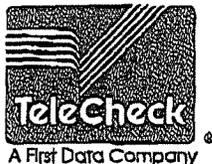


TeleCheck Services, Inc.
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(713) 331-7600



September 28, 2006

VIA FACSIMILE

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

Re: Comments on Interim Final Rule amending Regulation E - Docket Number R-1265

Dear Ms. Johnson:

This comment letter is submitted on behalf of TeleCheck Services, Inc. in response to the Federal Reserve Board's ("Board") interim final rule ("Interim Rule") amending (1) Regulation E,¹ which implements the Electronic Fund Transfer Act ("EFTA"),² and (2) the official staff commentary to Regulation E ("Commentary").³ We appreciate the opportunity to comment on the Interim Rule.

Background

Houston-based TeleCheck, is the world's leading check acceptance company, providing electronic check conversion, check guarantee, check verification, and collection services to retailers, financial institutions and other industry clients with sales and service network offices in more than 90 cities in the United States. TeleCheck is a wholly-owned subsidiary of First Data Corporation ("FDC"). FDC, with global headquarters in Denver, Colorado, helps power the global economy. As a leader in electronic commerce and payment services, FDC serves approximately 3.5 million merchant locations, 1,400 card issuers and millions of consumers. With more than 30,000 employees worldwide, the FDC provides credit, debit, smart card and stored-value card issuing and merchant transaction processing services;

¹ 12 C.F.R. pt. 205.

² 15 U.S.C. §§ 1693-1693r.

³ 12 C.F.R. pt. 205, Supp. I.

Internet commerce solutions; money transfer services; money orders; and check processing and verification services throughout the United States.

TeleCheck offers several check processing products including the TeleCheck Electronic Check Acceptance® ("ECA®") service which brings the convenience of electronic check commerce to the point-of-sale. This digital process allows merchants to accept checks as quickly, safely and easily as credit cards while improving the cash flow of their business. At present, the merchant provides return fee notification (signage) at the point-of-sale that the check writer can read prior to presenting their paper check for payment. From the point-of-sale, the merchant submits the consumer's check information to the TeleCheck host system using the TeleCheck Eclipse® ("Eclipse®") payment terminal or another ECA®-certified point-of-sale terminal.⁴ If the transaction is approved, the clerk gives the check writer a printed authorization for signature. The check writer's signature allows TeleCheck to electronically present the transaction to the check writer's bank for settlement and that money is automatically deposited into the merchant's bank account. The authorization also provides for the collection of a service fee by EFT in the event the item is returned unpaid. For all approved transactions, the check writer is provided a copy of the authorization language for their records. The ECA® service makes it safer, faster and easier to accept checks and makes checks a more viable payment option for both merchants and check writers.

TeleCheck urges the Board to reconsider the requirement to provide the amount of the insufficient funds fee on the copy of the notice provided at the point of sale.

TeleCheck commends the Board for clarifying the amendments to Regulation E published in January of this year by issuing the Interim Final Rule. TeleCheck supports the Board's adjustment to the disclosure requirements at the point of sale regarding the insufficient funds fee, however, TeleCheck urges the Board to consider a further adjustment to the rule to accommodate the technical difficulties merchants and service providers will face in complying with the rule and to ensure that the costs to comply with the rule are not a barrier to the adoption of evolving ACH payment applications.

Under the Interim Final Rule, persons that seek to collect an insufficient funds fee via electronic fund transfer ("EFT") from consumers who pay by check at the point of sale must post a prominent and conspicuous notice stating that the fee may be collected and stating the amount of the fee (unless the fee cannot be calculated at the point of sale in which case a description of how the fee will be calculated must be provided). In addition, a substantially similar copy of the fee notice must be provided to the consumer. In the preamble to the amendments published in January, the Board explained that the post-transaction copy of the notice requirement would enable consumers to refer to the notice later, if necessary.⁵ Accordingly, it is our understanding that the Board included the copy of the fee notice

⁴ The Eclipse® payment terminal, designed in partnership with VeriFone, is a point-of-sale payment solution that enables the acceptance of all non-cash payments, eliminating the need for multiple terminals to authorize and process checks, credit cards, debit cards, and EBT transactions, as well as, facilitating ECA® and other services offered by TeleCheck.

⁵71 FR 1642

requirement in the final rule, only to ensure that the consumer would leave the point of sale with a convenient source of information about the transaction for reference purposes, and not as a means to establish authorization of the EFT under Regulation E.

For most merchants, providing a copy of the fee notice on the receipt will be the only practical means to ensure that consumers receive a copy of the fee notice. As a result, including the fee amount on the receipt will require reprogramming every receipt producing terminal at all points of sale. The reprogramming process will be further complicated by the fact that fees vary from state to state: some states authorize a flat fee regardless of the amount of the transaction, in other states the fee is based in part on the amount of time that the check remains unpaid, and in other states the fee is calculated as a percentage of the value of the transaction. Several national retailers have informed TeleCheck that their point of sale cash registers cannot be programmed to add language to the receipt describing how the fee notice will be calculated. This technical shortcoming occurs in systems utilizing a single host through which all of the merchant transactions are processed. In certain of these systems, the point of sale terminals that are deployed nationally cannot receive varying language regarding insufficient funds fees from the host.

