From: State Bank of Chandler, Lonnie E Clark

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Name: Lonnie E Clark
Affiliation: State Bank of Chandler
Category of Affiliation: Commercial
Address:
City: Chandler
State: MN
Country: UNITED STATES
Zip: 56122-0128
PostalCode:

Comments:

The following comments are to the proposed amendments to Regulation E, which implements the Electronic Fund Transfer Act, and the official staff commentary to the regulation; Docket No. R-1343. Some Regulations create additional Moral Hazard: I disagree with the entire amendment to Regulation E. It is and should be an individual's responsibility to know how much money they have in their account before they spend it. This is just one more regulation designed to remove consumer responsibility and place it on the bank. The regulation tends to "dumb down" the consumer and train them not to keep track of their checking account balance, instead relying on the ATM to refuse them money when their account runs out. It has been proven that people who budget and keep track of their finances are better off than those who do not. This regulation encourages the opposite. People learn valuable lessons by the consequences to the actions they take. The proposed regulation attempts to take away consequences for not keeping track of one's account balance. The Moral Hazard created by people who believed they could ignore their finances, lie on credit applications, and live beyond their means, ignoring their true income and ability to repay, has gotten our country into one of the worst recessions we have ever entered. This regulation creates even more of that same Moral Hazard buy training the consumer not to keep track of their checking account balance. Beyond that, there are a lot of other problems with the proposed amendment to Regulation E that make it unworkable. Operational Difficulty Our core banking software is not able to distinguish between ATM withdrawals, one time debit card purchases, and a multitude of other type transactions that currently come to our bank through the ACH system. It does not have the ability to charge fees for some and not for others. Although the proposal addresses this issue, it does not explain how a bank is going to implement compliance with the proposal using a system and network never designed to distinguish between these different types of transaction items. The proposal does not address the issue of who is responsible if a merchant codes an item as a reoccurring transaction when it is actually a one time debit card transaction. The proposal should explain who has authority to cause the merchant to follow practices that would allow the banking industry to distinguish between various types of transactions that are

required to be handled differently by the proposal. The proposed amendment to Regulation E should be withdrawn based on it being impractical to implement. A study should be done to determine if the card network has the ability to code items in a way that would signal to the bank the nature of the item. That same study should also determine what government agency will enforce the requirement for merchants to code the items properly, and whether the bank should be responsible for items coded improperly by merchants. The proposal should have dealt with this issue in detail. Fees for not depositing to cover overdrafts:
The proposed amendment to Regulation E restricts fees for overdrafts caused by ATM use or one time debit card transactions. It appears the restriction applies not only to fees for items charged to the customer account, but also to fees for allowing the account to remain overdrawn. Allowing a customer to avoid fees while leaving their account with a negative balance takes away the bank's ability to encourage the customer to bring the balance positive. The proposal creates an unsafe and unsound situation for financial institutions. It also creates a situation of "Undue Enrichment". Customers will be able to overdraw their accounts and then not deposit money to cover the overdraft without any cost or consequences. That situation is wrong by any standard. Banks charge fees, in part, to encourage customers to deposit money into their account to bring the balance positive. Under the proposal, there would be no monetary incentive for a bank customer to deposit and cover an overdraft. Bank customers who opt-out, but then continue to write checks and use their debit card to make charges to their account and then just leave their account overdrawn without depositing to cover the overdraft need to be charged to encourage them to deposit. They should not be unduly enriched by a regulation prohibiting their bank from charging fees for allowing the overdraft to continue for days, weeks, and months. The prohibition on fees for certain types of transactions that overdraw an account should not apply to fees for allowing the overdraft to go on. The customer makes the charges and the bank pays them in good faith. The bank needs some type of leverage to encourage the customer to deposit money in the account again. At a minimum, there should be a time limit on the customer letting the overdraft ride for free. Under no circumstances should the free ride period be more than 3 days. There is also an operational problem with restricting fees for allowing an overdraft to go on. It is my experience that when a customer goes overdrawn, it is usually more than one item that causes them to go overdrawn. These items may be a mixture of items the bank is allowed to charge for under the proposal, and also items the bank is prohibited from charging. The proposal does not deal in sufficient detail with the order the items are charged to the account. For example, there could be a difference in overdraft charges if all the ATM charges are applied first and the last item is a check that causes the overdraft or if the check is charged first and doesn't cause the overdraft, but then the ATM charges do cause the account to become overdrawn. The proposal does not make this clear and especially as it applies to fees for allowing the overdraft to go on and exist for days, weeks, or months. The proposal should explain when a bank may charge and when it may not, using examples of overdrafts caused by different types of items charged to a customer's account. The proposal should explain if a bank may charge for an account remaining overdrawn when the original overdraft was created by an ATM withdrawal, but a check further overdrew the account, especially if the check is larger than the ATM withdrawal and would have caused the overdraft anyway. Then it should go on to explain how deposits should be applied to the account when the overdraft was caused by multiple type items, especially if it does not bring the account to a positive balance. Is the deposit applied against the overdraft caused by the ATM withdrawal or the overdraft caused by the check? Must the bank keep track of separate balances based on amounts overdrawn due to checks and amounts overdrawn due to ATM withdrawals? If so, how does the bank

