# FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 79-179
November 2, 1979

## REGULATION E - ELECTRONIC FUND TRANSFERS

Proposed and Final Amendments

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

The Board of Governors of the Federal Reserve System has announced adoption of final rules for Regulation E, Electronic Fund Transfers. The final rules, effective May 10, 1980, deal with initial consumer disclosures, waiver of notice of varying preauthorized debits, a two-year record retention requirement, and pre-emption of state law. One of the final rules dealing with exemptions from the regulatory requirements for intra-bank transfers and transfers made to buy or sell securities is effective November 15, 1979.

The Board has revised and issued for further comment six proposals for final provisions of Regulation E concerning positive or negative notice of receipt of preauthorized electronic deposits, services offered by an institution not holding the consumer's account, documentation of transfers made at terminals, availability of funds, procedures for processing errors, and permissible charges for documentation and error resolution. These proposed sections of Regulation E would take effect May 10, 1980. Interested persons are invited to submit comments to Secretary, Board of Governors of the Federal Reserve System, Washington D. C. 20551. All material submitted should refer to Docket No. R-0251.

Attached are the Board's final rules and proposals together with an analysis of the economic impact of the portion of the egulation adopted in final form. The Board's Press Release which follows further explains the changes contemplated.

Any questions concerning the proposed or final rules should be directed to the Consumer Affairs Section of our Bank Supervision and Regulations Department, Ext. 6171.

Sincerely yours,

Robert H. Boykin

First Vice President

Attachments

Banks and others are encouraged to use the following incoming WATS numbers in contacting this Bank: 1-800-442-7140 (intrastate) and 1-800-527-9200 (interstate). For calls placed locally, please use 651 plus the extension referred to above.

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# FEDERAL RESERVE

press release

For immediate release October 9, 1979

The Federal Reserve Board has adopted a number of additional provisions of its Regulation E implementing the Electronic Fund Transfer Act. The Board is also publishing for further public comment revisions of several previously proposed provisions of Regulation E.

The additions adopted deal with

--requirements for disclosures to consumers who use EFT services;

--exemptions for transfers made to buy or sell securities and for transfers of funds within an institution;

--record retention;

--the relation of the Federal Electronic Fund Transfer Act to State law on this subject, and

--requirements for compliance with certain provisions of the Act by those offering electronic fund transfer services.

The exemptions become effective November 15. The remainder of the new Regulation E rules will become effective upon the effective date of the sections of the Act upon which the rules are based: May 10, 1980.

The Board's proposals, which are substantial revisions of previous proposals, deal with

--requirements for documentation of electronic fund transfers by operators of EFT services (designed to give consumers a record comparable to the record resulting from the transfer of funds by check);

--notification requirements -- including a modified telephone notice proposal -- in connection with preauthorized electronic crediting of funds;

--the allocation of responsibility for compliance when EFT services are performed by a financial institution in which the consumer does not have an account;

--requirements for prompt crediting of funds received electronically by a financial institution for a consumer's account;

--procedures for resolving errors;

--charges by financial institutions for actions and services (such as documentation and error resolution) required by the Act or Regulation E.

The Board requested comment on its proposals by November 15.

The Electronic Fund Transfer Act[1] protects consumers in their use of EFT services. EFT services permit consumers and others to transfer funds without the use of checks. One means by which funds can be transferred is the use of an EFT card. Consumers can use EFT cards to make payments (for example, by use of the card at the point of sale to authorize debit of the consumer's account at a financial institution in payment for the purchase of goods or services). This differs from the use of a credit card in that such use of the EFT card authorizes funds to be taken directly out of the consumer's account, while use of the credit card creates a debt that the consumer pays at a later time. The EFT card may also be used at automated tellers to withdraw cash from the consumer's account.

Another EFT service is the preauthorization of financial institutions to make payments for the consumer (such as mortgage or automobile loan payments, utility bills and like repetitive payments). Consumers may use other EFT services to authorize the electronic deposit of payments due to them (such as electronic deposit of wages, Social Security benefits, dividends and like repetitive deposits).

Several provisions of Regulation E were adopted by the Board earlier this year. They include rules

1. That limit a consumer's liability for unauthorized use of an EFT card;

2. Specify the conditions under which EFT cards may be issued;

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[1] Title XX of the Financial Institutions Regulatory and Interest Rate Control Act of 1978.

3. Exempting certain electronic transfers, including transfers within an institution from a consumer's savings account to a checking account;

4. Exempting consumers from any financial responsibility for unauthorized use of EFT cards if the card issuer has not disclosed what liability the consumer will have for unauthorized use of the card, the telephone number and address for reporting a lost or stolen card and the institution's business days, and

5. Providing that written notice of loss or theft of an EFT card is effective when the consumer mails or otherwise transmits the notice to the card issuer.

On April 30, the Board published proposals for the completion of rules to implement the remainder of the EFT Act, which becomes effective May 10, 1980. The final rules and the further proposals published by the Board today reflect the Board's consideration of comment received from the public.

In outline, the principal additional Regulation E provisions announced by the Board today, to be effective May 10, 1980, are:

1. Disclosures -- When a consumer opens an EFT service account, or before the first use of the account, the financial institution offering the service must make a number of disclosures, in a readily understandable written statement, including:

a. The consumer's liability for unauthorized use of the consumer's EFT card.

b. The telephone number and address of the person or office of the card issuer to be notified in case of suspected unauthorized transfers.

c. The financial institution's business days.

d. The type and limitations on the EFT transfers the consumer may make.

e. Any charges involved.

f. A summary of the consumer's right to receive documentation of electronic transfers of funds involving the consumer's account.

g. The consumer's right to stop preauthorized payments and how to do so.

h. A summary of the financial institution's liability to the consumer for failing to make or stop certain transfers.

i. Circumstances under which the financial institution will disclose information about the consumer's account to others.

j. A summary of the error resolution procedures and the telephone number or address the consumer may use concerning error resolution.

The financial institution is generally required to mail or deliver these disclosures by June 9, 1980, or with the first periodic statement after May 10, 1980.

The financial institution is also required to give at least 21 days' notice of any adverse change in any terms of the EFT service of which the consumer must be notified.

2. Exemptions -- The Board amended the exemptions provisions of Regulation E to include not only automatic transfers from savings to checking accounts but also

--other transfers between a consumer's accounts at the same financial institution (including NOW and share draft account transfers);

--transfers from the financial institution to the consumer's account (such as crediting of interest on savings accounts), and

--transfers from the consumer's account to the financial institution's account (such as automobile loan payments).

The Board felt that such transfers parallel already permitted transfers in non-electronic form. Further, there do not appear to be abuses of such services.

Financial institutions may not however condition extensions of credit on the consumer's promise to repay by electronic means, or require candidates for employment to agree to establish an account at the institution for electronic deposit of pay.

3. Preauthorized debits -- The Board adopted its April proposal providing that consumers could, in writing, waive their right to advance notice of varying preauthorized debits, when the consumer had been notified of this right and had preauthorized a range of amounts within which payments could vary without notice (as, varying monthly utility bills).

4. Relation to State law -- With respect to the relation of the Federal EFT Act to similar State laws Regulation E as adopted provides that the Board will determine -- only upon receipt of a request for a determination -- whether a particular State EFT law is, or is not, pre-empted by the Federal law.

5. Record retention -- The Board adopted a requirement that financial institutions retain evidence of compliance with the EFT Act and Regulation E for two years. The Board adopted this provision although the statute of limitations runs only for one year since the agencies do not examine financial institutions uniformly on an annual basis. Institutions may make use of microfilm, magnetic tape or other such material for preserving records and must retain evidence of compliance, such as making required disclosures and the sending of periodic statements of account to consumers, but need not retain evidence of every transaction.

PROPOSALS

The Board revised and issued for further comment six proposals for final provisions of Regulation E. These are:

1. Preauthorized credits -- The Act requires that financial institutions give either positive notice of receipt of preauthorized electronic deposits to the account of a consumer (such as sending the consumer notice of receipt of the deposit) or negative notice (sending a notice that a scheduled deposit had not been received) unless the payor has given the consumer notice that the transfer has been started (such as notice that a wage deposit has been initiated).

The Board, which in its earlier proposals had asked for comment on alternative procedures, proposed that Regulation E should track these positive or negative requirements of the Act.

At the same time, the Board proposed a modification of one of its earlier proposed alternatives: that institutions provide the consumer with a telephone number to be used to verify whether a transfer has or has not been made. As modified, the institution would be permitted to use this alternative if it obtained the consent of the consumer. Institutions would not have the right to require consumers to telephone for information about preauthorized credit.

2. Services offered by a financial institution not holding the consumer's account.

The Board requested comment on a proposal that when a consumer receives EFT services from a financial institution where the consumer does not have an account, the institution where the consumer does have an account that would be used for EFT transfers would be absolved from virtually all the responsibilities to the consumer under the EFT Act and Regulation E. The institution offering the services would be responsible for compliance, with limited exceptions for disclosures having to do with the relationship of the institution holding the consumer's account to that consumer.

3. Documentation of transfers -- The Act requires that financial institutions document electronic transfers by providing receipts and sending periodic statements. With the objective of making documentation for EFT transactions essentially parallel to documentation of transfers by checks the Board proposed a revised section on documentation in Regulation E that would require:

a. Date of the transfer -- For transfers initiated at a terminal (such as point of sale and automated teller terminals) the financial institution would have to show on the periodic statement provided to the consumer the date the transfer was initiated and the date it was credited or charged (posted) to the consumer's account.

-- For other transactions, the periodic statement would be required to show the date the transaction was credited or charged to the consumer's account.

The Board noted that comment on its earlier proposal (that would have required the date the transaction was initiated for all transfers) pointed out that in many instances (such as payroll deposit and preauthorized payments) the date the transfer was initiated is often irrelevant and that the important date for the consumer and the financial institution is the date the transaction is credited or charged to the consumer's account.

b. Location of terminals -- The Board proposed that financial institutions could show on periodic statements the location of the terminal used in any of three ways: street address; name of an organization, such as a store or financial institution, where the terminal is located or, name of a readily identifiable location (such as O'Hare Airport).

4. Availability of funds -- The Board proposed that financial institutions make electronically deposited funds available to consumers promptly, as it had earlier, but with certain added specifications.

5. Procedures for processing errors -- The Act requires generally that financial institutions resolve asserted errors in electronic transfers within 10 business days of notification by the consumer. This notification may be in writing or oral. Alternatively, institutions may take up to 45 calendar days to investigate and resolve a complaint, if they provisionally recredit the consumer's account for the amount in dispute. The Act permits institutions to require written confirmation of an oral report of error within 10 business days of the report, and provides that recrediting need not take place if this written confirmation is not received within 10 business days.

The earlier proposal would have required a notice to the consumer of recrediting, and a second notice three days before any final recrediting, or redebiting (if no error is found). The new proposal changes the timing and procedure for the second notice. Institutions would have to tell the consumer that the account is being debited and would be required to honor any checks written before the consumer was so notified.

The new proposal adds provisions allowing the financial institution to rely, in an investigation, on information received from any third party to the transaction and to limit the investigation to the "four walls" of the institution when a third party is involved with whom the institution has no agreement (such as the Social Security Administration).

6. Charges -- Financial institutions have asked the Board whether they could charge for certain actions and services required under Regulation E, such as documentation and error resolution.

The Board requested comment on two alternative proposals:

--That the Board might set ceilings on charges by requiring that they be reasonable and cost-related.

--That the Board prohibit charges for error resolution.

The Board's final rules and proposals, outlined above, are attached.

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FEDERAL RESERVE SYSTEM

[12 CFR Part 205]

[Reg. E; Docket No. R-0221]

# ELECTRONIC FUND TRANSFERS

Definitions
Exemptions
Special Requirements
Issuance of Access Devices
Liability of Consumer for Unauthorized Transfers
Initial Disclosure of Terms and Conditions
Change in Terms; Error Resolution Notice
Preauthorized Transfers
Relation to State Law
Administrative Enforcement
Model Disclosure Clauses

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting in final form (1) additional sections of Regulation E to implement certain provisions of the Electronic Fund Transfer Act that take effect May 10, 1980, and (2) amendments to existing sections of Regulation E. The regulatory proposal was published for comment at 44 FR 25850 (May 3, 1979). The Board is separately republishing today, for further comment, additional sections of the regulation to implement other provisions of the Act effective May 1980. Finally, the Board is issuing an analysis of the economic impact of the portions of the regulation adopted in final form.

EFFECTIVE DATES: Sections 205.3 and 205.6 (originally 205.5): November 15, 1979; §§ 205.2, 205.4(a), (c), and (d), 205.5 (originally 205.4), 205.7, 205.8, 205.10(b), (c), and (d), 205.12, 205.13, and Appendix A: May 10, 1980.

