



HIGH POINT BANK

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

Regulation Comments, Chief Counsel's Office
Office of Thrift Supervision
Attn: OTS-2008-2004
1700 G Street, NW
Washington, DC 2055

Robert E. Feldman, Executive Secretary
Attn: Comments/Legal ESS
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

Re: Federal Reserve Docket No. R-1314; OTS Docket ID. OTS-2008-2004; Unfair or Deceptive Acts or Practices; May 19, 2008 Proposed Rules by the Federal Reserve System and OTS

Dear Sir or Madam:

The Board of Governors of the Federal Reserve System (Board), Office of Thrift Supervision (OTS) and National Credit Union Administration (NCUA) have proposed several amendments to Regulation AA, *Unfair or Deceptive Acts or Practices* and Regulation DD, *Truth In Savings*. The proposals include 1) imposing an advance opt out requirement and periodic opt out reminders 2) allowing a partial opt out of ATM and debit card transactions and 3) prohibiting overdraft fees on accounts involving debit holds.

High Point Bank & Trust Company, founded in 1905, is located in High Point, North Carolina. It is a state chartered non-member bank, with assets of approximately \$790 million. High Point Bank & Trust Company serves the cities of High Point, Jamestown, Archdale, Greensboro and Kernersville, North Carolina and the surrounding counties of Guilford, Davidson, Forsyth and Randolph. High Point Bank appreciates the opportunity to provide comments on the proposed revisions and we hope that our comments will be considered and will be helpful in composing the final rule.

High Point Bank & Trust Company (the Bank) does support imposing an advance opt out notice to consumers; however, the Bank does **not** support the proposed periodic opt out notices nor the additional proposed revisions listed above. These revisions will have negative impacts on our customers. The proposed revisions to allow partial opt outs and to restrict charges when a debit hold creates the overdraft are not technically feasible automated processes under our current processing system. High Point Bank takes a very conservative approach to overdraft protection services. The Bank observed the 2005 Interagency Guidance and best practices and therefore does not see how our program can now be rendered unfair and deceptive.

Imposing an Advance Opt Out Requirement and Periodic Reminders

High Point Bank & Trust Company supports the proposal to provide consumers with an advance notice and right to opt out of the Bank's overdraft protection service. High Point Bank currently provides customers with the option to opt out of our automated overdraft protection services. Providing an initial option to opt out is not too much of a burden on the Bank; however, requiring periodic reminders of a customer's right to opt out does place a burden on the Bank and creates confusion to the consumer. The proposal states that the periodic notice is to be provided "at least once during or for each periodic statement cycle in which any overdraft fee or charge is assessed to the consumer's account." Providing an opt out notice to a consumer along with the notice that they have overdraft fees on their account will create the need for educating consumers that, while they have the option to opt out going forward, the current fees charged must still be paid by the consumer. This proposal also allows the opt out at a time when the consumer may opt out simply because they are upset about their current charges; however, they are not thinking about the long term effects of their decision. The next time they overdraw their account and we return the item, are they going to be upset and embarrassed? Probably so. Are they going to pay a fee to for the returned item? Yes.

Most consumers regularly manage their accounts and avoid overdrawing them. These consumers appreciate the service on the rare occasion that they forget to write down a debit and overdraw their account. The overdraft protection service protects consumers from the embarrassment of having items returned unpaid as well as the possibility of being reported to a consumer reporting agency and consumers are grateful for that.

Allowing a Partial Opt Out of ATM and Point-of-Sale Debit Card Transactions

The proposal for a partial opt out that would allow consumers to opt out of overdraft protection services on ATM and debit-card transactions will have a negative impact on banks and consumers. This proposal creates additional customer confusion and the need for customer education as well as front-line employee education. For High Point Bank as well as many other banks, allowing a partial opt out is not technically feasible with our current operating systems. This proposal also creates an additional burden on the Bank to implement an effective opt out system that will differentiate between a partial opt out and a full opt out.

In today's environment, payment systems are complex. A consumer may write a check; however, the transaction could be processed as an ACH entry. Therefore, consumers do not always know how their transaction will be ultimately paid. There are times when the Bank cannot avoid paying an ATM or point-of-sale debit card transaction that overdraws a consumer's

account regardless of the consumer's option to opt out of overdraft protection services. In these situations, the customer is in the best position to determine their account status and whether or not the transaction would overdraw their account. If they make the decision to proceed with the transaction and the bank has no opportunity to prevent or return the transaction, then the bank should be allowed to charge a fee.

Debit Holds

The proposal states that a Bank cannot assess a fee or charge on a consumer's account in connection with an overdraft service if an overdraft would not have occurred had there not been a hold placed on funds in the consumer's account that exceeds the actual purchase or transaction amount. This problem is beyond the control of the bank and I see no logical explanation for this being an unfair and deceptive act on the bank's behalf. The bank can only rely on the information it is furnished from the merchant and is only acting in a safe and sound manner to mitigate risk and ensure that when the transaction is processed, the funds will be available to pay the transaction. The bank has no idea the dollar amount of the actual transaction until it is processed. At that time, the hold will be released and any additional funds that were being held will be available to the consumer.

The process of tracking overdrafts to determine if they were caused by a debit hold in excess of the transaction amount would be a very burdensome and manual task or would require a complex system that we do not currently have in place. The bank would have to adjust accounts and reimburse charges after the transaction posts to the account. This manual process will more than likely be cost prohibitive. This requirement will cause banks to question placing holds, which I then believe creates risk and safety and soundness concerns for banks.

Conclusion

The proposals for changes to Regulation AA and Regulation DD discussed above will have a large impact on the banking industry. These proposals may benefit a very small group of consumers who consistently overdraw their accounts and do not manage their accounts properly. However, the proposals will have negative impacts on the large majority of consumers that rely on overdraft protection in the very rare instances that they overdraw their accounts. This service offers these customers the comfort of knowing that they will not be embarrassed by returned items. High Point Bank appreciates the opportunity to comment on the proposals. We hope that the Agencies will consider our comments and, for those banks that are observing the 2005 Interagency Guidance, no changes in policy or procedure will be necessary.

Sincerely,

High Point Bank & Trust Company