

Legislative, Regulatory and Case Law Developments Affecting Consumer Choice in Payments

Payment Innovation in the Wake of the Financial Crises
Federal Reserve Bank of Chicago
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Overview

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- Legislative, regulatory and case law developments
 - Eliminating choices
 - Forcing choices
 - Aligning time of choice with time of consequences
 - Providing information about past choices or consequences of future choices
 - A counterexample
- Conclusion

Eliminating choices: payroll cards in NY

- Payroll cards and New York Dept. of Labor Letter (10/29/09)
 - Places unprecedented requirements on payroll cards
 - Even with employee consent:
 - No account maintenance fees
 - No card replacement fees
 - No fees for withdrawing wages
 - Effectively kills product

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Eliminating choices: certain credit and gift cards

- Credit Card Accountability, Responsibility and Disclosure Act of 2009 (“CARD Act”)
 - Title III – Protection of Young Consumers
 - No more credit cards for 18, 19 and 20 year olds without parent’s signature
 - Title IV – Gift Cards
 - No more gift cards with service fees or dormancy fees (unless there is more than one year of inactivity) or that expire within five years

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Forcing choices: overdrafts on ATM and debit transactions

Model Consent Form for Overdraft Services

I do not want [BANK NAME] to authorize and pay overdrafts on my ATM and everyday debit card transactions.

I want [BANK NAME] to authorize and pay overdrafts on my ATM and everyday debit card transactions.

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Forcing choices: autodialed calls to cell phones

- FCC Notice of Proposed Rulemaking, FCC 10-18 (Jan. 20, 2010)
 - Limits the use of prerecorded messages and automatic telephone dialing systems with respect to cell phones
 - Presently, under FTC and FCC rules, giving someone your cell phone number is sufficient to establish consent
 - If rule finalized, companies will likely need separate, signed agreement expressly authorizing calls to the number listed in the consent

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Forcing choices: arbitration election

ARBITRATION ELECTION. You must sign one of the lines below to indicate whether you want the Arbitration Provision to part of this Agreement.

- YOU AGREE TO ARBITRATION and want the arbitration provision to apply. You will not have to pay a monthly fee if you agree to arbitration.
- YOU DO NOT AGREE TO ARBITRATION and do not want the arbitration provision to apply. You will have to pay a monthly fee of \$1 if you do not agree to arbitration.

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Forcing choices: members of the military

MILITARY BORROWER IDENTIFICATION STATEMENT

Federal law provides important protections to active duty members of the Armed Forces and their dependents. To ensure that these protections are provided to all eligible applicants, we require you to initial one of the following statements.

Please initial **one** statement below that applies to you:

- **YOU ARE NOT:** (1) a regular or reserve member of the Army, Navy, Marine Corps, Air Force, or Coast Guard, serving on active duty under a call or order that does not specify a period of 30 days or fewer (a "Military Member"); or (2) a dependent of a Military Member of the Armed Forces on active duty as described above (a "Military Dependant"), because you are not a Military Member's spouse or child under the age of eighteen years old and are not an individual for whom a Military Member provided more than one-half of your financial support for 180 days immediately preceding today's date.
- **YOU ARE** a Military Member or a Military Dependent.

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Aligning time of choice with time of consequences

- ATM fees
 - “By proceeding with this transaction, you agree to pay us a fee of \$2.00. Your financial institution may also charge you a fee for this transaction.”
- Overdraft fees for point of sale transactions
 - Dodd bill requires GAO to study the feasibility of warning customers when they use debit cards for purchases that trigger overdraft fees and giving them the chance to cancel the transaction
- Overdraft fees for ATM transactions
 - Maloney bill requires ATM machines operated by the institution that holds a consumer’s account to notify the consumer when a requested transaction may trigger an overdraft protection fee and permit the consumer to cancel the transaction and avoid the fee

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Providing information about past choices or consequences of choices

- Minimum payment warning on credit card statements
 - “If you make only the minimum payment each period, you will pay more in interest and it will take you longer to pay off your balance. For example, if you make no additional charges using this card and each month you pay only the minimum payment, you will pay off the balance shown in about X months and you will end up paying an estimated total of \$Y.”
- Year-to-date total information for credit card fees and interest
- Year-to-date total information for overdraft fees

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Counterexample

- Remotely-created checks (RCCs)
 - No federal laws governing method of authorization
 - Generally no state regulation except for UCC
 - No private rules akin to NACHA's rules for TEL entries governing method of authorization
 - RCC shenanigans are generating lots of litigation and very expensive settlements