FOR FURTHER INFORMATION CONTACT: Regarding the regulation: Anne Geary, Assistant Director (202-452-2761), or Lynne B. Barr, Senior Attorney (202-452-2412), Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Regarding the economic impact analysis: Frederick J. Schroeder, Economist (202-452-2584), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: (1) Introduction; General Matters. The Board is adopting in final form additional sections of Regulation E to implement provisions of the Electronic Fund Transfer Act that become effective May 10, 1980. The sections adopted today are §§ 205.4(a), (c), and (d), 205.7, 205.8, 205.10(b), (c), and (d), 205.12 and 205.13. The Board is also issuing additional model disclosure clauses (Appendix A to the regulation).

These additional sections and model clauses were published on May 3, 1979, in the Federal Register for public comment (44 FR 25850). Note that the section numbers as adopted differ from those in the proposal.

The Board is also adopting amendments to §§ 205.2 and 205.3. Sections 205.4 and 205.5 in the existing regulation are being redesignated as §§ 205.5 and 205.6, respectively, and technical amendments to these sections are being adopted.

Other sections of the regulation proposed in May are being republished separately today for further public comment. See the proposed rules document affecting Regulation E in this issue.

The Board proposed in May not to implement in the regulation §§ 910 and 912-914 of the Act. Although some commenters suggested that the Board issue regulations on these sections, the Board has decided not to do so. With respect to §§ 912 through 914, the Board continues to feel that they are straightforward and regulatory implementation is not needed. Implementation of § 910 presents a different problem. That section imposes upon a financial institution liability for failure to make or stop electronic fund transfers in accordance with the terms and conditions of an account, except in certain enumerated instances. The Board is authorized to add to the list of instances in which an institution is absolved from liability. The Board is concerned that adding to this "laundry list" might reduce consumer protections and unduly complicate the regulation. Since § 910 explicitly states that a financial institution is liable only when it fails to act in accordance with the terms and conditions of its agreement with its customer, institutions may wish to review their customer agreements.

The Board solicited comment on whether the requirements of the Act and regulation should be modified, as permitted by § 904(c) of the Act, for small financial institutions, as necessary to alleviate undue compliance burdens for such institutions. The Board has determined that such modifications are not necessary at this time.

The Board received 202 written comments on the proposed amendments. Public hearings were also held on the proposal on June 18 and 19, 1979.

Section 904(a)(1) of the Act requires the Board, when prescribing regulations, to consult with the other federal agencies that have enforcement responsibilities under the Act. Members of the Board's staff met with staff members from the enforcement agencies both before and after the proposal was issued.

Federal savings and loan associations should note that they are subject to the provisions of Regulation E and that there may be some inconsistency between this regulation and the Federal Home Loan Bank Board's regulation governing remote service units (12 CFR 545.4-2). The Board of Governors has been advised by the Bank Board that § 545.4-2 will be amended to conform to the Act and Regulation E.

Section 904(a)(2) requires the Board to prepare an analysis of the economic impact of the regulation on the various participants in electronic fund transfer systems, the effects upon competition in the provision of electronic fund transfer services among large and small financial institutions, and the availability of such services to different classes of consumers, particularly low-income consumers. Section 904(a)(3) requires the Board to demonstrate, to the extent practicable, that the consumer protections provided by the proposed regulation outweigh the compliance costs imposed upon consumers and financial institutions. The Board's analysis of the economic impact of the provisions adopted today is published in section (3) below. The final regulatory amendments and the economic impact statement have been transmitted to Congress.

Section 917 of the Act and § 205.13 of the regulation, which assign administrative enforcement to various federal agencies, do not become effective until 1980. The Board intends, however, to enforce the effective requirements of the Act and Regulation E as to state member banks under the general enforcement authority contained in § 1818(b) of the Financial Institutions Supervisory Act (12 U.S.C. 1818(b) (1974)). Other financial institutions should consult the agency with supervisory jurisdiction over them to determine the agency's position as to enforcement.

(2) Regulatory Provisions. Section 205.2 — Definitions. The definition of "error" has been deleted from § 205.2 and placed in § 205.11 (Procedures for Resolving Errors), thus bringing together in one section the provisions relating to error resolution.

The Board has decided to amend the definition of "unauthorized electronic fund transfer" so that the third exclusion reads: "or (3) that is initiated by the financial institution or its employee." This language is closer than that of the proposal to the statutory language in that it refers specifically to acts of the financial institution. The intent of the proposed amendment was to eliminate the apparent inconsistency created by the fact that the existing definition of "unauthorized electronic fund transfer" excluded errors, yet "error" includes unauthorized transfers. The amendment as adopted also resolves this problem, by dropping the reference to errors.

The definition of "preauthorized electronic fund transfer" and the amendment to the existing definition of "financial institution" are adopted as proposed.

Section 205.3 — Exemptions. The Board proposed to amend §§ 205.3(c) and (d) which were adopted on March 21, 1979. Section 205.3(c) exempts transfers made primarily for the purchase or sale of securities or commodities. The Board proposed to eliminate the words "through a broker/dealer registered with" in order to broaden the scope of the exemption to

include securities transactions made by mutual funds. A significant percentage of mutual fund transactions are accomplished through sources other than registered broker/dealers. The Board has adopted the exemption as proposed because it believes that existing federal laws and the regulations of the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC), although not specifically promulgated for the regulation of payment transfers, provide protection to consumers regarding payment transfers consistent with the requirements of the Act and Regulation E. Under the provision as amended, if payment is the primary purpose of the transfer and a securities purchase or sale only an incidental purpose, the regulation would apply.

The Board also solicited comment on whether pension and profit-sharing plans should be covered by this exemption. No comments were received on this issue. Since pension and profit-sharing plans are not regulated by the SEC or the CFTC, the Board does not believe an exemption is appropriate.

The Board proposed to revise § 205.3(d) in order to exempt:

1. Transfers between a consumer's accounts at a single financial institution, such as transfers from a demand deposit account to a savings account.

2. Transfers from the financial institution to the consumer's account, such as crediting of interest on savings accounts.

3. Transfers from the consumer's account to the financial institution, such as debiting of automatic mortgage payments, other loan payments, and checking account charges.

Comment was solicited as to whether transfers from the consumer's account to the financial institution should receive total or partial exemption.

The Board has decided to adopt § 205.3(d) as proposed with the change discussed below. Public comment supports the Board's belief that intra-institutional transfer services have been provided by financial institutions for many years. The focus of the Act is on new and developing electronic payment systems, not on traditional intra-institutional transfers that have become "electronic fund transfers" by computerization. In addition, these services are beneficial for consumers and institutions. The costs of providing them would increase if they were subject to the Act's requirements, particularly the monthly periodic statement requirement.

The Board has decided against making transfers from the consumer's account to the financial institution subject to the requirement of periodic statements. It believes that the periodic statements which financial institutions provide supply sufficient and timely information to consumers, and that the possiblity of unauthorized use is not great for intra-institutional transfers. Comments did not demonstrate that the Act's protections were needed and the Board believes that the cost of these protections would outweigh the potential benefits.

Commenters pointed out, however, that complete exemption of the transfers described in paragraphs (2) and (3) of § 205.3(d) would conflict with § 913 of the Act. That section prohibits conditioning the granting of credit or the receipt of employment or government benefits on participating in a preauthorized electronic fund transfer arrangement. Accordingly, subsection (d)(2), exempting transfers into a consumer's account(s) by a financial institution, has been modified to require compliance with § 913(2) of the Act, and subsection (d)(3), exempting transfers from a consumer's account(s) to the financial institution, has been changed to require compliance with § 913(1) of the Act. Violations of § 913 will be enforced under §§ 915 and 916.

The Board also solicited comment as to whether any other automatic transfers should be exempted from the regulation. Several commenters suggested that additional exemptions should be made but did not provide a rationale for their recommendations. The Board does not believe that additional exemptions are warranted.

Section 205.4 — Special Requirements. Section 205.4 corresponds to § 205.13 in the first proposal. The first sentence of § 205.4(a) permits two or more financial institutions that jointly provide electronic fund transfer services to contract among themselves to fulfill the requirements that the regulation imposes on any or all of them. The second sentence is new. It states that when making disclosures under §§ 205.7 and 205.8, a financial institution providing electronic fund transfer services under an agreement with other financial institutions need only make those required disclosures that are within its knowledge and the purview of its relationship with the consumer for whom it holds an account. This provision responds to a problem raised by commenters, namely, that a financial institution that is part of a shared system is unable to disclose the terms and conditions imposed by other participants in the system.

Section 205.4(b) is being proposed for comment. Sections 205.4(c) and (d) correspond to §§ 205.13(b) and (c) in the first proposal. Only technical changes have been made in these sections. Commenters asked whether financial institutions may choose to which joint account holder they will send disclosures or statements; § 205.4(c)(2) does not restrict the institution's choice.

Section 205.4(d) permits financial institutions to provide additional information or disclosures required by other laws (Truth in Lending disclosures or state law disclosures) with the disclosures required by Regulation E. Commenters asked that a specific provision permitting inconsistent state laws to be combined with the Regulation E disclosures (similar to § 226.6(b) of Regulation Z) be added to the regulation. The Board does not believe that such a provision is necessary at this time, given the stringent placement requirements in Regulation Z. Other commenters asked that the Board add a provision similar to one contained in Regulation Z requiring that additional information or other disclosures combined with the

required disclosures not mislead or confuse the consumer or detract attention from the disclosures required by Regulation E. The Board is reluctant to add such a provision because of difficulty in enforcing it. It could also conflict with the similar provision in Regulation Z, particularly because Truth in Lending disclosures and EFT disclosures will often be combined by the financial institution into a single disclosure statement.

Section 205.5 — Issuance of Access Devices. Section 205.4 has been redesignated § 205.5. The existing regulation provides that an access device that is sent unsolicited to the consumer must be accompanied by a disclosure that complies with § 205.4(d). However, § 205.4(d) is a transitional provision and is effective only until May 10, 1980. For this reason, the Board is amending, effective May 10, 1980, § 205.4(b)(2) to read, ". . . in accordance with § 205.7(a), . . . ," and deleting § 205.4(d).

Section 205.6 — Liability of Consumer for Unauthorized Transfers. Section 205.5 has been redesignated § 205.6. The Board is adopting a technical amendment to paragraph (a)(2)(i), to make clear that the information required to be disclosed is identical to that required by § 205.7(a)(1).

The Board has decided to adopt the proposed amendment to paragraph (b); the phrase "series of transfers arising from a single loss or theft of the access device" is changed to "series of related unauthorized transfers." This revision recognizes that unauthorized transfers may occur in circumstances other than those involving loss or theft of an access device.

A few commenters found the term "related transfers" to be ambiguous. Whether several unauthorized transfers are related is a question of fact; typically transfers arising from a single loss or theft of the access device will be related.

In addition, the phrases "electronic fund" and "whichever is less," which were inadvertently omitted, have been inserted.

Section 205.7 — Initial Disclosure of Terms and Conditions. Section 205.7 corresponds to § 205.6 in the proposal. Comment was solicited on whether disclosure should be permitted "before the first electronic fund transfer is made involving a consumer's account." A large number of responses were received, the majority supporting the proposal. The proposed language was considered particularly important where the consumer contracts with an employer (in the case of direct payroll deposit) or with a utility (in the case of preauthorized debits) for an EFT service rather than directly with the account-holding financial institution. The financial institution would be unable to provide disclosures at the time the consumer contracts for the service. For that reason, and because of the difficulty of determining when a consumer has contracted for an EFT service, the Board is adopting this provision as proposed.

Several commenters were concerned about the difficulty of providing disclosures before the first electronic fund transfer. It was pointed out that, through an oversight or other error, an institution may not receive prenotification of an electronic fund transfer, such as a payroll deposit, or may not receive prenotification far enough in advance to enable it to give the required disclosures before the transfer is made. The Board believes, however, that applicable Treasury Department regulations governing the federal recurring payments program and industry practices, such as the automated clearing house rules, will minimize the likelihood of such occurrences, and that no further extension of the deadline for making disclosures is necessary.

Section 205.7(a)(1) has been amended to make it clear that a complete description of the consumer's potential statutory liability for unauthorized transfers need not be recited on the initial disclosure statement. The Board believes that a summary description, in plain English, will be easier for consumers to understand, and also less cumbersome for financial institutions. Examples showing the amount of information the Board considers appropriate for compliance with §§ 205.7(a)(6), (a)(7), and (a)(8), as well as this paragraph, are contained in the model disclosure clauses.

No changes have been made in §§ 205.7(a)(2) and (a)(3).

The requirement of § 205.7(a)(4) that usage limitations on EFT devices be disclosed generated a great many comments. Three points were raised. A number of commenters were concerned that an account-holding institution would be unable to determine, and therefore disclose, limitations imposed by other financial institutions--especially in the context of an interchange network or an automated clearing house system. As provided in § 205.4(a), a financial institution need make only those disclosures that are within its knowledge and the purview of its relationship with the consumer.

