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United States Government Accountability Office
Washington, DC 20548

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October 28, 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 (Board), entitled “Electronic Fund Transfers” (Docket No. R-1377). It was published in the *Federal Register* as an interim final rule; request for comments on August 17, 2010. 75 Fed. Reg. 50,683. We received the rule on October 15, 2010.

The interim final rule amends Regulation E, which implements the Electronic Fund Transfer Act (EFTA), and the official staff commentary to the regulation, in order to implement legislation that modifies the effective date of certain disclosure requirements in the gift card provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 (Credit Card Act). Congress recently passed legislation that amends section 403 of the Credit Card Act to delay the effective date of certain gift card disclosure provisions for gift certificates, store gift cards, and general-use prepaid cards produced prior to April 1, 2010 (Gift Card Amendment). The Gift Card Amendment delays the effective date of the disclosure requirements in EFTA sections 915(b)(3) and (c)(2)(B) (as amended by the Credit Card Act) in order to permit the sale of existing card stock through January 31, 2011. Nonetheless, the substantive fee and expiration date protections provided by the Credit Card Act continue to apply to those certificates or cards sold to a consumer on or after August 22, 2010. The interim final rule revises the final gift card rule, published in April 2010, in order to implement the Gift Card Amendment.

As mandated by the Credit Card Act, the final rule has an effective of August 22, 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). However, notwithstanding the 60-day delay requirement, any rule that an agency for good cause finds that notice and public comment procedures are impractical, unnecessary, or contrary to the public interest is to take effect when the promulgating agency so determines. §§ 553(d)(3), 808(2). Accordingly, the Board believes it has good cause for making the interim final rule effective on August 22, 2010, and to issue this rule as an interim final rule based on its determination that, given the impending August 22, 2010, effective date of the Credit Card Act and the final gift card rule, it would be impracticable to issue a proposal for public comment followed by a final rule. However, the Board intends to consider comments and may issue final clarifications and amendments to the extent appropriate. Comments were accepted on or before September 16, 2010.

Enclosed is our assessment of the Board'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 Board 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
Federal Reserve System

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-1377)

(i) Cost-benefit analysis

In its submission to the Comptroller General, the Board did not include a cost-benefit analysis.

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

The Board states that the Regulatory Flexibility Act (5 U.S.C. § 601 *et seq.*) requires an initial and final regulatory flexibility analysis only when 5 U.S.C. § 553 requires publication of a notice of proposed rulemaking. *See* 5 U.S.C. § 603(a), 604(a). The Board notes that it has found good cause under 5 U.S.C. § 553(b)(3)(B) to conclude that, with respect to this interim final rule, publication of a notice of proposed rulemaking is impracticable. Accordingly, the Board notes that it is not required to perform an initial or final regulatory flexibility analysis. Nonetheless, in order to solicit additional information from small entities subject to the interim final rule, the Board is publishing an interim final regulatory flexibility analysis. Based on its analysis, the Board believes that the interim final rule is not likely to have a significant economic impact on a substantial number of small entities.

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

The Unfunded Mandates 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 Board found good cause under 5 U.S.C. § 553(b) of the Administrative Procedure Act (APA) to waive notice of proposed rulemaking. The Board explains that the gift card provisions of the Credit Card Act are effective August 22, 2010, and the Gift Card Amendment delays this effective date only with respect to certain specified disclosure provisions. According to the Board, the time period remaining before August 22, 2010, does not provide sufficient time to prepare proposed regulations

and publish them in the *Federal Register*; provide a reasonable period for interested parties to review the proposal and prepare comments; analyze the comments submitted; and prepare the final regulations and publish them in the *Federal Register*. Therefore, the Board finds that, with respect to this rulemaking, there is good cause to conclude that providing notice and an opportunity to comment within the timeframe mandated by Congress is impracticable. Even if the Board were able to technically comply with the notice-and-comment process required by § 553 within the allotted time, the Board believes that such a process would not comply with the purpose of the APA because interested parties would not have sufficient time to prepare well-researched comments and the Board would not have time to conduct a meaningful review and analysis of those comments. Furthermore, the Board notes that a notice-and-comment process would leave no time between the issuance of final regulations and August 22, 2010, for affected parties to adjust their procedures in order to comply. In contrast, the Board believes the adoption of an interim final rule enables the Board to provide guidance in advance of the effective date and provides affected parties with more time to comply with the statutory provisions.

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

The Board reviewed the interim final rule under the authority delegated to the Board by the Office of Management and Budget (OMB) and was assigned OMB control number is 7100-0200. The collection of information that is subject to the Paperwork Reduction Act by this interim final rule is found in 12 CFR part 205.

Statutory authorization for the rule

The Board states that section 401(d)(1) of the Credit Card Act directs the Board to prescribe rules to carry out the gift card requirements of the Credit Card Act. 15 U.S.C. § 1693b.

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.