



August 4, 2008

VIA EMAIL

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal
Reserve System
20th Street and Constitution Avenue, NW.,
Washington, DC 20551
regs.comments@federalreserve.gov
Docket No. R-1314

Regulation Comments
Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, NW.,
Washington, DC 20552
www.regulations.gov
OTS-2008-2004

Ms. Nancy Rupp, Secretary of the Board
National Credit Union Administration
1775 Duke Street
Alexandria, VA 22314-3428
regcomments@ncua.gov
RIN 3133-AD47

RE: Regulation AA Proposed Rule Regarding Unfair or Deceptive Acts or Practices: Docket No. R-1314; OTS-2008-2004; and RIN 3133-AD47

Dear Sirs and Madams:

The Wisconsin Bankers Association (WBA) is the largest financial trade association in Wisconsin, representing approximately 300 state and nationally chartered banks, savings and loan associations, and savings banks located in communities throughout the state. WBA appreciates the opportunity to comment on the proposed revisions to Regulation AA to prohibit unfair or deceptive acts or practices regarding consumer credit card accounts and overdraft services for deposit accounts.

The Board of Governors of the Federal Reserve System (FRB), Office of Thrift Supervision, and National Credit Union Administration (NCUA) (collectively, the Agencies) have proposed amendments to Regulation AA regarding activities they believe should be considered unfair or deceptive acts or practices regarding consumer credit card accounts and overdraft services for deposit accounts. The Agencies have proposed prohibitions, numerous credit card payment treatments and new disclosures.

The proposal evolved from FRB's June 2007 proposal under the Truth in Lending Act (TILA) and OTS's August 2007 Advance Notice of Proposed Rulemaking under the Federal Trade Commission Act (FTC Act). The proposal also relates to other FRB proposals under TILA, and the Truth in Savings Act (TISA). WBA has previously expressed its strong opposition to those proposals and wishes to voice similar concerns today in response to the Agencies' current proposal involving overdraft protection services.

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In its letter dated July 18, 2008 regarding proposed revisions to Regulation DD regarding overdraft protection services, WBA urged FRB to withdraw its proposal and instead permit financial institutions to work within the parameters provided for by the February 2005 joint guidance on overdraft protection programs issued by the federal banking agencies.

WBA shares the Agencies' desire to ensure consumers are provided with accurate and timely consumer deposit account disclosures; however, we wish to remind the Agencies that consumers are free to contact their banker at any time to pose questions regarding their deposit accounts and to further discuss available overdraft services or discontinuation of such services, if the consumer so chooses. As such, WBA believes the Agencies' proposal regarding overdraft services to be unnecessary and strongly believes that overdraft protection services are not unfair or deceptive acts as the proposal provides. WBA does not believe an institution's decision to pay an item against a consumer's deposit account out of courtesy to be an unfair or deceptive act, especially when the decision to not pay an item would result in additional costs and reputational concerns for the consumer.

The Agencies defer to FTC's standards regarding whether an act or practice is deceptive, as set forth under section 18(f)(1) of the FTC Act. Under that standard, an act or practice is deceptive where: (1) there is a representation or omission of information that is likely to mislead a consumer acting reasonably under the circumstances; and (2) that information is material to consumers. Under the current proposal, the Agencies have set forth seven provisions regarding consumer credit card accounts and two provisions related to overdraft services in connection with consumer deposit accounts which they believe fall within FTC's standards regarding deceptive acts or practices.

The Agencies believe it is an unfair act or practice under the standards of the FTC Act for an institution to assess overdraft fees before the consumer has been provided with notice and a reasonable opportunity to opt-out of the institution's overdraft service. As such, the Agencies have proposed that financial institutions be prohibited from assessing any fees on a consumer's account in connection with an overdraft service unless the consumer is given notice and a reasonable opportunity to opt-out of the service, and the consumer does not opt-out. The consumer's right to opt-out of an institution's overdraft service would apply to all methods of payment. Furthermore, institutions would also be required to provide a subsequent opt-out notice at least once during or for each periodic statement cycle in which any overdraft fee or charge is assessed on the consumer's account. The Agencies have proposed a prescribed opt-out notice format which would be required for all opt-out notices under all proposed timing requirements to ensure uniform notices.

WBA argues the opt-out notice requirements are excessive and unwarranted and remind the Agencies that consumers have already been provided account disclosures which include information regarding overdraft fees. WBA opposes the creation of a new prescribed disclosure because consumers already have an opportunity to simply contact their financial institution at any time to pose any questions regarding their account and any fee associated with the account, and inquire about available overdraft services or alternatives. We believe a simple conversation between a consumer and their banker is the most effective and efficient solution to how a consumer may learn about the institution's overdraft payment services and how to opt-out of the overdraft program. WBA does not believe the majority of consumers wish to opt-out of such programs; therefore, to subject institutions to additional regulatory burden imposed by the proposal when it is unwarranted is unnecessary.

