



Sent via e-mail: regs.comments@federalreserve.gov

July 23, 2004

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

Dear Ms. Johnson:

The Credit Union National Association (CUNA) appreciates the opportunity to provide comments for the Federal Reserve Board (Board) on its announced study on the adequacy of the existing consumer disclosures for debit card fees. CUNA commends the Board for soliciting comments from the public in preparation for the report that it will send to Congress. CUNA is a national trade association that represents approximately 90 percent of the nation's 9,400 state and federal credit unions, and this letter was prepared in conjunction with CUNA's Payment Systems Subcommittee, which is chaired by Lindsay Alexander, President and CEO of National Institutes of Health FCU, Rockville, Maryland.

Summary of CUNA's Position

- Existing disclosures on debit card fees provide consumers with sufficient information to make informed decisions.
- Requiring financial institutions to add more disclosures in the periodic statement than the ones that already exist would impose new processing burdens on financial institutions and provide little, if any, additional benefit to consumers. The Board should not add additional disclosures to a consumer's periodic statement.

- The current requirements for fee disclosures at point-of-sale terminals adequately inform consumers and should not be changed because the potential changes could reduce the options available to consumers and would burden financial institutions.

Discussion

The Board is studying the fees imposed by financial institutions when consumers engage in debit card purchase transactions, which are point-of-sale (POS) transactions, by providing their personal identification numbers (PIN) rather than signatures. The Board has been asked to consider whether existing disclosure requirements are adequate and effective in making consumers aware of the imposition of debit card transaction fees by their financial institution. Further, the Board has been asked to consider the possible benefits of requiring additional disclosures in a consumer's periodic account activity statement that would inform the consumer of the amount of each fee imposed by the account-holding institution in connection with a debit card transaction during the statement period, as well as information regarding the source and recipient of such fee, along with a summary of the total amount of such fees for the period.

The Electronic Funds Transfer Act (EFTA) is implemented by the Board's Regulation E (12 CFR part 205). The EFTA and Regulation E provide for disclosures to consumers about fees related to electronic funds transfers (including POS transactions) at three points in time: 1) in the initial disclosures provided at the time the consumer contracts for an electronic fund transfer account; 2) in periodic account statements; and 3) on receipts provided at an electronic terminal at the time a transfer is initiated in certain situations.

Current Disclosures

CUNA supports the current consumer disclosure requirements that are required in Regulation E and believes that these disclosures are sufficient to inform consumers about debit card PIN use fees at the point-of-sale. Regulation E currently requires financial institutions to disclose debit card fees in the account disclosures that must be provided at initiation of an account. 12 CFR 205.7 (b) (5). In addition, these fees must be presented on the consumers' periodic account statement, although they may be aggregated with other fees. Sometimes they might be required to appear on the receipt. CUNA believes that the combination of these disclosures adequately inform a consumer of the fee before he or she conducts a debit card transaction and after he or she conducts that transaction. As a result, CUNA believes that consumers receive sufficient information about fees to make informed choices and additional disclosures are unnecessary.

Separate Disclosure of Debit Fees On Periodic Statement Not Necessary

CUNA believes that a requirement to separately disclose PIN-use fees would be inconsistent with other, similar Regulation E periodic statement fee disclosure provisions. Currently, the Regulation E disclosures allow fees to be aggregated. As a result, if an account holding institution imposes fees on the consumer for an online POS debit transaction, then these fees must be disclosed in the periodic statement but may be aggregated with other fees; a per-transaction itemization of each fee imposed by the card-issuing bank for a POS debit transaction is permitted, but not required by the regulations. The fees for PIN-based as opposed to signature-based, debit card transactions are not

more burdensome than other types of transaction fees; therefore, CUNA does not believe that the Board should adopt separate more onerous rules for these fees.