The second issue raised in connection with this paragraph is the question of what types of limitations are exempt from the disclosure requirement as "necessary to maintain the security" of an EFT system. The Board believes that such a determination can only be made by financial institutions on a case-by-case basis. Section 205.7(a)(4), however, does not permit institutions to withhold the details of frequency and amount limitations merely because they are related to the security aspects of the system. Unless disclosure of such details would compromise the integrity of the system, consumers must be informed of them. In order to emphasize the narrow scope of this exemption, the Board has amended the second sentence of the paragraph, changing the word "necessary" to "essential." It should be noted, however, that even when disclosure of such limitations would jeopardize a system's security, the financial institution is only relieved of the duty to disclose the details of the limitations; the fact that certain limitations exist must still be disclosed to the consumer.

The third issue raised by the commenters was whether the deletion of the words "and nature" in the regulation from the statutory phrase "type and nature of electronic fund transfers" was intended as a substantive departure from the requirements of the Act. The reason for the deletion is simply that the Board considers the additional words unnecessary.

No change has been made in § 205.7(a)(5). A number of commenters requested clarification as to what types of charges must be disclosed under this paragraph. It is the Board's opinion that only those charges that relate specifically to electronic fund transfers, such as transaction charges, or to the right to make such transfers, such as monthly EFT service charges, should be disclosed. In cases where an institution imposes only a general, undifferentiated account maintenance charge that covers EFT as well as other services, or requires that a minimum balance be maintained, no disclosure need be made under this paragraph.

Sections 205.7(a)(6), (a)(7), and (a)(8) have been amended to require only a summary statement of the consumer's statutory rights, as in the case of § 205.7(a)(1), discussed above. The model clauses that relate to these paragraphs indicate how much information an adequate summary would contain. In connection with § 205.7(a)(8), it should also be noted that the Board has decided not to implement § 910 of the Act in the regulation.

Section 205.7(a)(9) is substantially similar to the proposal. Several commenters expressed concern that the Board's original proposal was drafted too broadly, and would require financial institutions to disclose their reporting practices with respect to every consumer's account, including accounts not accessible to electronic fund transfers. However, this paragraph, and indeed all of § 205.7(a), relate only to accounts that are accessible by electronic fund transfers. Therefore, the institution's practices concerning other accounts need not be disclosed. It should be noted that this paragraph requires the institution to describe the conditions under which _any_ information relating to an account will be made available to third parties in the ordinary course of business.

The Board received a large number of comments regarding § 205.7(a)(10), most of which proposed amendments or additions to the error resolution procedure notice. In response to these comments, the notice has been redrafted in the interest of making the error resolution procedure more readily understandable to consumers. No change in substance or basic format was made, however, and the notice remains a summary of the statutory error resolution procedures, in compliance with § 905(a)(7) of the Act.

Section 205.7(b) has been substantially amended, in light of the comments received. The proposal could have been interpreted to require a large number of account holders to be given the disclosures required by paragraph (a) even where no electronic fund transfers were made or contemplated prior to May 10, 1980, and even if the account was closed on that date. The Board does not believe that such a result would be beneficial to consumers, or that it is required by § 905(c) of the Act. Under § 205.7(b), as adopted,

institutions must make the disclosures required by § 205.7(a) for all accounts still open on May 10, 1980, from or to which electronic fund transfers were actually made or contracted for prior to that date, or for which an access device was issued to a consumer (whether or not the device was an "accepted access device," as defined in § 205.2(a)(2)).

A number of commenters were also concerned that financial institutions which do not normally issue monthly statements will be forced to make a special mailing in order to comply with the timing requirement of this paragraph. Accordingly, the regulation now provides that the disclosures may be made at any time "on or before" June 9, 1980. Thus, an institution could choose to make the necessary disclosures in a periodic statement scheduled for a date earlier than May 10, 1980, and still be in compliance.

Section 205.8 — Change in Terms; Error Resolution Notice. Section 205.8 corresponds to § 205.7 in the proposed draft, and, with the exception of the deletion of paragraph (b)(2)(ii), it remains substantially the same. Paragraphs (a)(1) and (2) have been merged; similarly, paragraphs (b)(1) and (2) have been combined. Comment was solicited on whether additional types of unfavorable changes in terms or conditions of an account should be added to the list set forth in paragraph (a). Commenters did not generally favor additions to this provision and no change has been made.

Several commenters requested clarification of the relationship of paragraph (a)(2) of § 205.8 (limitations on the obligation to give prior notice of an adverse change in terms) to § 205.7(a)(4) (disclosure of frequency and amount limitations on the use of an access device). Concern was expressed that if a dollar or use limitation that was not previously disclosed for security reasons was made stricter, the institution would have to either explain the change, and thereby jeopardize the security of the system, or merely indicate that some unexplained change had been made to a previously undisclosed limitation. Neither choice would be in the best interest of the consumer or the institution, however, and neither result is contemplated. Section 205.8 does not require subsequent disclosures to be given in any case where a term not required to be disclosed under § 205.7(a) is changed. Where the details of a dollar or frequency limitation are withheld on security grounds under § 205.7(a)(4), a change in that limitation is not required to be disclosed later under § 205.8(a). If no such limitation existed when the § 205.7(a) disclosures were given, but one was subsequently added to a system or an account, the institution could withhold those details "essential to maintain the security of the system," but it would be required to indicate that some limitation had been imposed.

A number of comments were also received regarding the requirement that notice be given within 30 days after a change believed necessary to maintain or restore the security of a system or account. The Board recognizes the fact that the 30-day requirement would force institutions using a quarterly periodic statement schedule, as well as any institution forced to institute such a change immediately before its scheduled statements are

to be sent out, to make a special mailing to comply with this paragraph. In order to avoid this result, the Board has amended this provision to permit disclosure of such changes either within 30 days or on the next regularly scheduled periodic statement.

No substantive changes were made in paragraph (b)(1). Paragraph (b)(2) has been amended by eliminating proposed paragraph (b)(2)(ii), which would have required institutions using the "short-form" error resolution notice to send the longer notice to consumers who assert errors. Commenters pointed out that in most cases the investigation and correction of the alleged error will have already been completed by the time the long notice arrives, or will be completed shortly thereafter, and that the notice would then come too late to be of any practical use to the consumer. Such a notice might also be confusing, since a consumer receiving it might feel obliged to notify the institution again.

Section 205.10 — Preauthorized Transfers. Section 205.10(a) appears in the proposed rules document on Regulation E in this issue.

Sections 205.10(b), (c), and (d) were previously designated §§ 205.9(a), (b), and (c) respectively. Under the proposal, the responsibility for providing a copy of an authorization for preauthorized transfers from an account lay with either the financial institution or the designated payee. Many financial institutions explained that frequently they do not participate in, or have knowledge of, the consumer's authorization of preauthorized transfers. Section 205.10(b) has been modified, as suggested by commenters, to specify that the obligation to provide the consumer with a copy of the authorization form rests with the party that actually obtains the authorization.

The Board has added a sentence to § 205.10(c) to explain the consequences of a consumer's failure to provide timely written confirmation of an oral stop-payment order. Such failure results in a lifting of the order and a release of the financial institution from any obligation to continue to refuse to pay an item. The rest of the section is substantially unchanged.

The Board has also changed the first sentence of § 205.10(d) to insure that notice will be provided when a preauthorized transfer varies from the previous transfer under the same authorization. The proposal would have required notice only when a transfer differed from a "preauthorized amount." Commenters pointed out that in many cases a consumer will not specify an amount when authorizing varying transfers.

Financial institutions argued that they are not in the best position to provide notice of varying transfers and asked that the regulation place this responsibility on the designated payee. The Board does not believe it appropriate to vary by regulation express language on this point in § 907(b). The Act does not prohibit financial institutions from contracting

with the designated payee for compliance with the notice requirement and obtaining indemnity for non-compliance.

Section 205.12 — Relation to State Law. The provisions relating to preemption of state law have been rearranged and rewritten. Proposed §§ 205.11(a) and (b) would have constituted a regulatory determination of inconsistency since the provisions of state law described in proposed §§ 205.11(b)(1)(i)-(iv) would have been automatically preempted. Comments on the proposal and further analysis of § 919 and its legislative history have led the Board to conclude that the question of preemption should be decided upon application. Consequently, paragraphs (1) through (4) of § 205.12(b) now set forth the standards that the Board will apply in determining inconsistency, rather than final determinations of inconsistency. The regulation provides that any state, financial institution, or other interested party may apply to the Board for a determination whether a state law is preempted.

The provisions relating to exemption of state-regulated transactions have not been changed.

Section 205.13 — Administrative Enforcement. The proposal would have required financial institutions to retain records of compliance for two years. Many industry commenters urged the Board to shorten the record retention period to conform to the Act's one-year statute of limitations. Enforcement agencies, however, stressed the importance of records in carrying out their responsibilities under § 917 of the Act. For this reason, and to conform with record retention requirements under the Truth in Lending and Equal Credit Opportunity regulations, the Board has adopted a two-year record retention requirement.

Language has been added to § 205.13(c)(1) specifying acceptable methods for retaining records of compliance, and § 205.13(c)(2) has been changed to indicate that only the records actually involved in an ongoing lawsuit or administrative proceeding must be retained beyond the two-year period. Financial institutions should note that they need not retain multiple copies of identical disclosures.

(3) Economic Impact Analysis. Introduction. Section 904(a)(2) of the Act requires the Board to prepare an analysis of the economic impact of the regulation that the Board issues to implement the Act. The following economic analysis accompanies sections of the regulation that are being issued in final form. 1/

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1/ The analysis presented here is to be read in conjunction with the economic impact analysis that accompanies the Board's final rules at 44 FR 18474, (March 28, 1979). The sections of the regulation have been redesignated.

The analysis must consider the costs and benefits of the regulation to suppliers and users of electronic fund transfer (EFT) services, the effects of the regulation on competition in the provision of electronic fund transfer services among large and small financial institutions, and the effects of the regulation on the availability of EFT services to different classes of consumers, particularly low-income consumers.

The regulation in part reiterates provisions of the statute and in part amplifies the statute. Therefore, the economic analysis considers impacts of both the regulation and the statute, and throughout the analysis a distinction will be made between costs and benefits of the regulation and those of the statute. It is also important to note that the following analysis assumes that the regulation and the Act have no relevant economic impact if they are less restrictive than current industry practices or state law. In this case, the regulation will not affect costs, benefits, competition, or availability and will not inhibit the market mechanism. The following analysis of the regulation and the Act is relevant only if their provisions are more constraining than those provisions under which institutions would otherwise operate.

Analysis of Regulatory and Statutory Provisions. Section 205.3 is amended by the expansion of two exemptions. First, electronic fund transfers primarily for the purchase or sale of regulated securities are to be exempted from coverage by the regulation even if such transfers are not made through a registered broker/dealer, as is the case in many mutual fund transfers. This provision eliminates the costs of duplicating consumer protections already guaranteed by other federal laws.

Second, the regulation exempts preauthorized automatic transfers between a consumer's accounts at a financial institution and between the institution and a consumer's account. Subjecting such intra-institutional transfers to the Act's requirements would disrupt efficiently functioning internal transfer systems and increase their costs. The exemption assures that financial institutions may continue to offer to consumers such cost-saving, convenient services as automatic crediting of interest, automatic debiting of loan payments, and transfer of funds from checking to savings accounts.

Section 205.4 permits financial institutions to contract among themselves to avoid duplicate compliance efforts for jointly-offered services. 2/ It also provides that an institution need issue only one set of disclosures per consumer and per joint account, and that disclosures required by other laws may be combined with disclosures required by this regulation.

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2/ Section 205.4(b) has been issued in proposed form for comment and is not considered here.

These measures reduce the amount of disclosures and mailings needed to comply with the Act, while obviating the duplication of some services. Some compliance costs can therefore be avoided through this provision of the regulation. A financial institution is specifically exempted from having to make disclosures that go beyond its knowledge and the purview of its relationship with consumer account holders. This regulatory provision relieves institutions of the need to list such details as business days and telephone numbers for all institutions in a shared EFT system.

Section 205.7 modifies the Act's requirement that initial disclosures must be made at the time a consumer contracts with a financial institution for EFT services. The regulation provides that institutions can comply by giving the initial disclosures before the first electronic transfer occurs. This provision assures that consumers receive timely disclosures while, at the same time, it obviates the need to determine under state law when a contract for such services is created.

The initial disclosures will benefit consumers by providing them with more information than otherwise may have been readily available. With the disclosures consumers will be better able to assess the risks and benefits associated with EFT, to plan their financial transactions, and to compare EFT services offered by different institutions. By fostering greater awareness of the risks of liability associated with EFT use, the disclosures may encourage consumers to exercise greater care in the use of access devices. The required listing of offered services may have some marketing effect, leading to greater use of EFT services and, to the extent that scale economies are possible, may lower average cost of fund transfers. Finally, the disclosures benefit consumers by describing the steps they must take to guarantee the investigation and resolution of errors; proper use of the error resolution procedure will lead to greater recovery of consumer losses from errors.

