

From: Niva Kramek , Washington, DC

Subject: Electronic Fund Transfers

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Comments:

Dear Federal Reserve:

I am writing to comment on proposed amendments to Regulation E, which implement the Electronic Funds Transfer Act. I feel strongly that any overdraft services, fees, or protections offered to banking customers should be subject to the customer's consent, which is most clearly expressed by an opt-in.

I find industry's arguments as described in the Federal Register Notice to be disingenuous; they should declare clearly the benefits overdraft fines provide to the banks and leave suppositions about what is best for the consumer to consumers themselves. I am disturbed that they disapprove of increased disclosure of terms of overdraft fines and any ability to opt-out of receiving overdraft services.

If the Board take action on the first alternative approach (opt-out requirement), the proposed regulations and scope seem fair. Scope should be limited to debit card transactions (in person, by phone, or online), and ATM withdrawals, as proposed, and the reasonable opportunity of 30 days should provide enough time to opt-out. Ideally, opt-out could be done through automated phone system, online, or in-person at a bank branch. Any opt-out that requires mailing a letter would provide an obstacle to customers most likely to be subject to overdraft fines and least likely to be informed of their ability to opt out. Additionally, many people new to banking - such as college students - do not have a permanent address and may not receive paper notices about their ability to opt-out. I support the requirement of a toll-free number for opting out of overdraft services that incur a fine. I also support the criteria the Board has outlined for prohibiting conditioning the opt-out with respect to treatment of overdrafts for checks. I believe that customers will understand what they are gaining and losing by opting out if it is explained clearly by the bank, and that they will feel empowered to make the choice that suits them if they are assured, by the federal government, that certain conditions of the opt-out are regulated. I also agree with the Board's conclusions that changing the terms of an account based on whether or not the consumer has chosen to have overdraft services would have a severe chilling effect, and I would hope that any considering this would keep in mind that they should not take any steps that would further degrade consumer confidence in their services.

If the opt-out alternative is chosen, publicizing this option - including the toll-free number - should be required on all periodic statements or online statements, including those in which the customer has not received an overdraft fee. It should also be included in bank websites and within branches so that customers who have not had an overdraft are aware of their options. I do not believe the customers would ignore this as boilerplate language, though the precise wording of the notice could have influence in either direction.

However, despite the potential benefits of the opt-out option (particularly with the regulated conditions proposed), the opt-in option (second alternative) provides for more fair consumer treatment. Opting in removes many of the barriers of reaching all bank customers to explain their right to opt out, and will result in banks engaging in more vigorous explanation of proven benefits of the overdraft services. I applaud the Board's consideration of the potential for consumer coercion through the creation of unattractive terms for "not opt-in" accounts and urge your continued consideration of the first alternative approach to address the concern (accounts with the same features). I also feel that, if it is expressed clearly to consumers, the likely rejection of checks and ACH transfers that are overdrafted will not have a chilling effect on

choosing whether or not to opt-in. Additionally, a 60-day period for opting-in would be sufficient.

I also feel strongly that the order in which transactions are processed under some banks' daily batch system favors the accumulation of fees and thus is unfair towards consumers, who may logically assume that transactions are processed in the order sent to the bank. There is no reason a withdrawal should process faster than a deposit, and no reason why larger transactions should process before those that are smaller. However, by manipulating the order in which transactions are processed, banks assess fees on accounts that otherwise would not have overdrawn. These practices belie industry's statement that they are concerned for customers' convenience and peace of mind, since, by doing this, they are causing needless inconvenience and financial difficulties.

Sincerely,

Niva Kramek  
Washington, DC