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July 31, 2008

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

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

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

Ladies and Gentlemen:

First State Bank welcomes the opportunity to provide comments on the rule proposed by the Federal Reserve Board, the OTS and the NCUA covering Unfair or Deceptive Acts or Practices (UDAP) involving overdraft privilege service fees.

First State Bank is concerned about this proposal and its possible effect on our ability to safely and soundly exercise our risk-based discretion to pay inadvertent customer overdrafts that are otherwise reasonably avoidable when depositors follow prudent balancing practices. Years ago, only the best customer had the privilege of having overdrafts covered. With our safe and sound program in place, we have been able to offer the privilege to the majority of our customer base in a fair and consistent manner. Our customers like to know that if they make a mistake, they can rely on this service and are willing to pay for it. In fact, our bank charges the same fee whether the check is paid or returned, so the notion that overdraft privilege fees are injurious to customers makes no sense in our case. Long standing principles of banking law expect depositors to be responsible for their own account management. It is not unfair to expect them to do that. Today, customers have more current information and tools than ever before, but personal responsibility must remain. Customers know the transactions they have conducted and the bank can only find out after the fact. They are in control of their finances and can avoid overdraft fees. People go years without incurring an overdraft, but perfection cannot become the standard for what it means to reasonably avoid a fee. Customers have the option of choosing account packages that offer the service, selecting another account from which to transfer to cover shortages that would eliminate overdrafts, and ultimately, the customer has the choice to select another bank that might offer more favorable mix of features or prices. Banks compete for new customers and losing a customer is costly. A program that harms customers has no longevity. The banking industry's mainstream overdraft practices are not unfair to customers and are not intended to lure the customer into large overdrafts. Our limits are \$300- \$500 and customers must be out of the

overdraft situation within 30 days. If they cannot do that, we allow them to temporarily remove overdraft privilege and pay the overdraft out over a period of a few months, without interest! Customers can choose not to have overdraft privilege. The cost of a check returned to a merchant always results in more cost to the customer than paying an item into the overdraft.

The Expedited Funds Availability Act and Reg CC heavily regulate the process by which checks are handled, funds are made available and customers receive disclosures explaining that. The Electronic Funds Transfer Act and Reg E regulate the process by which electronic payments are handled, also protecting the consumers' rights. The proposal for a partial opt-out of ATM and debit card transactions, while retaining coverage for checks and ACH, is not technically feasible under our processing system. Small banks such as First State Bank would be forced to abandon overdraft privilege programs altogether rather than absorb the costs of a multi-option program. More problematic is distinguishing debit cards from ACH, and also card present POS transactions from recurring payment uses of debit cards. Compliance would be virtually impossible. Even in an opt-out scenario, banks cannot guarantee there would not be an overdraft. All debit card transactions are not processed in real time. If a deposited check is returned unpaid, a customer relying on Reg CC might spend funds by debit card that are not collected. This would result in an overdraft. If bank systems were down, and we could not rely on the prior day's balance, customers with adequate funds might be denied use of their debit card. Most of the issues regarding debit card payments involve card systems and merchants- not banks. Those circumstances are not encompassed by this proposal. If a partial opt-out is allowed, most small banks would simply have to discontinue offering overdraft privilege.

In regard to the payment clearing processing, payment order varies across the industry, but is clearly disclosed to the customer. It cannot be changed on a whim, or changed from customer to customer to generate additional fees for the bank. Different types of items are presented for processing at different times, so that no single rule (such as low to high) is practical. First State Bank pays items in order of check sequence number, but we also have to allow for internal cashed items, etc, so no process is flawless. The important thing is that the practice is fair and consistent and if a customer maintains the funds to clear all their items, the order of processing is not relevant.

We believe that regulations already exist that provide consumer protection for debit card transactions and that any changes should be evaluated within the already established framework for electronic transactions, funds availability and account disclosures. Use of UDAP rule-making as invoked in the current proposal will put banking agencies on the path of product feature micro-management at the expense of consumer choice and convenience. Thank you for your consideration.

Sincerely,



Johnny K. Morgan
President



Ragena Moore
SVP/ Operations Manager