

From: Bethany Anne Begnaud and Victoria Sand
Subject: Electronic Fund Transfers

Comments:

February 13, 2009
Re: R-1343

Dear Sirs,

We are second-year law students at Mercer University School of Law, and we are currently enrolled in an Administrative Law course. We found your proposed regulation R-1343 for Electronic Funds Transfers in the list of proposed regulations, and as students, the issue of being charged overdraft charges tends to affect us greatly.

Our understanding of the proposed regulation is to require financial institutions to provide notice and receive consent from a consumer before charging an overdraft fee on one-time debit transactions and ATM withdrawals. The proposed regulations intends to correct the problem of repetitive fees charged to account holders who often unknowingly overdraft their accounts repeatedly in short period of time because the charges are approved by the banking institution even though the account it over-drafted. Under our understanding of the proposed regulation, the Federal Reserve Board is proposing several different options. We prefer second alternative approach, which is the Opt-In Requirement, requiring financial institutions to obtain affirmative consent from the consumer before assessing an overdraft fee. The reason we choose the Opt-In requirement is that the default option is to not enroll the customer in the program assessing fees. Between advertisements and bills, many consumers fail to read the mailing sent to them, and we worry that if consumers are required to affirmatively opt-out of a system of overdraft charges, many would fail to do so. Thus, we find the default of not being enrolled in the system to be the more preferable approach because if the consumer takes no action on the issue, the financial institution cannot continue to charge such fees after 60 days.

In regards to the two alternatives of implementation, we would choose the second option, allowing financial institutions to provide incentives on the product level, enrolling consumers who opt-in to fees in different accounts than those who choose not to opt-in to the overdraft fees. We prefer the second alternative out of fairness to the financial institutions who, although barred from discriminating against those who do not opt-in, should be allowed to provide overdraft protection to those consumers who choose to do so. Furthermore, implementing the policy at the account level, rather the product level, would be most confusing to the consumer as to what their options are. We think it is easier to simply offer different types of accounts to the consumers.

With regards to the FTC Amendments regarding debit holds, we see the main problem to be that many consumers are not aware that there has been a hold placed on their account as a result of a debit authorization. In the consumer's mind, he has a certain amount of money in his bank account to spend, and so he may charge up to that amount as he is making purchases. If the purchases overdraft the account, then the consumer has been irresponsible in spending

more money than he had in his account. However, if the consumer overdrafts because additional holds are placed on his account, then he should not be charged overdraft fees. Furthermore, many debit card holders are not aware that there are holds placed on their accounts in the first place. Therefore, financial institutions should ensure that a consumer is aware of all the related fees and processes of debit card transactions when the consumer first receives a debit card. Otherwise, many times, the consumer simply does not know about the fees and the holds.

We appreciate your taking into consideration our comment on proposed regulation R-1343. Thank you for taking the time to read our comment.

Sincerely,

Bethany Begnaud and Victoria Sand