

From: Gesa Credit Union, Christina Brown
Subject: Electronic Fund Transfers

Comments:

Date: Mar 27, 2009

Proposal: Regulation E - Electronic Fund Transfers
Document ID: R-1343
Document Version: 1
Release Date: 12/18/2008
Name: Christina C Brown
Affiliation: Gesa Credit Union
Category of Affiliation: Other
Address: PO Box 500
City: Richland
State: WA
Country: UNITED STATES
Zip: 99352-0500
PostalCode:

Comments:

March 27, 2009 Ms. Jennifer J. Johnson Secretary Board of Governors of the Federal Reserve System 20th Street and Constitution Avenue, N.W. Washington, D.C. 20551 Chief Counsel's Office Office of Thrift Supervision 1700 G Street, NW Washington, DC 20552 Attention: OTS-2008-0004 Mary Rupp, Secretary of the Board National Credit Union Administration 1775 Duke Street Alexandria, VA 22314-3428 Re: Docket No. R-1343 Dear Ms. Johnson (or Chief Counsel or Ms. Rupp): This comment letter is submitted in response to the notice of proposed rulemaking ("Proposed Rule") and request for public comment by the Federal Reserve Board published in the Federal Register on January 29, 2009, the purpose of which would be to amend Regulation E. The Proposed Rule would address the ability of a financial institution (including a credit union) to assess an overdraft fee for paying ATM withdrawals and one-time debit card transactions that overdraw a member's, or credit union member's, account. We recognize that sometimes our credit union members are charged overdraft fees that either they did not anticipate or that they believed were disproportionate in amount to the value of any overdraft service received from the credit union. However, in our experience, members generally do not expect to incur overdrafts and therefore are reluctant to sign up for formal overdraft loan programs, and these same members appreciate the availability of an overdraft service when an overdraft does occur. In some cases, this service enables members to avoid more significant adverse economic consequences, such as merchant fees for returned checks or worse consequences. We have found that this service is even more valuable to our members as their use of debit cards and ACH transactions increases. These types of debits have made it more difficult for our credit union to identify transactions that may cause overdrafts. The Board of Governors has proposed that members either be able to opt out of any overdraft service that assesses a fee or charge for overdrafts due to ATM withdrawals or one-time debit card transactions or that the member be required to opt in to this service. We believe that the opt-out option will be more consistent with member expectations as they have the opportunity to receive the service unless they determine that it does not suit their needs.

It also enhances the relationship between the member and the credit union as we strive to avoid returning debit items unnecessarily. The Board has also proposed alternative approaches to the relationship between the credit union's member's choice with respect to ATM and debit card overdrafts and other overdrafts, including check overdrafts. Under one alternative the credit union would be permitted to condition the payment of check and other overdrafts (that were not ATM withdrawals or one-time debit card transactions) on the member's choice to have the credit union pay overdrafts due to ATM withdrawals or one-time debit card transactions. Under the other alternative, the credit union would be prohibited from imposing such a condition. As a practical matter, for the vast majority of credit unions, there are extraordinary technological difficulties in allowing the partial opt out of ATM and debit card transactions while continuing to pay paper checks and ACH items. Rather than imposing the partial opt out, we believe that the member should be allowed to either have access to the overdraft services for all types of transactions or to opt out of the overdraft services solution altogether. In addition, a "partial" opt out is likely to confuse members and lead to the need for extensive explanations as to the different types of transactions that are or are not covered by the member's choice with respect to an opt-out decision. A simple "on or off" solution will be much easier for members to understand. In addition, the Board has proposed alternatives with respect to the pricing of member accounts where the member opts out. Under one alternative, the Board requires that the terms of the accounts for members who opt out be the same as the terms for accounts for members who do not opt out, effectively giving the member an option to unilaterally change the price structure of the account relationship. The other alternative would recognize that by charging for overdrafts, credit unions are able to make other features of deposit accounts more attractive, including such features as minimum balances to avoid account maintenance fees, funds availability policies and rates paid on the accounts. We strongly believe that credit unions should be able to vary the terms of accounts that opt out of overdraft fees to reflect the differences between member accounts where the member opts out and those where the member does not. However, we believe that such differences should not be designed to coerce member choices. In fact, allowing such price differentials would remove any financial incentive that depository institutions might have to attempt to artificially influence such choices. Finally, we are pleased that the Board has recognized that the fact that a member may have adequate funds on deposit to cover an ATM withdrawal or a one-time debit card transaction at the time that the transaction was authorized does not mean that those funds will not be withdrawn or needed to cover another transaction, and permitted the credit union to impose a fee or charge for an overdraft resulting from such a transaction regardless of the member's choice on whether or not to opt out. Frequently we authorize these transactions only to have the funds disappear due to another transaction before the authorized transaction settles. At the same time, we do not want to reject these intervening transactions, both for operational reasons and because there is always a possibility that the authorized transaction will not be completed as authorized. Thank you for the opportunity to comment on this important matter. Regards, Christina Brown