

FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

**Circular No. 79-66
April 3, 1979**

**REGULATION E--FINAL REGULATION FOR TWO SECTIONS OF THE
ELECTRONIC FUNDS TRANSFER ACT AND
PROPOSALS REGARDING CONSUMER DISCLOSURES**

**TO ALL BANKS, OTHER CREDITORS,
AND OTHERS CONCERNED IN THE
ELEVENTH FEDERAL RESERVE DISTRICT:**

On March 21, 1979, the Board of Governors of the Federal Reserve System issued final regulations for consumer protection under two sections of the Electronic Funds Transfer Act. The Act is designed to protect consumers in their use of automated teller machines, point of sale debiting, and other electronic fund transfer services. The rules issued as part of Regulation E, Electronic Funds Transfer (EFT) relate to sections of the Act which limit a consumer's liability for unauthorized use of an EFT card, and specify the conditions under which EFT cards may be issued.

At the same time, the Board of Governors asked for public comment on proposals that would require certain disclosures to all consumers with EFT cards regarding their financial responsibility for the use of lost or stolen EFT cards, and that would make these disclosures a precondition of imposing any liability on a consumer. Comments should be directed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Any comments should refer to Docket No. R-0212, and they should be received on or before April 30, 1979.

Printed on the following pages is a copy of the new Regulation E which was effective March 30, 1979. The Board's announcement regarding the two proposals for comment also appears as it was published in the *Federal Register*. Questions regarding the new proposal or the new Regulation should be directed to our Consumer Affairs Section of the Bank Supervision and Regulations Department, Ext. 6171.

**Sincerely yours,
Robert H. Boykin
First Vice President**

Banks and others are encouraged to use the following incoming WATS numbers in contacting this Bank: 1-800-492-4403 (intrastate) and 1-800-527-4970 (interstate). For calls placed locally, please use 651 plus the extension referred to above.

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PART 205—ELECTRONIC FUND TRANSFERS

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AUTHORITY: Pub. L. 95-630, 92 Stat. 3730 (15 U.S.C. 1693b).

REGULATION E

PART 205—ELECTRONIC FUND TRANSFERS

§ 205.1 Authority, Purpose, and Scope.

(a) *Authority.* This regulation, issued by the Board of Governors of the Federal Reserve System, implements Title IX (Electronic Fund Transfer Act) of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 et seq.).

(b) *Purpose and Scope.* In November 1978, the Congress enacted the Electronic Fund Transfer Act. The Congress found that the use of electronic systems to transfer funds provides the potential for substantial benefits to consumers, but that the unique characteristics of these systems make the application of existing consumer protection laws unclear, leaving the rights and liabilities of users of electronic fund transfer systems undefined. The Act establishes the basic rights, liabilities, and responsibilities of consumers who use electronic money transfer services and of financial institutions that offer these services. This regulation is intended to carry out the purposes of the Act, including, primarily, the protection of individual consumers engaging in electronic transfers. Except as otherwise provided, this regulation applies to all persons who are financial institutions as defined in § 205.2(i).

§ 205.2 Definitions.

For the purposes of this regulation, the following definitions apply, unless the context indicates otherwise:

(a)(1) "Access device" means a card, code, or other means of access to a consumer's account, or any combination thereof, that may be used by the consumer for the purpose of initiating electronic fund transfers.

(2) An access device becomes an "accepted access device" when the consumer to whom the access device was issued:

(i) Requests and receives, or signs, or uses, or authorizes another to use, the access device for the purpose of transferring money between accounts or obtaining money, property, labor or services;

(ii) Requests validation of an access device issued on an unsolicited basis; or

(iii) Receives an access device issued in renewal of, or in substitution for, an accepted access device, whether such access device is issued by the initial financial institution or a successor.

(b) "Account" means a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held either directly or indirectly by a financial institution and established primarily for personal, family, or household purposes.

(c) "Act" means the Electronic Fund Transfer Act (Title IX of the Consumer Credit Protection Act, 15 U.S.C. 1601 et seq.).

(d) "Business day" means any day on which the offices of the consumer's financial institution are open to the public for carrying on substantially all business functions.

