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Automated Teller Machine (ATM) Fees: Legislation and Issues

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Summary

Congressional interest in the structure of fees associated with ATMs (automated teller machines) was increased as a result of a 1996 Visa U.S.A. and MasterCard International decision. Effective April 1, 1996, the two companies repealed their policies that banned surcharges at ATMs for the national networks they operate. An ATM surcharge refers to a fee charged directly to the consumer by an ATM owner or operator, not the institution of deposit. Until this action, the great majority of ATM fees were imposed by the account-holding institution. Pursuant to Federal Reserve Regulation E, these fees must be disclosed to the consumer when an account is opened and in periodic statements. The account-holding institution can charge its customer for using the institution's own ATMs. The deposit-holding institution can also charge its customer for using another institution's or a nonbank's ATM to access funds. The surcharge fee would be in addition to fees charged by the account-holding institution. Rescinding the ban and the imposition of surcharge fees has been controversial. Several bills to impose a federal ban on surcharges have been introduced since the ban was repealed but no further action was taken. Congress did include ATM fee disclosure provisions in P.L. 106-102. The issue of imposing a federal ban on surcharge fees has resurfaced in the 107th Congress. This report will be updated as warranted.

Background

The first ATMs introduced in the early 1970s were located on the premises of the depository financial institutions that owned them. Consumers could only use an ATM operated by their account-holding institution. As ATMs became more familiar and the volume of ATM transactions grew, ATM networks were developed. Networks provided a way to share the costs of ATM technology, and with them the number of off-premise machines grew. Regional and national networks allowed consumers to access their accounts using ATMs owned and operated by institutions or nonbanks with which they had no account relationship. Networks greatly expanded consumer use of ATMs. The networks presented an opportunity for smaller institutions to become involved by reducing their investment costs. Some institutions only issue ATM access cards and pay network fees to use terminals owned by others.

As the business of ATMs grew, so did the general trend towards imposing fees on transactions. In 1976, 5,900 machines had been installed and only 8% of the ATM bank operators charged transaction fees.[1] By 1982, 38,000 machines had been installed, and still only 16% of the ATM bank operators charged transaction fees.[2] By the mid-1990's the most common ATM fee levied was for transactions at ATMs owned and operated by others (referred to as "nonproprietary" or "foreign" ATMs). Arrangements for using "foreign" ATM's are usually made through regional or national network agreements. The account- holding institution has the option of charging its customers a fee for transactions initiated at foreign ATMs. By year-end 1995, there were 122,706 ATMs; 9.6% of banks charged their customers fees at the banks' own ATMs, and 85.3% charged for transactions at nonproprietary ATMs.[3] Traditionally, ATM surcharges were not imposed because they were prohibited by the networks.

Fees are also paid by the institutions who are network members. There are three basic categories of network fees. The network may charge a fee to be a member. The second fee category is a switch fee, this fee is paid by the account holding institution to the network organization for the costs of routing a transaction initiated by the cardholder. The third type of fee is an interchange fee, this fee is paid by the account holding institution to an ATM owner when the cardholder uses a nonproprietary ATM.

As consumer acceptance of ATM technology grew so did consumer demand for this convenient means of accessing their funds at locations away from their financial institution. Off-premise ATMs have been installed at increasingly remote locations such as airports, rail stations, hospitals, prime tourist locations, stadiums, and cruise ships. Operators of these terminals have found them to be more expensive to maintain for various reasons, including cyclical usage, higher rental costs for machine space, security needs, and upkeep of the terminal. According to them, a surcharge was needed to recoup investments and generate income from consumers using the services.[4] Visa and MasterCard responded to these developments by rescinding their ban on surcharges at ATMs operated by members of their networks. After the 1996 decision other networks and ATM owners followed suit and imposed surcharges.

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[1] Lipis, Allen H., Thomas R. Marschall, and Jan H. Linker. *Electronic Banking*. New York, John Wiley & Sons, 1985. pp. 8 and 13.

[2] Ibid., pp. 8 and 13.

[3] Philip Hudson, The American Bankers Association, and Governor Lawrence B. Lindsey, The Federal Reserve System, in statements before the Subcommittee on Financial Institutions and Consumer Credit of the House Banking and Financial Services Committee on April 24 and 25, 1996.

