



July 30, 2008

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

Chief Counsel's Office
Office of Thrift Supervision
1700 G Street, N.W.
Washington, DC 20552

Dear Ms. Johnson and Chief Counsel's Office of the OTS:

RE: Regulation DD; Docket No. R-1315 and Regulation AA Subpart D

The management of Gate City Bank would like to thank you for this opportunity to comment on proposed changes to Regulation DD; Docket No. R-1315 and the associated proposed changes to Regulation AA Subpart D.

As Gate City Bank does not issue Credit Cards, except through a referral relationship, our comments focus only on the proposed change to Overdraft Services (as defined by this proposal).

Gate City Bank does not, has not, and has no intention of offering what is commonly referred to as an *Overdraft Program*. That is the marketing and promoting of paying customers transactions presented against insufficient funds. Gate City has for years commonly and regularly paid customer items against insufficient funds as a service and courtesy to customers and merchants. Each time Gate City pays these transactions it generally results in lower charges to our customers, no embarrassment to them, and less effort of redeposit to the merchant, and the Bank does take on the full risk of repayment.

"Unfair or Deceptive Act or Practice"

The Management of Gate City Bank is strongly opposed to, and offended by, the determination that the process of providing Overdraft Services is an *Unfair or Deceptive Act or Practice*.

Gate City Bank has always strived to be in full and complete compliance with all laws and regulations and does not, nor will it ever, develop programs or practices with the intent to deceive or take unfair advantage of its customers. Gate City Bank's fee for handling a transaction presented against insufficient funds is, and has always been, clearly listed in initial and subsequent disclosures as required by regulation. Actual fees charged on these transactions honored, or dishonored, are clearly listed on both the notice mailed to our customers at each occurrence and listed with a clear description on each periodic statement. Further, as Gate City Bank has followed the guidance and best practices advanced by the OTS in 2005, it is beyond our understanding how these recommended practices could now be deemed "*Unfair or Deceptive*"?

We believe that the determination of providing Overdraft Services to consumers is an *Unfair or Deceptive Act or Practice* is flawed on each point.

- Consumers are provided notice of both Overdraft and Non-sufficient Funds fees at account opening. As to the ability to "opt out", there is nothing to "opt out" of, as the same charge is assessed as Non-sufficient Funds fee or Overdraft fees.
- Substantial monetary "injury" does not occur with the offering of Overdraft Services and the paying of insufficient fund transactions any more than the returning of these transactions unpaid and assessing the same fee as a Non-sufficient Funds fee. Through the process of honoring ACH or Debit Card transactions, significant convenience is provided the consumer by approving and paying of these transactions.
- We were shocked to read that the Board has determined that "*consumers cannot reasonably avoid injury*" caused by overdraft services. Who better than the individual consumer to know what checks they have written and what transactions are pending on their own account? It would seem the only requirements to avoid, the so called injury of, Overdraft Services would be basic math skills and a desire to do so. 72% of Gate City Bank's customers are successful in avoiding all NSF/OD fees each year, with another 7% having one charge per year and 11% experiencing between only 2 and 6 per year. Certainly if these fees can be avoided or minimized by 90% of Gate City Bank's checking customers, all consumers CAN reasonably avoid these fees and so called "injury", if they would only choose to do so.

- The board's determination that there are not sufficient countervailing benefits to outweigh the so called "injury" is also single sided. This argument pre-assumes that consumers have alternate methods of payment when ATM or Debit Card transactions might be denied. Consider the payment for a meal after dining, the gasoline already in the vehicle's tank, or emergency cash at the ATM – in these cases, if they have no other method of payment at their immediate disposal. The consumer may consciously decide that the benefit is worth the cost of the overdraft fee.

Overdraft Programs vs. Overdraft Services

As noted earlier Gate City Bank does not promote the use of Overdraft Services by advertising the Bank's intention to pay transactions presented on insufficient funds. We firmly believe there is a large difference in practices and intent between those banks promoting the use of Overdraft Services and those that do not promote this but commonly do pay overdrawn transactions as a courtesy to customers. We would encourage the Board and OTS to continue their current practices of dual regulation. One for those promoting Overdraft Programs and another for those providing Overdraft Services to our customers without any promotion or advertising.

Comments on Specific Proposed Requirements

If the Board and OTS continue down the path of pushing these flawed and poorly structured regulations forward, we offer the following specific comments on feasibility of implementation.

Division of "Opt Out" Options

We would like to see the division of "opt out" options be left to the individual banks. Some banks may choose to enable this "opt out" by payment channel while others may feel it best to keep it unified for all payment channels.

