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STATE OF MAINE

ONE HUNDRED AND TWENTY-FOURTH LEGISLATURE

COMMITTEE ON INSURANCE AND FINANCIAL SERVICES

Ky Tran-Trong, Counsel
Board of Governors of the Federal Reserve System
Division of Consumer and Community Affairs
Washington, DC 20551

March 26, 2009

Re: Docket No. R-1343, Regulation E, Proposed Rule Section 205.19 Debit Holds

Dear Ms. Tran-Trong,

We are writing on behalf of the Maine State Legislature's Joint Standing Committee on Insurance and Financial Services to comment on the changes to Regulation E, Electronic Funds Transfers in Proposed Rule Section 205.19 relating to debit holds. The Committee unanimously supports adoption of the proposed rule as provided in the comments below.

Recently, the Insurance and Financial Services Committee considered proposed legislation regulating debit card and credit card holds. LD 446, "An Act to Protect Consumers from Credit Card and Debit Card Holds", proposed to prohibit merchants from placing a hold on the credit or funds available to a consumer using a credit card or debit card in excess of the actual transaction amount unless the merchant reduces the hold to the actual transaction amount within one hour of completion of the sale.

The Committee believes that the practice of placing holds on debit cards, especially, can have a significant financial impact on consumers who are unaware that the hold may exceed the actual transaction amount. In the course of reviewing LD 446, the Committee was made aware by merchants that "holds" are determined according to rules and guidelines established by debit card or credit card processing networks, not by the merchants themselves. Because the State's ability to regulate these processing networks and federally-chartered financial institutions that issue credit and debit cards is limited, the Committee determined that the enactment of LD 446, even in amended form, would not address the issue for all Maine consumers. The Committee unanimously agreed that "holds" should be regulated at the federal level so that any statutory and regulatory

requirements would apply to all financial institutions (and card processing networks) equally, regardless of their charter.

The Committee favors adoption of the proposed rule because it includes an important financial protection for consumers who may incur overdraft charges and other fees because of a hold placed on funds in excess of the transaction amount. While the Committee recognizes the validity of ensuring that consumers have funds to cover the transaction amount at the time of settlement, the amount of the hold and the length the hold is in place should not be excessive or unreasonable. The proposed rule states that overdraft charges could not be assessed if the overdraft would not have occurred but for a hold placed on funds in the consumer's account if the amount of the debit card transaction can be determined "within a short period of time" after the financial institution authorizes the transaction. The Committee requests that any final rule specify that period of time and suggests that the time period be within one hour of the transaction.

As proposed, the rule's safe harbor provision would apply if the financial institution's procedures and practices are designed to release the hold within two hours of the institution's authorization of the transaction. The Committee also urges the Board to exercise its authority to require merchants (or their debit card acquirers or processors) to submit transactions for settlement within the two-hour safe harbor period. Based on testimony provided to the Committee, it is our understanding that the technology used by merchants to process debit card transactions can process and "clear" transactions within two hours.

Thank you for the opportunity to provide comments on the proposed rule.

Sincerely,



Senator Peter B. Bowman
Senate Chair



Representative Sharon Anglin Treat
House Chair