Financial institutions will benefit from their mandatory disclosures to the extent that consumer understanding of the terms and conditions leads to more widespread and careful use of EFT services. Consumers will know the correct channels through which to notify an institution of loss, theft, or suspected error. The Act and regulation do not preclude financial institutions from realizing cost savings by routinizing notification procedures and by establishing shared or centralized reporting channels.

Several costs will be imposed on financial institutions by the initial disclosure requirement. Institutions will incur drafting, legal, printing, distribution, and administrative costs in complying with disclosure requirements of the Act. Although the regulation sets forth a mandatory notice of error resolution procedures and provides model disclosure clauses for several subsections, disclosure documents must be drafted by the institution to reflect its unique terms and conditions. Four institutional commenters estimated initial disclosure costs; their estimates averaged $0.34

per disclosure. Actual aggregate costs will depend on the use of special provisions of § 205.4 and on the degree to which institutions avoid postage costs by sending disclosures in already-scheduled mailings.

It is expected that adoption at this time of the disclosure requirements in final form will allow an adequate period for most institutions to draft and print disclosure statements for distribution by the June 9, 1980, absolute deadline. 3/ The many institutions with a quarterly statement period ending June 30, 1980, will be unable to use July 1980 statement mailings for initial disclosures. The Act's deadline will therefore force those institutions to include disclosures in April statement mailings. The additional costs of meeting this operational compliance deadline are not likely to be great, however.

The initial disclosure requirements may place small financial institutions at a competitive disadvantage relative to larger institutions because the latter are able to spread fixed legal, administrative, and other costs over larger account bases. However, third-party vendors of EFT service packages to financial institutions may incur lower average costs by pooling orders, so that small institutions might enjoy some scale economies. The net effect of the initial disclosure requirements by size of institution cannot be assessed in advance.

Initial disclosure requirements are unlikely to have significant effects on the availability of EFT services to low-income consumers. Availability by income class is mainly dependent on the Act's issuance and liability provisions, which are implemented by §§ 205.5 and 205.6 of the regulation.

Section 205.8 of the regulation repeats the Act's requirements that financial institutions make (1) subsequent disclosures of the error resolution procedures at least once each year and (2) prompt disclosure of any change in terms or conditions that restricts services or increases costs for consumers. Like the initial disclosures, the subsequent disclosures will benefit both consumers and financial institutions by making relevant payment system information more readily available to consumers. Institutions will incur the costs of disclosure statement drafting, printing, and distribution. Distribution costs can be reduced by sending disclosures with periodic statements.

The Act requires that financial institutions disclose certain changes in the terms or conditions of an EFT account; this requirement is reflected in § 205.8(a) of the regulation. Such changes might be motivated

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3/ For accounts in existence on May 10, 1980. The regulation is expected to reduce compliance costs substantially by exempting closed accounts that otherwise would be subject to the Act's disclosure requirements.

by marketing or security considerations or changes in the costs of maintaining accounts. In particular, an institution must disclose any increase in a fee or charge for electronic transfers. Because cost inflation can be expected to drive up nominal account maintenance charges and trigger additional disclosures, this provision of the Act will place on institutions and consumers a regulatory cost burden associated with increases in the general price level. This disclosure rule thus places a regulatory "tax" on certain market price adjustments.

Regarding the error resolution procedure notice of § 205.8(b), the regulation permits institutions to choose either to send the full error resolution procedure disclosure once every year or to send an abridged disclosure with every periodic statement. Disclosure cost could be minimized by printing the abridged notice on the periodic statement forms. The alternatives allow institutions some flexibility to choose the most economically efficient compliance method for each account. Consumers benefit from adequate disclosure in either case.

Sections 205.10(b), (c), and (d) establish rules regarding preauthorized transfers from a consumer's account. The regulation, like the Act, requires that preauthorized debits may be made only if the consumer has authorized them in writing and received a copy of the agreement. As a result of this provision, consumers are likely to be better informed about their payment schedules. Institutions face a compliance cost only if they obtain the authorization, and such costs may be passed on to the payee. The regulation reiterates the Act's provision that consumers may stop payment of a preauthorized debit up to 3 business days before it is scheduled to occur. This measure provides benefits by ensuring a degree of protection and flexibility for the consumer, while allowing institutions sufficient time to accomplish stop-payment orders. Finally, the regulation restates the Act's requirement that advance notice must be given to a consumer whenever a preauthorized payment differs in amount from the previous transfer to the same payee. The regulation allows, however, that an institution may, if it informs a consumer of this right to notice, offer the consumer a plan whereby notice is sent only if the transfer goes beyond amount limits that the consumer may set. In this way the regulation allows for the reduction of notice volume and related costs.

Sections 205.12 and 205.13 reflect statutory provisions for administrative enforcement and for the relationship to state laws affecting EFT. The regulation requires that records containing evidence of compliance must be kept by financial institutions for at least two years. One commenter estimated that yearly record retention costs would average $0.89 per file in 1980, implying a nationwide annual cost of $19 million in 1980. 4/ Record retention activity is, however, partially motivated by other regulations and

4/ This assumes that files are kept for each of 22 million consumer EFT accounts.

business considerations, so that costs due solely to the Act and regulation cannot be determined.

Uncertainty about whether state laws are consistent with provisions of the Act and regulation will lead financial institutions to seek determinations from the Board under § 205.12. Preparation of the required applications will impose costs on applicants and may deter some institutions from applying. Uncertainties about the relationship between state and federal law may result in a temporary restriction of the availability of EFT services to some classes of consumers.

(4) Pursuant to the authority granted in Pub. L. 95-630 (to be codified in 15 U.S.C. 1693b), the Board hereby amends Regulation E, 12 CFR Part 205, as follows:

1. Section 205.2 is amended, effective May 10, 1980, by deleting the last sentence of paragraph (i), by redesignating paragraph (j) as (k), by adding new paragraph (j), by redesignating paragraph (k) as (l), and by revising paragraph (3) of new § 205.2(l), to read as follows:

SECTION 205.2 -- DEFINITIONS

*     *     *     *     *

(j) "Preauthorized electronic fund transfer" means an electronic fund transfer authorized in advance to recur at substantially regular intervals.

(k) "State"***

(l) "Unauthorized electronic fund transfer"*** (3) that is initiated by the financial institution or its employee.

2. Section 205.3 is amended, effective November 15, 1979, by revising the introductory statement and paragraphs (c) and (d), to read as follows:

SECTION 205.3 -- EXEMPTIONS

The Act and this regulation do not apply to the following:

*     *     *     *     *

(c) Certain securities or commodities transfers. Any transfer the primary purpose of which is the purchase or sale of securities or commodities regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(d) Certain automatic transfers. Any transfer under an agreement between a consumer and a financial institution which provides that the institution will initiate individual transfers without a specific request from the consumer

(1) Between a consumer's accounts within the financial institution, such as a transfer from a checking account to a savings account;

(2) Into a consumer's account by the financial institution, such as the crediting of interest to a savings account (except that the financial institution is subject to §§ 913(2), 915, and 916 of the Act); or

(3) From a consumer's account to an account of the financial institution, such as a loan payment (except that the financial institution is subject to §§ 913(1), 915, and 916 of the Act).

* * * * *

3. Section 205.4 is redesignated as § 205.5, and new § 205.4 is added, effective May 10, 1980, to read as follows:

SECTION 205.4 — SPECIAL REQUIREMENTS

(a) Services offered by two or more financial institutions. Two or more financial institutions that jointly provide electronic fund transfer services may contract among themselves to comply with the requirements that this regulation imposes on any or all of them. When making disclosures under §§ 205.7 and 205.8, a financial institution that provides electronic fund transfer services under an agreement with other financial institutions need make only those disclosures which are within its knowledge and the purview of its relationship with the consumer for whom it holds an account.

(b) Services offered by financial institutions not holding a consumer's account.

* * * * *

[See accompanying proposed rules document for § 205.4(b).]

(c) Multiple accounts and account holders. (1) If a consumer holds two or more accounts at a financial institution, the institution may combine the disclosures required by the regulation into one statement (for example, the financial institution may mail or deliver a single periodic statement or annual error resolution notice to a consumer for multiple accounts held by that consumer at that institution).

(2) If two or more consumers hold a joint account from or to which electronic fund transfers can be made, the financial institution need provide only one set of the disclosures required by the regulation for each account.

(d) Additional information; disclosures required by other laws. At the financial institution's option, additional information or disclosures required by other laws (for example, Truth in Lending disclosures) may be combined with the disclosures required by this regulation.

4. New § 205.5 is amended, effective May 10, 1980, by revising paragraph (b)(2) and by deleting paragraph (d), to read as follows:

SECTION 205.5 -- ISSUANCE OF ACCESS DEVICES

* * * * *

(b) Exception.***

(1) ***

(2) The distribution is accompanied by a complete disclosure, in accordance with § 205.7(a), of the consumer's rights and liabilities that will apply if the access device is validated;

* * * * *

5. Old § 205.5 is amended, effective November 15, 1979, by redesignating it as § 205.6 and by revising paragraphs (a)(3)(i) and (b), to read as follows:

SECTION 205.6 -- LIABILITY OF CONSUMER FOR UNAUTHORIZED TRANSFERS

(a) General rule.***

(3) ***

(i) A summary of the consumer's liability under this section, or under other applicable law or agreement, for unauthorized electronic fund transfers and, at the financial institution's option, notice of the advisability of promptly reporting loss or theft of the access device or unauthorized transfers.

* * * * *

(b) Limitations on amount of liability. The amount of a consumer's liability for an unauthorized electronic fund transfer or a series of related unauthorized transfers shall not exceed $50 or the amount of unauthorized 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:

* * * * *

6. Sections 205.7, 205.8, 205.10(b), (c), and (d), 205.12, and 205.13 are added, effective May 10, 1980, to read as follows:

SECTION 205.7 -- INITIAL DISCLOSURE OF TERMS AND CONDITIONS

(a) Content of disclosures. At the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving a consumer's account, a financial institution shall disclose to the consumer, in a readily understandable written statement, the following terms and conditions of the electronic fund transfer service, as applicable:

(1) A summary of the consumer's liability under § 205.6, or other applicable law or agreement, for unauthorized electronic fund transfers and, at the financial institution's option, the advisability of promptly reporting loss or theft of the access device or unauthorized transfers.

(2) The telephone number and address of the person or office to be notified when 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 make and any limitations on the frequency and dollar amount of transfers. The details of the limitations need not be disclosed if their confidentiality is essential 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) A summary of the consumer's right to receive documentation of electronic fund transfers, as provided in §§ 205.9, 205.10(a), and 205.10(d).

(7) A summary of the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure for initiating a stop-payment order, as provided in § 205.10(c).

(8) A summary of the financial institution's liability to the consumer for its failure to make or to stop certain transfers under § 910 of the Act.

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

(10) A notice that is substantially similar to the following notice concerning error resolution procedures and the consumer's rights under them:

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC TRANSFERS

Telephone us at [insert telephone number]

or

Write us at [insert address]

as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the problem or error appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will tell you the results of our investigation within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will recredit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not recredit your account.

If we decide that there was no error, we will send you a written explanation within 3 business days after we finish our investigation. You may ask for copies of the documents that we used in our investigation.

(b) Timing of disclosures for accounts in existence on May 10, 1980. A financial institution shall mail or deliver to the consumer the information required by paragraph (a) of this section on or before June 9, 1980, or with the first periodic statement required by § 205.9(b) after May 10, 1980, whichever is earlier, for any account that is open on May 10, 1980, and

(1) From or to which electronic fund transfers were made prior to May 10, 1980;

(2) With respect to which a contract for such transfers was entered into between a consumer and a financial institution; or

(3) For which an access device was issued to a consumer.

SECTION 205.8 -- CHANGE IN TERMS; ERROR RESOLUTION NOTICE

(a) Change in terms. A financial institution shall mail or deliver a written notice to the consumer at least 21 days before the effective date of any change in a term or condition required to be disclosed under § 205.7(a) if the change would result in increased fees or charges, increased liability for the consumer, fewer types of available electronic fund transfers, or stricter limitations on the frequency or dollar amounts of transfers. Prior notice need not be given where an immediate change in terms or conditions is necessary to maintain or restore the security of an electronic fund transfer system or account. However, if a change required to be disclosed under this paragraph is to be made permanent, the financial institution shall provide written notice of the change to the consumer on or with the next regularly scheduled periodic statement or within 30 days, unless disclosure would jeopardize the security of the system or account.

