

VIA E-MAIL

U.S. Bank
5065 Wooster Pike
Cincinnati, OH 45226

November 19, 2004

Jennifer J. Johnson
Secretary
Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue, NW
Washington, DC 20551

Re: Docket No. R-1210

Dear Ms. Johnson:

U.S. Bank appreciates the opportunity to comment in response to the Federal Reserve Board's proposal to amend Regulation E and the official staff commentary, implementing the Electronic Fund Transfer Act. Specifically the Board has requested comment on the need for, and the potential benefit of, requiring additional disclosures to consumers prior to electronic check conversion. The Board also seeks comment on the application of Regulation E to payroll cards, as well as procedures for resolving errors and whether the proposed timeframes for compliance are sufficient to enable financial institutions to implement the necessary changes to comply with the regulation.

U.S. Bancorp, the parent company of U.S. Bank, with \$193 billion in assets, is the 6th largest financial services holding company in the United States. The company operates 2,346 banking offices and 4,621 ATMs, and provides over 12 million customers a comprehensive line of banking, brokerage, insurance, investment, mortgage, trust and payment services products.

While there is much in the proposal that we commend, including the provisions extending the protections of Regulation E to payroll card products, and the creation of model notification language for check conversion processing, we believe there may be a better way to address certain other aspects of the proposal. At a minimum, these aspects may require additional study.

Electronic Check Conversion Disclosures

We support the Board's proposal to extend the requirements of Regulation E to merchants and other payees for the limited purpose of obtaining a consumer's authorization to convert a check into an EFT. Merchants and other payees participate directly in check conversion and are in the best position to provide consistent and clear notice to consumers about these transactions.

The Board has proposed a new disclosure regarding electronic check conversion, requiring merchants and payees to provide a notice to the consumer that states, “When a check is used to initiate an electronic funds transfer, the funds may be debited from the consumer’s account quickly.”

Our concern with this proposed disclosure is that it may be misleading to the consumer. This disclosure implies that funds will be debited more quickly for EFT payments as compared to checks that are not converted. There are a variety of circumstances that may come into account during these types of transactions and therefore this may not be true in all cases. For example, many merchants process EFT payments off-line at the point of sale and the debit does not take place immediately. In addition, the enactment of Check 21 will promote and facilitate the conversion of checks to images by allowing banks to create substitute checks which may result in faster check collection. A check may clear the same day it was presented for payment while an EFT payment may not settle until the next day. Based upon this new environment, a check that is converted to an EFT may actually take longer to debit the account.

The draft regulation contemplates the provision of a notice to obtain consumer authorization, but the Board has requested comment on whether merchants that obtain authorization at the point of sale should be required to obtain the consumer’s signature on the authorization. Provided the merchant has displayed clear and conspicuous signage regarding check conversion, the additional signature requirement could be unnecessarily burdensome and confusing to the consumer and may have the effect of deterring the consumer from the transaction thereby losing the protections afforded under Regulation E.

The Board has also proposed that a notice authorizing an electronic check conversion would need to be provided for each transaction. In the case of Accounts Receivable Conversion (“ARC”) transactions, the suggested language would require a financial institution to send a notice each month to customers who make payments with coupon books. For the purposes of cost efficiency and overall convenience, we would suggest that the Board consider allowing a one-time notice limited solely to coupon books. This could take the form of a detailed disclosure sent to the customer that could be attached (by adhesive) to the cover of the coupon book itself. Notwithstanding the significant cost savings of this approach, a one-time notice to the consumer would affirm that the entire coupon book itself is, in effect, a single statement.

Payroll Cards and the Definition of Financial Institution

We are supportive of the Board’s proposal to bring payroll cards within the scope of Regulation E. In fact, U.S. Bank currently extends the protections of the Regulation to consumers who use these products. The proposed amendment will ensure that all financial institutions provide the same safeguards.

The Board is also proposing to expand the definition of “financial institution” to include one or more parties involved in offering payroll card accounts. This expanded definition would subject employers and payroll card service providers to the requirements of Regulation E.

We believe that consumers will be adequately protected based upon the disclosure requirements imposed upon banks that offer these products. Expansion of the term “financial institution” to include non-bank parties involved in offering payroll card accounts will only result in the allocation of responsibilities by agreement and does not appear to offer the consumer any greater protection.

