

From: Amarillo National Bank, Chris Newell
Subject: Electronic Fund Transfers

Comments:

Please accept our comments regarding the proposal to amend Regulation E.

March 29, 2009

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

Re: Docket No. R-1343

Dear Ms. Johnson:

This comment letter is submitted by Amarillo National Bank in response to the Proposed Rule to amend Regulation E to address overdraft issues in connection with one-time debit card transactions and ATM. Amarillo National Bank is a \$2.6 billion asset bank located in the Texas Panhandle. We have worked hard to gain a 52% market share in the community we serve. We feel this market share indicates that we provide the people and businesses of Amarillo, TX with the products and services that they need - among those services is overdraft protection. Our overdraft protection program is an automated method of paying insufficient items regardless of the transaction method. Our fees for handling overdrafts whether returned or paid is the same and we don't charge overdraft balance fees. We provide options to manage overdrafts including a complete Opt-Out of overdraft protection. ANB appreciates the opportunity to share our views on the Proposal with the Board.

Comments
Opt-Out vs. Opt-In

ANB strongly urges the Board to adopt the Opt-Out Alternative. We are in fact already providing this. We provide overdraft services to our customers as a courtesy and a convenience and allow them the choice of participating. Our customers are generally satisfied with this courtesy which is a valuable benefit in the event that an otherwise responsible customer accidentally overdraws his or her account.

It would be a disservice to our customers to have a regulation that essentially denies the service until the customer has learned the hard way when refused a transaction. Consider the customer who uses a debit card to purchase essential services such as a prescription, emergency car repair, fuel or groceries who is denied the transaction and no other form of payment such as a check or cash is available. Many of our customers no longer carry check books and little cash as evidenced by the decline in checks processed and the increase in ATM, credit and PIN point of sale transactions. Essential services are needed promptly and can't be delayed until a request is processed by the bank to allow a transaction each time. An Opt-In will decrease the usefulness of debit cards significantly for all consumers stranding them (and the customers waiting in line) at the point of sale without another option to make an important purchase.

The customer is in the best position to know whether the transaction will overdraw the account. This is reasonable since the bank does not know if and when the customer anticipates deposits. Our bank is fortunate to have "real time" balances for ATM and point of sale transactions. However, most of our customers believe that the balance that settles at the end of each day is the daily balance they have to work with. They make purchase decisions off this information. In fact most of what would be "real time" overdrafts settle into good funds at the end of the day. Of the approximately 50,000 ATM and POS

transactions processed daily at our bank, we have less than 1% that result in an overdraft. We do not believe that an affirmative request is in the best interest of consumers, and that the Opt-Out Alternative is preferable.

Covered Transaction

The Proposal provides for a mandatory Opt-Out (or Opt-In) opportunity for one-time debit card transactions, but apparently not for recurring debit card transactions. One-time debit card transactions are not the same as debit card purchases. One-time debit card transactions can include bill payments that are individually scheduled. First, an all inclusive term does not allow for the processing problems of recognizing which is which -one-time purchase or bill payment. Also the bank cannot control how the merchant processes the bill payment - single item or recurring. Second, as currently drafted, we believe that consumers may not be able to understand when an electronic fund transfer is subject to the Proposal, and when it is not. It is possible that consumers will not understand why a transaction is covered or not if they give a debit card number once to a business for monthly payments, but covered if they provide the same number monthly to the same business to pay a monthly bill. Please give us authority to expand the coverage of these transactions with an all-in-one Opt-Out.

Opt-Out Requirement and Notice

The Proposal provides a "safe harbor" if the bank gives a consumer a "reasonable opportunity to opt out" if it provides: (i) a mail form; (ii) a toll-free number; or (iii) an electronic means or web site to opt out. The safe harbor involves a 30-day waiting period. We believe the period should be less than 30 days to allow a consumer the ability to use a debit card more quickly. A waiting period of 30 days will result in consumer dissatisfaction if the consumer has decided not to opt out. We suggest that a 15-day waiting period is more reasonable.

A full-page disclosure is not necessary to provide the consumer with the information necessary to understand the services and the right to opt out. We think the model language for the Subsequent Notice could be modified slightly to include fee amounts and to describe the consequences of an Opt-Out and used as the Initial Notice. We believe it would be a disservice to omit from the notice the consequences of opting out of overdraft services to make sure consumers understand the consequences of their decision. We object to statements in the notice allowing the consumer to tell the bank not to "pay overdrafts" for Covered Transactions. That is not an accurate description of the consumer's right. The notice should state the consumer would generally have the right to tell the bank not to "authorize" Covered Transactions. ANB asks the Board to provide flexibility in the final rule.

Conditioning the Opt Out on Account Terms

The Proposal would offer two alternative methods to apply different account terms and conditions based on accepted or declined overdraft services. It would also prohibit a bank to condition the consumer's opt-out of overdraft services on the consumer's decision to opt out of other overdraft services. The Board would also prohibit an institution from declining to pay checks, ACH or recurring debit card transactions that overdraft the consumer's account because the consumer has opted out of overdraft services for Covered Transactions.

