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September 24, 2013

RE: Consumer Financial Protection Bureau Revision of Regulation CC

Mr. Richard Cordray
Director
Consumer Financial Protection Bureau
1700 G Street, NW
Washington, DC 20006

Dear Mr. Cordray,

The Pew Charitable Trusts is dedicated to data-driven research on deposit accounts and furthering public policy that creates a safer and more transparent marketplace. We have published a number of reports that examine bank practices and policies and have extensively studied the need for effective disclosure that allows consumers to understand all of the features and fees related to available services and choose the product that best meets their needs.

Introduction

In March 2011, the Federal Reserve, which at that time had authority over all aspects of Regulation CC, issued a proposed rule to amend and update this regulation, which implements the Expedited Funds Availability (EFA) Act.¹ Since that time, the Consumer Financial Protection Bureau (CFPB) has officially launched and now the Federal Reserve is required to consult with the CFPB on many matters related to the EFA Act.²

Remote Deposit Capture

Pew noted in its comments to the Federal Reserve in 2011 that most large banks have policies to make many types of deposits available to consumers on a schedule that exceeds what is required under Regulation CC.³ These are consumer-friendly practices and these banks should be commended for going beyond what is required to allow customers to have timely access to their money.

When Pew studied checking accounts and developed a disclosure box that allows consumers to easily compare accounts from one institution to another, mobile remote deposit capture (RDC) was not a common feature among banks.⁴ Since that time, many large banks and other financial institutions of all sizes have added this feature, which allows consumers to make a deposit by uploading images of the front and back of a check.

As of now, Regulation CC does not have any clear rules on how checks deposited via RDC must be treated in terms of making funds available to consumers. In adopting rules to update Regulation CC, the Federal Reserve and CFPB should institute a schedule for financial institutions to make funds from checks deposited by RDC available as quickly as possible while taking reasonable precautions against the

possibility of fraud. Pew suggests that as much as possible, while ensuring against fraudulent activity, funds availability rules for RDC transactions should mirror those of other types of deposits.

It is also important to make funds availability information available to consumers in a clear and concise manner. The current disclosures for checking accounts are very long and dense, and it is questionable how many consumers read and understand the intricacies that exist when choosing one method to complete a deposit versus another. In Pew's disclosure box, information about the availability of funds is condensed to a short, user-friendly description.⁵ For institutions that provide RDC capabilities, this information could easily be included in this disclosure box. Since some banks are now charging a fee for this service, we urge the CFPB to require full and clear disclosure of fees associated with RDC.⁶

General Purpose Reloadable Prepaid Cards

In its proposed rule, the Federal Reserve did not address funds availability schedules for prepaid cards. Pew research has found that GPR prepaid cards have many different methods by which customers may load or deposit funds onto their cards. Many of these cards do not adequately disclose when the funds will become available. Since there are no regulatory requirements, GPR prepaid card providers could presumably hold funds for an indefinite period of time without making them available to the cardholder. Our research on GPR prepaid cards has demonstrated the need for most checking account consumer protections to also apply to prepaid cards. This holds true for funds availability rules as well. We urge the CFPB to develop rules ensuring that consumers have access to funds loaded onto prepaid cards without undue delay, while factoring in the need to guard against fraudulent activity.

Model Funds-Availability Forms

In April 2011, Pew introduced its model disclosure box for checking accounts, aimed at providing information about checking account terms, conditions, and fees in a concise, easy-to-read format similar to the disclosure box used for credit cards. Since its introduction, this disclosure box has been voluntarily adopted by 25 banks and credit unions, including four of the five largest banks in the U.S.⁷ Because of Pew's experience with developing checking account disclosures for the benefit of the consumer, we feel suited to provide feedback to the Federal Reserve that may improve its model funds-availability forms.

It is critical that the model forms disclose the availability of funds deposited through mobile remote deposit capture (RDC) and any other emerging method for a consumer to make a deposit. As the forms already contain bullet points for cash, check, electronic direct deposit and other methods of deposit, the forms should also include a bullet point concerning "Mobile remote deposit capture."

