

FEDERAL RESERVE SYSTEM

[Docket No. OP-1196]

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of Study and Request for Information.

SUMMARY: The Board is conducting a study about disclosures of debit card fees, at the request of members of the United States Senate Committee on Banking, Housing, and Urban Affairs. In connection with the study, the Board solicits comment on whether the existing disclosures required by the Electronic Fund Transfer Act adequately inform consumers of fees imposed by a financial institution that holds the consumer's account and has issued a debit card ("account-holding institution") when the debit card is used to make a purchase from a merchant (or other provider of services). The Board also seeks the public's views on the need for, and the potential benefits of, requiring additional disclosures in each periodic account activity statement to reflect fees imposed by account-holding institutions for debit card use. Lastly, the Board seeks comment on the benefits of requiring disclosure of the amount, source, and recipient of each such fee, as well as a summary of the total amount of such fees for the period, and calendar year-to-date.

DATES: Comments must be received on or before July 23, 2004.

ADDRESSES: You may submit comments, identified by Docket No. OP-1196, by any of the following methods:

- Agency Web Site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: regs.comments@federalreserve.gov. Include docket number in the subject line of the message.
- FAX: 202/452-3819 or 202/452-3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, except as necessary for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Daniel Loneragan, Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412. For users of Telecommunications Device for the Deaf ("TDD") only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

At the request of members of the U.S. Senate Committee on Banking, Housing, and Urban Affairs, the Board is initiating a study of the disclosure of fees imposed by financial institutions that hold a consumer's account and have issued a debit card to access the account ("account-holding institution"). The Board is specifically studying the fees imposed by such account-holding institutions when consumers engage in debit card purchase transactions with a merchant (or other provider of services), otherwise known as "point-of-sale" or "POS" transactions. The Board has been asked to consider whether existing disclosure requirements are adequate and effective in making consumers aware of the imposition of debit card transaction fees by their financial institution. Further, the Board has been asked to consider the possible benefits of requiring additional disclosures in a consumer's periodic account activity statement that would inform the consumer of the amount of each fee imposed by the account-holding institution in connection with a debit card transaction during the statement period, as well as information regarding the source and recipient of such fee, along with a summary of the total amount of such fees for the period.

Point-of-Sale Transactions. When a consumer uses a debit card to make a point-of-sale purchase, the parties to the transaction are typically the consumer, the merchant, the merchant's bank, and the consumer's account-holding bank. The consumer presents a debit card to the merchant to make a purchase, or "swipes" the card through the merchant's POS electronic reader to initiate the process of having the purchase amount debited from the consumer's checking account. In order to enable the account-holding institution to identify the consumer as provided by current regulation, and authorize the electronic fund transfer, the consumer is asked either to enter a personal identification number ("PIN"), for an "online" debit, or is asked to provide a signature, for an "offline" debit. If the transaction is successfully processed, the consumer will receive the goods or services sought, an account at the consumer's bank will be debited, and the merchant's account at the merchant's bank will be credited.

This is a simplified description of the debit card transaction process, as the transaction information described above is commonly carried over one or multiple networks to obtain authorization for the transaction, and commonly involves additional third-party participants. Moreover, the use of such networks and participants can result in the imposition of fees such as interchange fees that can result in costs to, or revenue for, the various parties involved.

The number of cards in circulation with a debit function is estimated to be approximately 287 million, and the number of POS debit card “readers” has risen dramatically. Consequently, the use of debit cards at point-of-sale -- both online (PIN-based) and offline (signature-based) -- has risen sharply since the mid-1990s.¹ While PIN-based debit’s share of total debit transactions was greater than signature-based debit’s share in the early-1990s, this is no longer true. Both PIN-based debit and signature-based debit continue to show strong growth. The differing costs of, and fees generated by, PIN-based and signature-based debit transactions have resulted in account-holding institutions and merchants favoring, and promoting, different methods of debit transactions.

For instance, as a general matter, an account-holding bank can receive greater revenue as a result of the interchange fees paid when a consumer chooses a signature-based debit transaction. Thus, these card-issuing, account-holding banks encourage the use of offline, signature-based transactions. Merchants, on the other hand, generally prefer that consumers choose online, PIN-based debit transactions in order to reduce their costs-per-transaction by minimizing the interchange fees they may need to pay.

