

August 1, 2008

Ms. Jennifer R. 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
1700G Street, NW.
Washington, D. C. 20552
ATTN: OTS-2008-0004

Sent by E-mail to: regs.comments@federalreserve.gov

Re: FRB Docket No. R-1314; OTS Docket No. OTS-2008-0004
Unfair or Deceptive Acts or Practices; *73 Federal Register* 28904
May 19, 2008

Ladies and Gentlemen:

Grundy Bank ("GB") appreciates the opportunity to comment on the proposed regulations relating to Overdraft Protection being offered by the Board of Governors of the Federal Reserve System and the Office of Thrift Supervision (collectively, the "Agencies"). GB is a \$200,000,000 community bank with branches located in Morris and Wilmington, Illinois. GB primarily serves the communities located within a 20 mile radius of its branches including Grundy, Will, Kendall, LaSalle, Kankakee and Livingston Counties, Illinois.

GB is concerned by the proposed regulations and respectfully asks that these proposed regulations be withdrawn. GB has been diligent in its efforts to provide our customers with an equitable overdraft protection program. We utilized the 2005 Interagency guidance in writing our overdraft policy. In deciding how to clear items we have tried to be fair to our customers and the bank. This principle guided us as we established our transaction order for clearing items. Our order is: Automatic Clearing House (ACH) Items, ATM or point-of-sale (debit card items) and checks in ascending number order. The ACH and debit cards receive priority because of the rules regarding these types of transactions.

I respectfully object to any regulatory requirement on processing order. Regulation on processing order may sound good for consumer protection reasons. However, I believe it will cause more problems for the vast majority of consumers than remedies it provides for a very small minority. (Please remember that most consumers pay no overdraft fees.) Regulation in this area will reduce the payment system efficiencies that are enjoyed by consumers, merchants and financial institutions. Today, payments are presented for processing at different times of the day. It will be a micro-managing and technological disaster for a regulation to be in place that governs the priority in which these are cleared. The consumer has choice today. I have outlined our payment clearing order and other financial institutions have different payment clearing orders. These choices allow the consumer to seek out accounts that best fit her/his needs.

Overdraft protection is a customer friendly service that we provide, with discretion, for our clientele. In fact, customers appreciate it when we do pay their overdrafts. Our fees are less than a merchant would charge if a customer's check is returned. In addition, it saves most customers the embarrassment of a returned check for things as simple as a bookkeeping error or forgetting to transfer funds into an account. In my twenty plus years as a banker, I cannot recall receiving a complaint for paying an overdraft, but I can remember many complaint calls for when we did not pay an overdraft.

The basis for our overdraft fees is to encourage our clients to not overdraw their account. Most overdrafts are an honest mistake by the customer and we have many times refunded the fees for account holders that have incurred the "once in a great while" overdraft. Other customers have more frequent overdrafts. They understand this is a service and recognize its value. We have frequently contacted these customers and suggested they utilize more economical products to avoid the overdraft situation. Most of these calls have gone for naught as most customers prefer to utilize the discretionary overdraft program rather than our other products.

The vast majority of our accountholders experience no overdraft fees. They have read the disclosures in their account agreements and understand how to avoid such fees. All this is accomplished without an opt-out notice.

I am very concerned over the proposal to allow partial opt-out for ATM and debit card transactions while retaining coverage for checks and ACH. Our current technologies do not allow such opt-out. While I am confident this could be solved, I am truly concerned about trying to have our customers understand the difference in these transactions. First, many of our customers have recurring payments for items such as phone bills or insurance premiums charged to their debit card. If they chose a partial opt-out for debit cards used in point-of-sale transactions, these recurring items would also be returned if they create an overdraft. Secondly, for customers to make an informed opt-out choice, they will need to have a basic understanding of these various payment systems—debit cards, checks and ACH. While we all believe we know what checks and debit cards are, I do not believe most of us know all the subtle differences and rules that govern them.

For consumers to make a truly informed choice on partial opt out, a massive educational program will be needed on the rules of the various payment systems.

In fact, I believe the partial opt-out will lead to more consumer complaints than our current system. Some consumers may believe the opt-out option is a sound idea. Yet, they may not fully understand the ramifications of their choice. Then, when they try to make a payment that utilizes the “opt-out” form of payment and they unintentionally create an overdraft situation, the payment will be returned. When the item is returned, they may or may not fully understand the reason for the return—especially if other overdraft situations have been paid. The customer will then turn to their bank for an explanation. We can easily provide the explanation, but I believe the customer will leave with a negative view of this experience. And, this may happen to a consumer who has never experienced an overdraft or an unpaid overdraft in their entire life.

Debit card holds are another complicated area that I do not believe should be addressed in these regulations. The debit card hold issue not only includes financial institutions that hold the consumer’s transaction account but it also involves merchants and the payment processing systems. Debit card holds assure that funds will be available for authorized transactions. Once the merchant places a hold on the account, the merchant is expecting that funds will be available to make the payment. If the financial institution is not allowed to place a hold on these funds in the consumer’s account, then the consumer may not have funds available when the payment is presented for payment. If the consumer does not have funds available, the financial institution will need to supply its own funds to make good on the payment and wait to collect from the consumer when, and if, they again deposit funds. This is not a sound practice. It may lead to an increase in fraud as the criminal element in society finds this an easy way to manipulate account balances for their benefit. Perhaps a better solution would be an educational campaign aimed at consumers that inform them about debit card holds and how they affect their transaction account available balance.

GB strongly believes in an educated and safe-guarded consumer. Yet, is also believes in preserving an efficient payment system. For all the reasons included in this letter, it respectfully opposes the Agencies’ proposed guidance. Thank you for the opportunity to comment on this proposal and we appreciate your consideration of our comments.

Sincerely,

Kevin L. Olson
President and Chief Executive Officer