. The merchant, processors and banks have built a 'stand-in' mechanism to support these disruptions. The 'stand-in' process provides limits for both PIN and signature authorizations. Due to these disruptions, actual account balances would not be available and therefore "opting out" would not be available.

   D. Removal of the stand-in process would create significant negative customer service issues.

P.O. Box 789 • Tupelo, MS 38802-0789 • 662-680-2000

5. The "partial opt-out" appears to create an even more confusing process. By using the "unfair practices" reg, will AG's, etc., begin to attempt to set their own set of payment types for "opt-out," who will determine whether future payment types should be available for "opt-out."

6. Partial opt-out will be confusing to customers. As a practical matter, it would be extremely costly and impractical for us to offer partial opt-out rights and to distinguish between credit holds and purchases. Lending institutions, current payment systems and information systems do not permit these distinctions.

7. The question also becomes the ability to do a customer-specific versus company-wide implementation; either, even if feasible, obviously being expensive and time intensive.

8. Debit card signature authorizations do not always occur, merchants may set floor limits which do require an authorization, therefore the customer would not have the option to opt out of the transaction.

9. Many customers utilize their debit card to securely pay for recurring services (example: monthly cell phone bill). As a debit card can be replaced by simply destroying the old card and obtaining a new card, customers prefer to use debit cards rather than provide their bank account number. These recurring transactions do not provide the option for the customer to opt out each transaction.

10. We recommend the Board eliminate the requirement for account balance disclosure at non-owned ATMs. This is not something that the account-holding institution can control. Data fields available for transmitting balance information to another institution's ATM will essentially include multiple balance fields, but the account-holding institution cannot control how the institution owning the machine may display information with any form of prominence indicators. If potential problems exist with balances that appear on receipts after a withdrawal is made at another institution's ATM.

11. The Sample Disclosure needs significant work. While the proposal leaves it optional for the bank to add the "bounced" check scenario consequence, if UDAP does not go away, we will be at risk by not having a "bright line" regulatory-approved sample in this regard, as well. This also ignores the responsibility detailed in several points above which must be added to the mix. An informed consumer cannot be more guided if not given the consequences of the two options. Thus, a revised B-10 Opt-Out sample form, "redlined" from your model, and drafted in consultation with our legal counsel, is attached.

12. While in the attached redraft, we do not attempt at this point to redefine "overdraft services" in the opt-out form, we are greatly concerned that this will come across sounding like the equivalent of one of the previously criticized marketed-type programs. We believe our customers may think of overdraft "services" as some kind of formal program which BancorpSouth has not had and does not plan to implement. Since the form requires us to tell our customers to explore other options, likewise, the phrase "overdraft services" could be incorrectly construed by our customers to include the other means of addressing overdrafts, for which there are qualification requirements, i.e., a line of credit. These alternative type services, while options, are not even the subject of any of the proposed rules.

As a result of these concerns and hurdles, it may force BancorpSouth to do the unnecessary choice of simply figuring a way to decline to accept any overdraft. It would have many an unintended consequence. Apparently, there are some egregious practices at some institutions which warrant targeted, case by case enforcement or bright lines rules to prevent such practices. If UDAP is the only solution for such more egregious practices, usually for marketed overdraft programs, BancorpSouth has no opposition to same. Yet they need to be bright line and specific, however, for example, requirement of disclosure of true balances at ATMs.

BancorpSouth *does* provide alternative means to address overdrafts: lines of credit, a link to a credit card or savings account. This in and of itself serves as ready examples of how a consumer can easily and reasonably avoid overdraft fees (other than the obvious, "balance your checkbook"). Selecting one of these products, one of our other account packages, or for that matter, selecting another bank that the consumer believes offers a more favorable mix of features or prices than that offered by BancorpSouth is a way to "avoid" fees.

We desire to retain our customers and do not want the latter choice to occur. But to claim that a consumer cannot avoid something and calling it "substantial injury" when they can simply go down the street to another bank cries out all the more to focus the current efforts on bright line, specific, and existing regulatory rules, forms, disclosures, and structure and use those regs to strike the appropriate balance of banking interests and consumer responsibility.

Customers can change banks at any time for any reason - - *and do*. Our bank competes for new customers everyday and competes to retain existing customers. Losing a customer is costly in terms of the outlay spent on attracting a new customer, therefore, we like to think that we serve as an alternative to the "marketed program" institutions. Yet, if UDAP is invoked, our more traditional, though automated, service that we do provide will likely end up "caught up in the net." That would be unfortunate, indeed.