(b) Error resolution notice. For each account from or to which electronic fund transfers can be made, a financial institution shall mail or deliver to the consumer, at least once each calendar year, the notice set forth in § 205.7(a)(10). Alternatively, a financial institution may mail or deliver a notice that is substantially similar to the following notice on or with each periodic statement required by § 205.9(b):

IN CASE OF ERRORS OR QUESTIONS ABOUT YOUR ELECTRONIC TRANSFERS

Telephone us at [insert telephone number]

or

Write us at [insert address]

as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe there is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 days to do this, we will recredit your account for the amount you think is in error, so that you will have use of the money during the time it takes us to complete our investigation.

SECTION 205.10 -- PREAUTHORIZED TRANSFERS

(a) Preauthorized transfers to a consumer's account.

*   *   *   *   *

[See accompanying proposed rules document for § 205.10(a).]

(b) Preauthorized transfers from a consumer's account; written authorization. Preauthorized electronic fund transfers from a consumer's account may be authorized by the consumer only in writing, and a copy of the authorization shall be provided to the consumer by the party that obtains the authorization from the consumer.

(c) Consumer's right to stop payment. A consumer may stop payment of a preauthorized electronic fund transfer from the consumer's account by notifying the financial institution orally or in writing at any time up to 3 business days before the scheduled date of the transfer. The financial institution may require written confirmation of the stop-payment order to be made within 14 days of an oral notification if, when the oral notification is made, the requirement is disclosed to the consumer together with the address to which confirmation should be sent. If written confirmation has been required by the financial institution, the oral stop-payment order shall cease to be binding 14 days after it has been made.

(d) Notice of transfers varying in amount. Where a preauthorized electronic fund transfer from the consumer's account varies in amount from the previous transfer relating to the same authorization, or the preauthorized amount, the financial institution or the designated payee shall mail or deliver, at least 10 days before the scheduled transfer date, a written notice of the amount and scheduled date of the transfer. If the financial institution or designated payee informs the consumer of the right to receive notice of all varying transfers, the consumer may elect to receive notice only when a transfer does not fall within a specified range of amounts or, alternatively, only when a transfer differs from the most recent transfer by more than an agreed-upon amount.

SECTION 205.12 -- RELATION TO STATE LAW

(a) Preemption of inconsistent state laws. The Board shall determine, upon the request of any state, financial institution, or other interested party, whether the Act and this regulation preempt state laws relating to electronic fund transfers. Only those state laws that are inconsistent with the Act and this regulation shall be preempted and then only to the extent of the inconsistency. A state law is not inconsistent with the Act and this regulation if it is more protective of a consumer.

(b) Standards for preemption. The following are examples of the standards the Board will apply in determining whether a state law, or a provision of that law, is inconsistent with the Act and this regulation. Inconsistency may exist when state law

(1) Requires or permits a practice or act prohibited by the Act or this regulation;

(2) Provides for consumer liability for unauthorized electronic fund transfers which exceeds that imposed by the Act and this regulation;

(3) Provides for longer time periods than the Act and this regulation for investigation and correction of errors alleged by a consumer, or fails to provide for the recrediting of the consumer's account during the institution's investigation of errors as set forth in § 205.11(c); or

(4) Provides for initial disclosures, periodic statements, or receipts that are different in content from that required by the Act and this regulation except to the extent that the disclosures relate to rights granted to consumers by the state law and not by the Act or this regulation.

(c) Procedures for preemption. Any request for a determination shall include the following:

(1) A copy of the full text of the state law in question, including any regulatory implementation or judicial interpretation of that law;

(2) A comparison of the provisions of state law with the corresponding provisions in the Act and this regulation, together with a discussion of reasons why specific provisions of state law are either consistent or inconsistent with corresponding sections of the Act and this regulation; and

(3) A comparison of the civil and criminal liability for violation of state law with the provisions of §§ 915 and 916(a) of the Act.

(d) Exemption for state-regulated transfers. (1) Any state may apply to the Board for an exemption from the requirements of the Act and the corresponding provisions of this regulation for any class of electronic fund transfers within the state. The Board will grant such an exemption if the Board determines that

(i) Under the law of the state that class of electronic fund transfers is subject to requirements substantially similar to those imposed by the Act and the corresponding provisions of this regulation, and

(ii) There is adequate provision for state enforcement.

(2) To assure that the federal and state courts will continue to have concurrent jurisdiction, and to aid in implementing the Act:

(i) No exemption shall extend to the civil liability provisions of § 915 of the Act; and

(ii) After an exemption has been granted, for the purposes of § 915 of the Act, the requirements of the applicable state law shall constitute the requirements of the Act and this regulation, except to the extent the state law imposes requirements not imposed by the Act or this regulation.

SECTION 205.13 -- ADMINISTRATIVE ENFORCEMENT

(a) Enforcement by federal agencies. (1) Administrative enforcement of the Act and this regulation for certain financial institutions is assigned to the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Board of Directors of the Federal Deposit Insurance Corporation, Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), National Credit Union Administration Board, Civil Aeronautics Board, and Securities and Exchange Commission.

(2) Except to the extent that administrative enforcement is specifically committed to other authorities, compliance with the requirements imposed under the Act and this regulation is enforced by the Federal Trade Commission.

(b) Issuance of staff interpretations. (1) Unofficial staff interpretations are issued at the staff's discretion where the protection of § 915(d) of the Act is neither requested nor required, or where a rapid response is necessary.

(2)(i) Official staff interpretations are issued at the discretion of designated officials. No interpretations will be issued approving financial institutions' forms or statements. Any request for an official staff interpretation of this regulation shall be made in writing and addressed to the Director of the Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The request shall contain a complete statement of all relevant facts concerning the transfer or service, and shall include copies of all pertinent documents.

(ii) Within 5 business days of receipt of a request, an acknowledgment will be sent to the person making the request. If the designated officials deem issuance of an official staff interpretation to be appropriate, the interpretation will be published in the Federal Register to become effective 30 days after the publication date. If a request for public comment is received, the effective date will be suspended. The interpretation will then be republished in the Federal Register and the public given an opportunity to comment. Any official staff interpretation issued after opportunity for public comment shall become effective upon publication in the Federal Register.

(3) Any request for public comment on an official staff interpretation of this regulation shall be made in writing and addressed to the

Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. It must be postmarked or received by the Secretary's office within 30 days of the interpretation's publication in the Federal Register. The request shall contain a statement setting forth the reasons why the person making the request believes that public comment would be appropriate.

(4) Pursuant to § 915(d) of the Act, the Board has designated the Director and other officials of the Division of Consumer Affairs as officials "duly authorized" to issue, at their discretion, official staff interpretations of this regulation.

(c) Record retention. (1) Evidence of compliance with the requirements imposed by the Act and this regulation shall be preserved by any person subject to the Act and this regulation for a period of not less than 2 years. Records may be stored by use of microfiche, microfilm, magnetic tape, or other methods capable of accurately retaining and reproducing information.

(2) Any person subject to the Act and this regulation that has actual notice that it is being investigated or is subject to an enforcement proceeding by an agency charged with monitoring that person's compliance with the Act and this regulation, or that has been served with notice of an action filed under §§ 915 or 916(a) of the Act, shall retain the information required in paragraph (c)(1) of this section that pertains to the action or proceeding until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

7. Appendix A is amended, effective May 10, 1980, by revising the introductory statement and by adding §§ A(8)(a), (c), and (d), (9), and (10), to read as follows:

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 §§ 205.5(a)(3), (b)(2), and (b)(3), 205.6(a)(3), and 205.7. Section 915(d)(2) of the Act provides that use of these clauses in conjunction with other requirements of the regulation 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 clauses, but may use clauses of their own design in conjunction with the model clauses. The inapplicable words or portions of phrases in parentheses should be deleted. The underscored catchlines are not part of the clauses and should not be used as such. 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 limits in § A(2)). Sections A(3) and A(9) include references to a telephone

number and address. Where two or more of these clauses are used in a disclosure, the telephone number and address need not be repeated if referenced.

* * * * *

SECTION A(8) -- DISCLOSURE OF RIGHT TO RECEIVE DOCUMENTATION OF TRANSFERS (§§ 205.5(b)(2), 205.7(a)(6))

(a) Terminal transfers. You can get a receipt at the time you make any transfer to or from your account using one of our (automated teller machines) (or) (point-of-sale terminals).

(b) Preauthorized credits.

* * * * *

[See accompanying proposed rules document for § A(8)(b).]

(c) Periodic statements. You will get a (monthly)(quarterly) account statement (unless there are no transfers in a particular month. In any case you will get the statement at least quarterly).

(d) Passbook account where the only possible electronic fund transfers are preauthorized credits. If you bring your passbook to us, we will record any electronic deposits that were made to your account since the last time you brought in your passbook.

SECTION A(9) -- DISCLOSURE OF RIGHT TO STOP PAYMENT OF PREAUTHORIZED TRANSFERS, PROCEDURE FOR DOING SO, RIGHT TO RECEIVE NOTICE OF VARYING AMOUNTS, AND FINANCIAL INSTITUTION'S LIABILITY FOR FAILURE TO STOP PAYMENT (§§ 205.5(b)(2), 205.7(a)(6), (7), and (8))

(a) Right to stop payment and procedure for doing so. If you have told us in advance to make regular payments out of your account, you can stop any of these payments. Here's how:

Call us at [insert telephone number], or write us at [insert address], in time for us to receive your request 3 business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call. (We will charge you [insert amount] for each stop-payment order you give.)

(b) Notice of varying amounts. If these regular payments may vary in amount, (we) (the person you are going to pay) will tell you, 10 days before each payment, when it will be made and how much it will be. (You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.)

(c) Liability for failure to stop payment of preauthorized transfer. If you order us to stop one of these payments 3 business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.

SECTION A(10) — DISCLOSURE OF FINANCIAL INSTITUTION'S LIABILITY FOR FAILURE TO MAKE TRANSFERS (§§ 205.5(b)(2), 205.7(a)(8))

(a) Liability for failure to make transfers. If we do not properly complete a transfer to or from your account according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

- If, through no fault of ours, your account does not contain enough money to make the transfer.
- If the transfer would go over the credit limit on your overdraft line.
- If the automated teller machine where you are making the transfer does not have enough cash.
- If the (terminal)(system) was not working properly and you knew about the breakdown when you started the transfer.
- If circumstances beyond our control (such as fire or flood) prevent the transfer.
- There may be other exceptions.

By order of the Board of Governors, October 5, 1979.

(signed) Theodore E. Allison

Theodore E. Allison
Secretary of the Board

[SEAL]

FEDERAL RESERVE SYSTEM

[12 CFR Part 205]

[Reg. E; Docket No. R-0251]

ELECTRONIC FUND TRANSFERS

Special Requirements
Documentation of Transfers
Preauthorized Transfers
Procedures for Resolving Errors
Model Disclosure Clauses

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is republishing for further comment certain proposed additional sections of Regulation E to implement certain provisions of the Electronic Fund Transfer Act that take effect May 10, 1980. These sections were previously published for comment at 44 FR 25850 (May 3, 1979). The Board is also separately publishing in final form other sections of Regulation E to implement other provisions of the Act becoming effective in May 1980. The Board is publishing for further comment a revised economic impact analysis, as required by § 904 of the Act.

DATE: Comments must be received on or before November 15, 1979.

ADDRESS: Comments may be mailed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to Room B2223, 20th and Constitution Avenue, N.W., Washington, D.C. between 8:45 a.m. and 5:15 p.m. Comments may also be inspected at Room B1122 between 8:45 a.m. and 5:15 p.m. All material submitted should refer to docket number R-0251.

FOR FURTHER INFORMATION CONTACT: Regarding the regulation: Anne Geary, Assistant Director (202-452-2761), or Lynne B. Barr, Senior Attorney (202-452-2412), Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. 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) Introduction; General Matters. The provisions of Regulation E currently in effect (44 FR 18468, March 28, 1979) implement §§ 909 and 911 of the Electronic Fund Transfer Act (Title XX, Pub. L. 95-630), which took effect February 8, 1979. The remainder of the Act takes effect May 10, 1980; on May 3, 1979, the Board published for comment (44 FR 25850) additional sections of Regulation E to implement those portions of the Act. The Board also held public hearings on the proposal on June 18 and 19, 1979.

The Board received 202 written comments on the proposed additional sections. Based on the comments, the testimony at the public hearings, and its own analysis, the Board has revised certain of the proposed sections and is republishing them for further comment. Section 205.8 (Documentation of Transfers) and § 205.10 (Error Resolution Procedure) have been redesignated §§ 205.9 and 205.11, respectively. Proposed § 205.4(b) is a new provision. The Board is also republishing § 205.10(a) (preauthorized transfers to a consumer's account) and its corresponding model disclosure clause for comment. This provision was designated § 205.8(c) in the first proposal. These are discussed in detail in section (2) below.

Other sections are being published separately today in final form. See the final rules document affecting Regulation E in this issue.

