



Another step on the path to success

first financial bank

August 4, 2008

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

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

First Financial Bank, NA (FFB) appreciates the opportunity to comment on the proposed Federal Reserve regulations relating to overdraft accommodation programs. Overdraft is an added customer service we provide that is not only financially sound, but because our customers see it as real value when the bank stands behind their payment.

FFB doesn't feel overdraft fees are unfair, and most often can easily be avoided. Most customers are diligent in balancing their accounts understand how to responsibly use their accounts. Moreover, our customers know good account management is avoidable and they demonstrate it month after month. Most of our customers make it through the year without a single overdraft. And, those customers who happen to overdraft periodically are aware of the consequences of their conduct and are acting in accordance with their preferences given that awareness. They do not need repeated notice to opt-out of the convenience they chose to accept. Our customer service and retail banking staff are always available to assist them and make it a point to reach out to those customers who would benefit from alternatives for managing their transaction activity.

Furthermore, a partial opt-out covering ATMs and Debit Cards is not necessary. Many of our customers use debit cards as their primary payment method, often carrying no other payment means. In addition they schedule recurring payments with their debit cards. These customers appreciate that we accommodate overdrafts on debit card transactions and understand that fees will apply. Affording a "partial opt-out" for debit cards may confuse customers that somehow they will be entitled to have check and ACH overdrafts paid even though account terms make it clear that paying overdrafts is always up to the discretion of the bank, and there is no contractual obligation to do so.

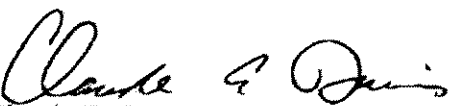
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Within the industry today, payment clearance practices—whether for debit holds or payment items generally—are complex and vary widely across the industry, but are driven by system efficiency and sound risk management and do not constitute unfairness to customers. Merchant and bank practices on debit holds are in flux. Many merchants in the hospitality industry alert customers that holds may be put on accounts if they use a debit card at check in. Card system rules are evolving to address authorizations for gasoline purchases at the pump to make them virtually real-time. Restricting when banks can charge fees for overdrafts caused by debit card authorizations changes the nature of the risk management decision for banks because it impacts whether banks will be properly compensated for intermediate transactions that settle “out of funds” while the authorized transaction is in transit. This is a significant countervailing safety and soundness benefit to the assertion that overdrafts caused by holds are unfair. Overdraft fees are calculated based on following clearance systems designed to provide payment processing efficiencies that reflect technical capabilities and the varied risks banks face for handling different payment channels. These systems, and the clearance order they generate, change as technological advances occur, as payment channel mix alters to capture customer usage trends and as legal liabilities evolve. They are not manipulated to generate overdraft fees. It would be impossible to give individual customers the right to alter the bank’s clearance process. In addition, many of these clearance processes are too complex to explain in understandable terms in any consumer disclosure.

We have followed the Interagency guidance on overdraft programs from 2005 and have never been criticized by our examiner for how we’ve run our program. How can this now become an unfair and deceptive practice? We are very concerned that what we followed as prevailing industry practice is now suggested to be unfair and, as a consequence in some instances, could possibly expose us to frivolous litigation.

Providing overdraft accommodation is a benefit and is reasonably avoidable by customers exercising normal care—the kind described in Federal Reserve and Interagency consumer publications. Our accommodation programs are successful because the benefits outweigh the disadvantages and they are sustainable because our customers want the bank to recognize that when they inadvertently overdraw their account they can be trusted to make it right.

Sincerely,


Claude E. Davis
CEO & President