Sincerely yours,

Jeff Jaggers
Senior Vice President

Attachment

B-10 OVERDRAFT SERVICES OPT-OUT NOTICE SAMPLE FORM

We may provide overdraft services for your account. Whether we do so, or continue to do so is within our sole discretion. This means that if there is a debit, that is, a charge to your account, when your account does not have sufficient funds, we may pay your overdraft.

There are fees associated with our overdraft services:

- We will charge you a fee ~~of $_____~~(an OD fee) for each overdraft item or transaction that we pay, including ATM withdrawals, debit card purchases, other electronic forms of payment, such as monthly bill drafts, checks, and in-person transactions.

- The current OD fee for each item that we pay into overdraft is $_____. This is the same fee amount as when we return an item (NSF). We may change this fee by sending you notice as part of our Account Information Statement.

- We may charge you this fee even if your overdraft amount is as low as $_____.

- [We may also charge you additional daily fees of $_____ for each day your account remains overdrawn.]

- [We can charge you a maximum of $_____ in fees per day and $_____ per statement period for overdrawing your account.] [There is no limit to the amount of fees we can charge you for overdrawing your account per day/per statement period.]

You have the right to opt out of this service and tell us not to pay any items or transactions into overdrafts. If you do, however, you may still have to pay aus an NSF fee if you make transactions that are returned unpaid. ~~You also have the right to tell us not to pay overdrafts for ATM withdrawals and debit card purchases, but to continue to pay overdrafts for other types of transactions.~~In addition to the NSF fee, consequences of opting out of our paying items into overdraft (in our discretion) may include your payment being denied, or returned unpaid ("bounced"), and you will incur our NSF fee, as well as a fee from the payee. If such an item "bounces," you may also be subject to civil or criminal laws concerning "bad checks."

We also offer ~~less costly~~other overdraft payment services that you may qualify for that may be less costly, including a line of credit. To opt out of our overdraft service, or to obtain information about other alternatives, call us at 1-800-XXX-XXXX or write us at [insert address].

July 17, 2008

To: Board of Governors of the Federal Reserve System and other agencies of the Federal Financial Institutions Examination Council (FFIEC)

By e-mail to: regs.comments@federalreserve.gov

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
10th Street and Constitution Avenue, NW
Washington, DC 20551

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

Re: Docket Number: R-1315; Truth in Savings (Federal Reserve Board);
and R-1314; UDAP (Federal Reserve Board)

Dear Sir or Madam:

BancorpSouth appreciates the opportunity to comment by this one submission on both the proposed rule amendment to Regulation DD referenced above as well as the UDAP proposal. BancorpSouth operates a system of community banks in eight states, Mississippi, Alabama, Tennessee, Louisiana, Arkansas, Florida, Missouri, and Texas, with approximately 300 deposit-taking locations. BancorpSouth also has a system of ATM's and the availability of electronic banking. I am Vice Chairman of BancorpSouth responsible for supervising the bank's operations division, which includes the deposit functions associated with checking accounts, insufficient funds items, returned items, and overdrafts.

BancorpSouth offers these comments, out of an abundance of caution, in that it firmly believes its system and procedures for managing NSF and OD items is lawful in all respects as a discretionary service, but for which the proposed rule now casts unnecessary doubt, tenor, and unintended consequences. BancorpSouth therefore desires to make several initial points. Specifics tied to the respective proposals are the subject of the separate letters of BancorpSouth personnel.[1]

[1]Letter of Jeff Jaggers, Senior Vice President over the Information and Transaction Services Group; letter of Pat Caldwell, General Counsel. See also, letter of BancorpSouth Senior

Just two and a half years ago, via the InterAgency Guidance on Overdraft Protection, the overdraft focus was concern over *marketing* of overdraft protection programs.

When the Guidance was announced for comment, the opening paragraph of the R-1197 proposal made the clear distinction between the entry into the marketplace of third party vendors by highlighting the key distinguishing characteristic of concern:

> What generally distinguishes the vendor programs from institutions' in-house automated processes is the addition of *marketing plans* that appear designed to *promote* the generation of fee income by setting a dollar amount that consumers would be allowed to overdraw and by *encouraging* consumers to overdraw their accounts and use the service as a line of credit. (Emphasis added).

