

From: Bronco Federal Credit Union, Kristen Tatlock
Subject: Reg E - Electronic Fund Transfer

Comments:

March 19, 2010

Ms. Jennifer J. Johnson, Secretary

Board of Governors of the Federal Reserve System

20th Street and Constitution Avenue, NW

Washington DC 20551

Dear Ms. Johnson:

The Regulatory Response Committee of the Virginia Credit Union League appreciates the opportunity to comment on the Federal Reserve Board's (Board) proposed clarifications to the recent final rules amending Regulation E, the Electronic Funds Transfers Act, that prohibit credit unions and other financial institutions from charging overdraft fees for certain electronic transactions unless the consumer consents, or "opts in". As background, the Virginia Credit Union League represents 186 member credit unions, which serve 5.6 million consumers with lending and savings products.

We do not support the proposed clarification that the fee prohibition of §205.17(b)(1) applies to all institutions, even those that do not have a formal overdraft policy. Institutions that have a policy and practice of declining ATM and one-time debit card transactions upon the reasonable belief that an account has insufficient funds need the ability to assess a fee when a transaction is authorized based on available funds but are subsequently required to force post the item into insufficient funds because of the consumer's intervening transactions. Since the Board has acknowledged that "an institution may not be able to avoid paying certain ATM or one-time debit card transactions that overdraw a consumer's account even if a consumer does not opt-in," requiring an opt-in in order to charge a fee for these transactions that are paid using the credit union's funds penalizes credit unions for something over which they have no control. Fees imposed for these transactions help to mitigate expenses associated with such transactions and serve as a deterrent to consumers who otherwise would be more than willing to initiate a series of transactions that exceed their actual account balance. We strongly urge the Board to reconsider allowing an exception to the opt-in requirement and fee prohibition for those transactions an institution has no choice but to pay.

If the Board continues to support the proposed clarifications as written, then the Board should also clarify how institutions with a general policy and practice of declining covered transactions upon reasonable belief that an account has insufficient funds but who are forced to pay some of these transactions because of system rules should disclose this practice to consumers. The model disclosure provided with the final rules does not contemplate these situations. We strongly encourage the Board to provide additional model disclosure language to give those institutions with this practice/policy a "safe harbor" for notices and disclosures.

In the proposed clarifications, the Board wrote, "that both financial institutions and consumers can have imperfect account balance information." The Board stated "that financial institutions are in a better position to mitigate the information gap than consumers, such as through improvements to payment processing systems." We would argue that such an assertion is fallacious logic. The consumer, in fact, is the only party with complete information regarding all outstanding debits to an account. This is no different from past years, before electronic transactions, when checks moved through the Federal Reserve System at a slow pace. The consumer was always responsible for recording and tracking outstanding checks and understanding that the available balance does not include such items. Managing a checking account with electronic transactions is no different than managing with paper transactions. It is irresponsible and harmful to the consumer to remove this obligation.

Personal financial responsibility on the part of the consumer must be a part of the financial services landscape. Removing a small deterrent - a fee for paying a transaction the consumer has no money to pay - may create a larger problem for that consumer, as many credit unions will be forced to terminate some accounts in order to mitigate risk. Most often, these consumers will then be forced to seek financial services from those entities that we believe the Board is really targeting with the rules.

Thank you for the opportunity to comment on these proposed rules. Please do not hesitate to contact Kristen Tatlock at our League office should you need further clarification on our views.

Sincerely,

Bonnie Newsome,
Bronco FCU

Virginia Credit Union League Regulatory Response Committee