

AMENDING THE ELECTRONIC FUND TRANSFER ACT TO LIMIT THE FEE
DISCLOSURE REQUIREMENT FOR AN AUTOMATIC TELLER MACHINE TO
THE SCREEN OF THAT MACHINE

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JUNE 29, 2012.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
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Mr. BACHUS, from the Committee on Financial Services,
submitted the following

R E P O R T

[To accompany H.R. 4367]

[Including cost estimate of the Congressional Budget Office]

The Committee on Financial Services, to whom was referred the bill (H.R. 4367) to amend the Electronic Fund Transfer Act to limit the fee disclosure requirement for an automatic teller machine to the screen of that machine, having considered the same, report favorably thereon without amendment and recommend that the bill do pass.

PURPOSE AND SUMMARY

H.R. 4367 amends Section 904 of the Consumer Credit Protection Act—commonly known as the “Electronic Fund Transfer Act” (EFTA)—by eliminating the requirement that fee notices be affixed to or displayed on automated teller machines (ATMs). The requirement is unnecessary because ATM operators are required to disclose fees on ATM screens and consumers have the right to decline the transaction without being charged. H.R. 4367 will protect ATM operators from frivolous lawsuits related to this fee notice requirement.

BACKGROUND AND NEED FOR LEGISLATION

The EFTA and its implementing rule, Regulation E, require ATM operators to display notices in two separate places notifying consumers that they might be charged fees for withdrawing cash from the ATM. The EFTA and Regulation E require that one of these notices must be posted in a prominent and conspicuous location on or at the ATM. The second notice must appear on the screen of the ATM, or on a paper notice issued from the machine, after the

transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

When the provision requiring physical ATM fee disclosures was enacted in 1999, consumers were less familiar with ATM technology. Some consumers may not have known that they might have to pay for using certain ATMs. Because ATM screens were smaller and had lower resolutions in 1999, Congress required ATM operators to display fee notices to consumers both on the ATM screen and in a prominent location on the machine itself. Today, ATMs are more prominent and better understood, screens are much larger, and they display sharper images. Also, unlike before, when many ATMs were not capable of providing the notice on the monitor, every ATM can notify consumers of possible fees today.

But even though the EFTA's physical disclosure requirement has become obsolete, the requirement exposes banks, credit unions and retailers to frivolous lawsuits and unnecessary costs. Under the EFTA, a consumer who uses an ATM that does not have a fee notice physically attached may recover statutory damages of between \$100 and \$1,000 for each transaction. The law also permits class action lawsuits to recover up to half a million dollars.¹ There is evidence that some plaintiffs are purposefully removing these superfluous notices from ATMs and then filing suits against ATM operators for failing to provide adequate notice on the machine.

Without this legislation, ATM operators may be forced to raise fees or reduce the number of ATMs. This legislation can help ensure consumers will receive appropriate notifications about ATM fees and still have convenient access to their funds.

HEARINGS

Throughout the 112th Congress, many witnesses have testified before the Subcommittee on Financial Institutions and Consumer Credit about problems associated with the physical ATM notice requirements contained in the EFTA.

On May 9, 2012, the Subcommittee held a hearing entitled "Rising Regulatory Compliance Costs and Their Impact on the Health of Small Financial Institutions." The following witnesses testified at the hearing:

- Mr. William Grant, Chairman, President and Chief Executive Officer, First United Bank & Trust
- Mr. Ed Templeton, President and Chief Executive Officer, SRP Federal Credit Union
- Mr. Samuel Vallandingham, Vice President and Chief Information Officer, First State Bank
- Mr. Terry West, President and Chief Executive Officer, VyStar Credit Union
- Mr. Adam Levitin, Professor of Law, Georgetown University Law Center
- Mr. Mike Calhoun, President, Center of Responsible Lending

On March 14, 2012, the Subcommittee held a field hearing in San Antonio, Texas, entitled "An Examination of the Challenges Facing Community Financial Institutions in Texas." The following witnesses testified at the hearing:

¹ 15 U.S.C. § 1693m(a).

- Mr. Robert Glenn, President and Chief Executive Officer, Air Force Federal Credit Union
- Mr. George Hansard, President, Pecos County State Bank
- Ms. Maria Martinez, President and Chief Executive Officer, Border Federal Credit Union
- Mr. Cliff McCauley, Executive Vice President, Correspondent Banking, Frost Bank
- Mr. Les Parker, Chairman, President and Chief Executive Officer, United Bank of El Paso de Norte
- Mr. Ignacio Urrabazo, Jr., President, Commerce Bank
- Ms. Janie Barrera, President and Chief Executive Officer, Accion Texas Inc.

On November 16, 2011, the Subcommittee held a legislative hearing entitled “H.R. 1697: The Communities First Act.” The following witnesses testified at the hearing:

- Mr. Salvatore Marranca, President and Chief Executive Officer, Cattaraugus County Bank on behalf of the Independent Community Bankers Association
- Mr. O. William Cheney, President and Chief Executive Officer, Credit Union National Association
- Mr. John A. Klebba, President and Chief Executive Officer, Legends Bank, on behalf of the Missouri Bankers Association
- Mr. Fred Becker, Jr., President and Chief Executive Officer, National Association of Federal Credit Unions
- Mr. Arthur E. Wilmarth, Jr., Professor of Law, George Washington University, Executive Director, Center for Law, Economics and Finance
- Mr. Damon Silvers, Director, Policy and Special Counsel, American Federation of Labor and Congress of Industrial Organizations
- Mr. Adam J. Levitin, Professor of Law, Georgetown University Law Center

COMMITTEE CONSIDERATION

The Committee on Financial Services met in open session on June 27, 2012, and ordered H.R. 4367 favorably reported to the House by voice vote.