Many banks, ours included, do not have the capability to apply an Opt-Out request based on the type of transaction or for an individual account. This will be extremely costly. We are already overwhelmed by new regulatory compliance changes and a lack of resources caused by the financial crisis and FDIC premiums. Debit card programs are not high margin products. Additional regulatory burdens associated with providing them will result in banks reconsidering product offering and pricing affecting all customers. It appears the Board is trying to prevent a harm that can easily be prevented by the customer. The proposed prevention will cause an increase in cost to all. We believe it is important for banks to have the operational flexibility to offer overdraft services in a manner that is most efficient and cost effective.

We also believe that a single Opt-Out choice will be much less confusing for consumers than a menu of overdraft opt-outs expecting the consumer to understand which transactions will be the subject to the opt-out. The Proposal would prohibit a bank from refusing to honor checks and ACH if the consumer opts out for ATM and one-time debit card transactions.

We think that the regulation does not give authority on how or whether a bank honors overdrafts of checks. We also believe that the regulation does not have authority to make banks provide electronic funds transfer services or debit card services and to regulate the associated fees at the account level. We fear dishonoring check and ACH items and structuring account types will be questioned by examiners when applying the prohibition. It would be much better to clearly disclose the features of an account, Opt-Out rights and the consequences of opting-out and let the customer decide if the account provides them with services they need.

Exceptions to Fee Prohibition

The rule provides for two exceptions to prohibiting fees when a customer has opted-out. The Board notes in the Commentary, that the exception for a "reasonable belief" does not apply if the merchant did not submit the transaction to the institution for authorization or the bank is relying on "stand in" authorization. We ask the Board to reconsider these distinctions.

It is entirely appropriate for the bank to have the ability to assess an overdraft charge in circumstances where we do not have the opportunity to decline the transaction in the first place. In these circumstances, we have absolutely no ability to control the risks associated with a transaction that may overdraw an account, while the consumer does have control. We do not believe it is appropriate to shift the risk of the transaction onto a bank that cannot control the risk when the consumer is in the better position to control it.

We don't believe that a consumer will know if sufficient funds are in the account if the merchant gets transaction approval. Merchants who do not get authorization, or who operate under floor limits, should be required to post clear and conspicuous signs in close proximity to the point of sale that the approval of the transaction may still result in a consumer's account becoming overdrawn. We believe that the overdraft Opt-Out notice could educate consumers in a more complete and accurate manner to address some of these concerns.

We ask the Board to consider the logistical issues and costs that will arise if a bank must determine whether an overdraft fee relates to a transaction that was not authorized, or authorized by stand-in processing. It is simply not just too costly but that it is not possible based on current network configurations. It is not possible to identify a settled transaction as having been previously authorized or not. Even if a bank could identify transactions in this way, it would still require additional significant systems revisions to do so.

Duration of Opt-Out

We ask the Board to allow (but not require) a bank to offer other options to revoke an Opt-Out, including in writing, electronically, by telephone, in person, or in any other manner in which the consumer requested the Opt-Out. A bank should be permitted to allow a consumer to revoke an Opt-Out by telephone in the event the consumer needs to make a purchase but is prevented from doing so as a result of the Opt-Out. The consumer may be at a drug store buying a prescription and need to revoke the Opt-Out for purposes of that transaction. We also believe it would be an unfortunate consumer experience if the consumer were in the bank branch and was told that he or she could not revoke an Opt-Out in the branch, and that a consumer should be permitted to use the same methods the consumer could use to place the Opt-Out that would be the most convenient

method for him or her at the time of revocation.

Debit Holds

The Proposal would prohibit an institution from assessing an overdraft fee if the overdraft would not have occurred but for a "hold" placed on funds in the consumer's account in connection with a debit card transaction if the actual amount of the transaction can be determined by the merchant or other payee within a short period of time after the transaction is authorized. We have two problems with this portion of the proposal.

The two hour "reasonable time" should be dropped because it is unworkable for banks and merchants. Rather, we suggest that a "reasonable time" should be end of the processing day of authorization and that merchants be required to submit transactions by the end of the processing day of authorization.

The Board clearly expects that a bank will be able to identify the type of merchant that initiated the debit card transaction. We know only what information is provided as part of a transaction authorization and settlement process. The best we can do is properly identify the merchant category code accompanying a transaction and handle it accordingly. Therefore, we ask that the bank be able to use reasonable policies and procedures to identify relevant transactions.

Effective Date

This proposal has the potential to impose significant system change requirements to which it appears the Board agrees. Even the largest institutions will have to work with core processors and third party vendors that handle processing, modify existing software and other systems or install new ones and then test these systems. Employees will have to be trained and customers educated. In addition, the regulation may require card network rule changes which cannot occur until after adoption of the final regulation. We believe the Board should allow at least 18 months to two years to implement the final regulation.

In conclusion, we request that the Board consider these comments and permit us the latitude to provide a viable overdraft protection program with sufficient explanation to our customers so they know how the program works. It is necessary to continue to place the responsibility and authority for account management on the accountholder. The electronic payment system is continually evolving - restricting regulations could hamper needed development and potentially harm the consumer.

Respectfully,

Chris Newell
Amarillo National Bank