A recent report by the Center for Responsible Lending found that more than 50 million Americans overdrew their checking account at least once over a 12-month period, with 27 million accountholders incurring five or more overdrafts of nonsufficient funds (NSF) fees. The costs to consumers for overdrafts are significant, with many instances of fees exceeding the amount withdrawn. ATM and one-time debit card transactions have been a key driver behind the growth in the volume and cost of overdraft fees. Point-of-sale/debit overdraft transactions accounted for 41 percent of surveyed institutions’ NSF transactions, according to an FDIC study. These POS/debit NSF transactions had a median dollar value of $20, while the median overdraft charge assessed by banks was $27.

To address high overdraft costs, last month the Federal Reserve Board issued a final rule amending Regulation E, which will provide greater consumer protection by limiting the fees financial institutions can charge consumers for paying overdrafts on ATM and most debit card transactions.

The new rule essentially eliminates a common practice by financial institutions of automatically enrolling consumers in overdraft services. In fact, the aforementioned FDIC study found that 75 percent of banks automatically enrolled customers in automated overdraft programs. Starting on July 1, 2010, financial institutions will have to provide a notice explaining its overdraft service and fees for ATM and one-time debit card transactions before the consumer can accept it. The rule includes a model form that institutions may use to satisfy the notice requirement.

Public comments and consumer testing help inform final revisions
The Board’s final revisions to Regulation E were informed by comments received on its January 2009 Regulation E proposal and results of consumer testing. The Board received more than 20,700 comment letters (including 16,000 form letters) on its January 2009 proposal, the majority of which were submitted by individual consumers. In addition, the Board engaged a consultant to conduct consumer testing on a model disclosure notice that would effectively communicate information to consumers about how their overdrafts would be handled by the bank, what fees they could be potentially charged, and what choices they had related to overdrafts.

Consumer advocates, members of Congress, federal and state regulators, and the overwhelming majority of individual consumers who commented favored the opt-in provision because they felt that the harm to consumers from overdraft fees outweighed the benefits from permitting the payment of ATM and debit card overdrafts. In contrast, the majority of industry commenters contended that the opt-out approach was better because it provided consumers with the benefits of overdraft services with fewer disruptions to the consumer and bank operations.

In the end the Board determined that an opt-in approach to permitting overdrafts
was the best decision for consumers. This decision was based partly on the Board’s consumer testing, which indicated that consumers prefer to have transactions declined than incur fees for overdrafts.

**Certain types of transactions not covered by the rule**

Other types of transactions are not covered by the rule, including withdrawal by check, ACH, and recurring debit. The Board determined that with respect to checks, the payment of overdrafts may be preferable to having the check returned for NSF and paying the return fees charged by the bank and merchant. In addition, participants in the Board’s consumer testing generally indicated that they were more likely to pay important bills using checks, ACH, and recurring debits. Debit cards were primarily used on a one-time basis for discretionary purchases.

**Opting in is not requirement for other services**

Consumers who do not accept an institution’s overdraft service cannot be treated differently than those who opt in. For example, institutions are prohibited from declining payment of overdrafts of other types of transactions (e.g., checks and ACH) because the consumer did not opt in to that institution’s overdraft service for ATM and one-time debit card transactions. The institutions are also required to provide those customers with the same account terms, conditions, and features that they provide to consumers who do elect to take the service.

Overdraft fee income for banks and credit unions rose 35 percent in the last two years. Although not a panacea, the Board’s overdraft rules provide greater protection for consumers in navigating their personal finances. Ultimately, an informed consumer is the best consumer protection.

*By Jennifer Grier, senior payments risk analyst at the Atlanta Fed*

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