Section 904(a)(1) of the Act requires the Board, when prescribing regulations, to consult with the other federal agencies that have enforcement responsibilities under the Act. Members of the Board's staff have met with staff members from the enforcement agencies both before and after the proposed additional sections were first issued.

Federal savings and loan associations should note that they are subject to the provisions of Regulation E and that there may be some inconsistency between this regulation and the Federal Home Loan Bank Board's regulation governing remote service units (12 CFR 545.4-2). The Board of Governors has been advised by the Bank Board that § 545.4-2 will be amended to conform to the Act and Regulation E.

Section 904(a)(2) requires the Board to prepare an analysis of the economic impact of the regulation on the various participants in electronic fund transfer systems, the effects upon competition in the provision of electronic fund transfer services among large and small financial institutions, and the availability of such services to different classes of consumers, particularly low-income consumers. Section 904(a)(3) requires the Board to demonstrate, to the extent practicable, that the consumer protections provided by the proposed regulation outweigh the compliance costs imposed upon consumers and financial institutions. A preliminary economic impact statement was published with the proposed additional sections, and a revised statement (applicable to the sections republished for further comment) appears in section (3) below. The statement and the proposed regulation have been transmitted to Congress, as required by § 904(a)(4).

Section 904(c) permits the Board to modify the requirements of the Act as they affect small financial institutions if the Board determines that modifications are necessary to alleviate any undue compliance burden. Section 904(d) requires the Board to insure that the requirements of the Act are imposed upon all persons that offer electronic fund transfer services to consumers. The Board previously solicited comment on how the proposed regulation would affect small financial institutions and on the extent to which EFT services are offered by non-financial institutions. Any further comments on this issue are welcome.

Because the public has already had an opportunity to comment on the subject matter of this proposal, and because it is desirable to complete Regulation E in final form as much in advance of the May 1980 effective date as possible, the Board believes that an expedited rulemaking procedure is in the public interest. Accordingly, the expanded procedures set forth in the Board's policy statement of January 15, 1979 (44 FR 3957), will not be followed in connection with this proceeding.

(2) Regulatory Provisions. Section 205.4 -- Special Requirements. Sections 205.4(a), (c), and (d) were adopted today in final form. Section 205.4(b) had no counterpart in the first proposal. It addresses an issue which at the present time is probably quite rare, but which may in the future be more common. Specifically, the issue is how to apportion responsibility for compliance with the regulation where (a) one institution holds the consumer's account and a second institution provides an EFT service and (b) there is no agreement between the institutions as to the service.

A description of a program offered by a particular financial institution illustrates the type of program to which this provision would apply.

A financial institution ("Bank A") now issues EFT cards to consumers with whom it does not have an account relationship; the consumer's deposit account is held by another financial institution ("Bank B"). The EFT card issued by Bank A can be used at automated teller machines (ATMs) and point-of-sale (POS) terminals throughout Bank A's EFT system by the consumer to receive cash (or make other electronic transfers) and make purchases at merchant locations. Bank A, through the automated clearing house or by other means, orders the consumer's account at Bank B to be debited or credited, depending on the transaction. The consumer has authorized Bank B to permit the debits or credits to the consumer's account, but there is no agreement between Bank A (the service-providing bank) and Bank B (the account-holding bank). The Act and regulation impose a number of requirements on Bank B, absent a provision in the regulation to the contrary. Bank B may not offer any EFT services of its own to its account holders, and does not have control over, or even knowledge of, many aspects of the agreement between the consumer and Bank A.

Commenters asked the Board to clarify the respective duties of the two institutions under such a program. Many of the comments suggested that both banks have some responsibilities. However, since there is no agreement regarding the service between the institutions, assigning some disclosure responsibilities to one bank and some responsibilities to the other does not appear to be feasible and, in addition, would be confusing to consumers using the service. Furthermore, the Board questions the equity of imposing any responsibility under the regulation upon Bank B, which is not offering this service to the consumer. Therefore, the proposal would absolve Bank B from all responsibilities and would require Bank A to undertake all of them.

Bank A would be required to comply with § 205.7, but the disclosures would only relate to the EFT service it provides. For example, under § 205.7(a)(9), Bank A would disclose the circumstances under which it will provide information to third parties about the electronic fund transfers made by the consumer under the agreement. Under § 205.7(b), Bank A would have to make disclosures only to those consumers who had contracted for the EFT service. Under § 205.8(b), it would only have to give the error resolution notices to the consumers for whom it provides electronic fund transfer services. The documentation requirements of § 205.9 would apply, except that the service-providing institution would not have to disclose charges imposed by the account-holding institution and would only have to give the account balance disclosures, required by § 205.9(b)(4), if such disclosures are applicable to the program offered by it to consumers. It would not have to give the account balances in the consumer's account at the account-holding institution.

The service-providing institution, under the proposal, would have to correct any errors in the electronic fund transfers made under its service. If the error was not corrected within 10 business days, the service-providing institution would have to order provisional recrediting of the consumer's account at the account-holding institution by initiating a recrediting and giving notice of the recrediting to the consumer. Finally, the financial institution providing the EFT service need only retain records (under § 205.13(c)) for those transfers made by the consumer pursuant to their agreement.

The Board understands that certain items of information may be unavailable to the service-providing financial institution. In addition, it is possible that the account-holding institution may make an error in posting to the consumer's account transfers made under this service. The account-holding institution would not have to comply with the Act's resolution procedures. The Board believes, however, that the service-providing institution can and should be able to correct errors committed either by itself or by the account-holding institution within the prescribed time periods.

The Board solicits comment on the proposal's approach to allocation of responsibility and on any operational difficulties that may be encountered by the service-providing institution in making disclosures or correcting errors.

Section 205.9 — Documentation of Transfers. Section 205.9(a), implementing § 906(a) of the Act, requires institutions to make a receipt available to consumers at the time they initiate an electronic fund transfer from an electronic terminal. The receipt must include 6 items of information, to the extent they are applicable to the transfer. The introductory language in § 205.9(a) remains essentially unchanged from the earlier proposal.

Section 205.9(a)(1) requires institutions to disclose the amount of the transfer. Comments on the first proposal indicate that, particularly in interchange and shared electronic fund transfer systems, the financial institution at whose terminal the transfer is made may add a transfer fee to the amount requested or authorized by the consumer. For example, a customer of Bank A withdraws $50 from an automated teller machine operated by Bank B, which imposes a charge of $0.25 on the transfer. The Board proposes to permit the combined amount ($50.25 in the example) to be disclosed as the amount of the transfer, but requests comment on this issue.

Section 205.9(a)(2) requires disclosure of the date on which the transfer was initiated. Several commenters raised the issue of whether the date disclosed should be the date on which the consumer uses the terminal or the date on which the transaction is posted, if different. The Board believes that the date of initiation is the most meaningful to the consumer and that providing it creates the fewest operational problems. For these reasons, the Board proposes to require disclosure of the initiation date on the terminal receipt.

The first proposal would have required financial institutions to indicate the type of transfer and the consumer's account from or to which funds were transferred. Many comments indicated that requiring the financial institution to generate the account identification, which the Board envisioned would normally consist of the account number, would create operational, privacy, and security problems. For these reasons, the Board has substantially revised §§ 205.9(a)(3) and (4). As now proposed, paragraph (4) would require identification of the access device, such as the card number, rather than a specific identification of the consumer's account. This identification is not intended to include a personal identification number or other security code.

Because nearly all such devices access only one savings account and one checking account, the Board believes that identification of the device, combined with the type of account, would provide full identification of the affected account. Therefore, the Board proposes to require not only the type of transfer, such as a payment or withdrawal, but a generic identification of the account, such as checking or savings. The example in § 205.9(a)(3) illustrates the level of information required. Section 205.9(a)(3) also continues to permit the institution to convey the information by a code, but has been redrafted to make it clear that the code explanation must appear on the receipt itself.

The first proposal would have required a disclosure of the "location" of the terminal, although the statutory language called for "location or identification." The current proposal would permit the financial institution to provide either a location or an identification, such as a terminal number. If a location is shown on the receipt, the format requirement of § 205.9(b)(1)(iv) must be met. If the institution chooses to use an identification, such as a terminal number or code, that identification need not

be explained elsewhere on the receipt. However, on the later statement which reflects that transfer, the location to which the number or code relates must be disclosed.

Section 205.9(a)(6) requires an institution to identify any third party to or from whom funds are transferred by means of an electronic terminal. As in the first proposal, where the consumer provides information on the identity of the third party by means of a handwritten or other non-machine-readable document placed in the terminal, the institution would not be required to capture the identity of that third party on the receipt. The Board wishes to emphasize, however, that the periodic statement reflecting that transaction must include the identity of that third party. Paragraph (6) also permits the use of a code to identify the third party, but the code must be explained elsewhere on the receipt. For example, a financial institution which permits payments to certain utilities to be made through its automated teller machines may wish to preprint, on the back of the documentation, a series of codes and the specific utilities to which they relate. A consumer using this service would key in the code relating to the utility for which payment is being authorized and the receipt would generate that code.

Section 205.9(b), implementing § 906(c) of the Act, requires institutions to provide consumers with periodic statements summarizing the electronic fund transfer activity occurring in the consumer's account during the statement cycle. Institutions subject to § 205.9(b) must provide a written statement to the consumer for each month in which there was electronic activity in the account. Where no activity occurs, the statement must be provided on at least a quarterly basis. Many commenters requested a longer statement cycle, but the Board believes that the language of § 906(c) of the Act is clear.

Set forth below is an example of a periodic statement illustrating the requirements of proposed § 205.9(b). The Board wishes to emphasize that, while information must be provided for each account accessible by electronic fund transfers, a financial institution may furnish a single periodic statement that combines information on more than one account.

A sentence has been added to the introductory language to make it clear that the information required by paragraph (b)(1) may be shown on accompanying documents, rather than on the periodic statement itself. This is in accord with the language of the Act, which specifically authorizes the use of accompanying documents. For example, the institution may furnish copies of terminal documentation to reflect transfers initiated by the consumer through electronic terminals. This would be analogous to the "country club" billing procedures permissible under Regulation Z and the Truth in Lending Act. (The example shown below is more similar to "descriptive" billing statements.)

Section 205.9(b)(1)(i) would require the financial institution to show the amount of the transfer. The Board is aware that, in a shared or

interchange system, the account-holding institution may be unable to determine which portion, if any, of the transfer represents a transaction charge imposed by the institution at whose terminal the transfer was initiated. The Board's proposal would permit the account-holding institution to disclose the entire amount as the amount of the transfer. For example, the $100.25 debit shown in the periodic statement represents a $100 withdrawal authorized by the consumer, together with a $0.25 charge imposed by the bank which operates the terminal at LaGuardia Airport.

The date disclosure required by § 205.9(b)(1)(ii) depends on the type of transfer involved. Transfers initiated by a consumer at an electronic terminal require the disclosure of the date of initiation in all cases, as well as the date that the amount is posted to the consumer's account, if different from the initiation date. In proposing this requirement, the Board believes that disclosure of both dates is essential to the consumer for purposes of account reconciliation and recollection of transfers made through a terminal. However, in preauthorized and telephone-initiated transfers, the Board believes that the initiation date may be irrelevant to the consumer and § 205.9(b)(1)(ii)(B) requires disclosure only of the posting date for such transfers. The first two columns in the example below reflect the date disclosures required for the three types of transfers.

Section 205.9(b)(1)(iii) requires the institution to indicate the type of transfer and the type of account affected by the transfer. This requirement would be satisfied by the same type of information as provided under § 205.9(a)(3), such as "withdrawal from checking" or "payment from savings." The Board specifically requests comment on any operational problems which may prevent an institution from describing the type of transfer. For example, several commenters indicated that, in a shared or interchange system, an account-holding institution may be unable to determine the nature of a debit, such as a payment or withdrawal, received from another institution.

The information required by paragraph (1)(iii) may be provided by a code that is explained elsewhere on the periodic statement or in accompanying material. For example, in disclosing a transfer initiated through a terminal, the institution may provide an explanation of the code on a copy of the terminal receipt provided with the periodic statement. In the illustration below, the transfer codes are preprinted on the periodic statement itself. Because the statement reflects only checking account transfers, a generic identification of the account is unnecessary in the list of transfer codes. The sole exception is transfer code 61, which affects the customer's savings account, as well as the checking account for which the statement is issued. In a combined statement, a further identification of the type of account would be necessary.

Section 205.9(b)(1)(iv) sets forth the disclosure requirements for terminal location. The Board proposes to limit this requirement to transfers initiated by the consumer at electronic terminals because it appears to be

relevant only in these cases. In the statement below, transfer types 01, 03, 05, 21, and 61 represent terminal transfers which would be subject to this requirement.

In implementing this provision, the Board seeks to provide enough specificity to assure the consumer of a complete description, while at the same time allowing institutions the flexibility to devise a meaningful identification. Therefore, paragraphs (A) through (C) provide three different ways of describing the location of the terminal. The institution may choose any one of these methods in making this disclosure.

