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Via Electronic Mail Delivery

Ms. Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551
regs.comments@federalreserve.gov
Attention: Docket No. R-1210

Re: Comments on the Proposed Amendment to Regulation E (Federal Reserve Board Docket No. R-1210).

Dear Ms. Johnson:

This letter is submitted to the Board of Governors of the Federal Reserve System on behalf of Compass Bancshares, Inc., a financial holding company (“Compass”), in response to the Board’s request for comment on the proposed amendment to Regulation E relating to electronic check conversion, payroll cards, preauthorized transfers, error resolution, and other matters. Compass appreciates the Board’s time and effort in preparing the Proposed Amendment and is grateful for the opportunity to provide comments on these important topics.

Compass Bancshares, Inc. is a \$28 billion Southwestern financial holding company which operates 376 full-service banking centers including 137 in Texas, 89 in Alabama, 71 in Arizona, 41 in Florida, 28 in Colorado and 10 in New Mexico. Compass is among the top 30 U.S. bank holding companies by asset size and ranks among the top earners of its size based on return on equity.

Comments

A. Overview

Compass Bank supports the proposal overall. It is a logical extension of the Financial Modernization Act (Title Five) that defines the term “Financial Institution” based upon what a company does, not based upon the presence or absence of a specific charter. The revised commentary eliminates some areas of confusion and provides additional flexibility to banks, merchants, employers, and consumers. The risks of expanding regulation to merchants, payees, and other 3rd parties are small compared to the benefits of the principle that all entities doing the same business should fall under generally federally mandated parallel rule sets.

B. Section 205.3(b). Electronic Check Conversion.

Provision: A customer authorizes an EFT if notice that the transaction will be processed as an EFT is provided to the consumer and the consumer completes the transaction.

Comment: Compass supports this provision in general. However, the repeat notice requirement does create issues for financial institutions processing mortgage payments when customers use monthly coupon books. In this specific instance, a single notification distributed in the coupon book should be sufficient.

Provision: Electronic debits to collect NSF/return check fees are authorized if the consumer is given notice that the fee will be collected electronically and the consumer proceeds with the transaction.

Comment: Compass supports this provision.

Provision: Notices must indicate that the check will not be returned by consumer’s bank (unless check is returned to the consumer at the point of sale).

Comment: Compass supports this provision. However, Compass would like to request safe harbor language for this provision.

Provision: Notice must indicate that when the transaction is processed as an EFT, funds may be debited from the customer’s account quickly.

Comment: Compass does **not** support this provision. Customers need to exercise fiscal responsibility and understand (without being told at every possible opportunity) that it is not an acceptable practice to write a check without having sufficient funds to cover the transaction. In

today's environment of increasing electronification (e.g. Check 21), the term "quickly" could be ambiguous and subject to multiple interpretations.

Specific Request: The Proposal solicits comment on whether payees should be required to obtain a consumer's *written* authorization to convert checks at the point of sale.

Comment: Compass' position is that consumers are adequately protected by the "clear and conspicuous" notice requirement; requiring written authorization provides no significant additional protection, and would be inconvenient for consumers and burdensome for merchants. This is an area where NACHA's rules are sufficient and therefore should define the requirement.

Specific Request: The Proposal solicits comment on whether notices stating that a consumer's check used to initiate an ECK *may* be processed as a paper transaction must specify the circumstances in which the check would be processed as a paper transaction.

Comment: Compass' position is that merchants and payees should be able to use their discretion in processing checks in the most efficient manner. Specific circumstances governing how best to process a check are subject to frequent change and disclosing the specific circumstances would provide no significant benefit to consumers.

C. Section 205.2(b)(3). Payroll Cards.

Provision: Payroll Cards would be subject to Regulation E.

Comment: Compass supports this proposal. However, Compass is concerned that this direction might expand to include other stored value cards, which in many ways are simply a substitute for cash. It is Compass' position that any future extension of Regulation E to cover such transactions would be excessive. It is also important to note that many payroll cards are branded by one of the card associations or EFT networks and are therefore already subject to numerous rules. Among these rules, the card associations include the "zero liability of losses" provision that provides adequate protection for consumers. Compass feels these are important points to consider, but they do not preclude Compass from supporting the proposal overall.

Provision: The Proposal defines Payroll Cards as: "Accounts directly or indirectly established by an employer on behalf of a consumer to which electronic fund transfers of the consumer's wages, salary, or other employee compensation are made on a recurring basis."

Comment: Compass agrees with this definition.