determine which balances to credit future deposits against when those deposits do not totally cover the overdraft? When may a bank charge the customer for allowing the overdraft to go on for days in the above situation? This is not discussed in the proposal. This could become an extremely complicated issue creating a nightmare of operational and compliance concerns for all financial institutions. I highly recommend against any restrictions on fees charged to accounts for allowing the overdraft to continue without making a deposit to cover it. The customer is the one who withdrew the money from the account. The customer is also notified of the overdraft and is in control of putting money in the account to bring it positive. The bank should not be restricted from charging the customer for allowing the account to remain overdrawn regardless of what item caused the overdraft. At an absolute minimum, there should be a limit on the days a customer may let an overdraft ride for free. Toll Free Number A bank should be able to put its normal telephone number on notices and statements. There should not be a requirement that a bank purchase a toll free number just for this one amendment to a regulation. Why force a bank to incur the cost of a toll-free number when almost all of the bank's customers live within the non-toll calling area around the bank? This is a waste of money for many community banks, and especially for those who have most of their customers living in an already toll free area from the bank. It will just add to the cost that must be passed on to the bank customers for something they will not benefit. It is also a much larger burden on small banks that do not have as many accounts to divide that cost over. Eliminate the requirement for a toll free number, especially on small banks with only one location. Preprinted Statements On page 5222 of the Federal Register in the Proposed Rules, the proposal would require the financial institution to put the opt-out notice on the periodic statement "in close proximity to any aggregate totals for overdraft and returned item fees". Research should be done on the cost of requiring all banks to print this opt-out notice in the dynamic part of the statement. For years many small banks have purchased statement stock paper with required disclosures preprinted on them. Only the monthly transaction information is currently required to be printed on the statement at the time the customer's account statement is prepared. The proposed amendment to Regulation E requires specific placement of disclosure information traditionally preprinted on statement stock to be placed near the "overdraft and returned item fees" that are dynamic in nature and vary in location on the form, depending on the number of checks printed on the statement. It is likely that the only way to make the placement requirement work is to convert those disclosures that are normally static in nature, into a dynamic format. It would require them to be printed by the bank printer at the time the statements are prepared. Although printers have increased in speed over time, this requirement could significantly increase the time required to print customer account statements. The extra time and cost to force the banks to do all the extra printing in-house seems to be excessive. This will be especially burdensome on smaller banks because they are more likely to mail printed statements to customers. Remove the requirements for specific placement of information on statements printed on paper. The customers will find the disclosures as they always do. At a minimum allow a short statement in close proximity to any aggregate totals for overdraft and returned item fees. The short statement could read "See opt-out notice on back". Model Form A-9 Form A-9 should be a static form, not a dynamic form that changes as fees change. The customers already receive fee disclosures on Truth In Savings disclosures and have become accustomed to look for them there. These disclosures are also given to the customer at the same time as Form A-9 would be under the proposal. The proposed requirement is duplicative in disclosing these fees. This double disclosure could confuse consumers making them wonder if this is another fee or the same