Even though BancorpSouth had no "program," marketed or otherwise, we still vented our practices with the guidance in mind, including legal counsel review, and easily recognized that we passed complete muster: BancorpSouth, having affirmatively chosen *not* to actively market such a service, had simply taken advantage of modern technology to otherwise replace or supplement a function traditionally addressed manually. BancorpSouth did not have then and does not have now an overdraft protection "program." We now utilize the wonders of technology to assist the former human task of daily approvals of payments versus returns. In other words, BancorpSouth's prior traditional and discretionary service of being "hands on" that now utilizes automation did not then, and does not now make it offend notions different than the traditional service historically offered by banks for years.

Rather than a credit offer or product, BancorpSouth offers a deposit service that we respectfully submit most, if not all, deposit institutions offer via their "signature card" account agreements, supplemented by the Uniform Commercial Code on bank deposits. Simply put, our agreements provide that we may, in our sole discretion, pay *or* return a check or other item that is presented against insufficient funds.

Historically, the decision to pay or not pay an item usually fell on the "who did you know" test between our bank and its customer, a process which might have resulted in otherwise "good" customers, (but less likely known to an individual banker), having their items returned and not paid, when, if "personally known", this discretionary service might have been otherwise extended to them. Enter technology. BancorpSouth now utilizes software which can review account statistics, activity and other factors, and guide BancorpSouth by automated means (not "automatically"). Use of automation by us does not mean final decision or commitment, just access to an automated tool to assist in making the return or pay decision.

Vice President, Kathi Carter, on the credit card proposals.

P.O. Box 789 • Tupelo, MS 38802-0789 • 662-680-2000

Even when part of our payment or return process is "automated", our institution always retains the discretion to reject that computer guidance and pay or return an item. And even though "automated", be it collectively, individually, system-wide, regionally, branch-to-branch, account-to-account, day-to-day, month-to-month, or otherwise, we may change (and *do* change) at *any* time *any* of the criteria the software uses to make the discretionary determination of whether to pay or return an item. The software merely assists in analyzing risk tolerance levels, generating reports and making analytical "judgments", all of which rely on ever evolving sources of information, from any number of sources, be it direct, indirect, financial based, history based, or otherwise, to either decline to pay overdrafts or pay them.

BancorpSouth engages in no marketing whatsoever of what is otherwise "behind the scenes" ever changing risk based technology, designed to supplement an occasional and discretionary service. No advertisements are used; no limits are disclosed; the circumstances under which the institution pays or returns an item is not disclosed; all the while, our truth in savings obligations to disclose relevant fees and charges associated with checking accounts, including NSF and OD fees, are met.

Whether the agencies "return to focus" and determine that active and affirmative marketing of an overdraft "product" needs UDAP regulation or not, institutions such as ours who choose to never market periodic customer friendly service should not be left to guess whether a practice we do or service we provide runs afoul of a new rule will apply to it because of the label of "unfairness." Instead, a clear demarcation between the active promoters of such services and those in the category of the BancorpSouths of the world needs to be made. To now propose for fear of being "unfair" that opt-out is *a substantive right* at account opening essentially converts all overdraft accommodation services to *promoted* plans - a boundary that the prior policy guidance we have expressly declined to do. Thus, the BancorpSouth position is rather straight-forward: drop the prospect of using UDAP altogether or alternatively make certain and unequivocal that the "target" of UDAP enforcement remains marketers of aggressive overdraft programs, not those who choose not to market, regardless of whether automation/technology is used or not. Then, under the Reg DD proposal, tailor make it with "bright line" rules to avoid inconsistencies because regulations such as DD can otherwise govern this topic extensively and adequately.

Some fundamentals of regulatory "unintended consequences" warrant mention. Financial institution regulations do indeed become the standard for civil courts, and a potential sword to plaintiffs' lawyers. Thus, extreme caution should be used with the use of UDAP. And, the undersigned has chosen to address both the Reg DD proposed rule and the proposed UDAP rule in one comment letter because, it is respectfully submitted, they cannot be reconciled separately. If at all, Reg DD is indeed the place where such regulation is warranted and the rule can be made to be reasonably targeted and reasonably concise.

