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United States Government Accountability Office
Washington, DC 20548

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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

ENCLOSURE

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

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 determinations for purposes of this rulemaking. *See* 74 Fed. Reg. 59,050–59,052.

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.