[4] See for, example, Cirrus System, INC., Statement Before the Financial Institutions and Consumer Credit Subcommittee on Banking and Financial Services, April 24, 1996, p.3; and Paul Allen, Visa U.S.A., Inc., Statement Before the Financial Institutions and Consumer Credit Subcommittee of the Committee on Banking and Financial Services, April 24, 1996, p.8.

A major concern behind the surcharge controversy is that this fee is in addition to the fee a consumer's own financial institution may impose for a foreign ATM transaction. The consumer can be required to pay twice for one transaction.

The Electronic Fund Transfer Act and the Federal Reserve's Regulation E, which implements the Act, contain disclosure provisions that affect ATM transactions. When a consumer opens an account or requests an ATM access card, all fees charged by the account-holding institution must be disclosed in writing. Information on fees must also appear on periodic statements. In addition, the consumer must be notified (in writing) 21 days in advance of any change in fees. Regulation E also requires disclosure of ATM surcharges for non-customer transactions at the ATM location by a sign posted at the terminal. As an alternative, the ATM operator has the option of displaying the fee on the terminal screen, permitting the consumer the option of canceling the transaction to avoid the fee. Surcharges must also be disclosed on the terminal receipt.

Both the Visa and MasterCard systems ("Cirrus" and "Plus") have disclosure rules of their own. Members of their networks must, if they impose surcharges on non-customers, both post a sign at the ATM with the surcharge structure displayed and display the surcharge on screen through interactive prompts that give the customer the option of canceling the transaction.

The Practice of Surcharging

The Board of Governors of the Federal Reserve System and the General Accounting Office (GAO) have conducted surveys for the purpose of quantifying the practice of surcharging by banks and thrifts. The Federal reserve publishes an annual report to Congress on fees and services at depository institutions. The report includes information on ATM fees. The GAO has conducted two surveys on ATM deployment and surcharge fees in response to Congressional requests for this information.

The most recent Federal Reserve report[5] is based on two surveys conducted in June of 1998 and 1999. The surveys collected data from approximately 700 banks and 350 savings associations (thrifts). The surveys found about 87% of the banks and 75% of the thrifts offered ATM services in 1999, levels that did not significantly change from 1998. In 1999 about 83% of the banks that owned ATMs imposed surcharges compared to about 78% in 1998. About 70% of the thrifts imposed surcharges in 1999 compared to 57% in 1998. In 1999, the average fee at banks was about \$1.26 up from \$1.20 in 1998. The increase at thrifts was smaller, from \$1.15 in 1998 to \$1.18 in 1999.

The GAO has published two reports[6] on ATM deployment and surcharge fees in response to congressional requests for information. The reports are based on survey data

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[5] Board of Governors of the Federal Reserve System. *Annual Report to the Congress on Retail Fees and Services of Depository Institutions*. Washington, July 2000. 162p.

[6] U.S. General Accounting Office. *Automated Teller Machines: Banks Reported That Use of Surcharge Fees Has Increased.* Washington, May 1997. 24p. GAO/GGD-97-90 and *Automated Teller Machines: Survey Results Indicate Banks' Surcharge Fees Have Increased*. Washington, April 1998. 28p. GAO/GGD-98-101.

collected in February 1997 and February 1998. Both surveys were limited by time and resource constraints. Information was not collected from either credit unions or nonbanks.

In 1997 data was collected from a total of 246 randomly selected banks and thrifts. The 1998 survey was expanded to 501 institutions. Based on the 1997 and 1998 surveys, GAO estimated approximately 70% of all U.S. banks and thrifts operate ATMs. The survey results did indicate an increase of about 13% in the total number of ATMs deployed between February 1997 and February 1998. In addition, about 66% of this growth was attributed to ATMs located off-premise.

GAO estimated about 39% of the institutions operating ATMs imposed a surcharge in 1997 and in 1998 that number increased to about 64%. In 1997 the average surcharge fee was $1.17 while the most common charge was $1.00. In 1998 the average fee grew to $1.27 and the most common charge rose to $1.50.

The GAO also obtained information on withdrawal transactions per ATM. The survey results indicated the average number of withdrawal by account holders decreased by 15% from January 1997 to January 1998. During the same time period the average number of non-customer withdrawals declined by about 24%.

