



**VIA EMAIL**

Ms. Jennifer J. Johnson, Secretary,  
Board of Governors of the  
Federal Reserve System  
20<sup>th</sup> Street & Constitution Avenue, NW  
Washington, DC 20551

Re: Docket No. R-1343

Re: Regulation E / Electronic Fund Transfers – Proposed Rule intended to provide consumers a choice on their institution’s payment of overdrafts for ATM withdrawals and one-time debit card transactions.

Dear Ms. Johnson:

SCBT, N.A. [SCBT] is a South Carolina based community bank with fifty [50] offices throughout the state of SC and the Charlotte NC area. As a provider of “overdraft protection services” for our transaction account customers, SCBT offers the following information relative to the proposed rule amendments to Regulation E / Electronic Fund Transfers.

**Limit Ability to Assess OD Fee for ATM/1-Time Debit Card Transactions:**

**SCBT Process:** SCBT’s current overdraft protection services do not cover ATM withdrawals. SCBT pays on the ledger balance, which does not include any overdraft limit; however, all ATM providers have “offline” limits allowing customers to withdraw funds even if the machine is offline. Customers incurring an overdraft during an ATM offline situation are not assessed an overdraft/NSF fee by SCBT.

SCBT’s overdraft protection services do cover debit card transactions. Electronic entries are processed against an account first based on assumption that these are items a customer wants “paid” since they are handled in person or by agreement for recurring transactions. Checks are then processed as received in check number order. SCBT does not manipulate check payment order to maximize overdraft/NSF fee assessment.

SCBT’s overdraft protection services are verbally explained at account opening, as is the alternative line of credit process. A document explaining overdraft protection services including types of transactions covered/subject to fees, explanation of how overdraft

protection services work, that fees are included in the balance, and that this service is not activated for the first 30 days on new accounts is provided at account opening. If not refused at account opening and the account remains in “good standing” [description included on information document], the service is added at the end of 30-days. There is no fee for this service beyond the normal overdraft/NSF fee assessed against each paid item. The cost associated with the overdraft/NSF item is incurred as a result of the customer instituting the transaction without sufficient funds; this is explained at account opening [verbally and via information document] and again via written letter when the service is activated.

The assigned “limits” are low and SCBT monitors via customer letters when limits are inadvertently exceeded or accounts are not brought back to positive balance regularly. SCBT provides notice to customers each time their overdraft protection has been tapped to pay an NSF item; the notice includes the amount of the NSF item and the fee amount. The fee charged is the bank’s normal overdraft/NSF fee disclosed in the account opening fee brochure with appropriate notice provided as per Regulation DD requirements if/when the fee amount is changed. Customers also receive a letter if their account experiences a specific number of overdraft/NSF items within a calendar year. The letter includes total fees incurred at that point and an education piece to reinforce customer understanding of overdraft protection services in hopes this will enable them to better manage their account and avoid unnecessary fees. Approximately 60% of SCBT’s consumer transaction accounts have overdraft protection services as defined within the Regulation E NOPR. Providing SCBT’s current process information to the Board is an important preamble to comments on the Opt-Out/Opt-In alternatives for one-time debit card transactions.

**General Comments/Questions:**

Possible Reprogramming Changes: In response to the Board’s assertion that “...benefits of enabling consumers to have a choice regarding payment of overdrafts for ATM withdrawals and one-time debit card transactions may outweigh the associated reprogramming costs”, community banks typically do not employ programmers but rely on system vendors to accommodate regulatory changes through upgrades. The reprogramming cost will most certainly be passed along to customers in the long run through increased fees/service charges. Costs include those of merchants and processors also, which are unknown, but would also be passed along in form of increased pricing for goods/products/services.

Given the number of persons/entities [merchant, merchant processor/network, financial institution processor/network, financial institution] involved in a one-time debit card transaction, who will be responsible for ensuring everyone is on the same page with respect to creating/appropriately communicating a universally acceptable message for the customer to make a final decision as to whether to continue with the transaction which may create an overdraft and result in assessment of an accompanying fee?

**Opt-Out / Opt-In Comments:**

Application to Recurring Debit Card and ACH Transactions: Given the Board’s

consumer research as well as SCBT's experience, do not feel it would be beneficial to include recurring debit card transactions and ACH transactions. These transaction types are handled by direct affirmative agreement between the customer and provider [insurance co, etc.] indicating to financial institutions the customer's desire that these type transactions be paid.

Reasonable Opportunity: SCBT's current process of not activating overdraft protection services, unless the customer has applied/been approved for a line of credit, for the first 30 days on new accounts is in line with the safe harbor for initial notice. Our continued use of the first 30-days for new accounts would work for either alternative. The requirement to provide this information for the 'opt-out' alternative again after a fee has been assessed/charged can also be accommodated on the regularly produced overdraft/NSF notice. However, current system constraints would require the message be included on all OD/NSF notices or not at all. Seeing the same message regularly produces either (1) no action/numbing effect to the information or (2) agitated customers using their time/energy as well as the financial institution's to "make sure" account is still appropriately coded. Request the Board provide guidance in the final rule with respect to financial institution flexibility for existing account "alternatives" when processes such as those used by SCBT have been employed to educate consumers at account opening and through out their use of overdraft protection services.

Methods: Regardless of alternative used, SCBT believes most efficient method is that consumers acknowledge the option at account opening for new accounts. SCBT requests the Board provide guidance on any necessary retention period for the acknowledged option.

Reasonable Belief Exceptions: These exceptions are based on the financial institution's authorization or awareness of that authorization. Like many community banks, SCBT is unable to determine whether or not a debit card transaction was submitted for authorization or was authorized. Although SCBT understands the Board's reasoning for excluding transactions which are either below floor limits established by card network rules for authorization or not submitted because the merchant feels the small dollar amount does not pose significant payment risk, determining which transactions fell into one of these categories would require daily research on all accounts experiencing a debit card transaction and an overdraft fee on the same day. The item could at that point be charged-back at a predetermined per charge-back fee to the bank along with the cost of research/documenting all findings. Ultimately these costs will be passed along to account owners or may result in the unintended consequence of financial institutions declining all debit card transactions if sufficient funds are not in the account at the time of transaction. Turning off this feature will certainly satisfy those who continually hold up the "high dollar coffee" banner for reform but may prove an unnecessary embarrassment or even a hardship for those trying to handle medical co-pays or other needed expense items.

**Debit Holds:**

SCBT's process of placing holds which do not exceed the actual transaction amount precludes any need to comment on this proposed rule other than to applaud the Board's

recognition that state-chartered credit unions would not have been covered by the NCUA's FTC Act authority. Local experience is that debit holds exceeding the actual transaction amount, thereby creating an overdraft and accompanying charge is primarily a credit union practice.

South Carolina Bank and Trust appreciates the opportunity to comment on these potential rule changes to Regulation E/Electronic Fund Transfers. If additional information is needed or there are questions about any of the information in this letter, please contact Lesley Lampert, Senior Vice President, Regulatory Risk Management.

Sincerely,

*Lesley Lampert*

Lesley Lampert  
Senior Vice President  
Regulatory Risk Management  
Phone: 803-794-3578  
Fax: 803-794-5165  
Email: [lesley.lampert@scbtonline.com](mailto:lesley.lampert@scbtonline.com)