P.O. Box 789 • Tupelo, MS 38802-0789 • 662-680-2000

The Uniform Commercial Code does not require our bank to pay a check against insufficient funds. Any commitment on our part to do so comes solely from specifically tailored products, *in writing,* to draw on a line of credit, a credit card, or savings account to "cover" otherwise insufficient items. Further, the UCC allows our bank to pay items in any order and it need not necessarily be pre-determined or disclosed (there could be 20 to 30 different scenarios on any banking day which would determine order of payment, the descriptions of which to a customer would be overwhelming, confusing and of little value). Further, we purposely avoid a variance in the fee we charge for items paid (OD fees) and items returned (NSF fees), both being exactly the same dollar amount in order to avoid any conceivable implication that the fees are for an extension of credit rather than handling of the items in question. We also choose to utilize terminology which we believe is consistent in the industry and for which ask the agencies to also use, namely, "insufficient funds fee" (NSF) for a check which is not paid and returned just as you have properly labeled an "overdraft fee" (OD fee) for a check which is not returned and paid into overdraft.

With this additional background on BancorpSouth, submitted to be quite common in the industry, we simply believe that our system better addresses customers who mistakenly or even knowingly issue a debit against insufficient funds. They have a preference that we pay the item. The proposed rule does not adequately address this expected deposit customer preference. To the contrary, it all but dismisses it. Thus, we believe the proposed rule will have the additional unintended consequence of being consumer unfriendly, rather than promote consumer protection.

Why? When our bank chooses to pay an item against insufficient funds, indeed we charge an OD fee. However, no third party is otherwise aware that the check was written against insufficient funds. There are no other consequences, fees, or expenses to our customer. On the other hand, when we utilize our discretion to return an item, indeed we charge the same dollar fee, in this instance an NSF fee, but our customer may also be charged a return check charge by a merchant, may have negative reporting via one or more of the check services used by the merchant, be subject to one or more civil claims, or face "bad check" civil or criminal provisions. All of which points out differences *to the customer*, but for which our bank has *no difference* nor financial incentive to pay the item versus return it because the same fee is charged in each instance.

Thus, a fundamental key to the proposals, otherwise intended to be customer and consumer friendly, is a "missing of the point" that overdrafts are not the problem. Customers authorizing payments or writing checks when they do not have the money is the problem and where responsibility should remain. Our second major point must therefore be made most strenuously:

A. **Overdraft protection fees are not injuries.** Charging someone the same fee for paying a check (or ACH or recurring debit card charge) as for refusing payment when funds are not sufficient turns the notion of injury on its head.

If this proposal stays,

1. Any fee will be at risk of becoming "injury"

2. It is supposed to be penal - to make you stop

3. Premise that debit card is always POS - i.e., in person, is false. Many customers now use debit cards for recurring charges.

4. Once someone incurs an overdraft fee, are they not on effective notice? What then makes it "unfair" to not constantly remind them of the right to opt-out?

B. Overdraft service fees are reasonably avoidable.

1. People are responsible for managing their financial affairs. Knowing what moneys are in your account has always been the responsibility of the account holder. From the beginning of banking, the movement of funds has always meant that there will be uncertainty about what the account balance is at any precise point in time.

2. Millions of people conduct billions of transactions a day without overdrawing their accounts. Most people go years without incurring an overdraft.

3. Overdraft fees are also reasonably avoidable by selecting other account packages, electing the use of alternative overdraft protections for which one may qualify.

4. The fundamental issue is whether the consumer has reason to know the consequences of one's banking activity. Our account agreements recite the conditions on which fees will be assessed.

5. The rationale for making overdraft service fees not reasonably avoidable - consumers cannot know with certainty their account balance - is essentially a statement that charging a fee for returning an overdrawn item is not reasonably avoidable!

Conclusion

The above-mentioned October 14, 2004 brochure on "Protecting Yourself from Overdraft and Bounced-Check Fees" concludes with an admonition to consumers, "the choice is yours." Then, the six ways to cover overdrafts are mentioned, the last one being "Bounced Check." If BancorpSouth's processes, methods, and services run the risk of heightened scrutiny under UDAP, that choice will change, and the choice will be ours. Regrettably, that choice may be an election of No. 6 only, bounce the checks. That will be an unfortunate result for our customers, the ultimate unintended consequence.

