

From: Black Hills Federal Credit Union, Tyler D.Grodi
Subject: Electronic Fund Transfers

Comments:

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Proposal: Regulation E - Electronic Fund Transfers
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Name: Tyler D Grodi
Affiliation:
Category of Affiliation:
Address:
City:
State: SD
Country: UNITED STATES
Zip: 57702
PostalCode:

Comments:

RE: R-1343 Before commenting on the Federal Reserve Board's proposal, we would like to comment on NCUA Rules and Regulations, Section 701.21, which requires negative accounts to be charged off at 45 days. We do not think 45 days is a long enough period of time to allow a consumer to bring their checking account to a positive balance. The short period of time is a disservice to the consumer, especially if the financial institution charges off the account, turns it over to a collection agency, and reports the charge off to one of the credit reporting agencies. We recommend a consumer be allowed up to 90 days to bring their account positive. The longer period of time would be beneficial to the consumer as well as allow the financial institution to exhaust their collection efforts before they are required to charge off the account. The following comments are in regard to the Federal Reserve Board's proposal to amend Regulation E, the Electronic Fund Transfer (EFT) Act, which will provide consumers with certain protections related to the assessment of overdraft fees.

- Should this rule apply to recurring debit card and ACH transactions, in addition to ATM withdrawals and one-time credit card transactions? What would be the appropriate amount of time that institutions should have to implement this rule? Comment - We recommend this rule apply to recurring debit card and ACH transactions in addition to ATM withdrawals and one-time credit card transactions. A consumer should not be allowed to pick which transactions they want covered by their Overdraft Privilege Plan (OPP). We recommend that institutions be given at least a year to implement this rule because our core processor (XP Systems, Inc.) would be required to make programming changes, which we do not have control over.
- Once a consumer receives an opt-out notice, he or she must be given a reasonable amount of time to exercise the opt-out, with 30 days being considered reasonable. Would a shorter time period, such as 15 or 20 days, be more appropriate? Comment - We recommend a shorter period of time such as 15 or 20 days. Chances are if the consumer has not responded back to the financial institution with 15-20 days, they won't.
- Should institutions be required to provide a toll-free telephone number as a means to opt-out of the overdraft program? Should the rule add examples of

opt-out methods that would not comply with the requirement to provide a reasonable opportunity to opt-out, such as requiring the consumer to write a letter? Comment - We recommend a signed document be required for a consumer to opt-out of a plan, a verbal opt-out is not adequate. • The proposal provides alternatives for implementing the consumer's choice for both the opt-out and opt-in approach. These alternatives recommend offering accounts with different features based on the consumer opting-out or opting-in to the OPP. What are your views on these alternatives? Do you currently place consumers in different accounts, based on whether they elect to use the overdraft service, and do you vary the terms on these accounts? If so, which terms are different and why are they different? Comment - We do not believe separate accounts and/or features should be granted based on whether a consumer elects to opt-out or opt-in to an overdraft service. Features of an account should be the same for the consumer regardless of whether they choose to opt-out or opt-in to the OPP. Black Hills Federal Credit Union (BHFCU) does not put consumers in different accounts nor do we vary the terms of an account based on whether the consumer elects to use our overdraft service. • Should the opt-out notice be segregated from other disclosures to ensure the notice will be seen by the consumer? Comment - We recommend the opt-out notice not be segregated from other disclosures. We do not believe the opt-out notice is any more or less important than other disclosures. • Instead of just an opt-out or opt-in process, the Fed is considering a hybrid approach in which there would be an opt-out rule for existing accounts and an opt-in rule for new accounts. Under this approach, the institution could continue to pay overdrafts and assess fees for ATM and one-time debit card transactions for existing consumers who have not opted out, but would be prohibited from assessing fees on new consumers who did not opt-in in to the overdraft service. What are your views on this alternative approach? Comment - We do not support the hybrid approach as we are not in favor of the opt-in process. We perceive the opt-in approach as being negative for both the consumer and the financial institution. From the consumer's standpoint, they will more than likely be confused by the opt-in notice and disregard it. • Under the opt-in approach, the institution must cease assessing fees for overdraft services if an existing consumer has not opted in within sixty days after receiving notice. Is sixty days adequate or should it be longer or shorter? Comment - Sixty days is too long a period of time to allow a consumer to opt-in or opt-out of the program. Chances are if the consumer has not responded back to the financial institution within 15-20 days, they won't. BHFCU perceives the opt-in approach as being a negative for both the consumer and the financial institution. To require an existing consumer of an OPP to opt-in to a service they are currently utilizing is unreasonable. From the consumer's standpoint, they will more than likely be confused by the opt-in notice and disregard it. This in turn will cause OPP to be removed from ATM withdrawals and one-time debit card transactions on the consumer's account. In today's competitive market, financial institutions are using every angle to set themselves apart from their competitors. At BHFCU, if we required our member to either return a notice or call the credit union to opt-in to our OPP, this would not be considered good member service. We pride ourselves in going the extra mile to minimize any follow up required by our members. In a marketing campaign, it has been proven if a consumer is required to initiate any type of action, the success of the campaign drops significantly. In that same respect, if a consumer is required to opt-in to OPP, the response rate will be minimal which would prove to be detrimental to the program. For this reason, Black Hills Federal Credit Union does not support the opt-in approach. • The prohibition on overdrafts in connection with debit holds will not apply if the institution adopts procedures designed to release the hold within a reasonable period of time, and the rule provides that

two hours will be considered reasonable. Do you agree with this approach or would another time period be more appropriate in light of operational constraints at smaller institutions, which may only receive authorization and settlement information periodically during the day? Comment - We believe the debit hold provision puts a great deal of responsibility on the financial institutions in an area they have little control over. Many financial institutions have limited control over holds placed by the merchants. We believe merchants and their processors should have tighter restrictions on their authorization practices. We thank the Federal Reserve Board and CUNA for giving us the opportunity to comment on the proposed amendment to Regulation E and Section 701.21 of the Rules and Regulations. Respectfully submitted, Tyler D. Grodi VP of Finance & Chief Financial Officer Black Hills Federal Credit Union