

# Guaranty BANK

July 18, 2008

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

Federal Reserve Docket No. R-1315

Guaranty Bank would like to take this opportunity to comment on the proposed changes to the Truth in Savings Act. 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 steer away from the costly expense of reprogramming and enhancing periodic statement disclosures. In this proposed rule dated May 19, 2008, the likely outcome will be more promotions for overdraft products and increasing the awareness and dependence on them. The industry, as a whole, will likely increase overdraft fees to compensate for additional expenses incurred to meet the proposed changes.

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 and with little consumer benefit. The impact to consumers of these changes is in some circumstances greater, both monetary and reputational, and the depth and complexity of the disclosures does not offer substantial clarification for consumers.

The Agencies have requested comment on the proposed changes to Regulation DD (Truth in Savings) and we appreciate the opportunity to provide comment on these proposals.

1. Comment is requested on the content requirements of the opt-out notice, and the burden to institutions and benefits to consumers of providing all of the proposed content in each notice, including the information about alternatives to overdraft services.

Comment: Guaranty Bank believes in transparency and informing the consumer of applicable fees that may be assessed to their account during certain events. The last two paragraphs of the "Overdraft Services Opt-Out Notice Sample Form" create concern for us. The following is an excerpt from the sample form.

“You have the right to opt out of this service and tell us not to pay any overdrafts. If you do, however, you may have to pay a fee if you make transactions that are returned unpaid. You also have the right to tell us not to pay overdrafts for ATM withdrawals and debit card purchases, but to continue to pay overdrafts for other types of transactions.”

We would recommend enhancing the paragraph to remind the consumer the payment of overdrafts is at the sole discretion of the financial institution and not a guarantee. The last sentence “...to continue to pay overdrafts for other types of transactions.” seems to charge the bank with orders to pay overdrafts. We do not believe that is the intent of the Agencies proposed changes.

The second concern we would like to share with the Agencies is within this paragraph:

“We also offer less costly overdraft payment services that you may qualify for, including a line of credit. To opt out of our overdraft service, or to obtain information about other alternatives, call us at 1-800-XXX-XXXX or write us at [insert address].”

This paragraph suggests that courtesy overdraft programs are more costly than other overdraft programs, like overdraft lines of credit. This is not always the case and could be misleading to the consumers we are trying to serve. For Guaranty Bank, courtesy overdraft programs are typically capped at the dollar level in which we will pay an overdraft, and remain outstanding for short time frames. However, overdraft lines of credit typically have a higher dollar credit limit attributable to them. The customer could face higher fees and interest charges if outstanding balances remain unpaid for longer periods. It would seem other financial institutions operate in a similar fashion if both products are offered.

We would request the Agencies to comment on and offer safe harbor provisions and not hold us liable for any consequential damages that may result from the use of the notice.

2. Comment is requested on the burden to institutions of requiring that the opt-out disclosures appear in close proximity to the fees.

We are not opposed to alerting our consumer customers of the fees attributable to their account. However, adding the substantive language found on the “Overdraft Services Opt-Out Notice Sample Form” to the periodic statement, which is within close proximity, would require an additional page to each applicable periodic statement. This would result in the Bank incurring additional expenses in paper and postage. We would encourage the Agencies to provide financial institutions with an option of a full disclosure at account opening with a condensed description of overdraft fees that would be in close proximity to the summary of “Overdraft and Returned Item Fees”. Perhaps a sentence could be provided describing the Bank’s contact information and alert the consumer to call the bank to gain a better

understanding of the fees and how to opt out, or for information about pertinent alternative services. Fully explaining the notice at account opening with subsequent reminders seems to be a prudent approach for a consumer to be fully aware of their situation and having the information at hand to make a decision of whether to proceed with overdraft protection or not. This would also benefit the financial institutions by limiting the amount of reprogramming and costs applicable to paper and postage.

3. Comments were not specifically requested about the “Aggregate Overdraft and Returned Items Fee Sample Form”, however we would like to make comment on it to share some of the Bank’s concerns.

Guaranty Bank is not opposed to transparency of fees charged to consumer accounts for overdrafts or returned items. We would like the Agencies to consider the aggregate calculation of fees charged during the year to be either the “Total Year-to-Date” as is currently shown, OR a “Rolling 12-Month Period”. Guaranty Bank (and likely others) calculates its overdraft fees, in part, by looking at a rolling period of time and the amount a consumer has used the courtesy overdraft product. For instance, a consumer overdrawing their account several times during a rolling period of time will incur more fees than someone overdrawing their account on a less frequent basis. This is one of our mechanisms in place to discourage the use of a courtesy overdraft product. Having the option of showing a “Rolling 12-Month Period” header would minimize consumer confusion and reduce the amount of reprogramming time and expense for our institution and potentially others as well.

We would also request that the Agencies consider allowing other descriptions to be used in place of the “Total Returned Item Fees” heading within the “Summary of Overdraft and Returned Item Fees” chart. An example our institution would prefer would be “Total NSF Fees”. This would allow our institution to be consistent with terminology that is already understood by our customer base and reduce the amount of confusion.

Sincerely,



Steve Cooper  
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Bank Operations and Support  
Guaranty Bank