(e) "Consumer" means a natural person.

(f) "Credit" means the right granted by a financial institution to a consumer to defer payment of debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

(g) "Electronic fund transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephone, or computer or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes, but is not limited to, point-of-sale transfers, automated teller machine transfers, direct deposits or withdrawals of funds, and transfers initiated by telephone.

(h) "Electronic terminal" means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. The term includes, but is not limited to, point-of-sale terminals, automated teller machines, and cash dispensing machines.

(i) "Financial institution" means a State or National bank, a State or Federal savings and loan association, a State or Federal mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer. The term also includes any person who issues an access device and agrees with a consumer to provide electronic fund transfer services.

Two or more financial institutions that jointly provide electronic fund transfer services may contract among themselves to fulfill the requirements that the Act and this regulation impose on any or all of them.

(j) "State" means any State, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the above.

(k) "Unauthorized electronic fund transfer" means an electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit. The term does not include any electronic fund transfer (1) initiated by a person who was furnished with the access device to the consumer's account by the consumer, unless the consumer has notified the financial institution involved that transfers by that person are no longer authorized, (2) initiated with fraudulent intent by the consumer or any person acting in concert with the consumer, or (3) that constitutes an error committed by the financial institution.

§ 205.3 Exemptions.

This regulation does not apply to the following:

(a) *Check guarantee or authorization services.* Any service that guarantees payment or authorizes acceptance of a check, draft, or similar paper instrument and that does not directly result in a debit or credit to a consumer's account.

(b) *Wire transfers.* Any wire transfer of funds for a consumer through the Federal Reserve Communications System or other similar network that is used primarily for transfers between financial institutions or between businesses.

(c) *Certain securities or commodities transfers.* Any transfer the primary purpose of which is the purchase or sale of securities or commodities through a broker-dealer registered with, or regulated by, the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(d) *Automatic transfers from savings to demand deposit accounts.* Any automatic transfer from a savings account to a demand deposit (checking) account under an agreement between a consumer and a financial institution for the purpose of covering an overdraft or maintaining a specified minimum balance in the consumer's checking account as permitted by 12 CFR Part 217 (Regulation Q) and 12 CFR Part 329.

(e) *Certain telephone-initiated transfers.* Any transfer of funds that (1) is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution and (2) is not under a telephone bill-payment or other prearranged plan or agreement in which periodic or recurring transfers are contemplated.

(f) *Trust accounts.* Any trust account held by a financial institution under a bona fide trust agreement.

§ 205.4 Issuance of access devices.

(a) *General rule.* A financial institution may issue an access device to a consumer only:

(1) In response to an oral or written request or application for the device;¹⁵ or

(2) As a renewal of, or in substitution for, an accepted access device, whether issued by the initial financial institution or a successor.

(3) As a renewal of, or in substitution for, an access device issued before February 8, 1979 (other than an accepted access device, which can be renewed or substituted under paragraph (a)(2) of this section), provided that the disclosures set forth in paragraphs (d)(1), (2), and (3) of this section accompany the renewal or substitute device; except that for a renewal or substitution that occurs before July 1, 1979, the disclosures may be sent within a reasonable time after the renewal or substitute device is issued.

(b) *Exception.* Notwithstanding the provisions of paragraph (a)(1) of this section, a financial institution may distribute an access device to a consumer on an unsolicited basis if:

(1) The access device is not validated;

(2) The distribution is accompanied by a complete disclosure, in accordance with paragraph (d) of this section, of the consumer's rights and liabilities that will apply if the access device is validated;

(3) The distribution is accompanied by a clear explanation that the access device is not validated and how the consumer may dispose of the access device if validation is not desired; and

(4) The access device is validated only in response to the consumer's oral or written request or application for validation and after verification of the consumer's identity by any reasonable means, such as by photograph, fingerprint, personal visit, or signature comparison. An access device is considered validated when a financial institution has performed all procedures necessary to enable a consumer to use it to initiate an electronic fund transfer.

