

January 21, 2010

The Honorable Ben S. Bernanke, Chairman
Board of Governors of the Federal Reserve
20th Street and Constitution Avenue, NW
Washington, DC 20551

Dear Chairman Bernanke:

On behalf of Henrico Federal Credit Union, I write you today regarding the recently published changes to Regulation E regarding overdraft protection programs. As a member-owned financial institution, we work to improve the lives of our members by offering products and services in a way that is most beneficial to them and we understand and support the revised regulation's overall intent. However, we have serious concerns that specific aspects of the revised regulation will increase risk and create member confusion.

Henrico FCU does not offer what is commonly referred to as "*Overdraft Privilege*" or "*Courtesy Pay*" as it relates to ATM and one-time debit card transactions. Our policy and practice is to decline authorization of these types of transactions unless funds are available at the time of the authorization request. However, card network rules do require that we force-post authorized transactions into insufficient funds when intervening, authorized transactions deplete an account's balance before the time of settlement. In these situations, we charge a non-sufficient funds fee just as we do in all other non-sufficient funds situations.

The revised Regulation E offers an exception to the notice and opt-in requirements for financial institutions, such as ours, that do not authorize any ATM or one-time debit card transaction unless funds are available at the time of the authorization request. However, it appears that these institutions will be prohibited from charging a fee when required to force-post a properly authorized transactions, unless the member opts-in for the fee.

Increased Risk

Card network rules require the credit union to force-post properly authorized transactions and such transactions can not be returned (as are checks and ACH items for which fees are allowed to be assessed). These transactions regularly require collection efforts and often result in charge-off situations.

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Customary non-sufficient funds fees allow the credit union to mitigate these risks while making ATM and especially debit card services available to a wide portion of our membership.

Member Confusion

Using the model consent form as a method of having a member opt-in to a fee is problematic for institutions with a policy and practice of declining to authorize any ATM or one-time debit card transaction unless funds are available at the time of the authorization request.

- If the member opts-out, they will reasonably expect the credit union not to authorize and pay transactions against non-sufficient funds and will likely be confused and disappointed when the credit union is required to force-post authorized transactions.
- Likewise, if the member opts-in, they will reasonable expect the credit union to authorize and pay reasonable transactions against non-sufficient funds and will likely be confused and disappointed when the credit union continues its practice of only authorizing transactions based on available funds.

Again, we understand and support the revised regulation's overall intent. However, there are risks and costs involved in covering transactions where the member does not have sufficient funds at the time of settlement. And unfortunately, the model consent form does not work to protect either the member or credit union in situations like ours. We respectfully request that the Board reevaluate the revised regulation as it pertains to institutions without overdraft programs that only post authorized transactions due to card network rules.

We appreciate the opportunity to share our concerns on the recently published changes to Regulation E.

Sincerely,

Chris Williams

Chris Williams
President/CEO