

Comment Call (10-3)

Regulation E – ATM and One-Time Debit Card Transactions CLARIFICATION

OMNI Community Credit Union; Regulation E; Docket No. R-1343

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Does the proposed rule clarify the confusion regarding whether a credit union can charge a fee if there is a policy and practice of declining ATM and one-time debit card transactions for which authorization is requested, when the institution has a reasonable belief that the consumer's account has insufficient funds at the time of the authorization request?

*The rule created an exception from the notice and opt-in requirements for institutions that have a policy and practice of declining ATM and one-time debit card transactions for which authorization is requested, when the institution has a reasonable belief that the consumer's account has insufficient funds at the time of the authorization request.*

*Since the issuance of the final rule, questions have been raised whether this exception would permit institutions with such a policy and practice to assess an overdraft fee without the consumer's affirmative consent if an authorized transaction settles on in sufficient funds. To clarify the scope of this provision, the proposed rule would explain that the fee prohibition applies to all institutions, and that the exception provides relief only from the notice and opt-in requirements (when no overdraft fees are assessed).*

The biggest clarification issue fell with institutions that have a policy and practice of declining ATM and one-time debit transactions as discussed in the above issued clarification. Some organizations do not include ODP in the authorization process. If the money is not there at the time of authorization at the merchant the transaction is declined. Although institutions may have this policy or practice in place, they still cannot assess an overdraft/NSF fee for a one-time debit card transaction or ATM transaction as this still would not prevent an item from slipping through (in the event of a gas pump transaction).

The FRB emphasized that the purpose of this rulemaking is to clarify and facilitate compliance with the final rule, not to reconsider the need for – or the extent of – the protections that the rule affords consumers. What reasoning can you provide to urge the FRB to reconsider this position?

First, it is important that I state our credit union is in favor of regulatory mandates that protect credit union members/consumers from predatory practices that fail to clearly disclose the terms, conditions and fees that accompany the use of a product such as a Debit card. We have provided clear disclosures and educated

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our members on the proper use of their Debit Card and have disclosed our fees and the consequences that may accompany misuse of their card. We do not charge a sustained negative balance fee.

Who is to say that if financial institutions, in order to recoup lost income, will not start charging fees elsewhere, such as a sustained negative balance fee for those who opt-in, or increasing fees for other products not affected by Reg E. This could present further issues and cause more anger and confusion among members/consumers.

Ultimately, at what point in the process of protecting members/consumers, are the regulators going to acknowledge any responsibility the members have in improperly managing the use of their Debit card? What happened to keeping a transaction/check register and viewing bank statements?

The FRB does not intend to extend the compliance deadline. Given the operational issues and cost concerns associated with this rule, what reasoning can you provide to urge the FRB to reconsider?

It is stated that the FRB recognizes that programming systems to conform to the proposed rule may raise operational issues and cost concerns and could be challenging to implement by July 1, 2010, has there been consideration to the fact that most operating systems have "all or nothing" in that most systems cannot distinguish ATM and one-time debit transactions from check, ACH and reoccurring debit transactions. If someone opts-in this does not cause an issue but if they do not want to be charged a fee for ATM/one-time debit and would rather be declined at the merchant than be charged a fee, many core systems have yet to come up with a solution to keep the fee for checks, ACH and reoccurring debits "turned on". This would have to be a manual process which then adds additional operational burden in that financial institutions will have to decide who will monitor this until the core systems come up with a solution and the capability to distinguish between said transactions. This could be a time consuming task while currently it is all automated.