(c) *Relation to Truth in Lending.* (1) The Act and this regulation govern

(i) Issuance of access devices;

(ii) Addition to an accepted credit card, as defined in 12 CFR 226.2(a) (Regulation Z), of the capability to initiate electronic fund transfers; and

(iii) Issuance of access devices that permit credit extensions only under a preexisting agreement between a con-

sumer and a financial institution to extend the credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.

(2) The Truth in Lending Act (15 U.S.C. 1601 et seq.) and 12 CFR Part 226 (Regulation Z), which prohibit the unsolicited issuance of credit cards, govern

(i) Issuance of credit cards as defined in 12 CFR 226.2(r);

(ii) Addition of a credit feature to an accepted access device; and

(iii) Issuance of credit cards that are also access devices, except as provided in paragraph (c)(1)(iii) of this section.

(d) *Transitional disclosure requirements.* Until May 10, 1980, a financial institution may satisfy the disclosure requirements of paragraph (b)(2) of this section by disclosing to the consumer, in a written statement that the consumer may retain, the following terms in readily understandable language:

(1) The consumer's liability under § 205.5, or under other applicable law or agreement, for unauthorized electronic fund transfers and, at the financial institution's option, notice of the advisability of prompt reporting of any loss, theft, or unauthorized transfers.

(2) The telephone number and address of the person or office to be notified in the event the consumer believes that an unauthorized electronic fund transfer has been or may be made.

(3) The financial institution's business days, as determined under § 205.2(d).

(4) The type of electronic fund transfers that the consumer may initiate, including any limitations on the frequency or dollar amount of the transfers. The details of the limitations need not be disclosed if their confidentiality is necessary to maintain the security of the electronic fund transfer system.

(5) Any charges for electronic fund transfers or for the right to make transfers.

(6) The conditions under which the financial institution in the ordinary course of business will disclose information about the consumer's account to third parties.

(7) Whether or not the financial institution will provide documentation of electronic fund transfers, such as receipts or periodic statements, to the consumer.

(8) Whether or not the financial institution has error resolution procedures, and, if so, a summary of those procedures.

(9) The conditions under which the financial institution will assume liability for the institution's failure to make electronic fund transfers.

¹⁵ In the case of a joint account, a financial institution may issue an access device to each account holder for whom the requesting holder specifically requests an access device.

§ 205.5— Liability of Consumer for Unauthorized Transfers.

(a) *General rule.* A consumer is liable, within the limitations described in paragraph (b) of this section, for unauthorized electronic fund transfers involving the consumer's account only if the access device used for the transfers is an accepted access device and the financial institution has provided a means (such as by signature, photograph, fingerprint, or electronic or mechanical confirmation) to identify the consumer to whom the access device was issued.

(b) *Limitations on amount of liability.* The amount of a consumer's liability for an unauthorized electronic fund transfer or a series of transfers arising from a single loss or theft of the access device shall not exceed \$50 or the amount of unauthorized electronic fund transfers that occur before notice to the financial institution under paragraph (c) of this section, whichever is less, unless one or both of the following exceptions apply:

(1) If the consumer fails to notify the financial institution within 2 business days after learning of the loss or theft of the access device, the consumer's liability shall not exceed the lesser of \$500 or the sum of

(i) \$50 or the amount of unauthorized electronic fund transfers that occur before the close of the 2 business days, whichever is less, and

(ii) the amount of unauthorized electronic fund transfers that the financial institution establishes would not have occurred but for the failure of the consumer to notify the institution within 2 business days after the consumer learns of the loss or theft of the access device, and that occur after the close of 2 business days and before notice to the financial institution.

(2) If the consumer fails to report within 60 days of transmittal of the periodic statement any unauthorized electronic fund transfer that appears on the statement, the consumer's liability shall not exceed the sum of

(i) The lesser of \$50 or the amount of unauthorized electronic fund transfers that appear on the periodic statement or that occur during the 60-day period, and

(ii) The amount of unauthorized electronic fund transfers that occur after the close of the 60 days and before notice to the financial institution and that the financial institution establishes would not have occurred but for the failure of the consumer to notify the financial institution within that time.