The data collected by the GAO and the Federal Reserve indicates the surcharge fee quickly became commonplace after the ban was lifted in 1996. Also the amount of the surcharge fee is rising. GAO survey results indicate that some ATM cardholders are avoiding surcharges by not using foreign ATMs. At the same time, the increase in the number of off-premise ATM installations indicates consumer demand for access to funds at remote locations. The growth in off-premise installations also indicates that these terminals must be profitable to their owners.

Ongoing Policy Issues

Oversight hearings provided Congress with a forum to frame the issues and monitor the impact of surcharges. Major concerns voiced at those hearings are summarized below.

Opponents state the surcharge is part of the generally unwarranted trend of more numerous and higher fees and service charges being imposed by depository financial institutions on their customers. The surcharge is considered particularly onerous because the consumer is paying twice for one ATM transaction (any fee for use of a foreign ATM, and the surcharge).

The surcharge is viewed as a competitive disadvantage by some smaller banks and thrifts. These institutions fear their customers will shift accounts to larger institutions with broad-based ATM ownership to avoid fees. The up-front cost of ATMs is a major reason why many of these institutions joined networks.

Opponents also argue low-income consumers will be disproportionately affected by the new fees. They argue that consumers living in neighborhoods poorly served by financial institutions may have few options to avoid using an ATM with a surcharge. In addition, consumer advocates believe an ATM user should be made aware of all possible ATM fees at the terminal location.

Proponents of allowing surcharge fees view access charges as part of the evolution of the ATM business. Surcharges defray the costs of providing ATM services in low-volume areas and in expensive off-premise locations. In addition, ATMs now provide many more services than the original cash dispensers, and upgrading technology has resulted in increased costs. Proponents state that rescinding the surcharge ban does not mean that the new fees will be imposed by all owners on all ATM terminals; the marketplace will have a great influence on these decisions.

Proponents also argue that the current Regulation E disclosure provisions for surcharges and other ATM fees provide consumers with all the information they need. Noting that deposit-taking institutions have a large variety of account arrangements with their customers that can result in a number of different fee structures, they contend that it would be an overwhelming task for the terminal owner or operator to provide information on all the alternatives offered by account-holding institutions.

Legislation and Regulation

The 1996 policy change that permitted surcharges at ATMs was controversial and the fees continue to draw criticism. Legislation introduced in the 104th, 105th, and 106th Congresses to ban surcharges did not pass. P.L.106-102 enacted on Nov.12,1999, does not reinstate the ban but the statute addresses disclosure of surcharge fees.

P.L. 106-102 requires disclosure of surcharges imposed by ATM owners on a non-customer ATM user. ATM operators assessing surcharges have to post a notice on the machine stating that a fee will be charged. In addition, a notice stating the amount of the surcharge will appear on the screen, when the consumer initiates the transaction, giving the consumer the option to proceed with the transaction after receiving the notice. A paper notice issued from the ATM machine may be used in lieu of the screen posting if it is issued before the consumer is irrevocably committed to the transaction. In addition, the Act requires that a notice of the possibility of surcharge fees must be provided to the consumer when an ATM card is issued.

On March 1, 2001, the Board of Governors of the Federal Reserve System published a final rule (which amends Regulation E) to implement the ATM disclosure provisions contained in P.L.106-102. While the rule was effective immediately, mandatory compliance was delayed until October 1, 2001 to allow ATM operators time to make needed system changes.

The Act also required the GAO to conduct a study and report to Congress on the feasibility of requiring a notice of all possible fees at ATM terminals. In July 2000, the GAO issued a report exploring the feasibility of providing real-time (the moment at which the cardholder performs an ATM transaction) disclosure of all possible fees.[7] Industry representatives interviewed for the report agreed real-time disclosure was technically

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[7] U.S. General Accounting Office. *Automated Teller Machines: Issues Related to Real-time Fee Disclosure.* Washington, July 2000. 39p. GAO/GGD-00-224.

feasible but would require extensive restructuring by the industry. They stated the time and costs associated with the types of changes required could also be extensive. The costs of implementing real-time disclosure could lead to higher fees.

The issue of surcharge fees has resurfaced in the 107th Congress. Legislation, H.R. 1047, addressing ATM fees was introduced on March 15, 2001. This bill does not ban surcharge fees altogether but disallows surcharging at ATMs that display paid advertising. The intent is to prevent consumers from paying a surcharge for using an ATM that generates ad revenue to cover costs. No further action has been taken on this legislation.