

September 28, 2006

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

Re: Regulation E; Docket No. R-1265 - Interim Final Rule

Dear Ms. Johnson:

Branch Banking and Trust Company and its affiliated banks and subsidiaries of BB&T Corporation (BB&T) appreciate the opportunity to comment on the interim final rule amending Regulation E and the related official staff commentary issued on August 30, 2006, Federal Register Vol. 71, No. 168, page 51451 (Interim Rule) on the subjects of electronic check conversion transactions and the electronic collection of insufficient or uncollected funds fees.

BB&T, with more than \$116 billion in assets, is the nation's ninth largest financial holding company and operates more than 1,400 financial centers in the Carolinas, Virginia, Maryland, West Virginia, Kentucky, Tennessee, Georgia, Florida, Alabama, Indiana and Washington, DC.

BB&T is generally supportive of the substantive requirements of the January 2006 final rule, Federal Register Vol. 71, No. 6, page 1638 (Jan. Rule) providing guidance regarding the rights, liabilities, and responsibilities of parties engaged in electronic check conversion (ECK) transactions and the electronic collection of fees if a payment is returned to the payee due to insufficient or uncollected funds. However, the Interim Rule and Commentary raise new issues of concern.

1. Persons Subject to Requirements. We agree with the clarifications added in the Interim Rule that the notice and authorization obligations fall upon the merchants or other payees, and not the consumer's financial institution. We also agree with the clarification that the obligations do not apply to the consumer's financial institution when it assesses a fee against the consumer's account for returning an EFT or check or for paying an overdraft. However, the Board changed the term "service fees" in the Jan. Rule to "insufficient funds fee" in the Interim Rule and Commentary. We do not agree with the Board's change in terminology in the Interim Rule. Consumers are accustomed to their banks imposing NSF fee and overdraft fees. They are also accustomed to merchants

imposing service fees or return check fees. Referencing the fees imposed by merchants as “insufficient funds fees” is inaccurate and is likely to cause confusion with consumers. We urge the Board to call the fees imposed by merchants and other payees for returned payments “service fees” which we believe is a more accurate description and will help to minimize confusion between the fee charged by the merchant and the fee charged by the financial institution.

2. Notice and Authorization Requirements. We understand the Jan. Rule and the proposed Interim Final Rule, when read together, to require notice to consumers containing the elements below. If the consumer goes forward with the transaction after being provided notice, the transaction is authorized.

	Notice	Source	Posted at POS	Copy to consumer (substantially similar to posted notice)	ARC transactions
1.	The transaction will or may be processed as an electronic funds transfer (EFT) for each transfer	Jan. Rule and Interim Rule	Yes, in prominent and conspicuous location	Yes, for each transfer; may be printed on receipt	May print on statement or invoice; or if coupon book used, may print single notice in a conspicuous place containing all disclosures
2.	If the payment is processed as an EFT, the funds may be debited from the consumer’s account as soon as the same day payment is received and that the consumer’s check will not be returned by the FI (or in the bank statement)	Jan. Rule	Yes, in prominent and conspicuous location	No	May print on statement or invoice; or if coupon book used, may print single notice in a conspicuous place containing all disclosures
3.	A fee may be electronically collected if payment is returned for insufficient funds or uncollected funds	Jan. Rule and Interim Rule (supercedes 205.3(b)(3) of Jan. Rule	Yes, in prominent and conspicuous location	Yes, for each transfer; may be printed on receipt	May print on statement or invoice; or if coupon book used, may print single notice in a conspicuous place containing all disclosures

	Notice	Source	Posted at POS	Copy to consumer (substantially similar to posted notice)	ARC transactions
4.	State the amount of the fee or if the amount of the fee may vary, the method by which the fee will be calculated	Interim Rule (supercedes 205.3(b)(3) of Jan. Rule; and official staff commentary to Jan. Rule 3(b)(2)(3)	Posted notice must state amount; or if amount may vary not required to state amount, even if fee can be calculated at time of transaction, but must state the method of calculation	Yes, for each transfer, may state method of calculation, but must state amount on copy to consumer if it can be calculated at time of transaction	Yes, for each transfer must state amount of fee; but if amount of fee may vary may state method of calculation

BB&T's concerns relate to certain aspects of the notice/authorization requirements.

- (i) Posted Notice at Point of Sale. We believe that a clearly worded notice which is prominently and conspicuously posted at the point of sale containing the information outlined above is manageable from the payee's perspective and constitutes sufficient notice to the consumer. We also agree that the posted notice should state the amount of any fee imposed, or the method of calculating the fee, for electronically collecting a service fee for returned items due to insufficient funds or uncollected funds.
- (ii) Written Notice to Consumer Stating Amount of Fee or Method of Calculation. We do not agree with the requirement that the written copy provided to the consumer state the amount or the method by which state law mandates the calculation of the fee. This disclosure requirement would necessitate modifications to the merchant's POS software, which would need to take into consideration not only the transaction amount, but potentially other variables, such as the physical location of the merchant's store (to determine which state's laws are applicable), and situations in which multiple payment instruments (such as both cash and a check) are used in a single transaction, where only a portion of the total transaction amount would be subject to the fee.

It should also be noted that many small merchants and businesses do not utilize POS software systems, and would have no alternative but to calculate the fee manually for each transaction. This approach would be likely to result in numerous calculation and disclosure errors, not to mention the impact it would have at the check out line. We believe that a clear description of how the service fee is calculated which appears on the posted notice is the best method for

- disclosing the fee to consumers. The costs of programming merchant point of sale systems to disclose a specific fee amount, and the likelihood of erroneous disclosures if fees were to be calculated manually, would outweigh any benefits from disclosing an actual fee amount in situations where the fee can vary based on the transaction amount. We note that the Jan. Rule does not require that the second notice element be contained on the consumer's copy; and we urge the Board to adopt the same position as to the amount of the fee and the method of calculation of the fee.
- (iii) Frequency of Notice/Authorization for Pre-authorized Recurring Payments. The Board should revise the Interim Rule to state that the requirement to give notice and obtain authorization for each and every transaction does not apply to standing pre-authorized debit arrangements, such as pre-authorized debits for utility payments, insurance premiums, etc. Authorization to initiate an electronic debit to collect a service fee for returned items can be obtained in the consumer's initial authorization for the electronic debit.
4. ARC Transactions. The Board also solicited comment on circumstances other than POS or ARC transactions in which payees might electronically collect service fees. We believe that, with proper notification and disclosure, payments authorized via a payee's Internet website (WEB), via telephone (TEL) or at an ATM, could all be situations in which service fees could appropriately be collected electronically.

Thank you for your consideration of our comments, and please feel free to contact me with any questions.

Sincerely,

Joseph S. Blount
Vice President & Payment Systems Consultant
(703) 241-3035
jblount@bbandt.com