

From: Lynda Galligan, Centreville, VA  
Subject: Electronic Fund Transfers

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Comments:

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Name: Lynda Galligan  
Affiliation:  
Category of Affiliation: Other  
Address:  
City: Centreville  
State: VA  
Country: UNITED STATES  
Zip: 20122  
PostalCode:

Comments:

Lynda Galligan Centreville, VA 20122-0251 February 23, 2009 Dear Ms. Johnson: I am writing to comment on Docket No. R-1343, proposed amendments to Regulation E (Electronic Fund Transfers) intended to provide consumers a choice regarding their institution's payment of overdrafts for automated teller machine (ATM) withdrawals and one-time debit card transactions. I want the banks to get my express permission in writing if I determine that I want the overdraft protection. I do not want any services added automatically to my bank account. I want the right to choose the services and account features that I want. I want you to make overdraft an "opt in" service -- meaning that if I want it, I will ask for it. A notice should be required when an ATM or point-of-sale debit card transaction is about to trigger an overdraft. If my bank places a hold on my account for gas, hotels, etc., it should not be allowed to charge me an overdraft fee when the hold causes my account to become overdrawn. The manipulation of the order of posting deposits and withdrawals so as to maximize overdraft fees should be prohibited. (Charging the largest posting first) If you fail to protect consumers from automatic bounce protection, then I want to be given prominent notice of my right to opt out at account opening, on each statement, on all notifications of overdraft, etc. The following information in support of these requests is submitted. Unilateral Protections and Disclosures There is no disclosure of the order, manner or priority in which transactions are processed. There is no standard of transaction processing which would provide a clear understanding of the process. There is no affirmative consent, disclosure of comparable credit options or signed contract committing the bank to cover unauthorized overdrafts. Using this non-contractual overdraft service, there is no guarantee on the bank's part that the overdraft will be paid. The fine print of the account agreement states the bank may cover any individual overdraft but reserve the right to refuse to cover any overdraft, maintaining that payment is discretionary on the part of the bank. Transactions are processed inconsistently where it may be covered one time, but not the next. Consumers who overdraw their account do not know for certainty that their bank will honor

the overdraft. This results in confusion, making it impossible to discern reasonable conclusions and manage accounts. There is no guarantee or fee for service. The unauthorized overdraft provisions are not actively disclosed. The bank allows customers to opt out of the program, but the only notification is a brief statement of the policy in mouse print deep inside the account disclosure agreement. Opting out of unauthorized overdraft loans is far better than losing an entire paycheck. Unauthorized overdrafts are quietly covered with disclosures in the fine print of account agreements, while contractual unauthorized overdraft protection is openly and aggressively marketed. Members are expected to learn through "experience" that unauthorized overdrafts will or will not be honored, rather than actively marketing overdraft programs and the distinctions between those options. Only financial institutions that market unauthorized overdraft protection must explain the cost of the obscene annual percentage rates. Financial institutions that keep the service and the fees quiet only have to include small-print notices when you open the account. Electronic systems are unilaterally designed for maximum revenue to the bank. Bank membership agreement language is written to provide unilateral protection only to the institution. None of the considerations involve protections to the member. Real Time Processing and Notifications Withdrawals are processed on a real time or accelerated basis, while processing deposits, voids, credits and holds are significantly time delayed and not processed on a real time basis, causing multiple penalty fees and maximum revenue to the bank. Deposited checks are held for days after the deposit actually clears, depriving members of access to their funds and contributing to overdraft and non-sufficient fund fees on transactions that would be covered by these funds. Overdraft's are surreptitiously encouraged by the bank by posting charges almost immediately while delaying the posting of deposits, and by processing large withdrawals and checks before smaller ones, leading to multiple overdraft fees. The time period for holding deposits has not changed since the Expedited Funds Availability Act took effect in 1990. Financial institutions should be prohibited from charging an overdraft or NSF fee when the hold on a cleared deposit causes subsequent transactions to overdraw the account. The same machine that created the transaction, voids or credits the transaction through the same circuit, yet the funds cannot be credited in real time. The bank is assessing overdraft charges on a real time basis, but fails to operate in real time. The bank processes withdrawals on a real time basis, but does not disclose the time the transactions were received. The consumer is unable to confirm the order of processing of transactions. The unauthorized overdraft fees are taken from future revenue, without any notice or due process. The multiple overdraft fees often result in entire paychecks or annuities being taken. This unexpected loss causes a snowball effect, which prevents paying other bills on time and results in additional fees. The member is unexpectedly denied the ability to appropriately manage their finances. Real time notification of account balances or potential overdrafts are not made to members. If the consumer's real-time account balance is unknown, it is unreasonable to expect consumers to be able to keep track, given the many electronic ways funds are processed and the irregularity of deposit holds. There is no warning to members that the ATM, debit or point of sale transaction will overdraw the account and incur a penalty fee. The majority of consumers believe permitting overdrafts without any notice is very unfair. Reg Z excludes Truth in Lending Act Disclosures. The archaic and obsolete provisions of Regulation Z, adopted in 1969 and similar NCUA regulations, permit the bank to disregard Truth in Lending Act disclosures as long as overdrafts are discretionary and cost the same as the bounced check standard charge. In order to comply with the archaic Regulation Z requirement for overdrafts to be discretionary (thereby avoiding the Truth in Lending disclosures), the bank agreement states it may or may not cover the

