



Telesca Center for Justice
One West Main Street, Suite 200 ♦ Rochester, NY 14614
Phone 585.454.4060 ♦ Fax 585.454.2518
www.empirejustice.org

March 27, 2009

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

VIA EMAIL: regs.comments@federalreserve.gov

Docket No. R-1343, Comment on Regulation E

Dear Ms. Johnson:

I am writing on behalf of the Empire Justice Center, in support of the Federal Reserve Board of Governor's proposed amendments regarding Regulation E [Docket No. R-1343], which curbs unfair electronic overdraft practices. We believe there need to be additional and stronger protections against these unfair and deceptive acts. We appreciate the opportunity to comment.

Empire Justice is a non-profit legal services organization in New York with offices in Albany, Rochester, White Plains and in Central Islip on Long Island. Empire Justice provides support and training to legal services offices statewide, undertakes policy research and analysis, and engages in legislative and administrative advocacy. We also represent low-income individuals, as well as other classes of New Yorkers, in a range of poverty law areas including consumer law.

We believe that Alternative 2A, the *opt in* provision, would be the most beneficial option and strengthen the protections offered consumers. Financial institutions should provide consumers who do not affirmatively consent to the institution's overdraft service for ATM withdrawals and one-time debit card transactions an account with the same terms, conditions and features, including interest rates paid and fees assessed, as it provides consumers who affirmatively consent to overdraft services. If the non-overdraft account does not have sufficient funds for a transaction, the debit card or ATM transaction should be denied rather than approved with a resulting overdraft fee.

Empire Justice has extensive experience in working with low and moderate income consumers

because of our direct representation of consumers with high cost loans. We believe that 'gotcha' fees, which penalize consumers who live paycheck to paycheck, have wider negative consequences than the cost of the fees themselves. It is not the lack of banking locations that result in the use and proliferation of alternative financial services such as check cashers. We believe hidden and deceptive features result in consumers avoiding banks and therefore suffering the negative effects of not having a relationship with a mainstream financial institution.

We have heard stories from many individuals who find our name on the internet or through other service providers about their being charged excessive and unfair overdraft fees. One man who contacted Empire Justice ended up with over \$100 in fees for a less than \$10 overdraft on his account. Federal preemption caused New York to roll back its \$20 limit on overdraft fees and made it nearly impossible in New York to find a bank that does not gouge its customers with these fees that are in all cases disproportionate to the harm and expenses incurred by the bank.

Empire Justice Center is the lead member of the Creating Assets, Savings and Hope Coalition (C.A.S.H.) in Rochester, NY. This is an EITC/Asset Building coalition that operates Volunteer Income Tax Assistance (VITA) sites throughout tax season. During the 2008 tax season, the coalition prepared federal and NY State tax returns for more than 14,000 low to moderate income working taxpayers who claimed over \$20 million in tax refunds and credits. While at C.A.S.H. VITA sites, taxpayers interact with volunteers who offer them opportunities and information to access additional community resources including fee free savings and checking accounts for the unbanked. Fewer than 10 percent of those who are unbanked choose to take advantage of this opportunity to access mainstream financial services; a significant share of those who decline this opportunity cite negative previous experiences with banks related to overdraft fees that were out of control.

In closing, we believe the proposed Regulation E *opt in* alternatives would give consumers added protections. Thank you for the opportunity to comment on the Board's proposals.

Sincerely,

A handwritten signature in black ink that reads "Ruhi Maker". The signature is written in a cursive, slightly slanted style.

Ruhi Maker, Esq.