Periodic Statement Adequately Discloses Fees More Disclosures Unnecessary

In response to the Board's questions, CUNA does not believe that changes should be made to the Regulation E requirements for disclosing fees on periodic statements. These changes would add additional burdens to financial institutions without providing much benefit to consumers. The disclosures on the periodic statement should not contain the source and recipient of any debit fee. Inclusion of this information does not provide helpful information to consumers; they already have information on the fees they pay. Other potential changes to Regulation E disclosures that would require the periodic statement to reflect a summary of calendar year-to-date for PIN debit card fees would cause consumer confusion because the periodic statement aggregates all other information on a monthly, not-year-to-date basis. Including a unique statistic, year-to-date information, on only one type of fee (PIN fees) would confuse consumers about what they should expect on the periodic statement.

Point-Of-Sale Fee Disclosures

Currently, a transaction fee must be disclosed on the receipt, and additionally displayed on or at the terminal, only if the fee is included in the amount of the transfer. If such a fee is not included in the transfer amount, then the receipt need not state the fee and the display requirements are not triggered. The Board requests comments on whether the receipt at an electronic terminal should be required to disclose the fees at all times.

CUNA urges the Board to avoid making a fee disclosure mandatory at the point-of-sale because added requirements could actually be detrimental to consumers. New requirements would limit the ability of a financial institution to assess fees in ways that are advantageous to consumers. For example, if a financial institution wants to provide a certain number of free POS debits per month, the programming requirement to implement this service in compliance with POS disclosure requirements could be cost prohibitive. Typically, POS terminals have limited capabilities, and they cannot transmit the specific fee information for the unique financial institution of the cardholder. CUNA encourages the Board to continue current disclosure requirements at the terminal and to avoid adding new mandatory requirements that would result in costly programming, little additional value to the consumers, and the potential for a reduction of availability of convenient and cost-effective services to consumers.

Besides the burden on consumers, CUNA does not believe that there is affordable technology to require mandatory disclosure of fees either on merchants' point-of-sale terminals or receipts. CUNA believes that the requirement to make this disclosure mandatory may be burdensome and costly to both merchants and financial institutions because a change in technology may require an investment in upgraded point-of-sale card readers and processing/settlement systems. Furthermore, it could be extremely difficult to program all point-of-sale card readers to disclose PIN-use fees specific to each card-issuing institution, given the number of financial institutions.

In the future, if the Board requires display of card-issuing institutions' PIN-use fees at point-of-sale terminals, CUNA believes that this would require numerous operational changes for the network. According to credit unions, networks are not currently configured to provide this information. So the infrastructure of networks would have to be altered to allow them to read the fee from each card at each financial institution. Moreover, before this upgrade could be implemented, each financial institution would have to test it to ensure that it works.

Further, CUNA believes that requiring institutions to disclose PIN-use fees at the point-of-sale would be inconsistent with Regulation E's treatment of the similar situation that exists with ATM transaction fees. Regulation E requires that at the ATM terminal a notice be posted that the ATM operator and the account-holding institution may charge a fee; it does not require the disclosure of these fees. 12 CFR 205.7 (b) (11). Card-issuing institutions do not control disclosures at ATMs they do not own (i.e., nonproprietary ATMs), and therefore cannot disclose fees they might charge to their members for use of a non-proprietary ATM at that ATM. A point-of-sale terminal is similar to a non-proprietary ATM in that an institution cannot customize another terminal owner's display or receipt to its own fee structure. For that reason, the Board should not impose a mandatory disclosure requirement on debit PIN fee use because the limited capabilities of the infrastructure are the same in both situations and the regulations should accommodate similar situations in a similar manner.

Conclusion

CUNA supports the existing debit card PIN fee disclosures, which allow a consumer to make informed choices. Additional disclosures for the periodic statement and at the point-of-sale would burden financial institutions and provide little benefit to consumers. If you have any further questions, please contact CUNA's Senior Vice President and Associate General Counsel Mary Dunn or me at (202) 638-5777.

Sincerely,

Michelle Q. Profit

Assistant General Counsel