If revisions to Regulation CC include new rules governing a specific schedule for RDC deposit availability, that information should be present on the model forms. In this same spirit, Pew recommends that any regulatory requirements on the model form be prepopulated whenever possible. For instance, under the section titled *Longer Delays May Apply*, the requirement that the first \$200 of a deposit be available to the depositor on the next business day should be explicitly stated.

If the Federal Reserve or Consumer Financial Protection Bureau elects to require issuers of general purpose reloadable (GPR) prepaid cards to similarly disclose their funds-availability policies as Pew suggests, model forms for GPR prepaid cards should maintain the general presentation and design of the model forms for checking accounts, while carefully recognizing the distinctions between these products. For instance, GPR prepaid cards are often funded using third-party loading services, such as those offered by Green Dot and MoneyGram, and funds-availability for these methods must be specifically disclosed.

From a design standpoint, Pew's research has demonstrated that checking account consumers would like disclosures to be concise and easy-to-understand. Several focus group participants interviewed during the development of Pew's disclosure box in 2011 felt that simplified disclosure documents would be useful and valuable when opening a checking account, and parents saw the disclosure boxes as good tools for educating their children about checking accounts.⁸ Seventy-eight percent of checking account holders interviewed in a nationally representative survey sponsored by Pew in 2011 supported the idea of requiring banks to provide a succinct summary of information about checking accounts' terms, conditions, and fees.⁹ A funds-availability disclosure, to the extent possible, should recognize these consumer preferences and consolidate its content to a single page.

One potential approach to reducing the length of these disclosures is to incorporate text situated outside of the availability timeline box into the box in as few words as possible. Please refer to the *Processing Policies* section of Pew's model disclosure box to see examples of how Pew more efficiently discloses funds-availability policies related to longer delays and the definition of a business day within our disclosure box, which is attached.

Comprehensive Summary Disclosure Box

While Pew recognizes that helping consumers understand their accounts' funds-availability schedules allows them to keep track of their balances and possibly avoid costly overdrafts, it does not address the fundamental problem that checking account disclosures, as a whole, are cumbersome and difficult to understand. Median bank checking account disclosure statements totaled 69 pages, according to a Pew 2012 report.¹⁰

This means it is exceedingly difficult for an average American to find the basic information needed to either select a checking account or to responsibly manage his or her existing account. Such deficiencies call for action that requires depository institutions to disclose fully and clearly key checking account terms, policies, and fees in a concise, consolidated format. The CFPB should require the use of Pew's model disclosure box for checking accounts, which was tested in focus groups in three cities, to help consumers better understand the terms of their accounts. A copy of our disclosure box is attached.

Conclusion

Pew appreciates that the Federal Reserve and CFPB are taking up this issue and striving to improve all disclosures for users of financial products. Whether a consumer uses a checking account, GPR prepaid card, or any other transaction account, the time in which they are able to access their funds should be reasonable and this information should be disclosed in a clear and concise manner. As always, we are available to discuss these comments or any other aspect of our work at any time.

Sincerely,



Susan Weinstock
Director
Safe Checking in the Electronic Age Project
(202) 540-6598
sweinstock@pewtrusts.org

Attached: Pew Model Disclosure Box

CC: Mr. Ben Bernanke
Chairman
Federal Reserve Board of Governors
20th Street and Constitution Avenue, NW
Washington, DC 20551

¹ Expedited Funds Availability Act, 12 U.S.C. § 4001 et al.

² Id. § 4008(a).

³ Pew Charitable Trusts, *Regulatory Comment: Availability of Funds and Collection of Checks*, May 2011, http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Safe_Checking_in_the_Electronic_Age/Federal%20Reserve%20Comment%20Final%20Letter_v2.pdf.

⁴ See American Banker, "Mobile Check Deposit Boom Brings Risks," July 2013 (citing Celent research that "had no plans to offer mobile remote deposit capture" has gone from 72 percent in 2009 to 18 percent in 2012).