Gate City Bank currently allows its customers to ask that no transactions be paid against insufficient funds and we fully support and understand the need to continue offering this feature. We do not believe it would be a good practice to force the division of this service between various payment channels. In today's environment there is much

morphing and migration between payment channels. Consumers would easily become confused. For example:

- Checks written for payment of credit card bills are converted and presented as an ACH via ARC.
- Checks given to merchants are converted and presented through ACH via BOC or POP.
- Some customers routinely have their utility bills paid via ACH while others use their Debit Card as a method of payment. Both would be considered electronic although these are very different payment channels.
- A paper check dishonored once as NSF can be represented a second and third time as an ACH via RCK.

There may also be specific unexpected consequences of “opting out” of Debit Card insufficient fund transactions. Many consumers now carry only a Debit Card. In fact, many never even purchase check blanks. These customers may be caught by surprise in the following cases.

- Any purchase where the product has been delivered before the payment approved, such as gasoline purchases; meals at restaurants; custom ordered services; etc.
- Sudden needs for services (or cash) where payment must be made in advance: Emergency Room Co-pays, Veterinary visits, or payments related to travel disruptions.

To avoid customer confusion on what payment channel is or is not included in overdraft services and for technical reasons related to data processing systems; we would like to see the division of “opt out” options be left to the individual banks. (Clearly we as individual banks would be within our rights to refuse payment of all insufficient items if a customer “opted out” of any one channel, effectively creating practice of “opt out of one-opt out of all”.)

If there is a regulatory requirement to divide the “opt out” options for payment channels, there will be a need for substantial programming changes to data processing systems that could need at least a one year lead time before implementation.

"Opt Out" Disclosures

The initial disclosures and deposit agreements provided to customers at account opening includes important information that all consumers should read and be aware of. It is the only appropriate place for an initial "opt out" disclosure. It may be a fact that disclosures have become too numerous and are readily ignored by consumers. By elevating one above the others, it may appear to reduce the importance of others that may be just as important. We oppose a more conspicuous notice or a stand-alone document.

The option of placing the subsequent "opt out" notice either on the individual insufficient funds notice itself, or on the periodic statement, is appreciated. We believe we would use the option of notice on the individual insufficient funds notice. We would hope the text and wording related to other payment services be left to the bank's discretion as some consumers may not qualify for all services and bank offerings may change from time to time. The simple statement that: "*Less costly options may exist, see your banker for more information*" should be sufficient.

We would hope that the actual "opt out" process could be limited to in person visits or phone calls to a live operator through a toll free number. We believe it will be very important to explain the full impact of an "opt out" decision to each consumer as they ask for this feature.

Listing of total charges on periodic statements

Currently Gate City Bank individually lists each charge assessed on an insufficient funds transaction on the periodic statement. This is listed if the transaction is paid or returned. We oppose any requirement to sum up these transactions, either for the period or the year to date as needless and unnecessary. Further we are confused as to the suggestion that a sum be provided on charges assessed on returned items. Nothing in this proposed regulation makes any mention of fees assessed on this activity not related to Overdraft Services.

Balance Displayed

We are in agreement with the recommendations on the balance displayed to customers. Gate City Bank has always displayed the true account balance to our customers.

Debit Holds

We are in general agreement with the recommendations on the handling of debit holds on accounts and the practices by merchants in placing them. The debit card hold practice

can complicate the funds availability process and we believe the card processing networks are acting to resolve this issue. We encourage the Board and the OTS to continue working with the major card networks and the retail merchants to achieve your goal.

Transaction Clearing Process

Gate City Bank clears checks presented in check number order, and electronic transactions in date order. We believe posting transactions in the same sequence that the customer made them is a fair and accurate method. We hope the Board and OTS continue to allow this option for processing. We do not support a process where one sequence is used for the posting of transactions and another is used for the calculation of the insufficient funds fee charges.

Exceptions

We appreciate and understand the need for the exceptions listed. We also believe more will be needed if any portion of this regulation is enacted. The fact that these exceptions are needed just reinforces our statement regarding customer confusion, particularly surrounding the partial "opt out" via channel. In many cases, banks would be within regulation in charging these fees. However, the explanation difficulties to our customers would effectively make it impossible to do so while still keeping good customer relations.

In closing we would again like to thank you again for this opportunity to comment and appreciate your consideration.

Sincerely,


Steven J. Swiontek
Chairman, President & CEO


Allan E. Erickson
EVP/CFO

cc: US Senators: Senator Kent Conrad, North Dakota
Senator Byron Dorgan, North Dakota
Senator Norm Coleman, Minnesota
Senator Amy Klobuchar, Minnesota

US Congressman: Congressman Earl Pomeroy, North Dakota
Congressman Collin Peterson, Minnesota