

From: Florence Savings Bank, Ian Vukovich

Subject: Electronic Fund Transfers

---

Comments:

1. RIGHT TO "PARTIALLY" OPT-Out or "partially" Opt-In, versus a Required Opt-In. While we support, in principle, the substantive opt-out right established by the proposed amendments to Regulation E (the Proposal), we have serious concerns about requiring consumers to opt in:

a. Best practices of financial institutions disclose their overdraft protection programs to consumers and to allow consumers to opt out (entirely; not partial) of those programs. A recent FDIC Study suggests that less than 10% of financial institutions offering overdraft protection services on the terms suggested by Strunk & Associates ( as our institution does) have received consumer complaints about their overdraft programs. With such a low complaint rate, it is difficult to understand why an affirmative opt-in requirement would be necessary, especially when doing so would impose additional administrative burdens.

b. The Federal Reserve Board commissioned a series of focus groups to study consumer impressions of overdraft services. 8 out of 9 study participants would keep overdraft coverage even if given the opportunity to opt out. The participants valued overdraft coverage as an efficient way to ensure that important transactions would go through. Again, the regulators' own research indicates very little demand for an opt-in requirement for overdraft services.

c. If adopted, an opt-in requirement would impose additional administrative burdens on financial institutions without any countervailing consumer benefit.

2. PARTIAL OPT OUT. The Proposal contains an unnecessary and unworkable partial opt-out provision:

a. The partial opt-out would allow consumers to retain overdraft protection services for checks and ACH transactions, while declining protection for other types of transactions, such as "ATM withdrawals" (but not other ATM transactions?) and some but not all "POS debit card transactions". The boundaries of this program will be impossible to convey to consumers. We believe consumers will conclude that exercising a "partial" opt-out right means they will never be charged an NSF or overdraft fee.

b. The Federal Reserve Study accompanying the Proposal supports our belief. In one study example, half of the participants could not tell the examiners what would happen if they set up a recurring payment for a utility bill, opted out of overdraft coverage and subsequently did not have sufficient funds to cover the payment. Almost half stated that the payment would be covered, even if the consumer had opted out of overdraft coverage. Any partial opt-out or any opt-in requirement will always be confusing to and misunderstood by consumers. Even if the consumer initially understands how the program operates, it is unlikely that the consumer will retain that understanding for any meaningful period of time.

c. A partial opt-out approach would not only be difficult to explain in a

manner that consumers would remember, it would be impossible to implement technologically, at least in the short run.

d. The Proposal bans financial institutions from varying accounts terms between accounts that provide partial opt-outs and accounts that do not. This requirement would invite legal claims and regulatory actions over whether an account term is varied. These subtle differences would be difficult to explain in a manner that consumers would remember for any meaningful period of time.

### 3. Exceptions to Opt-Out Requirements.

a. The Proposal includes exceptions to the general rule that a consumer cannot be charged an overdraft fee if he has opted out of overdraft protection coverage. If a financial institution reasonably believes that a transaction would not overdraw a consumer's account, but the transaction nevertheless results in an overdraft, the Proposal would permit the institution to charge an overdraft fee.

b. Since many financial institutions cannot track all (or most) transactions in real time, it is unreasonable and impractical to forbid overdraft fees in situations where the financial institution reasonably believes it must honor a transaction that turns out to be drawn on insufficient funds. This proposal would do more harm to consumers than it would good.

c. We agree with these exceptions but we also believe it is impossible to track, control and comply with the exceptions with current technology.

4. Debit Holds. The Proposal would prohibit financial institutions from assessing an overdraft fee if the overdraft was caused by a debit hold in excess of the actual transaction amount and the actual transaction amount would not have caused an overdraft.

a. The Proposal's debit hold rule applies only to debit-card transactions in which the merchant can determine the actual transaction amount within a short time period.

b. The Proposal also includes a two-hour safe harbor that allows the assessment of an overdraft fee for overdrafts caused by debit holds that were placed on the consumer's account within two hours of the transaction that resulted in the overdraft.

c. The Proposal is too heavily reliant upon the method of transaction processing at the merchant location to function with any consistency. We believe this would lead to increased consumer confusion surrounding the processing of transactions due to the potential inconsistency of overdraft fee assessments.

Ian T. Vukovich  
Florence Savings Bank  
Florence, MA 01062