



March 30, 2009

~ Sent Via Email ~

Jennifer J. Johnson  
Secretary, Board of Governors of the Federal Reserve System  
Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue N.W.  
Washington, D.C. 20551

Re: Proposed Amendments to Regulation E

Dear Ms. Johnson:

We appreciate the Board's decision to move the overdraft rules from the Unfair or Deceptive Acts or Practices Act (UDAP) regulation to Regulation E (Electronic Fund Transfer Act). Leaving it in the UDAP regulation would have established a precedent that would leave any bank fee or practices vulnerable to legal challenge creating unpredictable potential liability.

We support the provisions in the Proposal that would increase disclosure of overdraft programs. We also support most of the Proposal's opt-out provisions. We believe the final rule should allow banks to be able to offer customers the choice of either having all overdraft transactions **returned/declined** or having all transactions **covered** by the overdraft service. This is the way our current overdraft program works and it is readily understood and used by over 25,000 of our customers. For many banks, it is not feasible to allow customers, on an account-by-account basis, to select partial opt-out and have only debit card overdrafts declined. This would necessitate substantial and expensive reprogramming of our systems.

Not only is a partial opt-out confusing and difficult for the customer to remember, it would add a substantial technology development cost to all banks. In fact, even a profitable bank of our size (\$1.7 billion in assets) will struggle with this expense on top of the recent increased FDIC premium and the need to make larger loan loss provisions due to the economy. This added burden could impact our profitability and create a financial hardship. Besides the technology expense, we will need to add staff to manage this process and handle the increased calls from confused and angry customers.

Our market research and practical experience clearly confirms consumers expect and appreciate overdraft services. For customers who are dissatisfied, it is in the best interest of the bank to accommodate that customer, for example, by waiving the fee for the occasional overdraft and allowing the customer to then opt-out of the service. Customer satisfaction is a key component to our success. The only related customer complaints we have received during the three years we have been offering an overdraft service were from customers disqualified from using the program.

On a related matter, I encourage the regulatory bodies to voice their opposition to New York Congresswoman Carolyn Maloney's overdraft bill (HR946 in the 110<sup>th</sup> Congress) which would include overdrafts under the provisions of the Fair Lending and possibly Truth in Lending Acts. It would be virtually impossible for us to comply with this change as monitoring to guard against disparate treatment would be extraordinarily difficult for a community bank of our size and limited resources.

Thank you for your consideration of our comments and concerns. Please contact me at (209) 367-2455 if you have any questions.

Sincerely,  
Deborah Hodkin  
EVP, Chief Administrative Officer  
Farmers & Merchants Bank of Central California