

**From:** "Michael Dantuono" <Mdantuono@lakelandbank.com> on 07/24/2008 03:25:01 PM

**Subject:** Regulation AA

Lakeland Bank

July 24, 2008

Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal  
Reserve System  
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Washington, DC 20551  
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Regulation Comments  
Chief Counsel's Office  
Office of Thrift Supervision  
1700 G Street, NW.,  
Washington, DC 20552  
ATTN: OTS-2008-0004

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

**Overdraft accommodation is a customer friendly practice that is financially sound.**

At Lakeland Bank, we have always exercised discretion in covering overdrafts for our customers. As a result we have developed a safe and sound product for consumers and certain small businesses. Our Overdraft Privilege program is a customer friendly practice that is financially sound and is based on the Bank's exercise of risk based discretion (there isn't a contract to pay overdrafts). Overdraft Privilege is not a line of credit, and it should not be used to finance routine expenses. It's a tool to help our customers manage and protect their finances. Customers are provided with a welcome letter and pertinent information about the program, including Bank contact information, should they prefer not to participate.

The reason Lakeland Bank profits from this program is not because our customers go away unhappy, but because we stand behind their payment decision. They recognize that the fee is the known price to pay for this accommodation.

**Overdraft fees can be reasonably avoided and are not unfair when assessed without a formal advance notice opt-out.**

Non-sufficient funds fees are disclosed in the account agreement and our customers are made aware of these fees as well as any maintenance fees at the time of account opening. Customers further understand their responsibility to maintain their accounts

and that non-sufficient fund fees are the price for Bank accommodation in fulfilling a payment choice, rather than denying a transaction.

In many instances, our customers are saved from paying merchant fees for refused items and avoid being identified as unreliable payors, as a result of our Overdraft Privilege program.

Customers know that by good account management overdrafts are avoidable. Many of our customers demonstrate month after month that they can do so and most make it throughout the entire year without a single overdraft. Note that this is also true for debit card users as well.

Customers that overdraw their accounts periodically are aware of the consequences and are acting in accord with their preference. They do not need repeated notice that they can opt-out of our discretionary Overdraft Privilege program which they have chosen to accept. We monitor customer activity for excessive program usage, contact customers/provide an assistance letter with information on "Protecting Yourself from Overdraft and Bounced-Check Fees" when appropriate, provide transaction usage notices, cap the daily amount of Overdraft Privilege fees, provide detailed information on monthly account statements, and we are always available to work with our customers who would benefit from alternatives for managing their transaction activity (i.e. we also offer a traditional overdraft checking line product).

**A "partial opt-out" covering ATMs and debit cards is neither necessary, nor feasible.**

Many of our customers use a debit card as a primary payment method. Some schedule recurring payments with their card. These customers appreciate our accommodation of overdrafts on debit card transactions and understand that fees will apply.

Our technology systems will not allow us to differentiate debit card transactions from ACH or check at the customer level and therefore all we can really offer our customer is an all or nothing choice at this point in time. Furthermore our systems will not allow us to differentiate debit card Point-of Sale transactions from debit card recurring payment or card not present transactions (i.e. utility payments, insurance premiums, etc.). Therefore a partial opt-out for debit cards will be too broad for many of our customers because an inadvertent overdraft caused by a recurring debit card payment would not be paid for someone who exercised a partial opt-out. Affording a partial opt-out for debit cards may confuse customers that somehow they will be entitled to have check and ACH overdrafts paid even though our account agreements make it clear that paying overdrafts is always up to the discretion of the Bank.

In any notice required or provided as a safe harbor under Regulation DD – Truth In Savings, the language used must not confuse customers into thinking that overdraft accommodation is a contractual obligation of the Bank to provide, rather than being the exercise of Bank discretion.

**Payment clearance practices, whether for debits holds or payment items generally are complex any vary widely across the industry, but are driven by system efficiency and sound risk management and do not constitute unfairness to customers.**

Merchant and Bank practices on debit holds are in flux. Card system rules are evolving to address authorizations for gasoline purchases at the pump to make them virtually real time. Restricting when we can charge fees for overdrafts caused by debit card authorizations changes the nature of risk management decision for us because it impacts whether we will be properly compensated for intermediate transactions that settle out of funds while the authorized transaction is in transit.

Overdraft fees are calculated based on clearance systems designed to provide payment processing efficiencies that reflect technical capabilities and the risks faced by the bank for handling various payment channels. These systems, and the clearance order they generate, change as technological advances occur, as the payment channel mix alters to capture customer usage trends and as legal liabilities evolve. They are not manipulated by us to generate overdraft fees. It would be impossible to give individual customers the right to alter the Bank's clearance process. In addition, many of these clearance processes are too complex to explain in understandable terms in any consumer disclosure.

We have followed the Interagency guidance on overdraft protection programs from 2005 and have never been criticized by an examiner for how we have conducted our program. We could be sued by private parties for unfair practices, so we are very concerned that what we followed as prevailing industry practice is now suggested to be unfair and, as a consequence, could possibly expose us to frivolous litigation.

### **Conclusion**

Providing overdraft accommodation is not an injury but a benefit to our customers and is reasonably avoidable by customers exercising normal care as described in the Federal Reserve and Interagency consumer publications (i.e. Protecting Yourself from Overdraft and Bounced Check Fees). Our program is successful because our customers want the Bank to recognize that when they inadvertently overdraw their account they can trust it will be made right.

Sincerely,

Michael D'Antuono

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