



*MBNA America Bank, N.A.  
1100 North King Street  
Wilmington, Delaware 19884-0127*

*By Electronic Mail*

November 18, 2004

Jennifer J. Johnson  
Secretary  
Board of Governors of the Federal Reserve System  
20<sup>th</sup> Street and Constitution Avenue, N.W.  
Washington, D.C. 20551

Re: Proposed Rule and Official Staff Interpretation of Regulation E  
Docket No. R-1210

Dear Ms. Johnson:

This comment letter is submitted on behalf of MBNA America Bank, N.A. ("MBNA") in response to the notice of proposed rulemaking ("Proposed Rule") and request for public comment by the Federal Reserve Board ("Board"), published in the Federal Register on September 17, 2004. The Proposed Rule would revise Regulation E, which implements the Electronic Fund Transfer Act ("EFTA"), and the official staff commentary of Regulation E ("Commentary"), to address payroll cards and electronic check conversion services. In addition, the Proposed Rule includes revisions and clarifications relating to: stop payment and revocation of authorizations for preauthorized electronic fund transfers ("EFTs"); replacement of existing debit cards with multiple renewal or substitute cards; telephonic authorizations for preauthorized EFTs; requirements for automated teller machine ("ATM") notices; error resolution procedures; and notices of transfers varying in amount. MBNA appreciates the opportunity to comment on the Proposed Rule and will address only certain of the proposed revisions.

*Payroll Cards and the Effect of Other Regulations*

The Board seeks comment on whether Regulation E coverage should be determined by whether a payroll card account holds consumer funds that qualify as eligible "deposits" for purposes of Section 3(l) of the Federal Deposit Insurance Act (the "FDI Act"). The Federal Deposit Insurance Commission currently is considering

circumstances under which funds underlying stored value cards would be considered “deposits”.

MBNA believes that the question whether Regulation E applies to payroll cards should be independent from the issues of (a) whether consumer funds would qualify for deposit insurance coverage under the FDI Act, and (b) whether other statutes and regulations that apply to “deposits” (e.g., reserve requirements and funds availability) should also apply to payroll card and other prepaid card accounts. MBNA believes that each of these regulations and statutes should be examined and evaluated separately to determine whether and to what extent such might apply to payroll card accounts and other prepaid card accounts, as the purposes and consumer protection objectives of each are different. For example, Regulation E provides important consumer protections including disclosure of terms and conditions, limitation of liability and error resolution rights. Similarly, the purpose of deposit insurance is to protect a deposit account holder in the event of a bank failure. The question of Regulation E coverage should not be linked to the determination that the underlying funds qualify as deposits under the FDI Act.

### *Preauthorized Transfers*

Under the Proposed Rule the Board would eliminate from the Commentary the provision that a tape recording of a phone conversation with a consumer is insufficient for the purpose of obtaining that consumer’s authorization for preauthorized debits (comment 10(b)-(3)).

MBNA fully supports the deletion of this provision and is pleased the Board acknowledges that authorization for preauthorized transfers may be obtained by telephone, provided the requirements of the E-Sign Act are satisfied. This proposed change provides MBNA with important flexibility in obtaining consumer authorization for preauthorized transfers in a manner that satisfies consumer expectations and ensures adequate consumer protection.

### *Notice of Varying Amount*

MBNA requests reconsideration of the application of Section 205.10(d) to the preauthorized transfer of interest from a consumer Certificate of Deposit Account to an account owned by the consumer and held at a different financial institution.

MBNA's Certificate of Deposit Account (“CD”) allows a consumer to elect to have interest transferred each monthly account cycle to a deposit account owned by the consumer at another financial institution. The interest transfer feature is activated when MBNA receives a written authorization from the consumer in accordance with Section 205.10(a). MBNA’s deposit account cycles are based on calendar days, and the amount of interest credited to the CD account can vary based on the length of the month. This means the amount of interest transferred, via automated clearinghouse, can vary monthly. Currently, MBNA complies with Section 205.10(d) and provides the notice of varying

amount, since the interest is being debited and electronically transferred from the CD account on a recurring basis. Due to system limitations, MBNA cannot easily comply with the alternative method of providing notice if the amount of the transfer falls outside of a specified range.

MBNA acknowledges that the language in Section 907(b) of the EFTA expressly covers CD interest transfers, but believes that the consumer protection goal of the statute and regulation is not served in the context of a CD account having preauthorized interest transfers. MBNA understands that the aim of the notification is to ensure consumers are alerted to upcoming transfers that are different from previous amounts, in order to avoid the situation where the consumer might not have enough funds in the account to cover other checks or transactions. Since the CD account is not a transaction account, and the transfer involves accrued interest only, the purpose of the notification requirement is not achieved. Moreover, MBNA has found that the notice increases customer confusion particularly when customers have multiple CD deposit accounts.

MBNA currently sends approximately 17,000 notices of varying amount each month, at an annual cost of approximately \$86,000. As MBNA's consumer deposit base continues to grow, so do costs associated with meeting this notice requirement. Since the legislative objective is not served in the context of CD preauthorized interest transfers, and the costs associated with continuing to send the notice are increasing, MBNA respectfully requests that the Board consider excluding CD interest ACH transfers from the scope of Section 205.10(d).

MBNA appreciates the opportunity to comment on the Proposed Rule. If the Board has any questions about these comments, or if we may otherwise be of assistance in connection with this matter, please do not hesitate to contact me at (302) 432-0716.

Sincerely,

MBNA America Bank, N.A.

By /s/ Joseph R. Crouse  
Joseph R. Crouse  
Legislative Counsel