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Statement by

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Board of Governors of the Federal Reserve System

Before the

Subcommittee on Consumer Affairs and the Subcommittee

on Financial Institutions Supervision, Regulation and Insurance

of the House Committee on Banking, Finance and Urban Affairs

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It is a pleasure for me to appear before both Subcommittees. I have recently been designated to chair the Board committee that has responsibility for consumer affairs, and I look forward to working with you in the future.

Section 1 of H.R. 1903 would change the effective date of the Electronic Fund Transfer Act from May 10, 1980, to June 10, 1979. The Board recommends against adoption of this amendment. While we recognize the need for prompt implementation of the Act, changing the effective date to June 10 would not leave sufficient time to accomplish this task. A June 1979 effective date would require the Board to issue regulations without the degree of public participation that is essential for orderly implementation of this important new law. In addition, financial institutions would have fewer than four months to comply with the Act.

I can assure you that the Board shares your interest in quickly providing consumers who use electronic transfer services with the important protections offered by the Act. We also wish to publish final regulations as soon as possible. The Board's commitment to prompt action is illustrated by the speed with which the Board acted in implementing sections 909 and 911 of the Act. Those regulations were published for comment on December 26; the staff is analyzing the comments and preparing recommendations for the Board. Final regulations are expected to be issued in a few weeks.

The Board's schedule for implementing the remainder of the Act is as follows: by April 1 publish draft regulations for a 60-day comment

period, ending May 31. We have allowed 60 days for analyzing the comments and redrafting the regulations, bringing us to July 31. The revised regulations will be published for comment for a second 60-day period, running from August 1 to September 30. Analysis of the comments and redrafting will be completed by November 30. The final regulations will be published about December 1.

We believe this is a realistic schedule that demonstrates the Board's commitment to speedy and responsible implementation of the Act. Meeting it will require considerable effort by the Board and its staff. Our considerable experience in implementing consumer legislation suggests that a shorter rulewriting timetable would not be in the public interest.

One way in which the Board's schedule could be shortened is by allowing 30 days instead of 60 days for public comment. We are concerned, however, that a period as short as 30 days would not be sufficient to allow all interested parties to express their views adequately. Our recent experience with the amendment to Regulation Z modifying the rescission requirements with respect to certain open-end credit plans is a good example. When the proposal was first published for comment, the comment period was 30 days. Many interested parties have objected strongly that this was not enough time, so the Board recently decided to publish the amendment again. The Board, in accordance with the spirit of Executive Order 12044, recently adopted a policy of allowing at least 60 days for public comment on regulations that implement a new law. We feel that adequate time for public comment is especially important in the case of a law, such as the Electronic Fund Transfer Act, that is highly technical and that confers significant consumer rights.

Our experience with implementation of other legislation indicates that 60 days is essential for analysis of public comments, redrafting the regulations, and bringing them back to the Board for comment. In 1976, when the amended Equal Credit Opportunity regulations were issued, the Board received about 650 comments on the first proposal and about 500 comments on the second proposal. More recently, the Board, along with the other financial supervisory agencies, received almost 1,000 comments on the Community Reinvestment Act regulations. Since there is great public interest in the EFT Act, I think we can expect to receive at least several hundred comments on proposed Regulation E.

Finally, the Board's timetable calls for two public comment periods. I wish I could say that one comment period would suffice, but, again, our experience indicates otherwise. When new regulations are drafted, the first proposal may overlook important issues and some of the provisions may not be workable. Indeed, that is the purpose of public comment—to expose regulations to the critical gaze of the financial institutions and consumers who must live with them. Having two comment periods allows the public to comment on significant changes before regulations go into effect and thereby reduces the possibility that the regulations will have to be amended later. If the Act's effective date were changed to June 1979, the Board's regular procedures could not be followed. Even with only one comment period, there is a real risk that the law would take effect before implementing regulations could be issued in final form.

It is worth noting that the EFT Act creates two duties that the Board did not have under the Equal Credit Opportunity Act or other prior

legislation; namely, the requirement to prepare an analysis of economic impact and to issue model disclosure clauses.

I would also like to point out that the EFT Act imposes major new responsibility on financial institutions. They will be required to prepare and print new disclosures, establish new error resolution and stop payment procedures, program their computers to generate periodic statements, and, of course, train their personnel. Our experience with other laws, including the Equal Credit Opportunity Act, suggests that the quality of compliance is enhanced and the cost of compliance reduced by providing a lead time of several months between the issuance of regulations in final form and the effective date of a statute.

Turning now to the second section of H.R. 1903, it would change both the timing of, and the entity responsible for providing, the general statement of customer rights required under section 1104(d) of the Right to Financial Privacy Act of 1978. Instead of requiring that the statement be sent to all customers of all financial institutions "promptly" after March 10, 1979 (the effective date of the Right to Financial Privacy Act), the bill would require that the statement be provided to a customer when the customer is notified by a Federal agency of its efforts to obtain the customer's financial records. In addition, the bill would shift the responsibility for providing the statement from the financial institution having custody of the customer's records to the agency seeking the records. The Board would continue to be required to prepare a model statement of customer rights for use under section 1104(d). A draft statement was issued for public comment by the Board on January 29.

We believe that the provisions of section 1104(d) as written into law last year should be modified significantly. The informational benefit to financial institution customers of receiving a general statement of their privacy rights promptly after the effective date of the Act does not justify an estimated expenditure on the order of hundreds of millions of dollars to provide that statement. Sending the statement on a one-time basis after March 10 would not provide customers with information about their rights when that information was most needed--that is, when access to their records was sought. Furthermore, for every account that an individual has at a financial institution and for every credit card held, the individual would receive a separate statement. Therefore, a typical customer would receive several and perhaps a dozen or more virtually identical statements within a relatively short time span.

For those reasons, the Board, responding to a resolution of our Consumer Advisory Council, recommended that the Act be amended to require that the section 1104(d) statement be delivered only when access to a customer's records is sought. In making that recommendation, both the Board and the Council were influenced by the belief that providing the statement when access was sought would give customers relevant information about their rights at the most appropriate time for them to understand the significance of, and to act upon, those rights. Therefore, H.R. 1903's proposed change in the timing of the delivery of the customer rights statement is, in our view, a significant step in the right direction.

We should note, however, that the Act already requires the Government to notify customers in ten different instances about their rights under the statute. In addition, the Act specifies that customers

must be apprised of their financial privacy rights prior to authorizing government access to their records; and, having authorized access, they generally must be informed, upon request, of the identity of the Federal agency or agencies to whom their records have been disclosed and the number of times access has been granted. Although delivery of the required notices may be delayed if the Federal agency involved obtains an appropriate court order, even then the customer usually must be provided with a statutory notice. Thus, we believe that the general statement of customer rights mandated by section 1104(d) could be eliminated, as provided by S. 37, which has passed the Senate, without materially diminishing the customer protections of the Act.

While our original recommendation, based upon the Consumer Advisory Council's resolution, did not contemplate shifting responsibility from financial institutions to the Federal Government for providing the statement, we believe that H.R. 1903's proposal to require the Federal agency involved to supply the statement along with any other notice it must provide under the statute is an appropriate alternative. Although such a shift would increase somewhat the Government's cost of complying with the Act, it should on balance decrease overall costs by eliminating the need for a separate communication from financial institutions. While the approach taken by either our original recommendation or H.R. 1903 is better than the current requirement, we believe that deletion of the general statement requirement, as provided by S. 37, also is an acceptable alternative for the reasons previously mentioned.

I appreciate the opportunity to appear before both Subcommittees to present the views of the Board and its Consumer Advisory Council. I would be pleased to answer any questions.