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United States Government Accountability Office
Washington, DC 20548

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December 7, 2009

The Honorable Christopher J. Dodd
Chairman
The Honorable Richard C. Shelby
Ranking Minority Member
Committee on Banking, Housing, and Urban Affairs
United States Senate

The Honorable Barney Frank
Chairman
The Honorable Spencer Bachus
Ranking Minority Member
Committee on Financial Services
House of Representatives

Subject: *Federal Reserve System: Electronic Fund Transfers*

Pursuant to section 801(a)(2)(A) of title 5, United States Code, this is our report on a major rule promulgated by the Board of Governors of the Federal Reserve System (Board), entitled “Electronic Fund Transfers” (Docket No. R-1343). We received the rule on November 23, 2009. It was published in the *Federal Register* as a “final rule; official staff commentary” on November 17, 2009, with an effective date of January 19, 2010, and a mandatory compliance date of July 1, 2010. 74 Fed. Reg. 59,033.

The final rule amends Regulation E, which implements the Electronic Fund Transfer Act (EFTA), and the official staff commentary to the regulation, which interprets the requirements of Regulation E. The final rule limits the ability of a financial institution to assess an overdraft fee for paying automated teller machine (ATM) and one-time debit card transactions that overdraw a consumer’s account, unless the consumer affirmatively consents, or opts in, to the institution’s payment of overdrafts for these transactions.

Specifically, for accounts opened prior to July 1, 2010, the financial institution may not assess any fees or charges on a consumer’s account on or after August 15, 2010, for paying an ATM or one-time debit card transaction pursuant to the overdraft service, unless the institution has complied with the opt-in notice requirement and

obtains the consumer's affirmative consent. For accounts opened on or after July 1, 2010, the financial institution must comply with the opt-in notice requirement and obtain the consumer's affirmative consent before the institution assesses any fee or charge on the consumer's account for paying an ATM or one-time debit card transaction pursuant to the institution's overdraft service. The Board believes that this time frame best balances the significant consumer protection interests addressed by this rule against industry's need to make systems changes to comply with the final rule. According to the Board, smaller institutions in particular need time to come into compliance because they have fewer resources to devote to the substantial systems changes required by the final rule. Without sufficient time to implement the substantive requirements of the final rule, institutions may cease offering overdraft services for all transaction types, including the check transactions that consumers have indicated they would prefer to be paid.

Enclosed is our assessment of the Federal Reserve's compliance with the procedural steps required by section 801(a)(1)(B)(i) through (iv) of title 5 with respect to the rule. Our review of the procedural steps taken indicates that the Federal Reserve complied with the applicable requirements.

If you have any questions about this report or wish to contact GAO officials responsible for the evaluation work relating to the subject matter of the rule, please contact Shirley A. Jones, Assistant General Counsel, at (202) 512-8156.

signed

Robert J. Cramer
Managing Associate General Counsel

Enclosure

cc: Linda Robertson
Assistant to the Board of
Governors of the Federal Reserve

REPORT UNDER 5 U.S.C. § 801(a)(2)(A) ON A MAJOR RULE
ISSUED BY THE
FEDERAL RESERVE SYSTEM
ENTITLED
"ELECTRONIC FUND TRANSFERS"
(DOCKET NO. R-1343)

(i) Cost-benefit analysis

The Board assessed the potential costs and benefits and determined that the benefits justify the costs. The Board notes a number of benefits in the final rule. Specifically, the Board states that, on balance, an opt-in rule benefits consumers with respect to ATM and one-time debit card transactions because the cost to consumers of overdraft fees assessed in connection with ATM and debit card overdrafts is significant. Additionally, the Board notes an opt-in rule that is limited to ATM and one-time debit card transactions may result in fewer adverse consequences for consumers than a rule applicable to a broader range of transactions. According to the Board, available research indicates that the large majority of overdraft fees are paid by a small portion of consumers who frequently overdraw their accounts. The Board also notes that many consumers may not be aware that they are able to overdraft at an ATM or point of service (POS). Finally, the Board indicates the opt-in approach is consistent with consumer preference. The Board notes the cost of an opt-in approach may result in the denial of some transactions which would otherwise have settled into good funds, but that the overall impact of the final rule on the number of declined transactions is difficult to quantify. The Board estimates the total annual one-time burden for respondents to be 38,560 hours. The Board estimates the annual burden for Regulation E would increase by 466,618 hours, from 59,902 hours to 526,520 hours, including an increase of 428,058 hours to consumers reviewing and responding to an opt-in notice and an increase of 98,462 hours for Federal Reserve-regulated financial institutions that are required to comply with Regulation E. The final rule will impose a one-time increase in the estimated annual burden for financial institutions subject to Regulation E by 550,400 hours to 1,403,459 hours.

(ii) Agency actions relevant to the Regulatory Flexibility Act, 5 U.S.C. §§ 603-605, 607, and 609

The Board states that the final rule will have a significant economic impact on a substantial number of small entities. Accordingly, the Board prepared a final regulatory flexibility analysis for the final amendments to Regulation E.

(iii) Agency actions relevant to sections 202-205 of the Unfunded Mandates Reform Act of 1995, 2 U.S.C. §§ 1532-1535

The Unfunded Mandate Reform Act does not apply to independent regulatory agencies, such as the Federal Reserve System.

(iv) Other relevant information or requirements under acts and executive orders

Administrative Procedure Act, 5 U.S.C. §§ 551 et seq.

The final regulations were issued using the notice and comment procedures found at 5 U.S.C. § 553. On January 29, 2009, the Board published a notice of proposed rulemaking for electronic funds transfers. 74 Fed. Reg. 5,214. The Board received over 20,700 timely items of correspondence from the public that are addressed in the final rule. 74 Fed. Reg. 59,035.

Paperwork Reduction Act, 44 U.S.C. §§ 3501-3520

The Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget (OMB) and was assigned OMB Control Number 7100-0200.

Statutory authorization for the rule

The Board states the final rule is authorized by sections 904(a) and 904(c) of the EFTA. 15 U.S.C.A. § 1693b(a), (c).

Executive Order No. 12,866 (Regulatory Planning and Review)

The Executive Order does not apply to independent regulatory agencies, such as the Federal Reserve System.

Executive Order No. 13,132 (Federalism)

The Executive Order does not apply to independent regulatory agencies, such as the Federal Reserve System.