Sincerely yours,

Larry Bateman, Vice Chairman
BancorpSouth

P.O. Box 789 • Tupelo, MS 38802-0789 • 662-680-2000

July 17, 2008

By e-mail to: regs.comments@federalreserve.gov

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
10th Street and Constitution Avenue, NW
Washington, DC 20551

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

Re: Regulation Z; Docket No. R-1286; (Federal Reserve Board)

Unfair or Deceptive Acts or Practices; Docket No. R-1314 (Federal Reserve Board); OTS-2008-0004 (Office of Thrift Supervision); RIN 3133-AD47 (National Credit Union Administration)

Dear Sir or Madam:

Please accept this letter on behalf of BancorpSouth's Credit Card Center. BancorpSouth has its own credit card portfolio, not contracted with or managed by another institution. The issues raised are therefore important to BancorpSouth. I manage the Credit Card Division at the company.

This letter is also to supplement the letter of our General Counsel, Pat Caldwell, who is likewise commenting from a legal perspective on inappropriate use of UDAP to address the current concerns. At BancorpSouth, we stand ready to abide by more "bright line" regulatory requirements, hopefully under Reg Z and not UDAP; however, if invoked, a substantial lead time to implement any changes may be necessary.

The following represent specific comments linked to the Reg Z and UDAP proposal (as the latter applies to credit cards).

Promotional Plans/Introductory Rates

If we are restricted on how we allocate payments to that of the lowest APR balance and risk that being characterized as "unfair acts or practices," we simply will first reconsider whether we recompute the amount of the discount that can be offered or not offer one at all. At best, the discounted rates we offer will not be as great, and it is hard to see how this will benefit our customers, or why such a practice would be viewed as unfair or deceptive, when in the "Schumer box," in our marketing, and as otherwise required by Reg Z, all the terms and conditions of discounted rates are explained.

Our ability to underwrite certain customer risks, and offer lower rates for certain balances, such as balances resulting from transfers, balances resulting from certain types of purchases, etc. (because we can estimate the length of time those lower rates will apply), will likewise either be offered at higher rates or not available at all. The consequence will therefore be obvious: diminished customer options, more limited options, or no promotional products at all.

There was a time at BancorpSouth when our credit cards were "one size fits all." Rates were the same; limits were the same; and features were the same, regardless of your risk profile, other customer relationships with us, or any marketing we may have done to attract new customers. Several options exist today; however, if burdened with UDAP scrutiny as opposed to more "bright line" Reg Z disclosures, standards, and rules, our portfolio features will be headed backwards.

Beyond lowest APR allocation, if broader precepts of unfair and deceptive trade practices end up governing BancorpSouth's marketing, use, and credit card product mixes that currently may offer various forms of introductory rates or other benefits, an unintended consequence could be that discounted offers will simply no longer be available. It will not be worth addressing any related issues, or more importantly the risk associated with being labeled, reputationally or otherwise, as engaging in some form of unfair or deceptive practice. We must also be concerned with resulting, even though unfounded, litigation risk, class action or otherwise.

Simply put, we would be out of the introductory rate business, and even if just for the short time that an introductory rate may be in force, our customers will lose the benefit of the lower rate. They would also lose the benefit of a "blended rate over time" by eliminating the early introductory rate since even when it re-prices to a higher rate, this still offers a better rate than a flat market rate on the front end.

P.O. Box 789 • Tupelo, MS 38802-0789 • 662-680-2000

21-Day Statement Mailing Proposal

Candidly, an institution like BancorpSouth, provided it has adequate lead time to invoke a change such as the 21-day statement rendering rule, regrettably at expense, can and will do so. We also support the concept of regulation that has substance and meaning of benefit to both the industry and our customers such as "specific rule/bright line" approaches like the 21 day rule. We feel compelled to comment, however, on how this needs to be a Reg Z requirement, not a UDAP requirement. If our bank or another bank was found to be unscrupulous, mischievous, or purposely avoiding the 21-day Reg Z rule, a case by case examination under UDAP may be appropriate. Use of UDAP is not appropriate, however, to make something as direct and bright line as the specific number of days to send a statement. To do otherwise is going to require BancorpSouth to spend extra resources to "prove mailing" almost every month, document its mailing processes, renegotiate vendor mailings, "prove up" our statement cycling, and add employees to substantiate our "did we put it in the mail" regimen.