Provision: Both the employer and the financial institution would qualify as "financial institutions" with respect to the payroll card.

Comment: It is Compass' position that employers *should not* be treated as financial institutions with respect to the payroll card account. Third parties issuing payroll card accounts or providing related electronic fund transfer services *should* qualify as financial institutions with respect to the payroll card account.

Provision: Regulation E requires that a periodic statement be provided for each monthly cycle in which an electronic fund transfer occurs, or a least quarterly if there are no electronic fund transfers.

Comment: It is Compass' position that Regulation E should permit alternatives to periodic statements for payroll cards, such as making account balance and transaction information available through automated telephone inquiry, ATMs, and the Internet. A requirement for periodic statements will add to the costs associated with payroll card accounts, making them a less attractive product for consumers, employers, and banks. A paper statement mailed to the account holder is not necessarily the most effective method for providing information to payroll cardholders, many of whom are mobile and change their residence on a frequent basis. In addition, cardholders many times go to the ATM and withdraw the entire amount of their paycheck in cash. A current provision of Regulation E *for government benefit accounts* permits alternatives to the periodic statement, if information is made available through telephone inquiry, at ATMs, or upon written or oral request.

Specific Request: The Proposal solicits comment on whether Regulation E coverage should be determined based on whether the funds on the payroll card are considered eligible deposits by the FDIC.

Comment: Regulation E coverage *should not* be used to determine whether the funds on a payroll card are considered eligible deposits by the FDIC.

Specific Request: The Proposal solicits comment on whether six months following adoption of the revised rules is sufficient time for mandatory compliance.

Comment: Compass believes that financial institutions should be given twelve months following adoption to comply, to permit any necessary changes to be incorporated into disclosures and communicated to consumers in regularly scheduled mailings.

D. Section 205.5. Issuance of Access Devices.

Provision: Revised commentary would allow a financial institution to issue a supplemental access device in conjunction with the issuance of a renewal or substitute access device and would require that these replacement devices must be unvalidated.

Comment: Compass supports this provision.

E. Section 205.10. Preauthorized Transfers.

Provision: Existing commentary that tape-recorded telephone conversations authorizing transfers are not sufficient will be withdrawn to eliminate inconsistencies with E-Sign Act.

Comment: Compass supports this action. However, Compass has some concern about possible fraud implications. Rather than simply eliminating the conflicting language, the Fed should consider language on telephone conversations that stipulates that either an existing relationship must be in place or that the call was initiated by the consumer.

Provision: Financial institutions may disclose a range of varying transfer amounts (instead of a separate notice for each varying transfer) when the transfers are between accounts of the same consumer at different financial institutions.

Comment: Compass supports this action.

Provision: Financial institutions may use a third party to block pre-authorized transfers, made through a debit card network or other real-time system, in response to a consumer's oral or written stop payment request.

Comment: Compass supports this action.

F. Section 205.11. Error Resolution.

Provision: Revised commentary stipulates that financial institutions need not comply with error resolution requirements in instances where consumer does not provide notice of error on a timely basis (i.e., within sixty days of date that periodic statement was mailed), as long as the institution has complied with the terms of Section 205.6, *Liability of Consumer for Unauthorized Transfers*.

Comment: Compass supports this provision.

Provision: The Proposal revises commentary related to a financial institution's error resolution responsibilities, to expand the type of internal records that must be investigated; banks must investigate any "relevant" information available in its own records.

Comment: It is Compass' position that this requirement would potentially place an undue burden on financial institutions to search for all possible "relevant" information within its records. The proposed language is both vague and open-ended.

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Provision: Revised commentary governing credit card or debit card numbers provided by telephone or on-line for recurring transfers protects merchants in cases where the card type specified by the consumer is incorrect (such as when a consumer indicates a credit card, but the card is actually a debit card, or vice versa), as long as the merchant asks the consumer to indicate the type of card.

Comment: Compass supports this provision.

G. Section 205.16. Disclosures at Automated Teller Machines.

Provision: Disclosures at ATM machines may indicate that “A Fee *May* be Imposed” rather than “A Fee *Will* be Imposed” if there are circumstances in which a fee would not be charged.

Comment: Compass supports this language.

We appreciate this opportunity to comment on the Proposed Amendment to Regulation E. If you have any questions concerning this letter or if you would like us to provide any additional information, please do not hesitate to contact me at (205) 297-4736.

Very truly yours,

/s/ Todd C. Reynolds

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Compass Bank

cc: Joseph B. Cartee
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Compass Bank