one already disclosed to them on the Truth In Savings disclosure given to them at the same time. Eliminate the ($ amount) on Form A-9 and insert the following language: "The amounts of such charges are disclosed to you on another Truth In Savings form also provided to you at this time or on your periodic statement." It is not reasonable and an unnecessary burden to require banks to change Form A-9 every time the bank changes its fees, especially if they are preprinted. Expected impact on small entities: On page 5231 of the Federal Register, it states "Based on its analysis and for the reasons stated below, the Board believes that this proposed rule is likely to have a significant economic impact on a substantial number of small entities." I totally agree with that statement. I do not believe, however, that all the reasons have been reviewed and discussed in the proposal. The proposed rule will indeed have a significant negative economic impact on small banks. Our bank is about $35,000,000 in assets with 10 employees serving a small Midwestern town of less than 300 people and surrounded by farmland. We have about 1,200 or less transaction accounts, with debit cards issued to about 450 customers. I feel that we qualify as a small financial institution. The proposed amendments to Regulation E will have some serious effects on both the profitability of small financial institutions and also their ability to continue offering products like the debit cards, for the following reasons: 1.Small banks operate in a much different way than large banks. Many banks our size do not have the manpower to read the proposed regulations and comment on them. For that reason alone, the concerns of the smaller banks will not receive the same consideration as the concerns of the large banks. The proposed amendments will likely become effective before many small banks our size become aware of the full impact. By that time, it will be too late for them to do anything about some of the concerns of the small banks. If the proposal is not withdrawn, it should be phased in by bank size, with small banks required to comply last, if at all. 2.Small banks are limited in their ability to use the debit card network due to the fixed costs. Large banks can spread the fixed costs charged by the Card Network Providers over thousands and maybe millions of accounts. Even though we pay some of the same fixed costs as the large banks to gain access to the "card network", we do not have the large numbers of accounts to spread the fixed costs over in order to make a profit on the debit cards we offer. Yet, if we do not offer the same products, such as debit cards, to our customers, we will loose our customers to the big banks who offer them. We hope to make a profit on another part of the customer relationship, but we may loose the customer if we do not offer debit cards. For that reason, we and other small banks our size offer products like debit cards at a loss. If the proposed regulation is approved, it will serve to be a disadvantage to small banks in one of two ways. It will increase the cost of small banks that offer debit cards and therefore increase the loss being taken by small banks that choose to continue offering debit cards. It will also serve to increase the flow of customers from the small banks to the large banks as the small banks discontinue offering accounts with features such as debit cards because of the extremely high cost of compliance under the proposal. The issue of the ability of small banks to access the debit card network at a reasonable cost so as to continue their ability to compete with larger institutions needs to be explored. Changes to the proposal need to be made to protect the small bank's ability to continue offering debit cards. 3.Small banks look for ways to offer debit cards to their customers at a reduced cost so as to limit the loss they are taking on the program. One way they do this is by using the "daily limits" method to approve debit card transactions. This method is less expensive and does not require the bank to continuously send customer account balances out into the network for approving transactions. The bank supplies the card network with "daily limits" for each customer only one time at card issuance. Then transactions are

approved each day up to a preset "daily limit". The network "knows" the daily limit for each debit card, but not the account balance. The bank is required by contract with the card network to guarantee payment for all authorized transactions "approved" under the daily limits method without regard to the balance of the customer's account. The card network system can not tell if the transaction will overdraw the account at the time it approves the transaction. The bank does not know the charge is coming until it is already too late to refuse it. Therefore the "daily limit" method is a less expensive way for small banks to offer debit cards to customers. It further allows smaller banks with isolated computer systems, not connected to the network, to offer debit cards to their customers. This method of debit card transaction authorization clearly will not comply with the requirements of the proposal. The proposal exempts "paper based" transactions because of the card network's inability to know the account balance at transaction time. It should also exempt "daily limit" based transactions for the same reason. 4.At the time our bank decided to offer debit cards to our customers, we determined that sending account balances out into the network was too expensive for a bank our size. We would not have offered debit cards at that time if we had to send account balances to the network. The extra costs to send account balances come from 1. the card network provider including startup and ongoing monthly charges, 2. our core system provider, including additional software purchases and ongoing maintenance, 3. additional equipment to connect to the card network, 4. the cost of extra phone connections, 5. the additional costs, including labor, to send account balances out to the network on a daily basis, 6. the network security costs and the extra employee time to monitor and maintain security, 7. the costs to do the risk assessments, and 8. the extra auditing costs. To try to divide these costs over 450 cards would be prohibitive. We decided to use the "daily limit" method to authorize debit card transactions instead. The daily limit method is also expensive for a small portfolio of debit card customers, but it is much less expensive than the account balance method. However, it is an acceptable cost to offer the debit card product to our small number of transaction accounts using the "daily limit" method. Unless the proposed amendment to Regulation E is changed or withdrawn, it will destroy this method of debit card transaction approval used by small banks. This issue needs to be addressed to protect the profitability of small banks and to reduce the impact of this proposal. 5.The Federal Reserve has not yet done a cost analysis to discover the per-account costs for a small bank to implement the requirements to comply with the amendment to Regulation E. It should further recommend how to pay for these increased costs and if they can reasonably be passed on to the customer considering that small banks must compete in a market for deposit account customers. It is clear to me even without doing the study that the proposal will have disastrous results on small community banks. One possible way to limit the damage the proposal will have on small banks would be to allow them to discontinue offering debit cards to customers who opt-out or fail to opt-in. The problem is that the proposed regulation appears to prohibit any banks, including small banks, from offering a product that pays ATM and one time debit card transactions that cause overdrafts, only to customers who opt-in or do not-opt out of the overdrafts on that type transaction. It appears that it would be a violation to not offer them to those customers who either do not opt-in or else who opt-out while the bank is offering them to other customers. This would mean that the small banks currently using the "daily limit" method of transaction approval would have a big problem. They would have to either send account balances out into the network or else totally discontinue offering debit cards. This would be unfair to the small banks that have a small portfolio of debit cards. It would also be unfair to the debit card customers who would be willing to take a chance of an overdraft and overdraft fee, for

