July 13, 2010

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

The Honorable Barney Frank  
Chairman  
The Honorable Spencer Bachus  
Ranking 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 Federal Reserve System (the Board), entitled “Electronic Fund Transfers” (Docket No. R-1343). We received the rule on June 28, 2010. It was published in the Federal Register as a final rule on June 4, 2010. 75 Fed. Reg. 31,665.

On November 17, 2009, the Board published a final rule under Regulation E, which implements the Electronic Fund Transfer Act (EFTA), limiting the ability of financial institutions to assess overdraft fees 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 those transactions, which has a mandatory compliance date of July 1, 2010. See 74 Fed. Reg. 59,033. Since the November 2009 publication of the Regulation E final rule, institutions have requested clarification of particular aspects of the rule and further guidance regarding compliance with the rule. In addition, certain technical corrections are necessary. This final rule is amending Regulation E and the official staff commentary to clarify certain aspects of the Regulation E final rule.
The final rule has an effective date of July 6, 2010. The Congressional Review Act (CRA) requires a 60-day delay in the effective date of a major rule from the date of publication in the Federal Register or receipt of the rule by Congress, whichever is later. 5 U.S.C. § 801(a)(3)(A). The rule was published in the Federal Register on June 4, 2010, but we did not receive the rule until June 28, 2010. Therefore, the final rule does not have the required 60-day delay in its effective date.

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 System
(i) Cost-benefit analysis

In its current submission to the Comptroller General, the Board did not include an analysis of the final regulations. The Board analyzed the cost and benefits of the final regulations in the November 2009 publication. See 74. Fed. Reg. 59,033.

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

The Board states that because the final amendments are clarifications and do not alter the substance of the analyses and determinations accompanying the Regulation E final rule, the Board continues to rely on those analyses and determinations for purposes of this rulemaking. See 74 Fed. Reg. 59,050–59,052.

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

As an independent regulatory agency, the Board is not subject to title II of the Unfunded Mandates Reform Act of 1995.

(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 March 1, 2010, the Board published a proposal to amend Regulation E and the official staff commentary. See 75 Fed. Reg. 9120. The Board received approximately 90 comments on the proposal, including from financial institutions and their trade associations, as well as consumer groups. The final rule adopts the proposal largely as proposed, with additional commentary.

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

The Board states that because the final amendments are clarifications and do not alter the substance of the analyses and determinations accompanying the
Regulation E final rule, the Board continues to rely on those analyses and

Statutory authorization for the rule

The Board states that the EFTA, 15 U.S.C. § 1693 et seq., is implemented by the
Board’s Regulation E (12 C.F.R. part 205).

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

As an independent regulatory agency, the Board is not subject to review the
requirements of the order.

Executive Order No. 13,132 (Federalism)

As an independent regulatory agency, the Board is not subject to review the
requirements of the order.