



OHIO CREDIT
UNION LEAGUE

March 27, 2009

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

**Re: Docket No. R-1343
Comments on Proposed Revisions to Regulation E for Overdraft Protection Plans**

Dear Ms. Johnson:

On behalf of the Ohio Credit Union League (OCUL), this letter responds to the Federal Reserve Board's (FRB) proposed rule to amend Regulation E, the Electronic Fund Transfer Act. This proposal will provide consumers with certain protections relating to the assessment of overdraft fees for automated teller machine (ATM) transactions and one-time debit card overdrafts. The Ohio Credit Union League is a credit union trade association representing the interests of Ohio's 412 federal and state-chartered credit unions and its 2.6 million members.

The comments reflected in this letter represent the recommendations of the Ohio Credit Union League. We appreciate the opportunity to provide suggestions and feedback to the Federal Reserve (Fed) prior to adoption of any final rules as proposed.

Background

In summary, the FRB proposal replaces previously proposed rules under the Unfair and Deceptive Act or Practices and the Truth-in Savings Act that addressed overdraft protection plans. The current proposal seeks comments regarding two approaches for providing overdraft protection services for ATM transactions and one-time debit card transactions. Briefly, the two approaches are:

- **Opt-out:** An institution would be prohibited from imposing an overdraft fee unless the consumer is given an initial notice and a reasonable opportunity to opt-out of the



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institution's overdraft service, and the consumer does not opt-out.

- Opt-in: An institution would be prohibited from imposing an overdraft fee for paying overdrafts unless the consumer affirmatively consents to the institution's overdraft service.

In addition, the proposed rule prohibits credit unions and other financial institutions from imposing an overdraft fee on a one-time debit card overdraft occurrence solely because of a hold placed on funds in the consumer's account that exceeds the actual transaction amount, and limited to those transactions with holds that are released within a very short period of time after the transaction is authorized (i.e. two hours, such as many transactions at gas stations and restaurants).

The proposal does not apply to overdrafts paid pursuant to a line-of-credit under Regulation Z, Truth-in-Lending, or transfers from other loan or savings accounts of the consumer.

Opt-in vs. Opt-out Provisions

Overall, overdraft protection has proven to be an extremely popular credit union member service over the past several years, providing credit union members with conveniences and abilities to avoid the inconvenience and subsequent and added merchant fees associated with returned checks. The OCUL and its member credit unions fully support up-front and clear written member disclosures of ODP terms and conditions and support the ability of all members to opt-out of overdraft services at any time.

- For existing members/customers (as of the effective date of implementing final Regulation E revisions), OCUL strongly recommends that the Fed provide credit unions and other financial institutions with the flexibility and option to use the opt-out approach. OCUL supports a one-time opt-out notice sent to all existing account-holders within 90 days of any rules adopted (or other reasonable time period), acting much like a "change-in-terms" notice as required in many Federal Reserve regulations. OCUL supports the Fed's proposal for on-going opt-out notices being included on periodic statements moving forward, disclosing to members that ODP is optional and disclosing the procedure to opt-out. *We support the ability for all members/customers to opt-out of overdraft services at any time.* The OCUL also appreciates the Fed including model forms in its Regulation E proposal, and concludes that these proposed model forms provide full, fair and clear disclosures to the member/consumer.

Requiring opt-in for existing members/customers will cause numerous operational difficulties for many credit unions that have responsibly provided ODP services for

many years. Obtaining affirmative responses from millions of existing members of Ohio and U.S. credit unions is simply a waste of time and money. Instead, moving forward, a one-time opt-out notice with full disclosures as recommended above is very sufficient.

- For new members/customers (as of the effective date of implementing final Regulation E revisions), OCUL feels the Fed has developed very strong measures in its proposal for BOTH the opt-in and opt-out options. Both provide full and fair disclosures that permit members/customers the ability to make educated decisions regarding their participation in any ODP service provided. Thus, the OCUL strongly supports that credit unions and financial institutions have the flexibility to engage in either an opt-in or opt-out approach for ODP services, following the Fed's proposed Regulation E rules. More specifically, our position is summarized in the following two bullet points:
 - OCUL fully supports the opt-in provisions as drafted by the Fed, whereby the member/consumer must first provide an affirmative request to participate in ODP services, and if so, be provided a confirmation notice of their participation. Many Ohio credit unions will choose to utilize the opt-in method for new members and new accountholders and we support the disclosures and model notices the Fed has developed in its proposal as being both clear and comprehensive.
 - However, the OCUL cannot support the above proposed opt-in method as being the only method permitted. With full disclosure, credit unions and other financial institutions should be permitted to utilize both the opt-out, as well as the opt-in approach. The current proposal for opt-out requires a full disclosure to the member at sign-up, including: 1) all terms and conditions, 2) a time period of 30 days to allow a customer/member to opt-out before fees can be assessed, plus 3) additional opt-out notices in every periodic statement that any ODP fee is charged. The OCUL strongly supports the flexibility of utilizing the opt-out method as proposed, representing full disclosure, ample opportunity to waive participation by the member/customer before a fee can be assessed, and on-going reminders of opt-out rights in periodic statements.

