From: Greg Schmeisser

Subject: Electronic Fund Transfers

Comments:

General comments on the rule

Merchants and Networks do not uniformly differentiate between "one-time debit card transactions" and "recurring debit card transactions" (such as a preauthorized transfer). The rule creates no requirement for merchants or networks to provide this information. Without merchant and network requirements various institutions would not be able to differentiate on these transactions classes, which would have the unintended consequence of increased rejects that will impact consumers, merchants, and institutions.

Comment is sought on Implementation timing. Implementation of these systemic changes will take considerable effort. Hold Management systems, EFT interface systems, overdraft management systems, fee assessment systems, and collections systems will all require significant coordinated remediation. Implementation requirements under 18-24 months would not be reasonable.

Comments on the Opt-out method

Proposed § 205.17(b)(1)(ii), "provides a ... safe harbor for opt out periods of 30 days after the consumer is provided an initial notice ... . During this period, an institution generally would be prohibited from assessing any fees or charges for paying an overdraft for an ATM withdrawal or a one-time debit card transaction." This section appears to ignore the listed exceptions (Proposed § 205.17(b)(4) and Proposed § 205.17(b)(5)(i)) that allow the assessment of an overdraft fee regardless of the member's opt-in or opt-out status.

The board should not require a toll-free telephone number for the exercise of opt-out rights. That creates and undue expense requirement on the institutions selecting the opt-out method.

Under Conditioning the Opt-out, the board recognizes that the cost and time required to implement a "partial opt-out" could be prohibitive and proposes an alternative that allows institutions to opt the account out of all the overdraft program channels. This modified alternative should be retained in the final rule.

Proposed § 205.17(b)(5)(i), the discussion talks about floor limit transactions where the merchant does not obtain a pre-authorization. Many of our floor limit transaction have authorizations. Does the discussion excluding floor limit transactions propose to include floor limit transactions that have a per-authorization? If so this would be impossible to implement. The transaction message form the network does not include any details about the use of a floor limit or the status of "protective merchant transaction". These types of systemic details will make compliance with this proposed rule range from difficult to impossible. This rule needs to include merchants and the intervening processing systems if it includes requirements that are not part of the existing infrastructure and transaction rules.

Use of a positive balance stand-in file appears to exempt an institution from this rule. A positive balance stand-in file allows the stand-in processor to access a copy of the consumer's point-in-time account balance. If the

institution practices positive balance stand-in, it is arguable that the institution's stand-in transactions are covered by Proposed § 205.17(b)(5)(i) and the discussion on page 5220 under the heading "Reasonable belief exceptions".

Segregation of the Opt-out notice from other account disclosures should not be required. The required content and format (model form A) in this notice should cause it to be noticeable regardless of its inclusion with other disclosures. Segregation will only increase the expense of compliance.

The subsequent Opt-out notice requirements considers permissibility of the placement of the notice on statements or notices, particularly if they do not reflect an overdraft fee in the cycle or the fee is not related to ATM/Debit/POS activity. As mentioned already the implementation of a Partial Opt-out rule could increase the cost and timing of compliance (page 5219), so would the additional complexities of dynamic statements and notices. The board should not require the notice but also should not prevent this subsequent notice method.

The Board should retain the alternative to condition payment of any overdraft based on the consumer's decision regarding the ATM/POS/Debit channel. The creation of a requirement to manage Partial Opt-out/Opt-in programs at the account level will cause extensive timing delays for remediation of systems. Allowing institutions to condition participation in the overdraft payment program will speed implementation of the notice activities while systems are remediated to accommodate the more complex requirements of a Partial Out-out/Opt-in program.

The Opt-in alternative should allow for either an Initial disclosure to existing account holders or for a subsequent disclosure at the time a fee is assessed (similar to the Opt-out subsequent disclosure).

POS Hold Proposal

The proposed rule does not include accountability for the merchants, which are responsible for placing the holds through pre-auth transactions and whose actions during settlement submission fail to allow removal of the hold. Merchant "Consumer Hold Notice" requirements would help to address the issue at its source instead of placing the burden on institutional practices that mitigate transactional risk (a Safety & Soundness issue).

Merchants do not submit completions properly for accurate removal of the POS holds placed from the pre-authorizations. Merchants are not required to submit completions (settlement) transactions in a timely manner (page 5229 at footnote 39 incorrectly implies a 3 day window). The processing rules allow merchant completions to be delayed by up to 6 months after the transaction has occurred. Further, the processing rules do not require merchants to include uniform identifying data for accurate hold removal.

The hold management proposed in this rule either requires extensive retroactive monitoring and adjustment of overdraft fees, or removal of holds placed by selected merchants (restaurants, gas stations, etc.) within 2 hours. The rule does NOT require merchants in the select list also submit completions within the 2 hour window. The Board states that it has this power under Section 904 of the EFTA. Not only should the Board require merchant settlement submissions within the 2 hour safe-harbor but those settlement transactions should be

required to contain sufficient information about the pre-authorization to "clear" the hold.

Implementation of the 2 hour hold release provision will create further transaction fraud risk and creates higher risk that the consumer will experience negative balance transactions. The POS hold primarily attempts to prevent the member from accessing funds that have already been reserved through a transaction that has not yet settled. Releasing those holds prematurely will allow more members to spend the same funds more than once, thereby increasing the likelihood that they will incur a negative balance. This rule provision creates a "phantom float" that increases the institutional transaction fraud risk and creates greater potential for consumers to unwittingly incur negative balances, while doing nothing to address the problems with the merchants.

The Hold section appears to concentrate on the practice of increasing holds. The Board should add to the rule an exemption for institutions that do not alter the hold amount.

When the merchant places a $75 hold for pay-at-the-pump pre-authorizations and the institution places a hold for that amount there should not be adverse consequences to the institution for complying with merchant instructions. This is a case where only merchant notification can provide proper consumer notice of merchant hold and settlement timing activities. The merchant should be required to place a placard stating "Transactions will place a $75 hold that may not be released for up to 2 hours."

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