

Guaranty BANK

August 4, 2008

Jennifer J. Johnson
Secretary
Board of Governors of the Federal
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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

Guaranty Bank (the "Bank") would like to take this opportunity to comment on the proposed changes to Regulation AA – Unfair or Deceptive Acts or Practices. Overall, we agree with the intent of the Agencies in providing additional transparency to overdraft protection services; however there are a few concerns we would like to share with you.

As a general comment, under the May 2005 final rule, many financial institutions were influenced to withhold the promotion of courtesy overdraft protection services, primarily to avoid the costly expense of reprogramming and enhancing periodic statement disclosures. Guaranty Bank strives to follow this guidance as a way to ensure transparency to our customer base and do not feel they are currently unfair or deceptive. For example, it is our current practice to allow clients the option to opt out of our courtesy overdraft program upon their request. This allows consumers who are uncomfortable with such items being paid for their benefit the choice they desire. Furthermore, the automated portion of our courtesy program does not pay items if the account has remained overdrawn for an extended period, thus minimizing the amount of overdraft that can be accrued.

Because you are changing practices that have been in place for many years, we are concerned with the additional steps the Agencies are taking, during this difficult economic environment, that will likely lead to further consumer confusion, with little consumer benefit. The changes will in some circumstances lead to greater monetary and reputational impact on consumers. Additionally, the depth and complexity of the disclosures does not offer, in our view, substantial clarification for consumers.

The Agencies have requested comment on the proposed changes to Regulation AA (Unfair or Deceptive Acts or Practices) and we appreciate the opportunity to provide comment on these proposals.

The Agencies seek comment on the operational issues and costs of implementing the proposed prohibition on the imposition of overdraft fees if the overdraft occurs solely because of the existence of a hold.

The Bank strongly urges the Agencies to reconsider their stance on overdrafts resulting from holds. We have been unable to determine a method to logistically handle this in a safe and sound manner. Generally, financial institutions are unaware of the actual dollar amount or exposure for which a preauthorized transaction will ultimately settle. They are two very different transactions. Merchants have a window of time in which to send in the actual transaction amount and often the actual transaction is days apart from the preauthorized amount. It would be impossible to calculate overdraft fees associated with debit holds in the current environment under which merchant and card networks operate. Simply put, the Bank does not know the final settlement amount for at least one to three days after the original hold is placed, it would therefore be impossible to predict which transactions would cause an overdraft because that knowledge is gained after the original transaction is processed. A financial institutions ability to place a hold on funds that have been authorized for payment and the financial institution is obligated to honor is a prudent business practice and is in line with operating in a safe and sound manner.

It is already our practice once notified to refund fees caused solely by holds submitted by merchants in excess of the finally settled transaction, or where the information submitted with settlement is insufficient to allow the original hold to be matched and removed immediately. We recognize the consumer has no control over the manner in which transactions are submitted for authorization then subsequently settled. We engage in our refund practice in order to be fair to the consumer in circumstances which neither the consumer nor we directly control.

The Agencies seek comment on whether the consumer's right to opt out should be limited to overdrafts caused by ATM withdrawals and debit card transactions at a point-of-sale.

Without significant technology changes, it would be impossible to limit an opt-out to overdrafts caused by ATM withdrawals and debit card transactions at a point of sale terminal. We also perceive that with these types of changes, our Bank staff would have a difficult time understanding the nuances of what truly is a debit card point of sale transaction versus what it is not. This concern is amplified when trying to effectively explain the intricacies to the Bank's customer base.

Affording a partial opt-out for debit cards will confuse customers. They may believe they are entitled to have check and ACH overdrafts paid even though our account agreements make it clear that paying overdrafts is always up to the discretion of the Bank.

Another concern is the lack of clarity regarding the consumers desire to reverse an opt-out option. For example, it would need to be clarified if both parties on a joint account would be required to agree to the opt-out provision or would one consumer on a joint account be an acceptable means to take action. We request additional information regarding the retention of such opt-out or opt-in documentation and whether it can be maintained electronically.

The Agencies are also interested in the potential costs and consumer benefits for implementing a partial opt out that applies only to ATM transactions and debit card transactions at the point-of-sale.

We find it difficult to project potential costs associated with the set of proposals as there are many dependencies on what is finalized in the rule. As it reads today, the Bank's best estimate is the cost could potentially exceed several million dollars. We also find it difficult to justify burdensome educational expenses for our entire customer base on a product that is used by only a small percentage of customers. This would lead to confusion and frustration among the vast majority of the customer base.

The Agencies seek comment on whether exceptions are necessary to address these circumstances, and if so, how such exceptions may be narrowly tailored so as not to undermine protections afforded by a consumer's election to opt out.

The Bank is concerned with the level of exceptions that will likely be afforded financial institutions, with good cause, that will lead to increased consumer confusion and frustration and we do not believe that is the Agencies' intent. Currently there are two exceptions we have been asked to review and consider (1) when the actual purchase amount exceeds the amount that had been authorized; and (2) the transaction is presented for payment by paper-based means and was not previously authorized.

We feel there are other exceptions that should be considered. For example, Regulation CC has emergency conditions that include such items as (1) an interruption of communications or computer or other equipment facilities; (2) a suspension of payments by another bank; (3) a war; or (4) an emergency condition beyond the control of the depository bank. These are other valid exceptions items that should be considered when formalizing changes to Regulation AA.

The Agencies solicit comment on when any final rules should be effective and whether a one-year time period is appropriate or whether the period should be longer or shorter.

Guaranty Bank feels that there are too many concerns with the proposed changes, that a time impact study can best be reviewed once the Agencies have had the chance to review and address financial institutions concerns.

The Agencies are also seeking comment on payment clearance processing and the order in which transactions are paid.

Guaranty Bank objects to any regulatory requirement on processing order by pointing out that order of recognition varies across the industry to take advantage of system efficiencies and a regulation would be a micro-managing disaster. Today, different types of items are presented for processing at different times so that no single rule (such as low to high) is practical. Further, we would argue that no posting order methodology is inherently superior to the next, each has their benefits and issues from a customer perspective. Advancements in technology and in payment systems are moving the industry closer to real-time processing and we should not arbitrarily dictate a posting order process that may not take into account future efficiencies. We also believe that allowing an individual customer choose an alternative payment processing order would be very confusing for both customers and bank staff alike, incredibly hard to accomplish systematically, and very inefficient.

Imposition of a particular payment order could actually cause overdrafts that might otherwise not have occurred, due to the time frame between authorization and settlement of certain transactions. When added to the already complex nature of matching authorizations with settlement transactions, such restrictions become difficult for consumers to understand and may actually defeat the intent of the Agencies to increase clarity and transparency.

Sincerely,

A handwritten signature in black ink, appearing to read "Steve Cooper". The signature is fluid and cursive, with the first name "Steve" and last name "Cooper" clearly distinguishable.

Steve Cooper
Executive Vice President
Guaranty Bank