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By fax delivery

March 30, 2009

Jennifer J. Johnson, Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
Fax: (202) 452-3819 or (202) 452-3102

Re: FRB Docket No. R-1343

Ladies and Gentlemen:

The Landrum Company appreciates the opportunity to comment on the proposed changes to Regulation E, Electronic Funds Transfer Act, issued by the Board of Governors of the Federal Reserve System. If approved, the proposal would limit the ability of a financial institution to assess an overdraft fee for paying automated teller machine (ATM) withdrawals and one-time debit card transactions that overdraw a consumer's account, unless the consumer is given the right to opt out of the payment of such overdrafts, and the consumer does not opt out.

After reviewing the proposal we would like to address our concerns regarding the proposed opt-out and the debit hold requirements. We choose not to comment on the opt-in alternative due to the fact that this method does not appear to be the best option for our consumer customers. The opt-in option would require consumers to make a decision at account opening when they may not fully understand the consequences of their choice. It has been our experience that less than 1.5% of our customers choose to be excluded from this service therefore requiring all consumers to opt-in would be an unnecessary administrative burden and would increase the time related to the account opening process.

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I. The proposed opt-out should also apply to recurring debit card transactions, checks, and ACH transactions.

The Proposal requested comment as to whether or not the opt-out should also apply to recurring debit card transactions and ACH transactions. It is our opinion that it is in the best interest of the consumer to apply the opt-out to recurring debit card transactions, checks, and ACH transactions, as well as ATM withdrawals and one-time debit card transactions. We feel it would be very confusing to the consumer to try to understand which transactions the opt-out would apply to and would lead to extensive explanations as to the different types of transactions that are or are not covered by the customer's choice with respect to an opt-out decision.

The implementation of a partial opt-out regime would undoubtedly require most financial institutions to incur substantial costs to install information technology systems with the capacity to discriminate among the distinct types of payment channels. At a minimum, financial institutions would incur reprogramming costs. The increased costs may force some institutions to discontinue their overdraft programs altogether, denying consumers access to a service they value and use.

It is impossible for financial institutions to understand the consumer's intent with a transaction code when the consumer authorizes a debit card payment from their account. For example, if a consumer used their debit card to purchase a phone from their provider this would be a one-time debit card transaction. If the same consumer authorized a recurring debit card transaction to pay their monthly bill to this same provider it would be impossible for a financial institution to differentiate between the two to determine the consumer's behavior at the point of sale.

It is our position that due to technological issues the partial opt-out is not a realistic option. Financial institutions can not understand the customer's intent when they initiate the transactions. Additionally, it is highly unlikely that consumers will understand how such a program functions. It will be virtually impossible to explain to a lay consumer which transactions are eligible for overdraft coverage and which ones are not. Adoption of a partial opt-out approach will further confuse consumers as they attempt to understand why they must still pay overdraft fees on checks and recurring debit card transactions. Finally, assuming you were able to explain the partial opt-out to the consumer, anticipating that they would remember the explanation for any significant period of time is also unrealistic.

II. Institutions should not be required to segregate the opt-out notice from other account disclosures.

The Proposal requested comment on requiring institutions to segregate the opt-out notice from other account disclosures to ensure the notice could be seen by the consumer. It is our belief that the short-form notice would be more beneficial to the consumer than using the long-form notice. Additionally, we strongly feel the short-form notice should be included in the account agreement and given at account opening.

All material terms of the account relationship are included in the account agreement, therefore this is the logical document for the opt-out notice.

III. It would be costly for financial institutions to program their information technology systems to relate debit hold transactions to the specific debit card transaction related to making overdraft decisions.

Under the Proposal, institutions would be prohibited from assessing a fee or charge for paying an overdraft pursuant to their overdraft service if the overdraft would not have occurred but for a debit hold placed on a consumer's account if the amount of the hold exceeds the actual transaction amount. The Proposal would not prohibit institutions from assessing an overdraft fee if the consumer's account has insufficient funds to cover the actual purchase amount when the transaction is presented for settlement (and the consumer has not opted out) or if the amount of the debit hold is equal to or less than the amount of the transaction that prompted the hold.

The debit-hold rule would apply to debit card transactions in which the actual transaction amount generally can be determined by the merchant within a short period of time after the institution authorizes the transaction. We are concerned about the technical application of this part. We feel it would be costly for institutions to program their information technology systems to relate the specific debit card transaction to the hold that the merchant placed on the account and may require manual monitoring and overrides, thus increasing costs.

The Proposal provides that institutions would not violate the debit hold provisions if it promptly waives or refunds any overdraft fees assessed on a consumer's account caused by a debit hold placed on funds that is in excess of the actual amount of the transaction. However, the institution may not require the consumer to provide notice or other information that an overdraft fee was caused by a debit hold on funds in the consumer's account before waiving or refunding the fee. We feel this process would carry substantial compliance burdens for institutions and be costly to program technology systems to identify these transactions. It is our recommendation that the Board revise the rule to allow institutions to rely on consumer notification before being required to refund overdraft fees that were assessed on a consumer's account as a result of a debit hold.

IV. Merchants should be required to promptly submit transactions for settlement.


Comment was requested on whether the Board should exercise its authority under §094 of the EFTA to require merchants to promptly submit transactions covered by this rule for settlement. It is our belief that the consumers would be best served if the merchants were required to promptly submit transactions for settlement. This practice would be less confusing for consumers and allow financial institutions to process consumer transactions more efficiently and would not create hardships on the consumers or the merchants.

V. Conclusions

This ruling will have a significant impact on the processes and workflow of financial institutions. To summarize our comments, we support an option to allow the consumer to opt-out of the payment of overdrafts however we feel the proposed opt-out should apply to all transactions. Additionally, institutions should not be required to segregate the opt-out notice from other account disclosures; it would be costly for financial institutions to program their information technology systems to account for the debit card hold rules in order to make overdraft decisions; and merchants should be required to promptly submit transactions for settlement.

Finally, with respect to the timing of the effective date of the final rules, substantial technical changes will be required and financial institutions must undertake a massive consumer education campaign. We believe financial institutions and their service providers, especially small-to-mid-sized institutions, will need at least twenty-four months to prepare their systems to comply with the new rules.

Sincerely,


Sabrina McDonnell
President and COO