overdraft. Avoiding the Truth in Lending Act disclosures is the overriding reason the bank fails to guarantee covering overdrafts. It is the predominant reason the bank fails to actively disclose unauthorized overdraft provisions except deep inside the account disclosure agreement. Consumers are deprived of the protections provided by the Truth in Lending Act. This creates an environment of confusion and denies the ability of the member to know with certainty whether the overdraft will be covered. The machines and clearing houses use internally designed systems that automate decisions on processing overdrafts. Individual decisions to cover overdrafts as discretionary no longer occur. This processing is not disclosed to members, resulting in unilateral disclosures that evade Regulation Z requirements. This is a deceptive scam arranged for the extortion of billions of dollars. The failure to adequately address electronic transaction processing and the economic crime perpetrated as a result is egregious. This promotes outrageously excessive APRs, which compare only to extortion and loan sharking. It promotes antiquated systems and inhibits redesign of existing systems to adequately address the transition from paper processing to electronic transaction processing. A serious imbalance exists where there are no protections to the consumer which have been edited out or treated with disregard by the overriding protections to the financial institution. There is no affirmative consent or signed agreement for unauthorized overdraft provisions as a result of this regulation. The low-income including elderly, young, single parent, less educated and less affluent consumers, who pay most overdraft loans, need clear cost disclosures and protection against practices that fraudulently manipulate the system in the bank's favor and result in exorbitant fees, including ordering withdrawals high to low and permitting debit and deposit holds to maximize revenue. Regulation Z prohibits the overdraft fee to be set at a reasonable amount in proportion to the amount of the loan extended. A debit transaction of \$1.77 should not be charged a standard check charge fee of \$27.00. The standard check charge fails to address the transition from paper processing to electronic transaction processing. The majority of "bounced check" charges are actually the result of electronic transactions such as ATM withdrawals, debit card and point of sale purchases. That's due in part to the fact that paper check use has declined. Complex, Confusing and Contradictory Account Agreement & Disclosures The layering of contractual overdraft protection and unauthorized overdraft loans, different types of transactions (ATM, ACH, POS, etc.) and related processes and disclosures for each is incomprehensible for consumers. The distinction between the contractual overdraft protection such as transfers to credit cards or lines of credit and unauthorized overdraft loans can be lost on members. These options are often unavailable to low-income members. Websites contain advertisements that encourage customers to overdraw accounts; have contradictory language on whether overdrafts will be honored; and give incomplete or confusing information on how overdraft loans work. Only a very experienced financial industry representative would be able to comprehend the complexities of the existing system. Unilateral "Unique" Protection Laws Cash advances using a debit card to overdraw an account are very similar to cash advances using a credit card. The law provides very different protections when a cash advance is made using a debit card to overdraw an account as compared to cash advances using a credit card. Financial institutions are prohibited from taking funds directly from an account to repay a credit card debt, however, consumers who obtain cash advances made by overdrawing an account with a debit card lack this protection. When a consumer creates an overdraft, it is repaid immediately from future deposits, without notice or regard to the amount of fees charged. The distinction between the more traditional, contractual overdraft protection and unauthorized overdraft services can be difficult to discern, but the cost

differences for consumers are significant. The low-income, who may not have access to alternative means, are the most vulnerable to the significant cost differences between the contractual overdraft protection and unauthorized overdraft protection. Unauthorized overdraft protection is the bank's most expensive credit product, which is currently provided under one sided and obscure terms. Overdraft loans are treated as "credit" for every purpose except informing and protecting consumers.

