

Wachovia Corporation
One Wachovia Center
301 South College Street
NC0630
Charlotte, NC 28288-0630

Michael A. Watkins
Senior Vice President and
Deputy General Counsel
Tel 704-715-2489
Fax 704-715-4496



WACHOVIA

DELIVERED BY ELECTRONIC AND REGULAR MAIL

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

Electronic Address: reg.comments@federalreserve.gov

RE: Docket No. OP-1196; Notice of Study and Request for Information: Debit Card Fees

Dear Ms. Johnson:

This letter is submitted on behalf of Wachovia Corporation and its subsidiary companies, including Wachovia Bank, National Association, and Wachovia Bank of Delaware, National Association (collectively referred to as "Wachovia"). Wachovia appreciates the opportunity to offer its views to the Board of Governors of the Federal Reserve System ("Board") on the disclosure of debit card fees. Wachovia has carefully reviewed the Board's concerns and we believe that the existing regulations regarding disclosures of fees under the Electronic Funds Transfer Act and Regulation E are sufficient.

Wachovia offers a number of products that fall under the general definition of "debit card," which Wachovia defines as a card that provides the consumer owner with electronic access to funds in a deposit account. Access may occur through a Wachovia ATM ("proprietary ATM") or at an ATM owned by another financial institution, or through the purchase of goods or services from a merchant. Different Wachovia cards have different access capability and different fee structures apply depending upon the card and the account type. However, all of these fees are disclosed properly under Regulation E.

Initial Disclosures

Wachovia groups the fees charged for debit card uses together with all other fees related to account uses, but separately itemizes the amount of each fee and the conditions under which the consumer would incur the fee. Wachovia believes that its method of both grouping fees under an easily identified paragraph and separately listing each fee meets the requirements of 12 CFR 205.7. The disclosure is clear and conspicuous, in language that the consumer can understand and needs no further enhancement. We believe that generally clear and conspicuous disclosures are typical of our peers and smaller banks, particularly those relying on large, third party system vendors.

Periodic Statement

12 CFR 205.9 requires that financial institutions disclose fees related to an account on the periodic statement that the customer receives, usually on a monthly basis. Financial institutions disclose debit card fees in different ways. Some financial institutions list fees on a per item basis, as the item is deducted from the account balance, adjusting the balance on the account as the fee is deducted. Other financial institutions aggregate the fees and subtract the total of all fees charged during the period on the last day of the period. Still others aggregate fees but offer a short narrative of the items included in the aggregate. In each of these scenarios, the customer receives information concerning the amount of the fees and the impact of the fees on the customer's account balance.

Believing that the consumer is fully informed in the periodic statement of the debits from his/her account, including fees, Wachovia does not support any changes to Regulation E in this regard at this time. The Board has been asked to consider whether the consumer may benefit substantially if debit card fees are aggregated on a periodic and year-to-date basis. Traditionally, periodic account statement systems are not programmed to move data forward from month to month. In addition, many periodic statement systems do not provide for separate categories of cumulative fees on a monthly basis. Wachovia believes that the customer benefits more by seeing the per item fees on a periodic basis than cumulative totals. The cost of reprogramming and redesigning periodic statements to provide periodic and year-to-date totals would be substantial. Wachovia believes that the costs to the financial industry to provide aggregated fees far outweigh the benefit to the consumer to see monthly and year-to-date totals.

Terminal Receipts

Wachovia agrees with the Board's analysis that the consumer may not always see debit card fees charged by the account holding institution on all POS transaction receipts. However, fees are disclosed on receipts produced at proprietary ATMs. Because the financial institution controls the programming that delivers this information to the consumer, the cost of compliance is manageable. However, if the obligation to itemize fees should extend to all debit card transactions on which fees are charged, the cost of compliance would grow substantially. Unless debit card fees are disclosed on every transaction, regardless of whether the transaction occurs electronically, consumers will receive inconsistent information depending on the manner in which transactions are processed.

The Board emphasizes disclosures of fees at “electronic terminals,” and states, “both Pin-based debit and signature-based debit continue to show strong growth.” Yet, there continue to be substantial differences in the way debit card transactions are processed. Some signature-based merchants use an electronic swipe method, which imprints the card number on an electronically produced ticket that describes the transaction. Smaller merchants, particularly those whose locations may vary from week to week, continue to use the manual imprint method, preparing the vouchers by hand. Online bill payments, Internet, mail order and telephone order transactions occur without an electronic swipe and without the use of a PIN.

Fees also may vary from transaction to transaction and from consumer to consumer. If consumer deposit agreements require the issuing bank to look at specific customer usage to determine whether a fee may apply to a particular transaction, merchants must have this information transmitted in “real time.” However, some electronic “swipe” transactions do not result in a real-time interaction between the merchant and the card-issuer. Merchants who use floor limits, or who otherwise are not engaged in real time interaction, or who use a manual swipe method will not have immediate access to the amount of the issuing bank’s debit card fee. The transmittal of a debit card fee would involve multiple steps from the merchant’s “real time” request to the merchant entering the fee received through an interchange from the consumer’s financial institution on the debit voucher. The opportunity for delays and errors would increase significantly.

Wachovia has not estimated the cost of transferring fee information to merchants through terminal or other methods, but we believe that the programming and communication costs to all financial institutions and merchants would be substantial. Smaller merchants without electronic connections at the point of sale may be required to find alternate methods of accepting payments for transactions. Ultimately, the cost of operating debit card programs across the industry would increase significantly and be passed in some form to the consumer.

Conclusion

Wachovia believes that the existing disclosure requirements in the Electronic Funds Transfer Act and Regulation E offer adequate consumer information and protection. Wachovia urges the Board not to amend the Regulation E in such a way that may increase the regulatory burden on financial institutions and may limit the options offered and/or increase the cost of electronic commerce to the merchant and consumer. Wachovia believes that many financial institutions are in substantial compliance with Regulation E, and there are enforcement policies already in place to deal with those who supply erroneous or inconsistent information.

Wachovia appreciates the opportunity to respond to the request for information and hopes that the Board finds them helpful. For additional clarification of the points included in this letter, please contact me at 704-715-2489.

Very truly yours,

Michael A. Watkins