⁵ Pew Charitable Trusts, *Checking Accounts: Long on Words, Short on Protections – the Need for a Disclosure Box*, April 2011.

http://www.pewtrusts.org/uploadedFiles/wwwpewtrustsorg/Reports/Safe_Banking_Opportunities_Project/SafeChecking_SingleColumn.pdf.

⁶ This disclosure is not currently required (though most of the largest financial institutions have voluntarily adopted it), which is another matter the CFPB should address.

⁷ Pew Charitable Trusts, *Safe Checking in the Electronic Age*, August 2013.

⁸ Pew Charitable Trusts, *Consumers Need a Simple, Easy-to-Read Disclosure Box for Checking Accounts*, November 2011.

⁹ Polling data are from a Pew-commissioned national survey of 805 checking account holders conducted July 5–10, 2011, by Hart Research Associates and McLaughlin & Associates.

¹⁰ Pew Charitable Trusts, "Still Risky: An Update on the Safety and Transparency of Checking Accounts" (October 2012), available at <http://www.pewstates.org/research/reports/still-risky-85899396680>

Pew's Model Disclosure Box for Checking Accounts

BASIC TERMS AND CONDITIONS				
Account Opening and Usage	Minimum Deposit Needed to Open Account	\$		
	Monthly Fee	\$		
	Requirements to Waive Monthly Fee	\$	<i>Minimum combined account balance, direct deposit, or other conditions</i>	
	Interest-Bearing	yes/no		
	ATM Fees	\$	for using an ATM in your institution's ATM network	
		\$	for using an ATM outside of your institution's ATM network	
	Non-Sufficient Funds (NSF) Fee	\$	per declined transaction made against insufficient funds	
	Deposited Item Returned Fee	\$	for each item that you deposit that is rejected because the payor did not have enough money in their account	
	Stop Payment Fee	\$	per item to stop payment for up to X months	
	Account Closing Fee	\$	if account closed within Y days of opening	
Other Service Fees	Please consult the back of this document for a list of additional service fees.			
Overdraft Options for Consumers with Debit Cards	Option A: (Default)	No Overdraft Service	If you choose not to opt in to any kind of overdraft service, transactions that would cause an overdraft will be declined at no cost to you.	
	Option B: Overdraft Transfer Plan	Overdraft Transfer Fee	\$ per overdraft covered by a transfer from a linked savings account, line of credit, or credit card	
		Overdraft Penalty Fee	\$ per overdraft covered by an advance from your financial institution	
	Option C: Overdraft Penalty Plan	Maximum Number of Overdraft Penalty Fees per Day	You will only be charged this number of overdraft penalty fees per day, even if we elect to cover additional overdrafts.	
		Minimum Amount Required to Trigger an Overdraft Penalty Fee	\$	If you are overdrawn by this amount or less, you will not incur an overdraft penalty fee.
		Extended Overdraft Penalty Fee	\$	charged every X day the account is overdrawn, starting Y days after the account is first overdrawn
Processing Policies	Posting Order <i>The order in which withdrawals and deposits are processed</i>	<i>Summary of policy</i>		
	Deposit Hold Policy <i>When funds deposited to your account are available</i>	<ul style="list-style-type: none"> • Cash deposit with teller: X business day • Cash deposit at ATM: X business day • Check deposit with Teller: X business day • Check deposit at ATM: X business day • Direct deposit: X business day • Wire transfer: X business day • If something causes a longer hold on a deposit, the first \$200 of that deposit will be made available either the same business day or the next business day. • Funds from non-bank checks may take an extra business day to become available. <p><i>A "business day" is a non-holiday weekday. The end of a "business day" varies by financial institution and by branch. At branches, business days end no earlier than Y p.m. and at ATMs business days end no earlier than Z p.m.</i></p>		
Dispute Resolution	Dispute Resolution Agreement	<i>Summary of agreement</i>		