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Subject: Electronic Fund Transfers

Comments:

Overdraft services have the potential to provide ATM and debit card holders with a valuable financial cushion when the cost of essential purchases exceeds the cardholder's available balance. The majority of banks, however, have turned this valuable service into a predatory lending scheme, preying on the poor, lower income working class families, the young and those families struggling under this unprecedented financial crisis.

The outcome has been horrific. Billions of dollars are being taken away from cash-strapped Americans every year by this predatory practice. Yet, card holders are not permitted to opt out of this abusive system, while banks have altered the processes used to clear transactions in order to maximize the number of NSF overdraft fees charged to consumers.

Modification of Regulation E will be essential to stop systemic banking system abuses, and help restore financial stability to those families who are struggling to pay ordinary day to day living expenses.

Permit Opt-In but Prohibit Opt-Out

Regulation E should be modified to prohibit overdrafts and the imposition of overdraft fees for any ATM or debit card use UNLESS the card holder specifically chooses to activate those services.

Segmentation of Opt In Transaction Classes

Some transactions will be more important to consumers than others. For that reason the Opt-In provision must be segmented into at least four classes: ATM withdrawals and transfers, debit card purchases, check purchases, and automated payments. The consumer must separately agree to Opt-In to each of these classes in order to activate the overdraft service for each.

Full Disclosure and Estimation of Costs

Any Opt In process must include full disclosure by the bank, in clear, plain English, that contains black boxed warnings which alert the consumer to the risks and costs of accepting overdraft protection. Clear examples of how repeated use of overdraft protection can generate significant fees charged to the consumer must be provided, and must include an example of the penalties imposed as a result of repeated small purchases under the bank's overdraft service.

ATM Notification

When a consumer has chosen to Opt-In and participate in a bank's NSF overdraft program, banks must still be required to provide notice to the card holder before imposing any overdraft fee when the card is used at any ATM machine. The card holder must be advised that a fee will be imposed if the card holder continues with their requested transaction along with the full amount that can be withdrawn or transferred by the card holder without the imposition of fees. In addition, the card holder must be given the option to cancel the requested

transaction and avoid payment of all fees.

Purchase Notification

Banks must be required to provide cardholders with similar notification when a debit card purchase will result in an overdraft and generate overdraft fees. The consumer must be given the option to cancel the purchase and avoid any fees. However, assessment of the technology necessary to implement this consumer protection provision will likely be needed prior to any regulation requiring such action by the banks and retailers. A delay implementing this provision to assess technological needs and costs may be appropriate.

Right of Rescission

All cardholders must have full and immediate right of rescission under Regulation E. Banks must provide a toll free number that allows card holders to immediately terminate their overdraft services and privileges with no more than a telephone call. Once a card holder exercises this right, the bank would be prohibited from assessing any additional fees for ATM withdrawals or purchases that were approved by the bank after the call is complete.

Cessation of Fees Provision

Cardholders must be given the option at sign up to limit the number of NSF transactions and associated overdraft fees that can be imposed by the bank. Once the cardholder has reached this limit, the bank must be required to refuse any further transactions and be prohibited from assessing any additional overdraft fees until the cardholder reestablishes a positive balance, or agrees to extend their NSF overdraft limit by direct contact with the bank.

Application of New Deposits

Banks must be prohibited from applying new deposits to overdraft fees without first notifying the card holder that their account has a negative balance, and that the deposit may not cover future purchases. The notice must also advise the cardholder that further use of the card, despite the deposit, may generate further NSF overdraft fees. Imposition of overdraft fees covered by the new deposit must be prohibited until the bank has provided the notification required under this heading. Simply mailing a notification should not be sufficient to trigger the imposition of fees, but must include a reasonable time for the notice to reach the card holder.

Credit Hold Prohibition

Banks must be prohibited from assessing overdraft fees when a cardholder has a sufficient balance to cover any withdrawal, transfer or purchase, but a portion of the balance in the card holder's account is under a debit hold.

Transaction Process Sequencing

Banks must be required to process all transactions and apply debits to the card holder's account in the order in which they were made by the card holder.

Small Purchase Fee Limitations

Banks must be prohibited from assessing any overdraft fee that exceeds the value of the card holder's NSF withdrawal or purchase. The practice of assessing a thirty five dollar fee for a one dollar soda purchase is unconscionable, predatory, abusive, and preys on those least able to afford such fees. Alternatively, banks may be permitted to refuse such small overdraft payments even if the cardholder has agreed to participate in an overdraft plan.

Daily Fee Limitation

Although cardholders ultimately bear full responsibility for maintaining a balance sufficient for their purchases and withdrawals, many aspects of the banking system make it virtually impossible for the consumer to know their available balance in real time. For that reason, until real-time notification of overdraft withdrawals and purchases can be implemented, banks must be prohibited from assessing an unlimited number of overdraft fees during any one day.

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