(3) Paragraphs (b)(1) and (2) of this section may both apply in some circumstances. Paragraph (b)(1) shall determine the consumer's liability for any unauthorized transfers that appear on the periodic statement and

occur before the close of the 60-day period, and paragraph (b)(2)(ii) shall determine liability for transfers that occur after the close of the 60-day period.

(4) If a delay in notifying the financial institution was due to extenuating circumstances, such as extended travel or hospitalization, the time periods specified above shall be extended to a reasonable time.

(5) If applicable State law or an agreement between the consumer and financial institution imposes lesser liability than that provided in paragraph (b) of this section, the consumer's liability shall not exceed that imposed under that law or agreement.

(c) *Notice to financial institution.* For purposes of this section, notice to a financial institution is given when a consumer takes such steps as are reasonably necessary to provide the financial institution with the pertinent information, whether or not any particular officer, employee, or agent of the financial institution does in fact receive the information. Notice may be given to the financial institution, at the consumer's option, in person, by telephone, or in writing. Notice in writing is considered given at the time of receipt or, whether or not received, at the expiration of the time ordinarily required for transmission, whichever is earlier. Notice is also considered given when the financial institution becomes aware of circumstances that lead to the reasonable belief that an unauthorized electronic fund transfer involving the consumer's account has been or may be made.

(d) *Relation to Truth in Lending.* (1) A consumer's liability for an unauthorized electronic fund transfer shall be determined solely in accordance with this section if the electronic fund transfer

(i) Was initiated by use of an access device that is also a credit card as defined in 12 CFR 226.2(r), or

(ii) Involves an extension of credit under an agreement between a consumer and a financial institution to extend the credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.

(2) A consumer's liability for unauthorized use of a credit card that is also an access device but that does not involve an electronic fund transfer shall be determined solely in accordance with the Truth in Lending Act and 12 CFR Part 226 (Regulation Z).

APPENDIX A—MODEL DISCLOSURE CLAUSES

This appendix contains model disclosure clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of §§ 205.4(a)(3), (b) and (d). Section 915(d)(2) of the Act provides that use of these clauses in conjunction with other requirements of the regula-

tion will protect financial institutions from liability under §§ 915 and 916 of the Act to the extent that the clauses accurately reflect the institutions' electronic fund transfer services.

Financial institutions need not use any of the provided clauses, but may use clauses of their own design in conjunction with the model clauses. The inapplicable portions of words or phrases in parentheses should be deleted. Financial institutions may make alterations, substitutions or additions in the clauses in order to reflect the services offered, such as technical changes (e.g., substitution of a trade name for the word "card," deletion of inapplicable services), or substitution of lesser liability limits in § A(2).

SECTION A(1)—DISCLOSURE THAT ACCESS DEVICE IS NOT VALIDATED AND HOW TO DISPOSE OF DEVICE IF VALIDATION IS NOT DESIRED (§ 205.4(b)(3))

(a) *Accounts using cards.* You cannot use the enclosed card to transfer money into or out of your account until we have validated it. If you do not want to use the card, please (destroy it at once by cutting it in half).

FINANCIAL INSTITUTION MAY ADD VALIDATION INSTRUCTIONS HERE

(b) *Accounts using codes.* You cannot use the enclosed code to transfer money into or out of your account until we have validated it. If you do not want to use the code, please (destroy this notice at once).

FINANCIAL INSTITUTION MAY ADD VALIDATION INSTRUCTIONS HERE

SECTION A(2)—DISCLOSURE OF CONSUMER'S LIABILITY FOR UNAUTHORIZED TRANSFERS AND OPTIONAL DISCLOSURE OF ADVISABILITY OF PROMPT REPORTING (§ 205.4(d)(1))

(a) *Liability disclosure.* (Tell us AT ONCE if you believe your (card) (code) has been lost or stolen. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account (plus your maximum overdraft line of credit). If you tell us within 2 business days, you can lose no more than \$50 if someone used your (card) (code) without your permission.) (If you believe your (card) (code) has been lost or stolen, and you tell us within 2 business days after you learn of the loss or theft, you can lose no more than \$50 if someone used your (card) (code) without your permission.)