Paragraph (A) refers to a street address such as "500 Main St., Anytown, OH" or "Chestnut/Oak Sts., Anytown, OH." Paragraph (B) permits the institution to describe the location with a term, such as "LaGuardia Airport, N.Y., N.Y.," which has public recognition and conveys a particular location to the consumer. Paragraph (C) permits disclosure of the name of a merchant or financial institution on whose premises a terminal is placed. The Board envisions that this alternative would be used primarily to describe point-of-sale terminals at a seller's place of business. In the example below, the descriptions of those transfers designated as type 21 illustrate paragraph (C).

Footnote 2 to this paragraph is intended to prevent the account-holding institution from describing the location of its own terminals simply by the name of the institution, rather than a more specific geographic location. For example, if a customer of XYZ Bank withdraws funds through an automated teller machine located at a branch of that bank, the terminal location may not be described merely as "XYZ Bank, Anytown, OH."

If, on the terminal documentation provided under § 205.9(a), the institution used a terminal number or other identification, rather than a location, the institution must repeat that identification on the periodic statement along with one of the required descriptions of the terminal's location. The institution may describe the location on material accompanying the periodic statement, such as a master list of terminal numbers and the locations to which they relate.

Section 205.9(b)(1)(v) requires the institution to disclose the name of any third party to or from whom funds are transferred. Footnote 3 exempts from that provision the deposit of checks or similar negotiable instruments in an electronic terminal for later manual processing. In such cases, the institution would not be required to capture manually the names of third parties on the instruments for later disclosure on the periodic statements.

The second sentence of § 205.9(b)(1)(v) sets forth special requirements regarding disclosure of the name of any third party for transfers initiated by a consumer at an electronic terminal. In such cases, the institution must repeat on or with the periodic statement the name or code used

on the terminal documentation to identify the third party. For example, where the terminal documentation in a point-of-sale transaction showed the merchant's "doing business" name, the periodic statement must reflect that name and not the name of any parent corporation. If the institution used a code on the terminal documentation, the periodic statement or accompanying material must also provide the name of the third party to which the code relates.

The Board wishes to emphasize that the proposed location and third-party requirements may in some cases be satisfied by a single disclosure. For example, for the purchases (transfers labeled "21") shown below, the information contained in the column headed "Description of Transfer" represents both the third party merchants to whom funds were transferred and the locations of the point-of-sale terminals involved.

Section 205.9(b)(2) requires the institution to disclose the number of the consumer's account or accounts to which the periodic statement relates. As illustrated in the statement below, the account number need be shown only once on the periodic statement, rather than repeated with each description of a transfer.

Section 205.9(b)(3) requires disclosure of the total amount of any fees or charges assessed for electronic fund transfers or services. Only those charges which are specifically related to electronic fund transfer services must be disclosed. For example, if the institution imposes a fixed fee for use of an account whether or not the consumer utilizes the electronic fund transfer services associated with that account, no disclosure need be made. The amount shown must be an aggregate of all charges imposed. The institution need not itemize the various types of charges it imposes.

The Board is aware that in a shared or interchange electronic fund transfer system, the account-holding institution may have difficulty in segregating the amount of the transfer from any charge imposed by another institution at the point of origination. This proposal would permit institutions to disclose these amounts simply as the amount of the transfer under § 205.9(b)(1)(i), with no portion of that amount allocated to the fees or charges to be disclosed under paragraph (3). Comment is specifically requested on this issue.

Proposed §§ 205.9(b)(4) and (5), which require the statement to show beginning and ending account balances and the address and telephone number to be used for inquiries or error notifications, are essentially unchanged from the first proposal.

Section 205.9(b)(6) applies to institutions which utilize the telephone alternative set forth in proposed § 205.10(a)(1)(iii) for providing notice to consumers regarding preauthorized transfers to consumers' accounts. Under paragraph (6), the institutions must inform consumers, on each periodic statement, of the telephone number to be used for that purpose.

XYZ BANK

Statement of Account

Direct Inquiries to:

(216) 111-1111
P. O. Box 1234
Anytown, OH 44000

Mary and John Doe
421 Elm Street
Anytown, OH 44000

CHECKING ACCOUNT 44-66-8800

Beginning Balance 794.65

| Posting Date | Initiation Date | Credits | Debits | Type of Transfer | Description of Transfer |
|---|---|---|---|---|---|
| | 08 7 | | 25.00 | 01 | #123 - 500 Main St., Anytown, OH |
| 08 13 | 08 10 | 114.13 | | 03 | #568 - Chestnut/Oak St., Anytown, OH |
| 08 13 | 08 12 | | 72.34 | 21 | ABC Dept. Store, Anytown, OH |
| 08 15 | | | 278.49 | 51 | Anytown Savings & Loan |
| 08 17 | | 438.73 | | 31 | ACME Steel Corp. |
| 08 20 | | | 23.86 | 41 | 1st Bank of Anytown |
| 08 22 | | | 52.50 | 41 | ABC Dept. Store |
| 08 22 | 08 20 | | 100.25 | 01 | #24A - LaGuardia Airport, NY, NY |
| | 08 21 | | 88.00 | 21 | Metropolis Dept. Store, NY, NY |
| 08 24 | | 704.65 | | 31 | Anytown Hospital |
| 08 27 | 08 25 | | 59.64 | 05 | #456 - E-Z Shopping Mall, Anytown, OH Ohio Electric Power Co. |
| 08 27 | 08 25 | 65.00 | | 03 | #456 - E-Z Shopping Mall, Anytown, OH |
| | 08 29 | | 43.42 | 21 | A-1 Food Store, Anytown, OH |
| | 08 27 | | 300.00 | 61 | #123 - 500 Main St., Anytown, OH |

Ending Balance 1,073.90

Transfers

01 - Withdrawal
03 - Deposit
05 - Utility payment
21 - Purchase
31 - Direct deposit of payroll
41 - Telephone bill payment service
51 - Preauthorized debit
61 - Transfer from checking to savings

Sections 205.9(c) and (d) provide limited exceptions to the general periodic statement requirements set forth in § 205.9(b). Under § 205.9(c), a financial institution need not provide a periodic statement for passbook accounts which cannot be accessed electronically except by preauthorized electronic credits. Instead, the institution may simply update the passbook information whenever the passbook is presented by the customer. Section 205.9(d) permits institutions to send periodic statements on a quarterly rather than a monthly basis on non-passbook accounts which cannot be accessed electronically except by preauthorized credits. It should be noted that the format and content of the quarterly statement must satisfy § 205.9(b). These provisions have been redesignated, but are otherwise unchanged from the first proposal.

Section 205.10 — Preauthorized Transfers. Section 205.10(a)(1), which was designated § 205.8(c) in the first proposal, implements § 906(b) of the Act. The Act requires an institution to provide a consumer whose account is scheduled to be credited with a preauthorized transfer from the same payor at least once every 60 days with either positive or negative notice of whether the transfer occurred, except where the payor provides positive notice of the transfer to the consumer.

The Board had proposed three additional ways in which financial institutions could satisfy the statutory requirement. Proposed § 205.8(c)(1)(iii) provided that notice would be considered given if the institution transmitted a periodic statement within 2 business days after the transfer was scheduled to occur. A number of commenters pointed out, and the Board agrees, that a periodic statement is simply one permissible means of providing positive or negative notice and is therefore implicit in paragraphs (a)(1)(i) and (a)(1)(ii). Section 205.8(c)(1)(v) of the proposal would have required the institution to notify the consumer only where the failure to receive the transfer resulted in an overdraft or a credit extension or an automatic transfer to cover an overdraft. This alternative would have been available only if the institution paid all items presented and imposed no overdraft or related charges. Comments characterized this alternative as extremely burdensome to institutions and unfavorable to consumers. The Board has therefore eliminated this alternative.

The Board has decided to publish for comment a modified version of a provision that appeared in the first proposal. Section 205.8(c)(1)(iv) of the first proposal would have permitted a financial institution to establish a telephone line that the consumer could call to ascertain whether an expected preauthorized credit had arrived. The new proposal would also permit use of a telephone number but the financial institution would have to inform the consumer of the right to receive notice. The consumer would then have a choice as to the form of notice. The proposal would not prohibit an institution from charging for paper notice but the Board expects any charge imposed to be reasonable. If the consumer elects to use the telephone number, the proposal would require the institution to disclose the number at the time of the election and on each periodic statement.

Two other changes have been made in the proposal. The introductory language has been changed to clarify the type of notice the payor must provide in order for the exception to apply. The institution need not provide notice where the payor informs the consumer that the transfer has been "initiated." For example, a pay slip furnished by an employer would constitute sufficient notice by the payor in a direct payroll deposit program. Second, the word "transmitting" has been substituted for the word "providing" to make clear that where the institution provides written notice, it need only be sent by the institution, not received by the consumer, within 2 business days.

The Board has postponed final action on § 205.10(a)(2) until after its consideration of Subpart C of Regulation J. This provision would require institutions that accept preauthorized credits subject to paragraph (a) to credit the transfer as of the business day on which the institution receives value. The proposal has been modified to address an operational problem with the first proposal, namely, that the funds be available to the consumer at the opening of business on the date the transfer is scheduled to be made. In addition, the institution need not take action under this paragraph until it is actually in receipt of the funds.

Section 205.11 — Procedures for Resolving Errors. Before discussing the specific provisions of § 205.11, the Board wishes to invite comment on the question of charging for complying with the error resolution procedures. Comments on the first proposal and the Board's experience with the Fair Credit Billing Act indicate that a number of financial institutions contemplate imposing charges when a consumer seeks copies of documents (which is an error under proposed § 205.11(a)(1)(vii)) and possibly for investigating other notices of error as well. A consumer would not know in advance how a notice of error would be resolved. The Board is concerned that, fearing the imposition of charges should an error not be resolved in their favor, consumers will be reluctant to exercise their rights under the statute. On the other hand, a financial institution probably should be permitted to impose a charge when a consumer requests copies of documents for business or tax purposes.

The Board solicits comment on whether any charges for complying with the error resolution procedures should be prohibited. Alternatively, the Board invites comment on (1) permitting reasonable charges for copies of documentation requested under this section but prohibiting all other charges (such as investigation fees) for complying with the error resolution procedures; or (2) permitting the financial institution to impose reasonable charges for error resolution as long as the charges do not violate § 914 by constituting a waiver of the consumer's rights.

This section corresponds to § 205.10 of the first proposal. Section 205.11(a) now contains the definition of "error," which in the first proposal appeared as § 205.2(1). Section 205.11(a)(1)(i), which provides

that an unauthorized electronic fund transfer constitutes an error, remains unchanged from § 205.2(1)(1) of the first proposal. The first proposal's commentary, however, stated that a consumer's notifying a financial institution of the loss or theft of an access device would be considered an error. Such an interpretation would have required a financial institution to follow the error resolution procedures where unauthorized use was a possibility rather than an actual occurrence. Numerous commenters argued that, since the consumer's liability for unauthorized use terminates upon the consumer's notifying the financial institution of the loss or theft of the access device, treating such notice as an error would not grant the consumer greater protection. Furthermore, many commenters were concerned that they would be unable to undertake a meaningful investigation since a notification of loss or theft would not necessarily focus on any particular transfer or group of transfers that might be unauthorized. The Board believes that notification to the financial institution of the loss or theft of the access device, absent an allegation of unauthorized use, would not require the institution to comply with the requirements of § 205.11. An institution must, however, treat allegations of possible unauthorized use as errors.

Sections 205.11(a)(1)(ii), (iii), and (v), which correspond to §§ 205.2(1)(2), (3), and (5) of the first proposal, remain unchanged.

Section 205.11(a)(1)(iv), which corresponds to § 205.2(1)(4) of the first proposal, has been changed in two respects. The first proposal defined as an error "a computational error or similar error of an accounting nature made by the financial institution." The language has been changed in response to several comments to make clear that this paragraph applies only to errors relating to electronic fund transfers. In addition, the word "bookkeeping" has been substituted for "accounting" to avoid any implication that the Board intends to include errors of judgment that may occur in making accounting decisions. The provision, as presently written, would include arithmetical errors, posting errors, errors in printing figures, and figures that were jumbled due to mechanical or electronic malfunction.

Section 205.11(a)(1)(vi) corresponds to § 205.2(1)(8) of the first proposal. The previous draft treated as an error any misidentified or insufficiently identified transfer, or any transfer not in the amount or on the date indicated on or with any required documentation. This proposal specifically indicates that the financial institution must treat as an error an inquiry about a transfer that the consumer does not recognize. In addition, any failure to identify the transfer in accordance with § 205.9 (which would include the correct amount and date) is an error.