Debit Hold Provisions

OCUL does not support the proposed revisions to Regulation E regarding the prohibition of assessing overdraft fees that are both 1) a result of holds placed on funds in a consumer's

account, and 2) transactions with holds that are released within a “short period of time” (two hours as proposed). Although the proposal is well-intentioned, in practicality, the proposal will only cause added consumer/member confusion and added compliance costs for financial institutions. Reasons for this assessment include the following:

- No consistency exists for holds placed on debit items by financial institutions/card issuers in regards to the length of debit transaction hold times. The proposal cites specific types of transactions with holds that typically are relatively short, including gas stations and restaurants. Input from Ohio credit unions have demonstrated that holds are released on a very inconsistent basis, some releasing holds quickly within hours and some for days...even among merchant transactions of the same category type (i.e. gas stations). This will result in ODP occurrences that are not consistent and will only confuse consumers, as sometimes overdraft situations will and sometimes will not occur on the same types of purchases. Combining these transactions with much longer holds placed on other transaction types (i.e. car rentals and hotels), and the confusion and misinformation that already exists in the general public about debit card transactions will only multiply.
- Many credit unions would have to consistently and manually monitor debit transactions and hold releases to determine which overdraft transactions are and are not subject to overdraft fees. Automated systems are not in place that monitor this activity at this level. Requiring this level of monitoring would result in expensive outlays for hardware and software and additional (and significant) staffing time. This is especially true among credit unions that are not on-line with its core data processor to check balances in a real-time environment. Many credit unions utilize a positive-balance file, whereby balances are uploaded only once per day.

OCUL suggests that more rules are needed at the card issuer and merchant levels to standardize hold times and hold amounts. Significantly more disclosures are needed at the point-of-purchase where consumers can be better informed before choosing to engage in potential transactions that may exceed their available checking account or other account balance. Merchants should post clear disclosures at the point-of-purchase regarding:

1. The types of holds that are imposed,
2. The amount of the hold,
3. The length of the hold, and
4. The consumer’s responsibility to ensure that adequate funds are available to cover the combined transaction and hold amounts.

Summary

Although abuses of overdraft protection plans have occurred by some financial service providers, credit unions, on the whole, have provided this critical service in a very responsible and up-front manner with its members. At the same time, the OCUL fully supports the Federal Reserve's actions to propose rules that all financial institutions must abide by and will go a long ways in ensuring full disclosure of the terms and fees associated with ODP, along with clear directions of how a consumer may opt-out or opt-in.

For existing members, the OCUL supports the opt-out provisions, as the costs and burden of re-enrolling millions of existing members for overdraft protection coverage through the opt-in approach as proposed is not practical. We support a one-time "change-in-terms" notice as explained in the main body of our comments above, and believe the Fed's model notices and opt-out methods as proposed are well drafted and sufficient.

For new members, the OCUL strongly supports credit unions and other financial institutions having the *flexibility* of utilizing the proposed opt-in or opt-out rules, both providing full disclosure measures.

If the opt-in option is the only method permitted in the final regulations, members/customers will end up being assessed more in fees, as those who do not opt-in will end up being charged overdraft fees (the same fee as a returned item) by both the financial institution and the merchant for insufficient funds. Therefore, the consumer is always ahead by not opting-out. Thus, the OCUL strongly supports a financial institution's choice of fully disclosing either the opt-out or opt-in version, and educating its customer base on the importance of, and personal responsibilities of, monitoring their account balances to avoid overdraft fees.

The Ohio Credit Union League appreciates the opportunity to comment on the Regulation E proposal to modify overdraft protection plans for ATM and one-time debit transactions. Thank you for your consideration of the above comments when drafting your final rules. If requested, the OCUL would be happy to provide additional input or comments.

If you have any questions, please contact me at 1-800-486-2917 ext. 232 or at dshoup@ohiocul.org.

Sincerely,



David J. Shoup
Vice President, Regulatory Affairs