If you do NOT tell us within 2 business days after you learn of the loss or theft of your (card) (code), and we can prove we could have stopped someone from using your (card) (code) without your permission if you had told us, you could lose as much as \$500.

Also, if your statement shows transfers that you did not make, tell us at once. If you do not tell us within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time.

If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

SECTION A(3)—DISCLOSURE OF TELEPHONE NUMBER AND ADDRESS TO BE NOTIFIED IN EVENT OF UNAUTHORIZED TRANSFER (§ 205.4(d)(2))

(a) *Address and telephone number.* If you believe your (card) (code) has been lost or

stolen or that someone has transferred or may transfer money from your account without your permission, call:

[Telephone number]

or write:

[Name of person or office to be notified]

[Address]

SECTION A(4)—DISCLOSURE OF WHAT CONSTITUTES BUSINESS DAY OF INSTITUTION (§ 205.4(d)(3))

(a) *Business day disclosure.* Our business days are (Monday through Friday) (Monday through Saturday) (any day including Saturdays and Sundays). Holidays are (not) included.

SECTION A(5)—DISCLOSURE OF TYPES OF AVAILABLE TRANSFERS AND LIMITS ON TRANSFERS (§ 205.4(d)(4))

(a) *Account access.* You may use your (card) (code) to (1) withdraw cash from your (checking) (or) (savings) account.

(2) Make deposits to your (checking) (or) (savings) account.

(3) Transfer funds between your checking and savings accounts whenever you request.

(4) Pay for purchases at places that have agreed to accept the (card) (code).

(5) Pay bills directly (by telephone) from your (checking) (or) (savings) account in the amounts and on the days you request.

Some of these services may not be available at all terminals.

(b) *Limitations on frequency of transfers.*

(1) You may make only [insert number, e.g., 3] cash withdrawals from our terminals each [insert time period, e.g., week].

(2) You can use your telephone bill-payment service to pay [insert number] bills each [insert time period] (telephone call).

(3) You can use our point-of-sale transfer service for [insert number] transactions each [insert time period].

(4) For security reasons, there are (other) limits on the number of transfers you can make using our (terminals) (telephone bill-payment service) (point-of-sale transfer service).

(c) *Limitations on dollar amounts of transfers.*

(1) You may withdraw up to [insert dollar amount] from our terminals each [insert time period] (time you use the (card) (code)).

(2) You may buy up to [insert dollar amount] worth of goods or services each [insert time period] (time you use the (card) (code)) in our point-of-sale transfer service.

SECTION A(6)—DISCLOSURE OF CHARGES FOR TRANSFERS OR RIGHT TO MAKE TRANSFERS (§ 205.4(d)(5))

(a) *Per transfer charge.* We will charge you [insert dollar amount] for each transfer you make using our (automated teller machines) (telephone bill-payment service) (point-of-sale transfer service).

(b) *Fixed charge.* We will charge you [insert dollar amount] each [insert time period] for our (automated teller machine service) (telephone bill-payment service) (point-of-sale transfer service).

(c) *Average or minimum balance charge.* We will only charge you for using our (automated teller machines) (telephone bill-payment service) (point-of-sale transfer service) if the (average) (minimum) balance in your (checking account) (savings account) (accounts) falls below [insert dollar amount]. If it does, we will charge you [insert dollar amount] each (transfer) ([insert time period]).

SECTION A(7)—DISCLOSURE OF ACCOUNT INFORMATION TO THIRD PARTIES (§ 205.4(d)(6))

(a) *Account information disclosure.* We will disclose information to third parties about your account or the transfers you make: (1) Where it is necessary for completing transfers, or

(2) In order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant, or

(3) In order to comply with government agency or court orders, or

(4) If you give us your written permission.

By order of the Board of Governors,
March 21, 1979.

GRIFFITH L. GARWOOD,
Deputy Secretary.

[FR Doc. 79-8261 Filed 3-27-79; 8:45 am]

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 VOL. 44, NO. 61
 Wednesday, March 28, 1979
 pp. 18514 - 18515

ADDRESS: Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. All material submitted should refer to docket number R-0212.