Congressional Concerns and PIN Fees. In an effort to encourage their debit card holders to choose signature-based, offline transactions and offset the revenue lost when their account-holding customers choose online debit, some account-holding institutions are charging their cardholders a fee when the customer uses the institution’s debit card to make a point of sale purchase and chooses the online, PIN-based method (resulting in a “PIN-use” fee). The recent request by some members of Congress that the Board study the issue of debit fees reflects concern that consumers may be unaware, or not adequately informed, that their own bank may impose such PIN fees when the consumer chooses online debit. It may also reflect the belief that, unlike the various fees and surcharges that a consumer may be assessed in an ATM transaction, PIN-use fees assessed at the point of sale may not be adequately disclosed or timely disclosed at the point of sale, or might be inadequately disclosed in the regular account statement the consumer receives after the debit purchase date.

As detailed below, the Board solicits comments from all interested parties on these issues. The Board will consider these public comments in developing a final report

¹ For additional historical and statistical information regarding the ATM and debit card industry, as well as information on industry structure, pricing, transaction settlement and processing, and emerging policy issues, see “A Guide to the ATM and Debit Card Industry,” F. Hayashi, R. Sullivan, and S. Weiner, Federal Reserve Bank of Kansas City, 2003 (available in electronic form from the Federal Reserve Bank of Kansas City’s Web site, <http://www.kc.frb.org> under “Publications & Education Resources”).

to be submitted to the U.S. Senate Committee on Banking, Housing, and Urban Affairs in November 2004, which will address these specific questions, as well as additional issues expressly identified by the Committee.

II. Existing Fee Disclosure Requirements

The following summary of current disclosure requirements provides context so that commenters may more fully address the adequacy of existing disclosures

The Electronic Fund Transfers Act (EFTA), 15 U.S.C. 1693 *et seq.*, enacted in 1978, sets forth the existing disclosure requirements governing electronic fund transfers (EFTs). The general purpose of the EFTA is to provide a basic framework for establishing the rights, liabilities, and responsibilities of participants in EFT systems. The types of transfers covered by the EFTA include transfers initiated through an automated teller machine, point-of-sale terminal, automated clearinghouse, telephone bill-payment plan, or remote banking program. The statute and regulation require the disclosure of terms and conditions of an EFT service; the documentation of electronic transfers by means of terminal receipts and periodic account statements; limitations on consumer liability for unauthorized transfers; procedures for the resolution of errors; and certain rights related to preauthorized EFTs.

The EFTA is implemented by the Board's Regulation E (12 CFR part 205), and these regulatory requirements are interpreted by the Official Staff Commentary (12 CFR part 205 (Supp. I)). The Official Staff Commentary facilitates compliance and provides protection from civil liability, under § 915(d)(1) of the act, for financial institutions that act in conformity with it. The commentary is updated periodically, as necessary, to address significant questions that arise.

Generally, the EFTA and Regulation E provide for disclosures to consumers about fees related to EFTs (including POS transactions) at three points in time:

- ? in the initial disclosures provided at the time the consumer contracts for an EFT under Section 905(a) of the EFTA (which includes POS transfers);
- ? in periodic account statements provided under Section 906(c); and
- ? on receipts provided at an electronic terminal at the time a transfer is initiated under Section 906(a).

These express statutory requirements are implemented in detail by Regulation E. 12 CFR §§ 205.7(b), 205.9(a) and (b).

Initial Disclosures. Under § 205.7(b), a financial institution must make initial disclosures at the time a consumer contracts for an EFT service, or before the first EFT is made involving the consumer's account. In addition to other information, these disclosures must state "[a]ny fees imposed by the financial institution for electronic fund

transfers or the right to make transfers.” 12 CFR § 205.7(b)(5). As explained in the Official Staff Commentary to this section, the fees addressed by this disclosure requirement are those fees imposed on the consumer by the account-holding institution. See Comment 7(b)(5)-3. Thus, the particular fee that an account-holding institution imposes when its customer engages in a POS debit transaction must be disclosed under this initial disclosure requirement.

Periodic Statement Disclosures. Under § 205.9(b), for each account to or from which EFT can be made, a financial institution must send the consumer a periodic statement. 12 CFR § 205.9(b). This statement must be sent for each monthly cycle in which an EFT has occurred, and must be sent at least quarterly even if no such transfer has occurred. In addition to other information, this statement must set forth “[t]he amount of any fees assessed against the account during the statement period for electronic fund transfers, for the right to make transfers, or for account maintenance.” § 205.9(b)(3).

