

July 25, 2008

Board of Governors of the Federal Reserve System  
Office of Thrift Supervision  
Regulation AA – Unfair or Deceptive Acts or Practices  
Proposed Rule – Comments

Re: Docket No. R-1314

Dear Madam/Sirs:

State Bank of Southern Utah recognizes that some practices now in use may need to be changed as suggested in this proposed rule; however the rule goes far beyond what is necessary and good for consumers and punishes small banks like us for the abuses of financial services companies who have been aggressive in their fees. For example, State Bank thinks it is wrong for a company who issues a credit card to raise the interest rate on their card just because the consumer may be late on other credit cards. Our bank does not participate in that kind of practice, however when the regulators start to micro-manage the overdraft decisions of institutions with some of the “opt-out” and other provisions of this rule it goes beyond the protection of consumers and actually is contrary to many consumer’s interests and desires. I will point out some of those pit falls below.

1. First, overdraft fees can be avoided by consumers without requiring a specific advance notice and opt-out followed by repeated periodic opt-out reminders. Most consumers regularly manage their accounts to avoid overdrawing them. But if someone inadvertently overdrafts they are very anxious to have their check covered to avoid the embarrassment of having a check returned and added fees by merchant for a returned check. State Bank of Southern Utah is very mindful of protecting a customer from excessive fees on overdrafts. When someone opens an account at our bank they are offered the opportunity to tie that account to a savings account that can be used to transfer money to their checking account if they have an overdraft for a minimal fee of \$3.00 a transfer. If they have no savings account we suggest they apply for a small line of credit that can be accessed to cover overdrafts at the same fee of \$3.00 per transfer. In case they cannot qualify for a line of credit we will give them a \$300.00 to \$500.00 overdraft permit that they can access in an emergency at the rate of \$22.00 an item at the discretion of the bank once they have a satisfactory history with the bank. They are to pay the overdraft within two weeks. Our customers like these systems and use them regularly. If they do not want to use any of these products they have the choice of declining them at account opening. State Bank does not let them access the overdraft permit on-line unless they specifically authorize it. If Congress passes the regulation as proposed it would be trying to micro-manage all banks with a “one size fits all” rule that would ruin a system that works for our customers. Consumers have access to balances twenty four hours a day by phone or on the internet and most of them have no problems with excessive overdrafts. The reason our bank makes money on this program is not because people go away

- unhappy, but because our customers see real value when our bank stands behind the payment decision. The fee is properly disclosed up front and is the known price for the overdraft accommodation.
2. The proposal for a partial opt-out of ATM and debit card transactions, while retaining coverage for checks and ACH items is not technically feasible with our current systems and would be horribly expensive to implement. In addition most of the items coming in on ATM and debit cards have prior authorization and have to be paid. In addition, this rule would adversely affect customers who use debit cards for recurring payments. Those critical bills need to be paid as they are usually utilities, insurance or other essential services.
  3. The proposal covering debit holds seems to be one that was written by someone who does not understand how the payment systems work and is far too complicated to be implemented or for consumers to understand. Besides, this problem is really one that involves merchants and the card networks and cannot be solved by putting the onus only on banks who are simply acting to assure that funds are available for authorized transactions..
  4. This rule, as presently written, would confuse and irritate our customers. They have agreements in place to cover their overdrafts and do not want to be bothered by opt-out rules. They have opted in to our programs and we receive very few complaints about what is happening now. If you have some banks or institutions who are abusing the system concentrate on enforcing actions on those banks and let us operate efficiently.
  5. State Bank recognizes payment of checks and debits from the lowest to the highest amounts to minimize OD fees for our customers, but we have requests to pay checks for larger amounts like mortgage payments, insurance drafts, etc. If the regulators or Congress tries to micro- manage this system they will make it worse and more expensive to consumers because of the different desires of each customer. That is one reason smaller banks are so popular; the customer has someone they know and rely on to help them manage their money including their overdrafts. In today's multiple payment systems it is also important to remember that different types of items are presented for processing at different times and no one single rule is practical for all financial institutions.
  6. Merchant and bank practices on debit hold are now in flux. Many merchants in the hospitality industry alert customers that holds may be put on accounts if they use a debit card at check in. Card systems rules are evolving to address authorizations for gasoline purchases at the pump to make them more real time.
  7. Restricting when banks can charge fees for overdrafts caused by debit card authorizations changes the nature of the risk management decision for banks because it impacts whether banks will be properly compensated for intermediate transaction that settle "out of funds" while the authorized transaction is in transit. This is a significant countervailing safety and soundness benefit to the assertion that overdrafts caused by hold are unfair.
  8. State Bank of Southern Utah has followed the Interagency guidance on overdraft programs from 2005 and have never been criticized by an examiner for how we've run the program—How can this now become an unfair and deceptive practice?

State Bank of Southern Utah makes these few comments and will submit others through their departments that understand other dangers of going ahead with this proposal as it is written, I trust that you will make significant changes in the proposed rule to avoid unnecessary red tape and costs and inconvenience to consumers.

Sincerely,

Ronald W. Heaton, President/CEO  
State Bank of Southern Utah  
Cedar City, Utah