

From: State Bank of Southern Utah, David Eberhard
Subject: Reg E - Electronic Fund Transfer

Comments:

Date: Mar 29, 2010

Proposal: Regulation E - Electronic Fund Transfer
Document ID: R-1343
Document Version: 2
Release Date: 02/19/2010
Name: David Eberhard
Affiliation: State Bank of Southern Utah
Category of Affiliation: Commercial
Address:
City:
State:
Country:
Zip:
PostalCode:

Comments:

To: Board of Governors of the Federal Reserve System Subject: Docket No. R-1343 Comment on Proposed Rule change Date: March 25, 2010 Dear Board of Governors, I am writing to comment on the proposed rules to clarify final rule under Regulation E, that limits a financial institution's ability to assess fees in connection with an overdraft service without affirmative consent from the consumer. I would first like to refute the Board's underlying premise in designing the final rules which is stated as follows: "The Board recognizes that financial institutions and consumers have imperfect information as to the balance in the account at the time of the transaction. Financial institutions face operational limitations in processing transactions, and in tracking the consumer's actual balance, because transactions may not be processed in real-time. Similarly, even if a consumer checked his or her balance prior to a transaction, the balance may not be updated, so the consumer may inadvertently overdraw his or her account on the belief funds are available. On balance, the Board believes financial institutions are in a better position to mitigate the information gap by developing improved processing and updating systems, as they have in recent years, and as the Board expects they will continue to do over time." See 74 FR 59046 (Nov. 17, 2009) Consumers have access to perfect account balance information. They know exactly what checks they have written, what debit card purchases and ATM withdrawals they have made, and are completely aware of other automatic debits (ACH) they have authorized. Consumers also know how much and when any direct deposits are added to their accounts and when they will be available for use. All consumers who keep an accurate check register know exactly the amount of money available for their use without going overdraft. No amount of improved processing or updating systems by financial institutions will ever make up for this information gap between the consumer and the financial institution. This gap can only be filled by personal responsibility and accountability on behalf of the consumer. This rule in essence is absolving the consumer of any personal responsibility. Section 205.17(b)(4) Under the final rule, this section provided an exception to the notice and opt-in requirement when a financial institution has a policy and

practice of declining to authorize and pay any ATM or one-time debit card transactions when the institution has a reasonable belief at the time of the authorization request that the consumer does not have sufficient funds available to cover the transaction. The Board is now proposing to change the rule such that an institution may not assess an overdraft fee without an opt-in from the consumer in these circumstances. In the supplemental information to the Regulation E final rule regarding this exception, the Board noted that "Both consumer group and industry commenters generally supported this proposed exception." (See 74 FR 59045). The Board is proposing to eliminate any exception to the payment of overdraft fees in connection with ATM and Debit Card transactions contrary to the support of both consumer groups and industry commenters. Our bank policy has been to authorize these transactions based on balances available at the time of request. Also, we do not artificially inflate this balance by submitting a balance that may include an overdraft amount. However, we have seen a number of inadvertent overdrafts come through as a result of intervening checks or payments that post to the consumer's account. This is through no fault of the bank but could be avoided by a consumer who knows what checks have been written and what charges have been authorized. For these reasons, I am requesting the Board withdraw the proposal to eliminate the exception to the notice and opt-in requirements. Comment 17(b)-9-Daily or Sustained Overdraft, Negative Balance, or Similar Fees or Charges. The Board is proposing to clarify that where a consumer's negative balance is solely attributable to an ATM or one-time debit card transaction, the rule prohibits the assessment of any overdraft fees, including daily or sustained overdraft, negative balance or similar fees or charges, unless the consumer has opted in. The Board's rationale for this is that such consumers "would reasonably expect not to incur daily or sustained overdraft, negative balance, or similar fees or charges." (See 75 FR 9123). I respectfully disagree with the Board in its rationale. When account goes overdraft, for whatever reason, the consumer's overdraft balance is in essence a "loan" from the bank. Overdraft accounts are reported as loans on all regulatory reporting and financial reporting documents. Our bank does not charge a specific sustained overdraft or negative balance fee. However, we do charge what may be considered a similar fee in that we charge an overdraft interest fee at a rate of 18% per annum. Consumers understand that any loan carries with it a component of interest. Being classified as a loan, I believe consumers would reasonably expect to incur some type of interest charge on the overdraft balance, regardless of the source of the overdraft. Based on these reasons, I am requesting the Board to withdraw the proposal on daily or sustained overdraft, negative balance or similar fees or charges. If the Board is unwilling to withdraw the proposal, I am respectfully requesting that the Board consider clarifying the proposal by allowing the imposition of continuous fees that are solely based on the size of the overdraft that involves the time value of money, such as interest. Thank you, David Eberhard