The costs associated with reprogramming registers and terminals throughout the nation in order to comply with the requirement to provide the actual numerical amount of the service fee (or a description of the process for calculating the fee) on the receipt will be significant. The benefit to the consumer, namely, a moderately more convenient source of information than, for example, TeleCheck's existing receipt language which refers the consumer to the posted sign and applicable law, will be limited. Accordingly, TeleCheck is concerned that the rule will be unfairly burdensome to retailers and their service providers. TeleCheck, as a processor of large volumes of check conversion transactions, has not received complaints from consumers regarding the sufficiency of the current disclosure that TeleCheck provides on the receipt referring the consumer to the point of sale signage. Furthermore, TeleCheck notes that the limited benefit provided to consumers is only relevant to a very small percentage of consumers.⁶

When a copy of the fee notice is not provided at the point of sale, the Board should permit the copy of the fee notice to be sent at a later date.

A significant amount of TeleCheck's service fee collection occurs with respect to paper checks that are presented at merchant locations which do not convert checks at the point of sale. Receipts for these paper check transactions are produced by the merchant's register and not an Eclipse terminal or other external terminal. It is TeleCheck's understanding that few, if any merchants will expend resources to ensure that their registers provide the insufficient funds fee notice on the receipt for paper check transactions. Accordingly, it will not be possible to collect the insufficient funds fees for such transactions via EFT under the Interim Final Rule. As collection of the fee via EFT would be significantly more efficient, this result is an unfortunate

⁶ In TeleCheck's experience, a very high percentage of checks are paid and not returned, thereby reducing the rule's relevance to a small fraction of the checkwriters (e.g. 1-2%).

consequence of the current formulation of the rule.⁷ Board could address this issue by permitting merchants and others to send a copy of the fee notice posted at the point of sale to the consumer so long as the following conditions are met: (1) a notice is posted at a prominent and conspicuous location at the point of sale stating that such a fee may be collected and stating the amount of the fee (unless the fee cannot be calculated at the point of sale in which case the description of how the fee will be calculated must be provided); and (2) a substantially similar copy of the fee notice is sent to the consumer by mail subsequent to the transaction, but prior to the collection of the insufficient funds fee via EFT, to the address on the check or the last known address of the consumer.

As noted above, TeleCheck understands that the purpose of requiring the merchant to provide a copy of the notice is to ensure that the consumer has a convenient source of information. This objective would be met by sending the notice to the consumer. Furthermore, this alternative would enable a merchant to target the paper copy disclosure of this information exclusively to those consumers to whom it is relevant as the notice would be sent only after the payment is returned unpaid. Such a solution obviates the reprogramming or replacing of point of sale terminals for those merchants who do not convert checks at the point of sale. TeleCheck believes that the proposed method should be added to the rule as an alternative means of meeting the requirement to provide a copy of the fee notice to the consumer.

Conclusion

The complexities and costs associated with reprogramming terminals and point of sale systems will create a barrier to the use of more efficient ACH payment applications by merchants. Accordingly, TeleCheck urges the Board to simplify the requirement to provide a copy of the notice by giving merchants and other payees the option of providing consumers with a receipt notifying the consumer that an insufficient funds fee may be collected and referencing but not stating the amount that will be prominently and conspicuously posted on the sign at the point of sale. In addition, TeleCheck requests that the Board provide an alternative delivery method so that merchants who do not provide a copy of the fee notice at the point of sale might be able to collect an insufficient funds fee by EFT. TeleCheck believes that its suggested revisions balance the benefit to consumers of robust disclosure with the cost to industry of providing the disclosures.

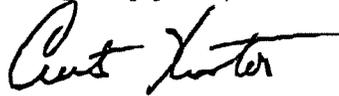
As a significant participant in the electronic payment industry, TeleCheck supports the objectives of the EFTA and Regulation E. TeleCheck also endorses educating consumers about electronic payments and their rights, liabilities and responsibilities with respect to EFTs through clear and conspicuous disclosure. However, the benefits that such disclosures provide to consumers must be weighed against the compliance costs borne by financial institutions, merchants and service providers, such as TeleCheck.

⁷ Although the NACHA Operating Rules require a signed, written authorization for collection of the return fee today, TeleCheck understands that NACHA is considering amending its rules to allow for authorization through notice alone for service fees.

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Once again, TeleCheck appreciates the opportunity to provide comments on the Interim Final Rule to the Board. If you have any question regarding the foregoing, please contact me at (713) 331-7838.

Very truly yours,

A handwritten signature in black ink, appearing to read "Curtis Kantor". The signature is fluid and cursive, with a long horizontal stroke extending to the right.

Curtis Kantor
General Counsel
TeleCheck Services, Inc.