

**Overview of Public Comments for the
Recordkeeping and Disclosure Requirements in Connection with
Regulation E (Electronic Fund Transfer Act)
(OMB No. 7100-0200)(Docket No. R-1343)**

Summary

The Board of Governors of the Federal Reserve System, under delegated authority from the Office of Management and Budget (OMB), proposes to revise, without extension, the recordkeeping and disclosure requirements of Regulation E, which implements the Electronic Fund Transfer Act (EFTA).¹ The Federal Reserve is required to renew these requirements every three years pursuant to the Paperwork Reduction Act of 1995 (PRA), which classifies regulations, such as Regulation E, as “required information collections.”²

On January 29, 2009, a notice of proposed rulemaking was published in the *Federal Register* for public comment (74 FR 5212). The comment period expired March 30, 2009. The Federal Reserve received over 20,500 comments on the proposed revisions; however, no comments specifically addressed current or proposed paperwork burden estimates. The majority of the comments were submitted by individual consumers. The remaining comments were submitted by banks, savings associations, credit unions, industry trade associations, industry processors and vendors, consumer advocates, members of Congress, other federal banking agencies, state and local governments and regulators, and others. On November 17, 2009, a notice of final rulemaking was published in the *Federal Register*; the rule is effective January 19, 2010, with a mandatory compliance date of July 1, 2010, (74 FR 59033).

Overview of Public Comments

The Federal Reserve received over 20,700 comment letters on the proposal, including approximately 16,000 form letters. The majority of the comment letters were submitted by individual consumers. The remaining comment letters were submitted by banks, savings associations, credit unions, industry trade associations, industry processors and vendors, consumer advocates, members of Congress, other federal banking agencies, state and local governments and regulators, and others. Many commenters reiterated comments made in response to the 2008 FTC Act proposal.

Some consumer advocates, federal and state regulators, and others generally expressed support for the more narrowly tailored approach under Regulation E. However, some other consumer advocates urged the Federal Reserve to reconsider using its authority under the FTC Act to provide, at a minimum, the right to opt-out of the payment of overdrafts with respect to checks, ACH, and recurring debit card transactions.

Industry commenters generally supported the Federal Reserve’s decision to issue a proposal

¹ The EFTA was enacted in 1978 and is codified at 15 USC § 1693 *et seq.* Regulation E is located at 12 C.F.R. Part 205.

² 44 U.S.C. § 3501 *et seq.* The collection of information under Regulation E is assigned OMB No. 7100-0200 for purposes of the PRA.

under Regulation E, rather than pursuant to the FTC Act. Many industry commenters argued that consumers derive substantial benefits from overdraft services, and expressed concern about the operational feasibility of limiting the opt-out, or opt-in, right only to overdrafts paid in connection with ATM withdrawals and one-time debit card transactions.

In response to the proposed opt-out and opt-in alternatives, consumer advocates, members of Congress, federal and state regulators, and the overwhelming majority of individual consumers who commented urged the Federal Reserve to adopt the proposed opt-in approach. These commenters argued that the harm to consumers from overdraft fees outweigh any benefits. Further, these commenters maintained that most consumers would prefer to have an ATM or one-time debit card transaction declined, rather than trigger one or more overdraft fees. These commenters also stated that an opt-in should apply to *all* account holders.

In contrast, the majority of industry commenters favored the proposed opt-out approach. These commenters maintained that an opt-out regime would more effectively provide consumers the benefits of overdraft services while causing fewer disruptions to consumers and other participants in the banking system. Further, these commenters argued that any opt-in requirement should apply only to *new* accounts.

Consumer advocates and federal and state banking regulators supported the proposed prohibition on conditioning the payment of overdrafts for checks, ACH transactions, or other types of transactions on the consumer also affirmatively consenting to the institution's payment of overdrafts for ATM withdrawals and one-time debit card transactions. These commenters stated that consumers would otherwise feel compelled to opt into the institution's overdraft service in order to have check and ACH overdrafts paid. For similar reasons, these commenters argued that institutions should be required to provide consumers who do not opt into the institution's overdraft service for ATM and one-time debit card transactions an account with identical terms, conditions and features as an account provided to consumers who do opt-in. In contrast, industry commenters supported the alternative permitting conditioning the opt-in, because it would be costly to implement a system that pays overdrafts for certain types of transactions but not others. These commenters also urged the Federal Reserve to permit institutions to vary the account terms, conditions, and features for consumers who do not opt-in.

Consumer group commenters stated that the Federal Reserve should not provide any exceptions to the prohibition on fees, even if overdrafts are inadvertently paid due to delays in transaction processing and settlement. Industry commenters, on the contrary, supported the proposed exceptions. Many industry commenters urged the Federal Reserve to provide for additional exceptions for transactions for which authorization is not requested at the time of the transaction.