From: Chris Williams

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Comments:

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Proposal: Regulation E - Electronic Fund Transfer
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Comments:
On behalf of Henrico Federal Credit Union, I write today regarding the recently proposed rule to amend Regulation E and the official staff commentary to clarify certain aspects of the final rule. (Docket No. R-1343) 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 (a well understood and accepted practice that has been in place at our credit union for nearly two decades). The original revised Regulation E offered an exception to the notice and opt-in requirements for financial institutions, such as ours, that do not authorize ATM or one-time debit card transactions unless funds are available at the time of the authorization request. However, the proposed amendment seeks to clarify that these institutions cannot assess a fee for the payment of ATM and one-time debit card overdrafts if the consumer does not opt-in. (What would the consumer opt-in to?) Financial institutions that meet the exception should be excluded from BOTH the notice and opt-in requirements and the fee prohibition if they do not have a "discretionary overdraft program" that includes "authorizing" overdrafts. If the proposed clarification is approved then the Fed should consider the following: 1 - The Model Consent Form. The model consent form appears to be designed for institutions that have a "discretionary overdraft program". What type of form should be used for institutions who do not have a "discretionary overdraft program" but do charge non-sufficient funds fees when required to force-post properly authorized transactions. The model consent form

would cause significant consumer confusion. 2 - Same Account Terms, Conditions, and Features. The revised regulation requires that all consumers be provided the same account terms, conditions, and features regardless of their opt-in choice. Does this apply if the member takes actions contrary to their opt-in choice? Specifically, if the consumer elects not to opt-in but regularly overdrafts their account using their debt card can the institution close their card (while allowing a consumer who elected to opt-in to keep their card open?) The Fed has suggested that the fee prohibition needs to apply to all financial institutions because the consumer can not differentiate between a financial institution that has a discretionary overdraft program and one that does not. This seems unreasonable. The average consumer likely can differentiate between something that exists and something that does not. The Fed has also suggested that while an institution may not be able to avoid paying certain ATM and one-time debit card transactions that overdraw a consumer's account that these situations would only occur in "limited circumstances". This is not the case for our credit union. The proposed rule significantly expands the scope of what appeared to be the original intent of the regulation (to promote transparency regarding discretionary overdraft programs) and creates greater risks for financial institutions which ultimately will negatively impact all consumers (especially those who are most responsible) in the form of higher fees and reduced access to service.