



March 24, 2009

Ms. Jennifer J. Johnson
Secretary
Federal Reserve Board
20th 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:

Thank you for allowing us the opportunity to comment on the Board's proposal to Regulation E. We appreciate the intent to protect consumers from unnecessary overdraft fees.

We offer an Overdraft Protection Service to customers. This is a discretionary service offered to customers once their account has been opened and held in good standing for 30 days. Our disclosures indicate the customer is provided the opportunity to opt-out at any time. Overall we believe our service has been well received and customers appreciate knowing their transaction will be accepted and embarrassing situations avoided.

We have concerns in regard to the proposal as outlined below:

1. The proposal intends to separate debit card and ATM transactions from other transactions. Our systems currently do not have the ability to separate these transactions. We are dependent upon our core processing system vendor for development of this ability. Our main concerns include:
 - a. The cost of development of the process;
 - b. The time implications of development and testing of the process. An appropriate implementation period, if this proposal would pass, should be at least 24 months.
2. Another concern is potential confusion and misunderstanding by consumers, such as:
 - a. Consumer opts-out of the process at account opening, not expecting to incur overdrafts; later placed in an emergency situation where they need to utilize their debit card to pay for a necessary item (i.e. fuel, vehicle repair, etc.). Utilization of debit cards as opposed to checks is becoming the more prevalent method of payment. Many consumers no longer carry checks; therefore their only mode of payment could potentially be a debit card in an emergency situation. The consumer may forget they "opted-out" of the payment of a debit card transaction that could result in an overdraft. This will cause them frustration and embarrassment.
 - b. Consumers may not understand they will continue to be charged an overdraft fee in the event they overdraw their account with the payment of an ACH or check item, or in the event they utilized their debit card during a timeframe when it appeared funds were available, but by the time the transaction posts other items have posted, resulting in an overdraft.

- c. Rather than imposing a partial opt out, we believe the customer should be allowed to either have access to the overdraft services for all types of transactions or to opt out of the overdraft service solution altogether. We believe the opt-out option will be more consistent with customer expectations as they will have the opportunity to receive the service unless they determine it does not meet their needs. With a partial opt out, as indicated above, we anticipate some consumers may forget they opted out of the service of having their debit card and ATM transactions paid if the transaction would result in an overdraft. We anticipate complaints from consumers in regard to this. In addition, as described above, we do not provide the ODP service to all new customers, and it is a discretionary service. By providing the consumer the ability to opt-out of certain transactions at account opening, they may mistakenly assume they have opted-in to the remaining portion of the service, when in reality they have not qualified for the ODP service yet.
3. We do not believe the proposed opt-out should also apply to recurring debit card and ACH transactions. Many times consumers establish these payments for utilities, insurance, and house payments. Consumers may not understand if they opt-out their item will not be paid, and they will be assessed an insufficient funds fee.
4. Some of the items within the proposal would create additional cost and burden to the financial institution, with no or limited benefit to the consumer. For example,
 - a. The increased documentation, recordkeeping, and processes that will need to be developed will create increased costs. We will be required to allocate additional resources to comply with this regulation, including increased audit costs.
 - b. We believe we do an adequate job of notifying consumers when their account is insufficient. A notice is sent every day an item is presented against insufficient funds. In addition to a notice sent every 7 days the account is in overdraft. Additional notices with periodic statements would create additional costs for the financial institution, and result in limited to no benefits to the consumer.

We appreciate the intent of the proposed regulation to protect consumers from incurring unnecessary overdraft fees. However, as outlined above, the proposal creates additional costs to the financial institution. More important is our concern that consumers will misinterpret the regulation and believe they will not incur any type of overdraft fee, when in reality if they conduct a transaction that causes their account to be in overdraft status, or conduct a transaction when they have insufficient funds in their account, they will continue to incur fees.

Sincerely,

Cynthia J. Tinkham
Assistant Vice President, Compliance Manager
Union Bank & Trust Co., Lincoln, NE