**Cost of Credit** The volume of paper transactions has been surpassed by electronic transactions. The majority of transactions are electronic ATM, point of sale or debit transactions. When the overdraft amount extended is low, the time outstanding is short, the effective interest rate paid on this loan can be astronomically high. The median implicit interest paid by consumers is over 4,000%, and can be in the hundreds of thousands percent. Older consumers pay a median interest rate in excess of 7,000%, the most of any sub-group. Penalty fees disproportionately affect low-income customers, who are least able to afford, and often unable to avoid, paying them. The median interest rate on unauthorized overdraft loans is in excess of twelve times that of payday loans. The high unauthorized overdraft fees for such small loans translate to predacious annual percentage rates. Estimates for the amount of revenue from non-sufficient funds fees and unauthorized overdraft fees are between \$17 billion and \$50 billion per year. Many banks rely on this revenue for up to 50 percent of their profit. Bank unauthorized overdraft loan rates tower over rates for payday loans, credit cards and other forms of short-term extensions of funds. The finance charge for the short-term cash advance translates to four digit interest rates. A \$100 overdraft repaid in two weeks for a \$27 penalty fee amounts to an annual percentage rate (APR) of 648% APR. Overdraft Loans are credit without Truth in Lending Protections. The Federal Reserve Board's Regulation Z, adopted in 1969, exempts overdraft fees from Truth in Lending coverage. That regulation was intended to apply to the practice of paying consumers' occasional or inadvertent overdraft, considered a long established customer service. The law fails to address the volume increase of electronic transactions and decrease in paper processing, resulting in outrageous APR's.

**Unfair Charges** The typical unauthorized overdraft fee is the same as the bank's non-sufficient funds (NSF) fee. The reason that the charge is the same is because the antiquated Federal Reserve rules are still in effect. The bank does not have to comply with the Truth in Lending regulations if there is no contract covering the overdraft and if they charge the same fee they would have charged to bounce it. The volume of electronic transactions renders this law obsolete, but the law for the standard charge remains unchanged, resulting in excessive fees. Complex systems have been designed to make calculations for complicated loans and mortgages. However, unauthorized overdrafts are still charged a "standard" fee, whether the amount is \$1.00 or \$1,000. Small debit card transactions are the most frequent trigger of these overdrafts. This is also attributable to archaic and inadequate financial regulatory laws that provide the conditions for enormous profits to the financial institutions. Excessive fees are charged when the costs of processing electronic transactions are a fraction of the amount recovered. The automation of the historical practice of paying overdrafts on a discretionary basis has reduced costs associated with case-by-case assessment and manual intervention. Charges should only be imposed which are in proportion to their costs. The fees are set massively too high and should not exceed the cost to the provider. The charges are not a true reflection of the cost to the bank for handling the default.

**Transaction Clearing Practices** Another tactic used to generate excessive overdraft and insufficient funds fees is to order the sequence of withdrawals to pay the largest transaction first which increases the number of transactions that trigger overdraft fees. Ordering transaction withdrawal to maximize overdrafts or insufficient funds fee revenue

should be prohibited. Ordering should be smallest to largest with deposits processed before withdrawals. Language in the fine print contains obfuscation and legal double talk about withdrawal processing. There is no disclosure of their withdrawal processing order in customer brochures or consumer information on the website. Instead, practices are found in the fine print of account terms and conditions that state completely unilateral protections for the bank. Consumers have no reliance on processing order for reliable payment of multiple transactions that arrive at the bank on the same day. Given that a mortgage payment or other recurring big ticket item is a once a month event, the every day practice of deducting the largest transaction first, resulting in multiple small transactions that trigger exorbitant overdraft fees, is absolutely not in the consumer's best interest. Small dollar debit card transactions cost the same \$27 overdraft fee as a \$700 mortgage check. An overdraft that is not covered and rejected is charged the same standard overdraft fee. The real purpose for clearing the largest transactions first is to maximize the imposition of multiple overdraft fees for low balance customers. Financial institution consultants have promoted this method as a way to increase revenue, not as a "consumer protection." This is a deceptive illusion and a scam.

