

From: Indiana Credit Union League, John McKenzie
Subject: Electronic Fund Transfers

Comments:

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, N.W.
Washington, D.C. 20551

Dear Ms. Johnson:

The Indiana Credit Union League (ICUL) appreciates the opportunity to provide comments on the Federal Reserve Board's (The Board) proposed amendments to Regulation E, Docket No. R-1343, as it relates to overdraft protection plans. The ICUL represents 186 of Indiana's 204 credit unions with those credit unions' memberships totaling more than two million members.

We appreciate the Board's efforts to create disclosure to improve consumers' awareness of overdraft protection plans (ODP). Credit unions are member-owned financial cooperatives that take pride in serving and educating their members/owners. With that said, there also needs to be a measure of balance.

What credit unions have been experiencing with overdraft protection plans is that an overwhelming majority of the qualified members like the service. The service helps avoid embarrassment and minimizes fees associated with a bounced check. Payment of an overdraft can reduce a member's cost because he/she does not have to pay the merchant's fee for the overdraft. Credit unions also have traditionally offered numerous services that allow for alternatives or help in preventing overdrafts. Examples are overdraft lines of credit, automatic overdraft transfers between deposit accounts, home banking and audio systems allowing for balance inquiry and balance transfers, and so on. Unfortunately, many members do not take advantage of alternatives. We can only surmise that this is because they don't anticipate having overdrafts.

ODP is even more valuable to consumers as their methods of access to deposit accounts proliferate through debit card, automated teller machine (ATM) and automated clearinghouse (ACH) transactions. In today's environment, many vendors are converting checks written into ACH transactions and processing those transactions electronically.

This increase in the types of debits that our institutions must process and post to consumers' accounts has made it more difficult for our member credit unions to identify transactions that may cause overdrafts.

The Board has identified a number of issues in the Proposed Rule along with proposed alternative approaches to addressing them. It is critical that the technological changes required to implement some of these proposals be recognized by the Board, and if these proposals are adopted, sufficient time be given to allow for programming to be completed by all of the various data processors utilized by the various financial institutions covered by this regulation. This can be a massive, expensive undertaking, ultimately increasing the cost to the consumer through higher fees to recoup these expenses. Based on feedback from our member institutions, a twelve month lead time to allow for the necessary programming would not be unreasonable. This

additional data processing burden could also result in financial institutions no longer offering this program, which would be to the detriment of many consumers who are strong advocates for overdraft protection programs.

First, the Board has proposed that consumers either be able to opt-out of any overdraft service that assesses a fee or charge for overdrafts due to ATM withdrawals or one-time debit card transactions, or that the consumer be required to opt-in to this service. Industry best practices currently provide consumers with the ability to opt-out of ODP services. It is our belief that the opt-out option will be more consistent with consumer expectations, and provides consumers the opportunity to receive the service unless they determine that it does not suit their needs. It also is consistent with the objectives of credit unions who strive to minimize the overall impact on their members that results from returning items unnecessarily.

The Board has also proposed to make available alternative approaches for consumers to differentiate between treatment of their ATM and debit card overdrafts and other overdrafts, including check overdrafts. The proposal would require financial institution data processing systems to be modified to differentiate between transaction types when overdrafts occur, and to identify specifically what type of transaction caused the overdraft. As a practical matter, for the vast majority of financial institutions, there are extraordinary technological difficulties in allowing the partial opt-out of ATM and debit card transactions while continuing to pay paper checks and ACH items. Since financial institutions are not allowed to return ATM and debit card transactions, this proposal could have unintended consequences of having financial institutions posting transactions by type in order to minimize the potential financial exposure they face based on the consumer's possible inadvertent decision to overdraw their account. Overdrafts often occurs as a result of the consumer not properly documenting ATM and debit card transactions and continuing to write checks based on an inaccurately recorded balance. It is not that uncommon for a financial institution to approve an ATM or debit card transaction and have the funds not be available in the account when that transaction actually settles.

Rather than imposing the partial opt-out, we believe that the consumer should be allowed to either have access to the overdraft services for all types of transactions or to opt-out of the overdraft services solution altogether. It is our belief that a "partial" opt-out is likely to result in confusion for consumers, and will result in the need for extensive explanations as to what types of transactions are or are not covered by a consumer's opt-out decision. A simple all or nothing solution will be much easier for consumers to understand.

In addition, the Board has proposed alternatives with respect to the pricing of consumer accounts where the consumer opts out of ODP options. Under one alternative, the Board requires that the terms of the accounts for consumers who opt-out be the same as the terms for accounts for consumers who do not opt-out, effectively giving the consumer an option to unilaterally change the price structure of the account relationship, while increasing the financial risk of the account to the financial institution. We strongly believe that financial institutions should be able to vary the terms of accounts that opt-out of overdraft fees to reflect the differences between consumer accounts where the consumer opts out and those where the consumer does not in order for

the institution to address the increased risk associated with these accounts. However, we believe that such differences should not be designed to coerce consumer choices, and that such pricing options would remove any financial incentive that depository institutions might have to attempt to artificially influence such choices.

The proposal asks several questions regarding the timing and formatting of opt-out notices. We believe that an opt-out notice at the time of account creation, along with an annual notice, as is done today, is sufficient. As for the allowable methods to opting out, we believe individuals and financial institutions should be given as much flexibility as possible (e.g., by mail, electronically or in person), but we do think that a formal action in writing or electronically should be required for a consumer to opt-out of the program. We also do not believe that it is necessary to separate the opt-out notice from all other disclosures as long as it is clearly displayed and effectively spells out the options available to the consumer. From a technology standpoint, it would be better to allow institutions to include the opt-out notice on the periodic statement if any overdraft fees are charged during the current cycle regardless of what type of transaction caused the overdraft, and should not be prohibited from including the notice on all periodic statements regardless of whether overdrafts occurred during the cycle.

The Board has also asked for feedback regarding opt-in vs. opt-out programs. Ultimately, we believe it should be up to the financial institution to determine whether to use an opt-in or opt-out approach for ODP programs, as long as they are consistent with their approach. Again, we believe that which ever method is selected, it should be an all or nothing option, and that differentiating between transaction types would require technological changes that would ultimately increase the cost of the program, potentially resulting in higher cost to the consumer. The individual consumer determines what method of payment to utilize for a given transaction, not the financial institution. Much of what is proposed shifts the burden of tracking transactions and the potential impact of overdrafts away from the consumer and onto the financial institution. Many consumers appreciate the availability of ODP service when an overdraft does occur and the resulting ability to complete the transaction.

In the proposal, the Board has recognized the fact that a consumer may have adequate funds on deposit to cover an ATM withdrawal or a one-time debit card transaction at the time that the transaction was authorized, does not mean that those funds will not be withdrawn or used to cover another transaction. Such a withdrawal would trigger the financial institution to impose a fee or charge for an overdraft resulting from the transaction regardless of the consumer's choice on whether or not to opt-out. These transactions are often authorized, only to have the funds disappear due to another transaction before the authorized transaction settles. At the same time, financial institutions do not want to reject these intervening transactions for operational reasons and because there is always a possibility that the authorized transaction will not be completed as authorized.

Specifically related to debit card transactions, the dollar amount of the hold placed for a debit card transaction is determined by the vendor processing the transaction and not the financial institution. It again is the vendor's system that determines how quickly a transaction settles, and therefore how long the hold is in place. Anything the Board can do on the merchant and processor side to speed up the settlement time would benefit both the consumer and the financial institution and has the potential to reduce the number of overdrafts

resulting from these holds.

Sincerely,

John McKenzie
IndianaCredit Union League