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March 31, 2010

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

RE: Docket No. R-1343

To Whom It May Concern:

E&A Credit Union appreciates the opportunity to comment on the proposed rule. By way of background, E&A Credit Union is a state-chartered, federally insured credit union which serves members in the state of Michigan primarily in the counties of St. Clair, Sanilac, Lapeer, and Macomb counties.

It is understood that the primary goal of the provisions outlined in the proposed rule would require financial institutions to receive a consumer's consent prior to charging a fee for an overdraft on one-time debit card and ATM transactions. This will be accomplished by having consumers "opt-in" prior to an overdraft fee being accessed.

The original change to Regulation E seemed to be focused on financial institutions which offered overdraft protection programs. An institution may not be able to avoid paying certain transactions that overdraw a consumer's account, even if a consumer does not opt in. This can occur in limited circumstances. For example, an institution may authorize a debit card transaction on the reasonable belief that there are sufficient funds in the account, but subsequent transactions, such as checks or ACH withdrawals, may reduce the available funds in the account before the debit card transaction is presented for settlement, causing an overdraft. Or, a merchant may request authorization of an amount that is less than the amount later submitted for settlement, or not request authorization at all. The proposal clarifies that in such circumstances, an institution may not assess an overdraft fee for paying the debit card transaction into overdraft.

While the original intent seemed to make sense, this proposed clarification does not. It seems unlikely that a consumer, who does not have an overdraft tolerance, would opt-in to be charged a fee in instances of drawing their account negative. Once a financial institution authorizes a transaction, it must be paid, regardless if there is overdraft tolerance or not.



It is unclear if the law makers understood the effect that this would have on financial institutions. Many small sized institutions rely upon the fee income generated by overdraft transactions and can not afford to lose this income. Many institutions have begun their opt-in "campaigns." This will result of tens of thousands of dollars and many man-hours being exhausted to be in compliance with the proposed change. It is urged that the Board please consider extending the compliance date. This will ensure that financial institutions are able to educate consumers properly while having a compliant process in place.

It is understand that the changes to Regulation E are to enhance consumer protection. However, it should be noted that a large number of consumers do rely upon overdraft protection services. If overdraft protection programs were not offered to consumers, more items would be returned or consumers may have a stronger reliance on pay-day lending type programs. This would result in large fees for many consumers. Additionally, the financial burden to comply with this change in a short period of time, accompanied with the current financial market and other the other regulatory challenges that financial institutions face, will make this a very large feat for many small sized institutions to comply with.

Sincerely,

Jeremy Maurer
Manager of Compliance & Security
E&A Credit Union