FOR FURTHER INFORMATION CONTACT:

Regarding the regulation: Dolores S. Smith, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452-2412). Regarding the economic impact analysis: Frederick J. Schroeder, Economist, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452-2584).

SUPPLEMENTARY INFORMATION:

(1) The Board has adopted regulations published in the Rules section of this issue to implement Sections 909 and 911 of the Electronic Fund Transfer Act, the two sections that became effective on February 8, 1979. Under those regulations, some consumers will receive notice of their potential liability for unauthorized transfers before May 1980, but the vast majority of users of EFT devices will not learn of their liability until after the remainder of the Act and regulation go into effect. The Board believes that all consumers should be informed of their potential liability and of the need for prompt reporting. Consumers should be aware that unless they report the loss or theft of an access device within two days of learning of the loss or theft, their liability may increase from \$50 to \$500. Similarly, they need to know that they must report an unauthorized transfer appearing on a periodic statement within 60 days; and that if they fail to report it, their liability for later transfers could be unlimited.

The Board is publishing two proposals for public comment. Proposal A would require financial institutions to disclose to consumers who now hold EFT access devices (as well as consumers who apply for access devices prior to May 1980): (1) what their liability for unauthorized transfers would be; (2) how to report the loss of theft of the access device; and (3) the institution's business days. These disclosures would have to be made by August 1, 1979, as to all accounts now in existence or established between now and July 31, 1979. After August 1, 1979, and before May 1980, institutions would be required to make the disclosures before the first electronic fund transfer is made on an account.

The Board's Proposal B would make delivery of these interim disclosures a precondition to imposing liability. (Section 909(b) of the Act will make delivery of the disclosures a precondition

[6210-01-M]

FEDERAL RESERVE SYSTEM

[12 CFR Part 205]

[Reg. E; Docket No. R-0212]

ELECTRONIC FUND TRANSFERS

Disclosure of Consumers' Liability for Unauthorized Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: Section 909 of the Electronic Fund Transfer Act, which relates to a consumer's liability for unauthorized transfers, became effective on February 8, 1979. The Board is publishing for comment two proposals that relate to disclosing the consumer's liability for unauthorized use of an access device. Proposal A would require financial institutions to give consumers certain disclosures regarding their potential liability. Proposal B would make compliance with the disclosure requirement a precondition to the institution's imposing any liability on the consumer.

DATE: Comments must be received on or before April 30, 1979.

*Defined in Paragraph II.A. of Appendix G to 10 CFR Part 50.

tion of imposing liability after May 1980.)

Under either proposal, if a financial institution assumes all risk and imposes no liability on a consumer for unauthorized transfers, then the institution would not be required to provide disclosures.

(2) Section 904(a)(2) of the Act requires the Board to prepare an analysis of the economic impact of the regulations that the Board issues to implement the Act. The following economic analysis accompanies proposed §§ 205.4(e) and 205.5(a) of the regulation, which are designed to implement, in part, section 909 of the Act.¹

Two proposals are offered for comment. Proposal A requires that financial institutions make liability disclosures before August 1, 1979, to holders of all accounts that can be accessed by an electronic fund transfer (EFT) access device unless they impose no liability on a consumer for unauthorized transfers. Proposal A does not change the consumer's liability limits as set forth in § 205.5(b). Proposal B, on the other hand, in effect allows a financial institution to choose whether or not to make interim liability disclosures to consumers, given that consumers can be held liable only if the institution makes the disclosures.

Interim liability disclosures under both Proposals A and B would provide consumers with information that might improve their ability to plan financial activities and might encourage them to exercise greater care in the use of EFT access devices and accounts. Greater consumer care may benefit financial institutions by reducing unauthorized use of EFT systems. Another potential benefit to institutions is greater consumer acceptance of EFT stemming from increased certainty about the liability rules applicable to unauthorized transfers.