We recognize the rule provides that we should simply have processes in place for such, but with the threat of UDAP, we believe we will have no choice but to institute all of the above, and perhaps then some, to avoid the "we didn't get a statement timely" argument. Regardless of how unnecessary and unfounded of merit such a claim would be, our processes, forms, due diligence documentation, etc., would *still* beg the question of why? Thus, make it a Reg Z specific requirement and no more; and certainly not under UDAP.

Risk-Based Pricing

To BancorpSouth generally, and especially with our credit card portfolio being mostly unsecured open-end consumer credit, risk-based pricing is critical. This issue is of concern not only on front end underwriting, but in managing the ongoing customer relationship. While front end risk-based pricing issues appear to exist with the proposal, the greatest concern to BancorpSouth is with the initial underwriting of a credit card product, where we assign the product type/pricing and apply other features such as limits commensurate with one's credit history, only to have the customer's credit change down the road for the worse. This happens every day.

Currently when this happens, BancorpSouth considers the option of moving the customer to a different product which is priced at a higher rate and/or lowering credit limits in lieu of actually canceling the card and eliminating the customer's access to credit. Under the proposal, that appears not only problematic, but likewise subject to getting tainted with an "unfair" label. We therefore face what we consider to be a negative option of having to cancel our customer's access to credit under such circumstances as opposed to legitimately adjusting the relationship.

P.O. Box 789 • Tupelo, MS 38802-0789 • 662-680-2000

Under UDAP's scrutiny, to do otherwise would raise portfolio delinquency concerns and the possibility of safety and soundness concerns for our portfolio. A prohibition on risk-based pricing would force us to consider increasing rates for all of our credit card customers.

The alternatives therefore seem to be, as is the solution to other aspects, for enhanced Reg Z disclosures in this regard. Otherwise, for our customers with better credit histories, lower priced cards and/or greater limits will no longer be viable options. And, to adjust for the potential loss of income occasioned thereby, a reevaluation of the entire portfolio, putting all segments of our customer base at risk, looms as an unfortunate, unintended consequential choice for us.

5:00 P.M. Payment Receipt Proposal

If BancorpSouth makes only a morning mail run to our post office that is designated for receipt of making credit card payments, BancorpSouth would apparently be committing multiple fair and deceptive trade practices or otherwise be in violation of the proposed rule because it would not be crediting a payment that was received throughout that same day up until 5:00 p.m. at the very same post office. To avoid this, BancorpSouth would have to station someone at the post office to retrieve the mail throughout the day and figure a way to do a "last mail call" at 4:59 p.m.

Then comes the real quandary because cut off times are supposed to be designed to enable depositor institutions to have sufficient time for payment processing. Something that is basically impractical is therefore being proposed. We will simply have an undisclosed "grace period" day in effect added because of this arbitrary date and time.

We therefore strongly oppose the Board's establishment of 5:00 p.m., or for that matter, any particular cut off time for receipt of mailed payments and respectfully request the Board to delete this proposal. A rule is already provided in Reg Z, Section 226.10. Creditors may specify reasonable requirements that enable consumers to make conforming payments, thus appropriately leaving to creditors the determination based on their specific procedures.

BancorpSouth uses a lockbox concept, therein we would have to engage the services of those personnel to "figure out" and process in a totally different manner than that currently implemented by specific detailed procedures. Banks like BancorpSouth need adequate time to utilize the system capability of processing payments. Simply put, BancorpSouth cannot open, process, and credit a payment on the day it is received unless it is received by a time certain that leaves enough time to complete the processing by the end of that banking day. For BancorpSouth, that is in the morning, or at best, midday.

The Board does not provide a justification in terms of a benefit to consumers why the 5:00 p.m. cutoff is a preferable cutoff time as compared to an earlier cutoff time set reasonably by the financial institution itself. If this proposal stays, banks will have no choice but to process payments in the following days, but find a means to arbitrarily grant additional grace days because of the impracticability of crediting payments that were placed in the late mail run at the post office, even if at 4:59 p.m.

Conclusion

It appears that certain practices warrant UDAP scrutiny, if tailor-made and specific to the major concerns under scrutiny, i.e., double cycle billing. However, remaining concerns need a balancing act: first, a retreat from UDAP, then utilization of revisions to Reg Z, as the solution.

Sincerely yours,

Kathi Carter

Kathi Carter
Senior Vice President