The Official Staff Commentary to this provision provides additional clarification that is relevant to commenters, the goals of the requested study, and to consumers. The fees to be disclosed in the periodic statement may include fees for EFTs as well as for other, non-electronic services (both fixed and per-item fees). Significantly, these fees may be stated “as a total or may be itemized in part or in full.” See comment 9(b)(3)-1. Thus, for example, if an account-holding institution imposes fees on the consumer for an online POS debit transaction, these fees must be disclosed in the periodic statement but may be aggregated with other fees; a per-transaction itemization of each fee imposed by the card-issuing bank for a POS debit transaction is permitted, but not required by the regulations.

Disclosures Contained in Receipts Provided at Electronic Terminals. Under § 205.9(a), financial institutions must make a receipt available to a consumer at the time the consumer initiates an EFT “at an electronic terminal,” which includes a POS terminal. § 205.2(h). The Official Staff Commentary expressly provides that “[a]n account-holding institution may make terminal receipts available through third parties such as merchants or other financial institutions.” See comment 9(a)-2. Consequently, when a debit card is used at point-of-sale, the merchant provides a terminal receipt that contains the information that the account-holding institution is required to provide to the consumer.

Certain information is required to be provided on the terminal receipt. Section 205.9(a)(1) provides that the amount of the transfer must be stated, along with other information such as the date the transfer is initiated, the type of transfer, the terminal location, and other information. A transaction fee, however, must be disclosed on the receipt, and additionally displayed on or at the terminal, only if the fee is included in the amount of the transfer. If such fee is not included in the transfer amount, the receipt need not state the fee and the display requirements are not triggered.

Thus, by way of example, assume that an account-holding institution charges its customer a \$1.00 transaction or PIN-use fee each time the customer uses the institution's debit card for an online POS transaction. If the debit card is used at point-of-sale to purchase a \$20 item, and the "amount of the transfer" on the receipt is identified as "\$21.00" (that is, the PIN-use fee is included in the amount of the transfer), then the \$1.00 fee must be disclosed on the receipt and displayed on or at the terminal, or on the terminal screen. If, however, the "amount of the transfer" is identified only as "\$20.00," the § 205.9(a) receipt requirements impose no such disclosure obligation. The fees imposed by the account-holding institution would still need to be disclosed under the initial disclosures under § 205.7(b) (5) however, and in the periodic statement sent to the consumer (in either aggregated or segregated form along with other fees) under § 205.9(b)(3), both discussed above.²

III. Request for Comment

The Board requests comments on the extent to which these existing EFTA and Regulation E disclosures are adequate and effective in making consumers aware of the circumstances under which account-holding institutions impose a fee, if applicable, when a consumer uses a debit card to make a purchase at point-of-sale. In responding to this request, commenters are asked to address specifically whether the initial disclosures, the disclosures in periodic statements, or any disclosures on receipts at electronic terminals, are effective – either separately, or cumulatively – in providing consumers with sufficient information about such point-of-sale fee practices. To the extent commenters believe that enhanced fee disclosures are recommended, commenters are asked to consider and address whether such disclosures would be more effective as initial disclosures, disclosures provided as part of the consumer's periodic account activity statement, or disclosures included within information available on a terminal receipt. If enhanced disclosures are recommended, commenters are also asked to address whether such PIN-use fees should be separately disclosed, or whether such fees may be aggregated with other disclosed fees.

The Board also solicits specific comment on the need for, and benefits of, requiring additional disclosures in the periodic statement provided by the account-holding financial institution to the consumer. In particular, if commenters believe that additional periodic statement disclosures would be beneficial, commenters are asked to address whether the periodic statement should reflect some or all of the following:

- ? the amount of each fee imposed by the account-holding financial institution on the consumer in connection with a debit card transaction at point-of-sale;

² This provision of the regulation was originally drafted to address fees imposed by entities other than the consumer's own institution, but was later amended to also include fees imposed by account-holding entities as well. Although the Board lacks specific data, it is presumed that those account-holding institutions that impose a POS debit transaction fee, or PIN fee, do not include such fee in the "amount of the transfer" identified on the receipt, and thus the § 205.9(a)(1) fee disclosure requirements would not be triggered.

? the source and recipient of any such fee; and

? a summary of the total amount of such fees for that reporting period, and calendar year-to-date.

IV. Form of Comment Letters

Commenter letters should refer to Docket No. OP-1196 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed electronically to regs.comments@federalreserve.gov. If accompanied by an original document in paper form, comments may also be submitted on 3 ½ inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

By order of the Board of Governors of the Federal Reserve System, May 18, 2004.

Jennifer J. Johnson (signed)
Jennifer J. Johnson
Secretary to the Board.