FDIC
FEDERAL DEPOSIT INSURANCE CORPORATION

NEWS RELEASE

Statement on

ELECTRONIC FUNDS TRANSFER
MORATORIUM ACT OF 1974

Submitted to the

Subcommittee on Financial Institutions
of the
Committee on Banking, Housing and Urban Affairs
United States Senate

by

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The Federal Deposit Insurance Corporation appreciates this opportunity to submit its views with respect to S. 245, 94th Congress, the "Electronic Funds Transfer Moratorium Act of 1974," an Act which would prevent federally insured financial institutions from operating electronic funds transfer ("EFT") facilities at locations other than their own banking premises prior to December 1, 1976. The purpose of the bill is to give the recently authorized National Commission on Electronic Fund Transfers a reasonable opportunity to study this area and submit its recommendations to the Congress before allowing insured financial institutions to proceed with the establishment and operation of such off-site EFT facilities without regard to Federal and State laws on branch banking.

The threshold question for the three Federal bank regulatory agencies (Comptroller of the Currency, FDIC and Federal Reserve) is whether some or all such off-site facilities must be treated as "branches" under Federal banking law. The reason this question is so important is that if they are "branches" under Federal banking law, the three Federal bank regulatory agencies will then be legally bound by the provisions of State law governing the location and approval criteria for EFT facilities which banks headquartered in that State may wish to establish. If they are not "branches" under Federal banking law, the FDIC with respect to State nonmember banks and the Federal Reserve with respect to State

member banks would have only limited authority to supervise developments in this area unless some injury to the safety and soundness of individual institutions could be demonstrated. Presumably, notification requirements could be imposed on State-chartered banks which would allow the FDIC and the Federal Reserve to monitor the location, cost, operation and competitive impact of such facilities but advance approval or approval conditioned on certain changes in the planned operation of such facilities, e.g., in the terms of access to an interrelated network of such facilities, might not be possible. By contrast, the Comptroller of the Currency for national banks and State banking authorities for State-chartered banks would most likely have more comprehensive powers over the development of such facilities by virtue of their status as chartering authorities and primary supervisors for such banks. The Federal Home Loan Bank Board is not bound, as you know, by any similar provisions of Federal or State law in permitting federally insured savings and loan associations to establish branch or EFT facilities, since its governing statute is totally silent on the subject.

Of the many questions raised by EFT facilities, one appears to us to be relatively inconsequential, and that is whether a typical branch application and investigation should be necessary for these facilities even if they are to be considered "branches." We at the FDIC believe, and I am certain the other Federal supervisory agencies would respond

similarly, that simpler forms and a different kind of review are desirable for EFT facilities than for manned, full-service branch facilities. That question is basically administrative, not legislative, and the four Federal agencies would undoubtedly adapt their present branch application procedures to the special needs of the new electronic environment.

On the merits of S. 245, our view is that rather than imposing a moratorium on the expanded use of EFT equipment, which might prevent experimentation, technological refinement, and improved customer service, we would prefer that the Congress give the Federal bank regulatory agencies explicit legislative guidance on the "branch" issue and hence on the applicability of State law. If, however, the Congress should prefer to await the National Commission's report, or a judicial resolution of the "branch" question, before enacting legislation in this area and decides to pursue the moratorium approach, we believe that it would be inequitable to impose a complete moratorium on the development of EFT facilities by insured and regulated financial institutions over the next twenty months when uninsured and unregulated firms in the private sector are not similarly constrained, e.g., nonbank credit card firms and major retailers.

Within many States, in ways fully consistent with State law, commercial banks and thrift institutions have already committed significant

resources to the various types of EFT facilities, many of which are presently or nearly in place. In view of the significant policy issues to be dealt with by the National Commission, an analysis of the actual operations and continued competitive evolution of such facilities should serve as a valuable and necessary input to the Commission.

We believe, however, that the Subcommittee and the Congress could properly distinguish at the present time between the intrastate operation of such EFT facilities by insured financial institutions headquartered within that State and the possible interstate operation of such facilities by insured financial institutions. Most currently operated EFT facilities are in the former category, while possible interstate systems appear at this point in time to be only in various stages of early development. Few States have addressed themselves to this aspect of EFT development, and only a handful of banks or bank holding companies with "grandfather privileges" presently operate "retail" facilities or deposit-receiving branches outside their home States. On the other hand, the rulings of the Comptroller and the Federal Home Loan Bank Board may have the effect of giving federally chartered institutions a significant head start over their State-chartered competitors in the development of interstate EFT facilities which in due course the National Commission may recommend that the Congress limit or prohibit altogether. In this regard, these administrative rulings may result in a fundamental and basic change

in the essentially local character of "retail" banking in the United States -- without benefit of any conscious study, analysis or approval by the Legislative Branch.

If, after review, the Congress were to decide that it did not wish to prohibit the interstate establishment and operation of EFT facilities altogether, there is a middle course which it might wish to consider. This would allow such interstate facilities only where the State of intended location has, by statute, explicitly authorized the establishment and operation of such facilities by an insured financial institution headquartered in another State. This would avoid the imposition of a Federal ban on interstate EFT activities that might well be permissible under explicit provisions of State law. Such State law provisions might, but need not, be limited to institutions headquartered in another State which had enacted reciprocal legislation authorizing insured financial institutions headquartered in the first State to establish similar facilities within its borders. Any remaining problems of competitive imbalance between State and federally chartered insitutions headquartered in the same State could then be adjusted by changes in the State law in the headquarters State, just as they could be with respect to the intrastate facilities we recommend not be covered by a Federal moratorium.

The FDIC's position on S. 245 may thus be summarized as follows: We oppose the total moratorium on EFT facilities required

by the present terms of the bill and would urge instead explicit Congressional guidance on whether or not such facilities constitute "branches" under present Federal law for purposes of applying the provisions of State law which might govern their location and approval. If this appears neither desirable nor feasible and the Congress believes some moratorium should be enacted while it awaits the report of the National Commission or a judicial determination of the "branch" question, we recommend that the moratorium not apply to the establishment of such facilities intrastate but only to the establishment of such EFT facilities across State lines (unless, possibly, such facilities are affirmatively authorized by explicit statute in the State of intended location).

Should the Subcommittee desire the Corporation's technical assistance in drafting the legislative provisions on which it may ultimately decide, we stand ready to help at any time.