

November 19, 2004

Ms. Jennifer J. Johnson, Secretary
Board of Governors of the Federal Reserve System
20th and C Streets, N.W.
Washington DC 20551

Re: Comments to Proposed Amendments To Regulation E

Docket No.: R-1210

Dear Ms. Johnson:

KeyBank NA welcomes the opportunity to comment on the proposed changes to Reg. E and commends the Board for taking the initiative to submit these changes to public comment. As electronic funds transfers become an even more significant part of the payments system and innovation creates such far-reaching changes in how consumers conduct financial transactions, we feel it is critical that regulations keep up with changes in the marketplace. We believe that the changes requested will benefit consumers, billers and financial institutions. Increased consumer awareness and knowledge of are an important component in assuring the countries continued confidence in our payments system, and we think these regulatory changes are also a significant step in that direction. Please consider our specific comments in regard to the regulatory proposal below and feel free to contact us if further clarification is desired.

About KeyCorp

Cleveland-based KeyCorp is one of the nation's largest bank-based financial services companies, with assets of approximately \$84 billion. Key companies provide investment management, retail and commercial banking, consumer finance, and investment banking products and services to individuals and companies throughout the United States and, for certain businesses, internationally. The company's businesses deliver their products and services through branches and offices and a network of approximately 2,200 ATMs.

Regulation E Proposed Changes

General Comment

We agree that the Echecks, (POP, ARC, etc.) should be included in the coverage of Regulation E. We also feel that Reg. E coverage should be expanded to cover merchants and other payee's who initiate EFT's for the limited purpose of ensuring that appropriate, conspicuous and consistent notification is given to consumers.

Comment Section 205.2 Definitions Payroll Card

There is a need to have a clear and distinct definition of Payroll Cards. The definition should include that the card is issued by the employer for the sole purpose of payroll distribution and the card should be so labeled. Further, include that this definition preempts current and future state law definitions in order to achieve uniformity for purposes of Regulation E compliance.

Proposal

To identify payroll cards as an account requiring the delivery of notices and periodic statements.

Comment

The use of payroll cards is to assist and reach the unbanked individuals and those without permanent addresses. The payroll card allows the seasonal, temporary and migrant employee the flexibility and convenience of direct payment without the necessity of a banking relationship. Due to the potential mobile nature of these persons there is a potential problem regarding the delivery of periodic statements.

We recommend that alternative delivery mechanisms be allowed for these payroll card individuals, such as:

- Account information available through a toll free voice response system.

- Delivery of the information in care of the employer for forward delivery to the card holder.

- Available through the internet.

- Available in an abbreviated format at ATM's.

These alternative methods will alleviate the requirements for the delivery of the statement and allow the unbanked the convenience and reliability of receiving pay in a simple and acceptable environment.

Comment Section 205.3(b) Electronic Check Conversion

Proposed

Proposed revisions to the regulation would address its coverage of electronic check conversion services and those providing the services. The proposed rule would provide additional guidance regarding the rights, liabilities, and responsibilities of parties engaged in ECK transactions. Section **205.3(b)(2)** would be added to include the guidance on Regulation E coverage of ECK transactions currently contained in the commentary, with some revisions. Where a check, draft, or similar paper instrument is used as a source of

information to initiate a one-time EFT from the consumer's account, that transaction is covered by Regulation E, and is deemed not to be a transfer originated by check. (See § 205.3(b)(2)(i) and comment 3(b)(2)-1.)

Comment

To ensure that there is no confusion that checks converted to an image for electronic processing and forward presentment as a check are not considered an electronic check governed under this proposal. The regulation should make it clear and distinct that these image checks are not part of this regulation and should continue to be governed and included in the checking regulations, Regulation J and CC as well as the UCC.

Proposed

Comment is solicited on whether six months is sufficient time following adoption of the final rule to enable financial institutions to revise their disclosures to comply with the rule.

Comment

The proposed six month implementation is not sufficient for most of actions implicit in the proposed changes in the regulations. One year would be better given the complexity and scope of most of the changes. The reason that one year would be a more appropriate time line is that the proposal to allow banks the flexibility to clear items which began as checks in the most efficient manner (via ACH, paper check, or substitute check) will require all banks to ensure that anti-fraud and stop payment systems are fully integrated regardless of the final payment method.

Proposed

Comment is solicited on whether merchants or other payees should be required to obtain the consumer's written signed authorization to convert checks received at POS.

Comment

To protect both the consumer and the financial institution holding the account, some form of signed written authorization at POS is necessary. This writing could be a separate signed authorization or the merchant could retain an image of the consumer's signed, completed check as evidence of authorization. This will provide an evidentiary trail to resolve any consumer dispute. However, the regulations should specifically allow that a completed and signed check is sufficient authorization only if it is supplemented by appropriate notification via clear and conspicuous signage that the payment by check constitutes authorization to convert that check to an EFT.

The question is more complex in the event of re-presentment of dishonored checks as EFT's and the charging of fees associated with that dishonorment. Requiring signatures for this type of transaction would be an undue burden on the merchant, since the vast majority of checks will be properly paid and an explicit signed authorization would be mostly superfluous. If the merchant maintains clear and conspicuous notice via signage, this should suffice for this type of electronic transaction. The proposed regulations should

be clear on both model language for this type of transaction, and on what constitutes 'clear and conspicuous' placement of signage.

Proposed

That initiators of ECK transactions have the flexibility to process transactions that were originated as checks as either EFT's, original checks or substitute checks with appropriate notification.

Comment

In order to create true efficiency in the payment system, maximum flexibility should be maintained by participants in the system. In many cases the optimal payment method may not be an ECK, but instead a substitute check or an original check. We strongly support this proposal with the caveat that consumer notification is explicit as proposed in the model language clauses that are included. As noted in our comments under the time needed to implement these changes, we also feel that this portion of the revised regulations should have a one year lead in time to allow banks to prepare appropriate systems and effectively educate consumers.

Additionally, we firmly believe that if an ECK is unsuccessful because of MICR line related or other issues, that the completion of the transaction via original check or substitute check would be the best alternative. Remotely created demand drafts are currently required to complete these types of transactions and this instrument is clearly the least desirable alternative for our consumers. These drafts cannot easily be verified by the paying bank, may not provide sufficient information to our consumers and are frequently the instrument of choice for fraudulent activities. Authorizing the use of original checks will be a great step in minimizing the prevalence of these drafts. It is our understanding that the Fed will be seeking comment in the near future on proposals to reduce the problems associated with these drafts, but changing the language in Reg. E would be an important step in that direction. We believe that this revision should have an effective date as soon as practical to better protect our customers.

Proposed

Model Disclosure Clauses to be provided to consumers with their periodic bills or at the POS to ensure uniformity of notice to consumers and to provide safe harbor to billers and financial institutions if used appropriately.

Comment

We feel the model disclosure clauses in the proposal are clear, concise and effective and that all of the versions purposed should be retained.

Proposed

Consumer disclosures from financial institutions would be modified to include electronic funds transfers initiated from check information.

Comment

We have no issue with making this change to our disclosures and feel the change is sufficiently clear and concise. However, we feel that six months is too short of a time given the logistics needed to ensure that these changes are distributed to our existing customer base. We would propose one year as a more realistic time to make these changes.

KeyBank appreciates the opportunity to comment on these important changes to Regulation E and its Commentary. We are happy to provide additional information.

Sincerely,

Rosemary J. Klee
Senior Vice President and Manager
Deposit Compliance