WBA does not believe financial institutions are acting in an unfair or deceptive manner when a decision is made to pay an item presented against a consumer's deposit account. Whether manual or automatic, the decision to permit an item to be paid against a consumer's deposit account despite creating an overdrawn account balance is a decision made out of courtesy to the consumer. WBA acknowledges a fee is imposed for such payment; however, the fee is imposed as it is a service provided by the institution which poses a risk to that institution. The fee also acts as a deterrent to discourage consumers from routinely overdrawing their account. WBA again stresses that consumers are free to contact their banker at any time to pose questions regarding their deposit accounts and to further discuss available overdraft services or discontinuation of such services, if the consumer so chooses. As such, we believe the Agencies' proposal regarding overdraft services to be unnecessary.

Additionally, overdraft fees are already disclosed to consumers in account deposit disclosures required to be given to consumers before they open a deposit account. WBA argues that consumers themselves are in the best position to monitor their deposit account balance and to know when their account balance is getting low. In fact, WBA adamantly believes that consumers have a responsibility to monitor their deposit accounts and to keep abreast of their account balances. To further assist consumers in the process, financial institutions even provide several methods by which consumers can check their current account balance. These methods commonly include telephone, ATM and on-line computer inquiries.

WBA argues that it is illegal for consumers to purposefully conduct transactions when they know they do not have sufficient funds to cover the transactions. However, on the occasion when the consumer's account balance is low, financial institutions may permit an item to clear against the consumer's account despite creating an overdrawn account balance. WBA argues this is not deceptive or unfair, but a simple courtesy extended to the consumer. WBA vehemently opposes the Agencies proposal to treat overdraft services in the manner proposed and strongly recommends the Agencies withdraw that portion of their proposal.

The Agencies have also proposed an option for consumers to have "ATM withdrawals or debit card purchases" not paid, but continue to have other overdraft transactions paid. The Agencies state that the partial opt-out provision is intended to allow consumers the ability to determine for themselves whether they prefer that their institution deny the payment of all overdrafts, or to have overdrafts paid for check and ACH transactions in order to avoid potential merchant fees for returning items or other adverse consequences.

WBA struggles to understand the Agencies' rationale behind the proposed partial opt-out option. On the one hand, the Agencies claim overdraft services are unfair and deceptive, yet on the other hand the Agencies have proposed to permit consumers the opportunity to select which transactions should or should not be permitted to overdraw their deposit account balance. WBA believes the decision to permit an item to clear against a consumer's deposit account is a decision which should rest solely with the financial institution, and is a service that is neither unfair nor deceptive.

WBA recommends there be no partial opt-out option. If the Agencies' final rule contains opt-out rights, then it should be applied across the board to affect any item presented regardless of the manner in which the item is presented against the deposit account.

In addition, the proposal contains two exceptions to the proposed requirements that institutions cannot impose a fee for the payment of an overdraft created by a consumer

who has opted-out of the institution's overdraft services. The first exception would permit an institution to charge a fee when an overdraft occurs as a result of a point-of-sale (POS) debit card transaction, and the purchase amount presented for settlement by the merchant exceeds the amount that was originally required for pre-authorization. An institution would also be permitted to charge a fee when a merchant, without first obtaining authorization from the card issuer, presents a debit card transaction for payment by paper-based means, and the amount of that transaction creates an overdraft. WBA agrees that in both situations, financial institutions should not be subject to a consumer's opt-out decision because the institution does not have a way in which to decline the authorization of the item.

While the Agencies' proposal does not address transaction clearing practices, the Agencies seek comment on the impact of requiring institutions to pay smaller dollar items before larger dollar items when received on the same day for purposes of assessing overdraft fees on a consumer's account.

Imposing any particular clearing practice is contrary to Articles 3 and 4 of the Uniform Commercial Code, which permits an institution to exercise flexibility in the order in which items are paid. WBA recommends institutions be permitted to continue in this manner and not be required to pay items in a particular order.

WBA recognizes the Agencies' efforts to review consumer deposit account disclosures and share the Agencies' desire to ensure consumers are provided with accurate and timely consumer deposit account disclosures. However, WBA believes existing account disclosures and advertisement requirements already sufficiently inform consumers of an account's features, including fees. Any addition to those disclosure requirements would merely be unnecessary duplication resulting in extensive regulatory burden and increased costs to financial institutions. WBA believes the new burdens excessively outweigh the Agencies' perceived benefits, and will only increase costs to consumers.

WBA reminds the Agencies that consumers are free to contact their banker at any time to pose questions regarding their deposit accounts and to further discuss available overdraft services or opt-out options. WBA opposes the Agencies interpretation that overdraft services are unfair or deceptive acts and strongly encourages the Agencies to withdraw this portion of the proposal. If the Agencies finalize the proposal, WBA recommends the Agencies not permit a partial opt-out option; retain the two exceptions for consumer opt-out; and not require transactions be paid in a particular order.

Once again, WBA appreciates the opportunity to comment on the Agencies' proposed revisions to Regulation AA.

Sincerely,



Rose Oswald Poels
Senior Vice President