COMMITTEE VOTES

Clause 3(b) of rule XIII of the Rules of the House of Representatives requires the Committee to list the record votes on the motion to report legislation and amendments thereto. There were no record votes taken on amendments or in connection with ordering H.R. 4367 reported to the House. A motion by Chairman Bachus to report the bill to the House with a favorable recommendation was agreed to by voice vote.

COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 3(c)(1) of rule XIII of the Rules of the House of Representatives, the Committee has held hearings and made findings that are reflected in this report.

PERFORMANCE GOALS AND OBJECTIVES

Pursuant to clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the Committee establishes the following performance related goals and objectives for this legislation:

The first objective of H.R. 4367 is to eliminate the requirement that fee notices be affixed to or displayed on ATMs. The requirement is unnecessary because ATM operators are required to disclose fees on an ATM screen and consumers have the right to decline the transaction without being charged. The second objective of H.R. 4367 is to protect ATM operators from frivolous lawsuits related to this notice requirement.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX
EXPENDITURES

In compliance with clause 3(c)(2) of rule XIII of the Rules of the House of Representatives, the Committee adopts as its own the estimate of new budget authority, entitlement authority, or tax expenditures or revenues contained in the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 3(c)(3) of rule XIII of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 402 of the Congressional Budget Act of 1974:

U.S. CONGRESS,
CONGRESSIONAL BUDGET OFFICE,
Washington, DC, June 29, 2012.

Hon. SPENCER BACHUS,
*Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 4367, a bill to amend the Electronic Fund Transfer Act to limit the fee disclosure requirement for an automatic teller machine to the screen of that machine.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Susan Willie.

Sincerely,

DOUGLAS W. ELMENDORF.

Enclosure.

H.R. 4367—A bill to amend the Electronic Fund Transfer Act to limit the fee disclosure requirement for an automatic teller machine to the screen of that machine

Enacting H.R. 4367 would affect direct spending and revenues; therefore, pay-as-you-go procedures apply. The bill would require the Consumer Financial Protection Bureau (CFPB) and the Federal Reserve Board to revise certain disclosure regulations. Changes in the CFPB's workload are reflected as increases or decreases in its mandatory appropriations, while changes in the workload of the Federal Reserve Board are reflected in the budget as changes in revenues. Based on information from those agencies, CBO estimates that revising those regulations would not have a significant effect on their workload and any change in direct spending (for the CFPB) or revenues (for the Federal Reserve Board) would be insignificant. Implementing H.R. 4367 would not affect spending subject to appropriation.

Under current law, operators of automatic teller machines (ATMs) are required to disclose fees charged to use the machine by posting a notice both on the equipment itself and on the computer screen of the ATM. H.R. 4367 would eliminate the requirement that the fee notice be displayed on the machine, allowing the disclosure requirement to be met if the notice appears only on the ATM screen.

H.R. 4367 contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act and would not affect the budgets of state, local, or tribal governments.

The CBO staff contacts for this estimate are Susan Willie (for the CFPB) and Barbara Edwards (for the Federal Reserve Board). The estimate was approved by Theresa Gullo, Deputy Assistant Director for Budget Analysis.

FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of the section 102(b)(3) of the Congressional Accountability Act.

EARMARK IDENTIFICATION

H.R. 4367 does not contain any congressional earmarks, limited tax benefits, or limited tariff benefits as defined in clause 9 of rule XXI.

SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

Section 1. Fee disclosure requirement

This section amends Section 904(d)(3)(B) of the Consumer Credit Protection Act (15 U.S.C. 1693b(d)(3)(B)) to eliminate the requirement that ATM operators post in a prominent and conspicuous location on or at the ATM a notice that a fee is imposed by the operator when consumers withdraw cash from the ATM.

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

CONSUMER CREDIT PROTECTION ACT

* * * * *

TITLE IX—ELECTRONIC FUND TRANSFERS

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§ 904. Regulations

(a) * * *

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(d) **APPLICABILITY TO SERVICE PROVIDERS OTHER THAN CERTAIN FINANCIAL INSTITUTIONS.—**

(1) * * *

* * * * *

(3) **FEE DISCLOSURES AT AUTOMATED TELLER MACHINES.—**

(A) * * *

(B) **NOTICE [REQUIREMENTS.—**

[(i) ON THE MACHINE.—The notice required under clause (i) of subparagraph (A) with respect to any fee described in such subparagraph shall be posted in a prominent and conspicuous location on or at the automated teller machine at which the electronic fund transfer is initiated by the consumer.

[(ii) ON THE SCREEN.—The notice required under clauses (i) and (ii)] *REQUIREMENT.—The notice required under clauses (i) and (ii) of subparagraph (A) with respect to any fee described in such subparagraph shall appear on the screen of the automated teller machine, or on a paper notice issued from such machine, after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction*, except that during the period beginning on the date of the enactment of the Gramm-Leach-Bliley Act and ending on December 31, 2004, this clause shall not apply to any automated teller machine that lacks the technical capability to disclose the notice on the screen or to issue a paper notice after

the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.】.

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