

From: Aliant Bank, Pamela Sweeney
Subject: Electronic Fund Transfers

Comments:

March 30, 2009

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20 and C Streets, NW
Washington, D.C.20051

Re: Docket Number R-01343
Proposed changes to Regulation E
Electronic Fund Transfer Act
74 Federal Register 28866

Dear Ms. Johnson,

Aliant Bank appreciates the opportunity to comment on the Federal Reserve Board's ("Board") proposed amendments to Regulation E, which implements the Electronic Fund Transfer Act ("EFTA"), published January 29, 2009 in the Federal Register. Aliant Bank is located in Alabama with 15 offices in the Birmingham, Montgomery, and AlexanderCityareas and has an asset size of \$970 million.

We agree with the Board that Regulation E is the appropriate regulation to address overdraft accommodation programs. To ensure that customers continue to have choices and access to a program the Board's testing showed customers expect and value, we recommend that the final rule permit banks latitude when providing an election not to cover debit card transactions in overdraft accommodation programs-permitting either an account level opt-out or a partial opt-out limited to debit card transactions that properly recognizes how debit cards are used and processed. In addition we urge the Board to allow banks to satisfy the opt-out requirement by offering alternative accounts that are reasonable or customary.

Our bank has always exercised some discretion to cover overdrafts for certain customers. Today we exercise that discretion using a safe and sound program that extends our ability to cover inadvertent overdrafts to a majority of our customers. Our overdraft accommodation practices are successful because they provide desirable back-up for customer payment decisions, and they are sustainable because people want the bank to recognize that when they inadvertently overdraw their account they can be trusted to make it right and are prepared to pay for the bank's accommodation.

I. The final rule should permit banks latitude when providing an election not to cover debit card transactions in an overdraft accommodation program.

Today, debit cards-also often called "check cards"-enable bank customers to make individual purchases and to pay bills separately or even on a recurring basis. By the same token, unexecuted debit card bill payments due to insufficient funds are as likely as bounced checks to incur merchant and payment recipient late fees. Therefore, banks should be allowed to offer

customers a single account-wide opt-out for overdraft accommodation that sensibly places the emphasis on customer account management, not payment method management-especially when the different devices are used interchangeably to conduct the same types of transactions. This emphasis on account level treatment puts overdraft accommodation on the same plane as other types of overdraft protection-e.g., linked deposit accounts, line of credit, or credit card back-up-all of which are applied across the account independent of the payment method used to conduct the transaction. Whether one overdraws into a line of credit by use of a debit card or by a check, the treatment is the same. Overdraft accommodation programs should be allowed to be on a similar all-in or all-out footing.

For our bank, debit card transactions (point-of-sale, bill pay and ATM withdrawals) may occur and at the time of the transaction, we may not know that the transaction will overdraw the account due to technological limitations. In addition, in point-of-sale transactions, merchants may not process transactions timely. From a processing stand-point, one-time bill payments are indistinguishable from any other one-time debit card transaction. This means that in order to offer the debit card and overdraft accommodation, the choice for our customers is to opt in or opt out of the coverage up front at the time they request a debit card for their account. The decision to opt out of the overdraft accommodation on debit card transactions would effectively be the equivalent of opting out of overdraft accommodation on all transactions.

II. The final rule should enable customers to "opt out" of overdraft accommodation and allow banks to offer alternative accounts as an option.

Automated overdraft accommodation is an innovation that benefits the vast majority of customers who are covered by it and value its presence when they inadvertently err in conducting their transactions. Therefore it warrants being applied in opt-out form so that the minority who choose to decline its benefit may act on that preference without disadvantaging the majority of customers or the payment system itself.

The goal and practice of our bank is to avoid bad customer experiences. Opt-out minimizes the negative experiences when there are insufficient funds to cover a transaction initiated by a customer. Both opt-in and opt-out will potentially result in an irritated call to the bank, but with opt-out, the result is more likely to turn positive: the transaction the consumer initiates and authorizes is processed and a fee possibly waived in order to keep the customer happy. In contrast, with opt-in, the transaction is denied and cannot be rectified after the fact. We allow opt-out on an account-wide basis today and find that our few customers that choose to opt out understand their rights.

We appreciate the Board's recognition that there are legitimate reasons for account terms or conditions to vary depending on whether the customer has or has not declined overdraft accommodation. A requirement that account alternatives be "customary" or "reasonable" would discourage terms that would render the right to decline overdraft accommodation meaningless or illusory.

III. Conclusion

We encourage the Board to recognize the evolving nature of electronic payments and the need to continue to place the responsibility for account management on the accountholder. Whether transactions settle in near real-time or by daily batch processing, the customer is still the only one who knows what

transactions they have conducted. We firmly believe that to best benefit the customer, banks must be allowed to implement their discretionary overdraft accommodation programs in opt-out form so that the minority who choose to decline its benefit may act on their preference without disadvantaging the majority of customers who strongly desire this protection.

Sincerely,

Pamela L. Sweeney
Aliant Bank