the privilege to continue having access to a debit card. This would put these small banks at an even larger competitive disadvantage. This is clearly an issue about small entity financial institutions. Something needs to be done to protect the interests of the small bank. The proposed regulation is silent about the "daily limit" issue and how it will affect the number of financial institutions using the "daily limit" method. It does not address the unfair burden it puts on small rural banks that service communities with small populations with debit cards using the "daily limit". It does not address the extremely high "per customer" costs that small banks will incur to comply with this proposal. There should be a safe harbor exemption for small banks. Small banks should be protected by the extreme competitive disadvantage created by the proposal. A full and complete study should be completed, as alluded to in the text of the proposal. Such study should at a minimum 1. Compare the per-account costs created by compliance with the proposal and how they unfairly effect small institutions; 2. discuss the consequences of small banks discontinuing offering certain accounts and account features including debit cards to customers because of the extremely high per-account cost of compliance with this regulation; and 3. review the needs of rural communities with small populations for debit cards. It should be noted that there is precedence for exempting small banks from certain regulations. One such example is the Home Mortgage Disclosure Act - HMDA, Regulation C. A similar exemption should be made for small banks with the amendment to Regulation E. One suggestion would be to exempt all banks under $100 million in assets. Another would be to exempt all banks under $100 million in assets that use the "daily limit" method to approve transactions instead of sending account balances out into the network. Another would be to exempt all banks under $100 million in assets with 5,000 or less transaction accounts. If no exemption is given to small banks, then at a minimum, the small banks currently using the "daily limit" method to authorize debit card transactions should be grandfathered into continuing to use that system under a Safe Harbor. Those small banks should be allowed to continue offering this product to all customers who are willing to incur an overdraft and overdraft fees. Those same small banks should then be allowed to discontinue offering debit cards to all other account holders who do not wish to receive an overdraft or overdraft fees from using the debit card. That way it would not disadvantage customers who want a debit card and who are willing to incur an overdraft fee from using it. It would only disadvantage some customers who are unwilling to incur a fee for an overdraft caused by the card at those small banks using the daily limit method. We are talking about a very small number of people, and that number would probably be statistically insignificant. It would still be a disadvantage to the small banks themselves because they already have a small number of debit cards and it would potentially reduce the size of their debit card customer portfolio. However, it would be preferable to not issuing debit cards at all, or taking away debit cards from customers who want them regardless. It would be much preferable to incurring huge upfront and ongoing monthly costs to fully comply with the proposed amendment to Regulation E on a small number of accounts. Safe Harbors and Exemptions need to be made for small banks. Privacy Concerns The proposed amendment to Regulation E does not address the various potential negative effects of putting additional customer information including account balances out on the network. It does not address the increased potential for unlawful use of such information by hackers and criminals who want this information for unlawful purposes. It does not address the potential for misuse of the account balance information by stores and vendors whose computers access the network for transaction approval. You can't pick up a newspaper without reading about another breach with loss of customer information. The proposed amendment to Regulation E would serve to increase the required amount of information "at

risk" on the card network to include account balances for every customer wishing to access the card network by using a debit card. There should be an option for customers to use debit cards without requiring them expose their account balance to various card networks. The proposal will take away that option. The proposed regulation appears to take away a method of transaction approval that does not force customers to allow their account balances to flow through the network. This appears to disadvantage certain customers who are more "conservative" with their account information and who do not want it released outside their bank. These customers may not trust the approved methods currently used to protect their account information when it is used on card networks. These customers may purposely choose to do business with banks that keep their account information on "isolated computers" not connected to the network. Yet these customers may want the convenience of a debit card. They are thankful for the daily limit method of transaction approval that allows them to have and use a debit card without sharing their account balance with the world. They may be concerned that such information could fall into the hands of criminals or else be used by stores and other vendors for purposes other than just transaction approval. Some customers may just feel that their account balances are private information that they only want their local bank to have. They may feel that the stores and other vendors they do business with only need to know that the transaction is approved and nothing more. The proposal appears to force all customers to allow their financial institutions to put their account balance information out into the network as the only way to approve debit card transactions and therefore the only way to allow them to have and use a debit card. The proposed regulation should discuss the needs of consumers who are concerned about account balance privacy and how the new required demands of this proposal outweigh their needs and wishes for that account balance privacy.