

Bureau of Consumer Financial Protection

[Docket No. CFPB—2011—0039]

Streamlining Inherited Regulations

Joint Comments by the Electronic Funds Transfer Association and the ATM Industry Association

March 2, 2012

The Electronic Funds Transfer Association (EFTA) and the ATM Industry Association (ATMIA) are providing this joint response to the request of the Consumer Financial Protection Bureau (the Bureau) for suggestions for streamlining regulations inherited by the Bureau from other Federal agencies. In Section V of the Request for Information (RFI), the Bureau provides specific examples of opportunities to revise inherited regulations. We are focusing our comments on the ATM fee disclosure issue listed in Section V of the RFI.

EFTA is the nation's leading inter-industry, non-profit trade association dedicated to the advancement of electronic payment systems and commerce. EFTA's diverse membership includes ATM networks, manufacturers, owners, and processors, card organizations, technology companies and financial institutions.

ATMIA is a global, non-profit trade association with over 2,500 members in 50 countries. Its mission is to promote ATM convenience for consumers, and growth and usage worldwide, while providing education to its members and promoting best practices among them.

The members of our respective associations are responsible for all aspects of the 14 billion ATM transactions that dispense over a trillion dollars to consumers in the United States each year.

One of the Bureau's inherited regulations under the Dodd-Frank Act is Regulation E, which implements the Electronic Fund Transfer Act (the Act). The Bureau accurately states in the RFI that the Act and Regulation E require an ATM operator that imposes a fee on any consumer for withdrawing funds or inquiring about balance information to disclose the amount of the fee it may charge. The Bureau also correctly notes the operator is required to provide detailed disclosures prior to payment of the fee on the ATM screen or by paper. In addition, the operator must post a sign on the actual ATM.

The Bureau poses the following questions regarding this dual fee notification requirement.

1. Should the requirement to post a sign be eliminated?
2. Are other disclosures of ATM fees adequate to inform consumers?

We shall address these questions separately.

Should the Requirement to Post a Sign Be Eliminated?

Yes. We believe the physical signage disclosure is obsolete and provides little (if any) value to the consumer in executing an ATM transaction. Years ago, the dual fee notification requirement did make sense for the consumer because many ATMs were not technically capable of giving an on-screen fee notification. This is no longer the case. Current ATM video screens deliver consumers the required information in a manner that is timely and more easily viewed. Consumers are fully notified by the on-screen fee disclosure notices and are given the opportunity to opt out of the transaction and not be charged.

Consumers possess the additional right to decline – via the on-screen disclosure – to pay the fee or complete the transaction by a notice saying, for example, “Do you wish to pay the fee and proceed with this transaction?” The consumer must key “YES” or the transaction is cancelled and the customer is not charged.

At issue for ATM owners/operators is a wave of lawsuits (at this writing over 500) from plaintiffs’ lawyers over alleged violations of Regulation E’s dual notification requirement. Please note that the aforementioned number of lawsuits does not include those that were settled prior to the filing of a legal complaint. Vandals or quick-buck artists remove or damage the signs on ATMs and then proceed with litigation against the owner/operator. The statute prescribes that in a successful class action, plaintiffs are entitled to recover “the lesser of \$500,000 or one percent centum of the net worth of the [ATM operator]”, plus attorneys’ fees and costs. Litigation costs are burdensome on all ATM owners/operators, especially on smaller financial institutions and independent ATM deployers. Even a successful defense is costly to ATM owners and operators.

Our memberships follow best practices and comply with applicable law when deploying or servicing ATMs so that consumers will have a consistent and convenient experience when using ATMs. For example, ATM owners/operators may instruct individuals replenishing cash at an ATM or branch personnel at bank branch ATMs to inspect the machine routinely, including a check for proper signage. But even the most vigilant owner/operator can be the target of frivolous litigation. And unchecked litigation in this area threatens to increase the costs of ATM transactions and restrict access by consumers to ATMs.

Authority to Amend Regulation E

We appreciate the Bureau’s desire to focus on identifying improvements it can make without Congressional action. We firmly believe that the Bureau, pursuant to its authority under Section 904(c) of the Act to make such adjustments and provide exceptions to the Act’s requirements to facilitate compliance, can eliminate this unnecessary and currently destructive requirement.

Consumer Impact of Eliminating the Dual Fee Notification Requirements

The Bureau asks commenters to describe and possibly quantify the potential benefits and costs to consumers if the regulation is changed. We assert that eliminating Regulation E’s dual fee notification requirement will have a *positive* effect on consumers, without any deleterious impact. As previously stated, current ATM video screen disclosures provide consumers the best and most timely fee information. Consumers are more than adequately protected by the use of

the interactive on-screen disclosure. Freeing ATM owners/operators from the costs associated with frivolous litigation will lower industry costs and insure continued convenient consumer access to ATMs.

EFTA and ATMIA appreciate this opportunity to comment to the Bureau on this topic of such importance to our members and to the electronic payments industry.

Sincerely,

A handwritten signature in black ink, appearing to read "Kurt Helwig". The signature is stylized with a large, circular initial "K" and a long, sweeping underline.

Kurt Helwig
President & CEO
Electronic Funds Transfer Association

A handwritten signature in black ink, appearing to read "Michael Lee". The signature is written in a cursive style with a prominent initial "M" and a long, sweeping underline.

Michael Lee
Chief Executive Officer
ATM Industry Association