



October 5, 2005

Ms. Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, NW  
Washington, DC 20551

Sent via email to [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov)

Re: Docket No. R-1234

Dear Ms. Johnson:

The National Association of State Credit Union Supervisors (NASCUS)<sup>1</sup> is pleased to submit comments to the Board of Governors of the Federal Reserve (Board) about the proposed amendment to Regulation E, which implements the Electronic Fund Transfer Act (EFTA).

We support the proposed revisions and believe they adequately balance the concerns of both financial institutions and consumer advocacy groups. Please see our comments about proposed revisions to Section 205.16, Disclosures at Automated Teller Machines.

1. Comment is solicited on the current disclosure practices of ATM operators that impose surcharges on some, but not all, consumers.

NASCUS believes the fee structure of a financial institution and the decision to determine what products will and will not incur fees should be determined by that institution. It is legitimate that some customers may incur fees, while others may not. Consumers understand preferred pricing structures. Many industries practice preferred pricing, including airlines and grocery store chains, to name a few. It is a way for financial institutions or other entities to reward loyal customers.

2. Under what types of circumstances might an ATM operator not impose a surcharge for providing electronic transfer services or responding to balance inquiries?

NASCUS believes it is appropriate for each financial institution to decide whether or not to impose surcharges on their own cardholders, persons who carry governmental electronic benefit transfer program cards, or cardholders of a particular ATM provider or card issuer who has entered into a contractual relationship with the financial institution.

---

<sup>1</sup> NASCUS is the professional association of the 48 state and territorial credit union regulatory agencies that charter and supervise the nation's 3,800 state-chartered credit unions.

3. If surcharges are not imposed on all consumers, how do ATM operators disclose their surcharge practices?

In addition to disclosing that ATM surcharges will or may be imposed on consumers initiating an EFT or a balance inquiry, an ATM operator may include further language, which indicates that there is no fee for particular transactions. The language does not have to include the specific transactions; just indicate that particular transactions do not incur a fee. Additionally, the notice may indicate that the ATM operator has entered into an agreement with specific card issuers about surcharges and include language directing them to their financial institution's disclosures. This language does not have to be long; it should simply refer them to where they can learn about specific fee information.

4. What adverse impact on consumers, if any, might result from a disclosure that states that an ATM surcharge will be imposed when the operator's practice is not to impose a surcharge on certain consumers?

Currently, ATM operators disclose that a fee will be charged for services. This is the practice even when a fee is not charged for particular transactions, or when the card issuer has entered into a contractual relationship with the ATM operator regarding surcharges. A consumer, who would not have incurred a fee for a transaction, may cancel the transaction to avoid the fee because he believes a fee will be incurred. The adverse impact on consumers is the potential inconvenience of not completing a desired transaction or having to locate another ATM to process the transaction.

5. Conversely, what adverse impact on consumers who are charged an ATM fee, if any, might result if ATM signage states that a fee may be imposed?

The proposed amendment provides a consumer adequate notice that a fee may be charged, before the consumer is committed to paying the fee, and he has the opportunity to choose to proceed or cancel the transaction. This fulfills the intent of the EFTA to provide a basic framework establishing the rights, liabilities and responsibilities of participants using electronic fund transfer systems.

NASCUS understands that when a fee is charged, ATM operators are still required to provide a consumer notice that he will incur a fee. Further, the consumer must elect to continue the transaction after the notice has been provided. A frequent ATM user will soon understand from behavior, or additional study of the financial institution's fee structure, when he will or will not incur a fee. NASCUS believes the amendment provides consumers with adequate disclosure, eliminating the likelihood of an adverse impact.

6. In addition, comment is solicited on disclosure practices of ATM operators with respect to surcharges at the time the GLB Act was passed.

The language in GLB Act reinforces portions of the EFTA. Section 702 of the GLB Act applies to services provided by entities other than the account-holding institution. It requires that a notice is placed in a prominent and conspicuous location on or at the ATM about the fee. The ATM operator must disclose the amount of the fee, either on the screen of the ATM or on a paper notice before the consumer is committed to completing the transaction. No fee may be imposed without proper notice.

Disclosing fees is a benefit to consumers; it provides them the option to continue or cancel a transaction once a fee is disclosed. NASCUS believes that Section 702 provides adequate

notice to consumers, while not imposing an exorbitant burden for a financial institution to implement the disclosure requirement.

NASCUS understands Section 703 of the GLB Act requires that the financial institution holding the consumer's account must include in its initial disclosures a notice that a fee may be imposed by both a foreign ATM provider and/or a local, regional or national network. Again, this provision adequately balances the benefit with any burden.

Section 705 of the GLB Act clarifies that ATM operators are not liable for failing to comply with the notice requirement when a posted notice at an ATM is subsequently removed, damaged, or altered by any person other than the ATM operator.

NASCUS believes the provisions provided by the GLB Act provide a balance between the burden to comply and adequate notice to consumers.

NASCUS would welcome an opportunity to discuss the state regulator perspective on proposed amendments to the EFTA. If you require more information in your analysis, please do not hesitate to contact me at (703) 528-8354.

Sincerely,

A handwritten signature in cursive script that reads "Sandra Troutman". The signature is written in black ink and is positioned above the printed name.

Sandra Troutman  
Executive Vice President, Government Relations