**System Design** Despite enormous profits received each year from overdraft fees, the revenue has not been spent on redesigning the inadequate, antiquated and deceptive financial systems to address the change from paper processing to the speed and volume of electronic processing. The systems, however, have been programmed to levy maximum fees from member funds.

**Processes, Policies and Practices** The conditions and practices for plundering consumer accounts are antiquated, ambiguous and obsolete laws, disclosures, protections and electronic processing systems. These deficiencies and deceptions have aligned in a way that is causing continuous harm to the public. The antiquated laws include: Regulation Z of 1969 which permits avoiding the Truth in Lending Laws; Truth in Savings law which deceptively discourages actively promoting courtesy overdraft protection, committing disclosure to mouse print and promoting a standard charge; and the 1990 Expedited Funds Availability Act which permits holds on deposits. There is no explanation for the failure to change the antiquated laws, archaic and inadequate systems and deceptive disclosures when over \$20 Billion is being extorted from the American public annually, many low-income young, single parents, seniors and the uneducated. It is one thing for antiquated and archaic practices and procedures to exist. It is another to use these deficiencies and deceptions to charge exorbitant fees. This gives preference to financial institutions while allowing collusion and fraudulent practices to continue. Unilateral protections have been created by long standing laws and regulations, which are contradictory and no longer applicable or adequate. Since the laws are still in effect, the corruption that is occurring is not considered illegal and the financial institutions are not culpable.

**Inhuman Tolerances** There is no allowance for inadvertent human error. The discretionary paid overdraft has been replaced by a predatory "zero tolerance" unauthorized overdraft protection. This change has occurred by a questionable reliance on automated systems. There is too much reliance on these fees. Consumers are treated inhumanly, as if they are machines. The community charter provisions for low income and senior citizens have been edited out by these predatory conditions, protecting only the financial institution.

**Low Income** An unauthorized overdraft loan that is repaid out of direct account access to the next deposit of funds is unfair and causing substantial injury to low-income consumers. These overdraft loans are the equivalent of wage assignments that cannot be canceled, without any due process. "Attachment" of the consumer's next deposit of pay or benefits should not be permitted to repay these loans. The federal government requires federal benefit recipients to receive exempt funds through direct deposit to accounts

at depository institutions and present day practices require consumers to maintain financial accounts. There is something sinister about these conditions and the extraction of funds from the most vulnerable. The elderly, young, single parent, less educated and less affluent consumers who live from payday to payday are at risk of losing their bank accounts or having to close them to avoid unexpected and uncontrollable penalty fees. Older adults should not be placed in unauthorized overdraft loan programs without their specific and informed consent. Social Security and retirement income should not be automatically collected for repayment of overdraft fees. This creates a snowball effect of fees that is difficult to recover from, especially those on a limited income. British/United Kingdom Overdraft Fees British/United Kingdom consumers are filing for reimbursement of fees charged by financial institutions in the past 6 years. The fees have been determined to be excessive and unfair. The financial institutions are now reducing charges to nominal and reasonable fees. American consumers should also be reimbursed for the funds, which were stolen from them. Summary All forms of small cash loans should be treated under the same set of rules to enable consumers to make informed choices about credit options. At the very least, the banks should have to comply with the same federal credit laws that apply to payday lenders, pawn shops and small loan companies. As it stands, they are hiding behind a smokescreen of conflicting laws, misleading terms and murky practices that encourage costly overdrafts. Financial institutions should protect customers' funds, not plunder them with outrageous fees and harmful practices. There is a serious breach of the consumers trust relationship with the current culture. There is serious deficiencies in the systems, practices and laws which have been used as a deceptive device to extort enormous funds from the public's most vulnerable. These result in personal tragedies to real people who are subject to significant injury. These insane practices are tyranny against the American public and should be terminated immediately. Any delay would subject cash-strapped consumers to further electronic thievery and corruption. Thank you for your consideration of my ideas regarding Docket No. R-1343, proposed amendments to Regulation E (Electronic Fund Transfers). I appreciate the time you are taking to consider the many viewpoints on this issue. Sincerely, Lynda Galligan