We would request that the Board clarify whether parties that do not have a direct relationship with the consumer, such as third party processors and service providers acting on behalf of either the employer and/or the bank, should be included within the definition of “financial institution”.

Statements for Payroll Card Accounts

Regulation E requires that a periodic statement be provided for each monthly cycle in which an electronic fund transfer occurs, or at least quarterly, if there are no electronic fund transfers. However, mailing a paper statement is not necessarily the most effective method of providing information to payroll cardholders. The payroll card product satisfies an important need, which is creating a mechanism for access to the primary financial assets for Americans who are “unbanked”. Many recipients of payroll cards are more mobile than holders of deposit accounts, which makes the mailing of periodic statements a less reliable means of conveying information to the payroll cardholder than the deposit account holder. Furthermore, the unbanked community includes seasonal employees or more transient employees that are less likely to have an address at which they are able to receive mail and periodic statements. A requirement for periodic statements will add to the overall costs associated with payroll cards, making them a less attractive product for employers to offer to their employees.

To resolve this, account balance and transaction information could be made available to payroll cardholders through automated telephone inquiry, ATMs and the Internet. This would ensure that the consumer had access to account information in the most efficient and cost-effective manner, thereby preserving the value of these cards.

We believe that entities offering payroll cards should be subject to rules similar to those contained in section 205.15 of Regulation E for administering government-issued or government-sponsored electronic benefit cards. In this regard, section 205.15 exempts government agencies from the periodic statement related requirements, provided the agencies make balance information available to consumers.

Procedures for Resolving Errors

The Board proposes to revise the official staff commentary related to a financial institution's error resolution responsibilities. The new interpretation will expand the scope of internal records that must be investigated, requiring a bank to examine all "relevant" information available within the institution.

We would ask the Board to provide additional guidance on this point, as the proposed language may be overly broad.

ATM Signage

The Proposed Rule would amend the Commentary to clarify the current Regulation E provision for notices posted on or at an ATM. More specifically, the Proposed Rule would clarify that if there are circumstances in which an ATM fee will not be imposed, the ATM operator may disclose in the notice posted on or at the ATM that a fee "may" be imposed. We strongly support the proposed clarification, which is consistent with historical practice and the Board's longstanding position that compliance with Reg E can be satisfied in multiple ways.

We believe that the Proposed Rule is fully consistent with section 904(d)(3)(A) and (B) of the Electronic Fund Transfer Act (EFTA), which provides that an ATM operator, who charges a consumer for electronic fund transfer services, must provide notice to the consumer indicating "that a fee is imposed" for the service in a prominent and conspicuous location on or at the ATM and through an ATM on-screen disclosure accompanied by the fee amount. We believe that it is important to clarify that the current regulatory language of section 205.16(b)(1) of Regulation E should not be read to require signage stating that a fee "will" be charged. Historically, ATM operators who do not universally charge consumers for EFT services have used language indicating that a fee "may" be imposed, which is consistent with EFTA section 904(d)(3)(A) and serves to alert consumers to the more consumer-specific on-screen disclosures provided after card insertion. The more detailed on-screen notice, which uses the explicit language of Regulation E to notify consumers of the precise fee amount, if any, ensures that a consumer receives adequate disclosure before he or she proceeds with an ATM transaction.

Further, we urge the Board to make clear in the supplemental information accompanying the final rule that the proposed revisions merely clarify the current ATM fee disclosure requirements. The failure to make such a clarification could lead to the revisions being viewed as only prospective in nature. We urge the Board to clarify that ATM signs stating that "a fee will be imposed" and "a fee may be imposed," both comply and have complied with section 205.16(b)(1) of Regulation E.

Implementation Timeframe

We request the Board consider allowing twelve months from the adoption of the final rule to enable financial institutions sufficient time to implement changes. Financial institutions require reasonable notice in order to develop and distribute disclosures to

customers, review and update error resolution procedures to ensure sufficient investigation is occurring, and post ATM notices.

Thank you for the opportunity to comment on these issues and we appreciate your consideration of our views. . If you have any questions about the issues raised in this letter, please contact the undersigned at 513-979-1350.

Sincerely,

Linda Garner
Senior Vice President
Enterprise Payments
U.S. Bank