

From: Karen Niederkohr, Redwood City, CA
Subject: Electronic Fund Transfers

Comments:

Date: Mar 11, 2009

Proposal: Regulation E - Electronic Fund Transfers
Document ID: R-1343
Document Version: 1
Release Date: 12/18/2008
Name: Karen Niederkohr
Affiliation: San Mateo Credit Union
Category of Affiliation:
Address:
City: Redwood City
State: CA
Country: UNITED STATES
Zip: 94063
PostalCode:

Comments:

March 3, 2009 Jennifer J. Johnson Secretary Board of Governors of the Federal Reserve System 20th Street and Constitution Avenue, N.W. Washington, DC 20551 Docket No. R-1343 Dear Ms. Johnson: I am writing to you in response to the proposed revisions to the Regulation E disclosure requirements for overdraft fees. It appears that these disclosure requirements will apply to ATM transactions and one-time debit card overdrafts. San Mateo Credit Union (SMCU) is a state chartered community based credit union in San Mateo County, California. As of December 31, 2008, SMCU had approximately \$579 million in assets serving 69,000 members. SMCU began its overdraft program in 2006 and structured the program to meet the safety and soundness best practices as recommended by the National Credit Union Administration. We have received overwhelmingly positive feedback from our members about this service. For example, many members have indicated that the Courtesy Pay program saved them from the embarrassment of having a check bounce or a point-of-sale transaction denied. Under our current overdraft program, SMCU reserves the right to cover a share draft/checking account deficit for a member without having a credit application on file. SMCU may honor overdrafts in a member's share draft/checking account for the following types of transactions: 1. Checks, 2. Pre-authorized or automatic debits (ACH), 3. Point of sale transactions (Visa® Direct Check Card or ATM card), and 4. Transactions at automated teller machines (ATMs). SMCU has structured this program as a discretionary privilege and not a right of membership. As a result, SMCU has offered this service to members meeting certain requisite criteria. The proposed rule outlines two alternative approaches (an opt-out and an out-in) for providing consumers with a choice regarding the payment of ATM and one-time debit card overdrafts. It is our opinion that neither an opt-out nor an opt-in approach should be implemented. Although we support full disclosure of fees associated with an overdraft program, we believe it is important for the Federal Reserve to consider the impact of these proposed regulations on consumers. We believe that both approaches would create additional operational and compliance burdens on financial institutions, and as a result, the benefit to consumers would be significantly curtailed. SMCU urges the Federal Reserve to continue to allow financial institutions the discretion and flexibility to structure overdraft

programs as it sees fit to meet consumer needs. However if the proposed regulations are implemented, we urge the Federal Reserve to adopt the opt-out alternative. Under this alternative, financial institutions would be required to provide consumers with a notice and a reasonable opportunity to opt-out of the overdraft plan for ATM withdrawals and one-time debit card transactions. If a consumer does not opt-out under this option, the financial institution would be required to send the consumer additional opt-out notices in each periodic statement cycle in which an overdraft fee is assessed. We believe that opt-out approach would greater flexibility to allow more consumers to continue to benefit from overdraft programs. Nevertheless, we urge the Federal Reserve to re-evaluate the need to send an opt-out notice in each periodic statement cycle in which an overdraft fee is assessed. We believe that the cost of these notices will be ultimately passed onto the consumer. In our opinion, the key for consumer benefit is not the frequency of notices; but rather, the ability of the consumer to opt out of the overdraft program at anytime. Requiring a notice assumes the consumer is not already aware of the fee. We believe the consumer must undertake some responsibility to be aware of the costs associated with his/her financial transactions. Multiple notices are not only a waste but an insult to the consumer who is fully aware of what the service costs. Instead, we urge the Federal Reserve to consider a less frequent opt out notice requirement such as an annual notice. In its current form, both the opt-out and opt-in alternatives require that the institution apply the same criteria for deciding to pay overdrafts for checks, ACHs and other types of transactions regardless of the consumer's opt-out or opt-in choice with respect to ATM and debit card transactions. SMCU strongly urges the Federal Reserve to reconsider this approach, because the proposed partial opt-in or partial opt-out would create operational challenges in addition to confusion for consumers. It appears only logical for a financial institution to decline to pay checks, ACH and other types of transactions if the consumer has opted out for ATM withdrawals and one-time debit card transactions. We thank you for the opportunity to express our opinions with respect to the proposed revisions to Regulation E. Should you havany questions, you may contact me or our Compliance Officer, Karen Niederkohr. Sincerely, Barry Jolette President and CEO San Mateo Credit Union cc: Jeffrey Bloch, Credit Union National Association (CUNA)