Proposal A would force financial institutions to incur disclosure costs if they impose liability for unauthorized use. Costs for disclosure statement drafting, legal advice, printing, and distribution may be high, even if the Regulation E model disclosure clauses are used. The proximity of the August 1, 1979, disclosure deadline may impose additional costs. Financial institutions, particularly those that

issue periodic statements in a cycle less frequent than monthly, may have to make special disclosure mailings to account holders. Special mailings to holders of inactive accounts would be required in any case. Costs associated with the disclosure program would be passed on to consumers to some degree.

Proposal B would permit financial institutions to choose optimal disclosure programs after weighing the expected costs and benefits associated with making the interim liability disclosures to all or some of their account holders. A more efficient allocation of resources would result with no loss of consumer protection relative to the liability provisions established by the Act. The provision conditioning consumer liability on whether interim disclosures were made would protect consumers not covered by other disclosure provisions of the Act and would guarantee that a consumer would not be held liable for any loss from unauthorized use unless disclosures were made.

It is not apparent whether small financial institutions are likely to be placed at a cost disadvantage relative to larger institutions under either Proposal A or B. Proposal B, however, would allow institutions more flexibility to adapt to the ultimate disclosure requirement mandated by the Act for May 1980, so that small institutions would be better able to schedule the relatively larger fixed-cost expenditures associated with their disclosure programs. It is also not apparent whether low-income consumers would be affected differently from higher-income consumers under the different proposals.

The Board solicits comments and information on the possible costs, benefits, and significance of the effects discussed above.

(3) Pursuant to the authority granted in Pub. L. 95-630, Title XX, section 904 (November 10, 1978), 92 Stat. 3730 (15 U.S.C. 1693b) the Board proposes to amend Regulation E, 12 CFR Part 205, as follows:

PROPOSAL A

The Board proposes to add a new paragraph (e) to § 205.4 as follows:

§ 205.4 Issuance of Access Devices.

* * * * *

(e) *Interim disclosure of consumer's liability.* (1) For any account accessible by an access device, the financial institution shall disclose to the consumer, in a written statement that the consumer may retain, the following terms in readily understandable language:

(i) The consumer's liability under § 205.5, or under other applicable law or agreement, for unauthorized elec-

tronic fund transfers and, at the financial institution's option, notice of the advisability of prompt reporting of any loss, theft, or unauthorized transfers.

(ii) The telephone number and address of the person or office to be notified in the event the consumer believes that an unauthorized electronic fund transfer has been or may be made.

(iii) The financial institution's business days, as determined under § 205.2(d).

(2) The disclosures set forth in paragraph (e)(1) of this section shall be made before August 1, 1979, for any account accessible by an access device and in existence on February 8, 1979, or established after February 8, 1979. For any such account established on or after August 1, 1979, and before May 10, 1980, these disclosures shall be made the first electronic fund transfer is made involving the consumer's account.

(3) The disclosure set forth in paragraph (e)(1) of this section need not be made by any financial institution that imposes upon the consumer no liability for unauthorized transfers.

PROPOSAL B

1. The Board proposes to add a new paragraph (e) to § 205.4 as set forth under Proposal A.

2. The Board proposes, in addition, to amend § 205.5(a) to read as follows:

§ 205.5 Liability of Consumer for Unauthorized Transfers.

(a) *General rule.* A consumer is liable, within the limitations described in paragraph (b) of this section, for unauthorized electronic fund transfers involving the consumer's account only if:

(1) the access device used for such transfers is an accepted access device;

(2) the financial institution has provided a means (such as by signature, photograph, fingerprint, or electronic or mechanical confirmation) to identify the consumer to whom the access device was issued; and

(3) the financial institution discloses to the consumer, in accordance with the requirements of § 205.4(e), the terms specified in § 205.4(e)(1).

* * * * *

By order of the Board of Governors,
March 21, 1979.

GRIFFITH L. GARWOOD,
Deputy Secretary of the Board.
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¹The analysis must consider the costs and benefits of the proposed regulation to suppliers and users of EFT services, the effects of the proposed regulation of competition in the provision of electronic fund transfer services among large and small financial institutions, and the effects of the proposed regulation on the availability of EFT services to different classes of consumers, particularly low-income consumers. The analysis presented here is to be read in conjunction with the economic impact analysis that accompanied the Board's Regulation E, published in the Rules section of this issue.