Section 205.11(a)(1)(vii) provides that error resolution procedures are activated by a consumer's request for any documentation required by §§ 205.9 and 205.10(a) or for any additional information or clarification concerning an electronic fund transfer. In § 205.2(1)(7) of the previous

proposal, the failure to provide required documentation was considered an error, whereas the current proposal regards only consumers' requests for such documentation to be errors. These requests for documentation, however, would be considered errors whether or not the documentation had been previously provided. The current provision specifically indicates that an error includes any request for information or copies of documents that the consumer wants in order to find out whether a mistake exists in the consumer's account regarding an electronic fund transfer. Thus, if a consumer requests documentation or information regarding a particular transfer without alleging a mistake, that documentation or information must be provided to the consumer in accordance with § 205.11.

Section 205.11(a)(2), which is new, provides that certain routine requests for information and copies of documents are not considered errors. Under this paragraph, a financial institution has no error resolution responsibilities when a consumer makes a routine inquiry regarding the balance in the consumer's account. This would include, for example, an inquiry made under proposed § 205.10(a)(1)(iii) to find out whether a preauthorized transfer has occurred. This section also exempts from the error definition any request for information or documentation for tax or business purposes. The Board solicits comment on this provision, and is particularly interested in knowing whether there are other types of inquiries that should not be considered errors under § 205.11.

Section 205.11(b) corresponds to § 205.10(a) of the previous proposal. In response to several comments, clarifying language has been added to indicate that a financial institution has error resolution responsibilities only when the consumer notifies the financial institution of an error. The financial institution need not comply with the error resolution procedures if it or its auditor, for example, discovers an error, or if any other party, other than an agent of the consumer, notifies the financial institution concerning an error.

Section 205.11(b)(1) corresponds to § 205.10(a)(2) of the first proposal. That proposal, like the current proposal, provides that the error notification must be received no later than 60 days from transmittal of the periodic statement first reflecting the alleged error.

Some commenters stated that this 60-day period should begin when the consumer receives the terminal receipt. The Board still believes, however, that the 60-day period is more precisely and simply calculated (with two minor exceptions noted below) from transmittal of the periodic statement. Other commenters objected to limiting the consumer's notice period by using the periodic statement that first reflects the error, claiming that the consumer may not have the necessary information at that point to assert an error. The Board has responded to this concern by providing the consumer with an additional 60 days to assert an error after the consumer receives the additional documentation or information needed to assert an error.

Additional language has been added to address the application of the 60-day time limit in two specific cases. First, under § 205.9(c) (involving passbook accounts that may not be accessed by any electronic fund transfers other than preauthorized credits), if the financial institution chooses to update the consumer's account with the amount(s) and date(s) of each transfer upon presenting the passbook rather than to provide periodic statements, the 60-day period runs from the updating (in the manner required by § 205.9(c)) that first reflects the alleged error. Second, as noted above, where the consumer requests additional information, clarification, or documentation so that he or she can determine whether to assert an error within the meaning of paragraphs (a)(1)(i) through (vi), a second 60-day time period runs from the financial institution's transmitting to the consumer the additional information, clarification, or documentation requested.

The second sentence of § 205.11(b)(1) corresponds to §§ 205.10(a)(1)(i) and (ii) of the first proposal. Section 205.10(a)(1)(i) of the first proposal provided that the notification of an error (referred to in the present proposal as a "notice of an error") should enable the financial institution to identify the consumer's account. A number of the comments received from both consumer groups and financial institutions objected to the omission of the statutory language of § 908(a)(1) that the notice should enable the financial institution to identify the consumer's name as well as the account number. The present proposal reflects the statutory language.

Section 205.10(a)(1)(ii) of the first proposal set forth the information that the consumer should provide in notifying the financial institution of an alleged error. Language has been added to the present § 205.11(b)(1) to indicate clearly that this provision does not apply to errors asserted under paragraph (a)(1)(vii). Section 205.10(a)(1)(ii) of the first proposal also referred to "any documentation required by this regulation." As a result of several comments, the current proposal specifically identifies the documentation intended to be covered in this provision. The Act refers to the documentation required by §§ 906(a) (terminal receipts), 906(b) (positive or negative notice of preauthorized credits), 906(c) (periodic statements) and 906(d) (updating of passbook accounts). This proposal specifically refers to §§ 205.9 and 205.10(a), the regulatory counterparts to these sections, and in doing so, includes the documentation required by § 906(e) and § 205.9(d) (quarterly statements for certain non-passbook accounts). This paragraph also reflects a change suggested by some commenters, namely, that the consumer would be required to provide the financial institution with the date of the alleged error, if possible, together with the type and the amount of the alleged error. For example, if the periodic statement shows ten $25 transfers, identification of the date(s) of the transfer(s) questioned would prove helpful and possibly necessary.

Section 205.11(b)(1) of the present proposal also retains the provision that the reasons for the consumer's belief that an error has occurred and a description of the suspected error need only be provided to the extent

possible. The commentary to the first proposal suggested that a financial institution would not be relieved of error resolution responsibilities where a consumer is unable to describe the error or articulate the amount of or the reasons for the error. A number of the comments objected to both the language of the provision and the interpretation suggested in the commentary as permitting vague assertions (that may be difficult to investigate) to trigger error resolution procedures. The Board still believes that its position is proper and necessary in order to minimize the possibility that a consumer could be denied the protections of § 205.11 by not being able to understand the cause or nature of the error or articulate the reasons for the error. Consequently, where a consumer's notification is somewhat vague or imprecise, a financial institution is expected to make a good faith effort to identify and resolve the alleged error.

Section 205.11(b)(2), which corresponds to § 205.10(a)(3) of the first proposal, remains unchanged.

The introductory language to the previously designated § 205.10(b) has been combined with § 205.10(b)(1) and the alternate time limit provision of § 205.10(b)(2) and is now reflected with one modification as §§ 205.11(c)(1)(i) and (ii) in the current proposal. The concept of relieving a financial institution of its error resolution responsibilities when a consumer subsequently agrees that no error has occurred is reflected in § 205.11(g) of the current proposal. To make clear that the term "report" contemplates oral rather than written communication, the word "orally" has been inserted. This change is also reflected in §§ 205.11(e)(2) and (f)(2).

Section 205.11(c)(1)(ii)(A), which corresponds to § 205.10(b)(2)(i), has been changed to reflect explicitly the Board's position regarding the amount that can be withheld by the financial institution when provisionally recrediting a consumer's account. The Board suggested in the commentary to the first proposal that $50 was the maximum that could be withheld. The Board continues to believe that this is the appropriate interpretation of the Act. Under § 909(a), in order to impose liability greater than $50, the financial institution must prove that the consumer failed to report loss or theft of the access device within two business days of learning of it and that the institution could have prevented the loss had timely notice been given. Permitting the institution to withhold up to $500 under error resolution would relieve it of the burden of proof imposed by the statute. The provision has been further clarified to indicate that a financial institution may withhold up to $50 only when an unauthorized electronic fund transfer is suspected. The Board believes that to allow the financial institution to withhold more than $50 or to permit the financial institution to withhold any amount without suspecting an unauthorized electronic fund transfer would undermine the purpose of the recrediting provision.

Section 205.11(c)(1)(ii)(B), formerly designated § 205.10(b)(2)(ii), deals with the consumer's having full use of provisionally recredited funds. The first proposal required notification of the consumer 3 business days before debiting a provisionally recredited amount. The current proposal

requires notice upon debiting a provisionally recredited amount. Therefore, the Board proposes in § 205.11(c)(1)(ii)(B), in order to ensure the full use of recredited funds, to require that the financial institution honor any items drawn on the provisionally recredited funds prior to the time that the consumer either receives the notice required by § 205.11(f)(2), or can be expected to have received the notice, whichever is earlier.

Section 205.11(c)(1)(ii)(C), which requires that the consumer be provided with a notice of provisional recrediting, corresponds to § 205.10(b)(2)(iii). Since the current proposal no longer requires notification of the consumer 3 business days before debiting a provisionally recredited amount, the notice has been modified accordingly. The current proposal requires that the consumer be notified of the amount and the date of the recrediting and of the fact that the consumer will have the use of the recredited funds while the financial institution investigates the alleged error and determines whether an error occurred. Comment is invited on whether the financial institution should notify the consumer that the financial institution is required to pay checks written against the recredited funds until the consumer receives the notice of debiting.

A number of commenters asked for clarification on whether the recrediting provisions apply where a consumer merely requests additional information or documentation under § 205.11(a)(1)(vii). The Board believes that resolution in these cases consists of providing the requested information or documentation, and that the financial institution should be able to do this within 10 business days. If the institution takes more than 10 business days, however, the recrediting procedures will then apply. The amount recredited would be the amount of the transfer(s) about which the consumer requested information or documentation.

Section 205.11(c)(2), which corresponds to the final sentence of § 205.10(b)(2), remains unchanged except for the deletion of unnecessary explanatory language.

Section 205.11(d) is new. Paragraph (d)(1) makes clear that the regulation does not require an investigation of an alleged error where the financial institution would prefer to make a final correction to the consumer's account in the amount or in the manner alleged by the consumer to be in error. This course of action should not involve more than 10 business days since the decision to correct without investigating would probably be made almost immediately after a financial institution receives a notice of an error. This proposal in no way relieves the financial institution from complying with any other applicable requirements of the section (for example, the correction provisions of §§ 205.11(e)(1) and (2)).

Many comments indicated that financial institutions cannot, within the 10-business-day provision of § 205.11(c)(1)(i), investigate alleged errors arising out of transfers that involve third parties with whom financial institutions do not have agreements (for example, payroll deposits from

a third party or utility payments to a third party) if the financial institution is required to investigate the alleged error with the third party. The commenters also argued that if they must carry the investigation to a third party, they will be forced to provisionally recredit a consumer's account in order to take advantage of the alternative 45-day time period.

Consequently, in § 205.11(d)(2) the Board proposes to address this issue by limiting the scope of investigation that must be undertaken by the financial institution where a third party is involved. The proposal provides that a financial institution need only review its own records when investigating an alleged error concerning transfers to or from a third party with whom the financial institution does not have an agreement. The Board expects that limiting the extent of investigation required will alleviate the concerns regarding provisional recrediting. Section 205.11(d)(2) would also apply to a consumer's request for information or documentation that is not in the institution's possession, such as a copy of a utility bill that was paid by means of an electronic transfer. In such a case, resolution would consist of a timely response to the consumer that the institution does not have copies of utility bills.

Numerous commenters asked whether an independent verification of information was required when a financial institution, in investigating an alleged error involving a third party (including a third party with whom the financial institution has an agreement), receives information from that third party. Section 205.11(d)(3) responds to this issue and provides that a financial institution may rely upon information supplied by third parties and is not obliged to verify the accuracy of such information.

Sections 205.11(e) and (f) correspond to § 205.10(c) of the first proposal. Section 205.11(e)(1) is identical to the first proposal except for the addition of clarifying language regarding the correction of the account in the case of an unauthorized electronic fund transfer. The regulation reflects the fact that the financial institution, at this point in the resolution process, must have satisfied the requirements of § 205.6(a) in order to impose any liability on the consumer for an unauthorized electronic fund transfer. In order to impose liability on the consumer in an amount greater than $50, however, the financial institution must satisfy the additional requirements detailed in § 205.6(b). The Board invites comment on the manner in which financial institutions anticipate satisfying the requirements of § 205.6(b) in those instances in which financial institutions seek to impose liability in excess of $50.

In an effort to ease compliance with the notification of corrections requirement, a provision has been added to paragraph (e)(2) (formerly paragraph (c)(1)(ii)) expressly permitting a financial institution to notify the consumer of a correction by clearly reflecting the correction on a periodic statement as long as the periodic statement is mailed or delivered within the 10-business-day or 45-day time limits of §§ 205.11(c)(1)(i) or (ii).

Paragraphs (f)(1) and (3), formerly (c)(2)(i) and (iii), remain the same as the earlier proposal, except that the last sentence of the first proposal's paragraph (c)(2)(iii) is now contained in the current proposal's paragraph (f)(1). Paragraph (f)(2), however, as previously mentioned, no longer requires that a financial institution notify the consumer 3 business days before debiting a provisionally recredited amount. Many commenters objected to the first proposal, claiming that notifying the consumer 3 business days in advance would encourage the withdrawal of recredited funds to which the consumer might not be entitled. In response to the comments, the current proposal requires in § 205.11(f)(2) that, upon debiting a provisionally recredited amount, the financial institution must notify the consumer of the date and amount of any such debiting and of the fact that the financial institution will honor any items that have been drawn on the provisionally recredited funds prior to the time the consumer received or should have received the notice, whichever is earlier. It is hoped that notice at the time of debiting, rather than prior to debiting, will reduce substantially the potential for fraud.

Section 205.11(g) replaces and clarifies the introductory language in § 205.10(b) of the first proposal which would have relieved a financial institution of its duty to comply with the error resolution procedures should the consumer agree, after having properly alleged an error, that no error in fact occurred. Consumer comments objected that the language in the first proposal was too broad and might have the effect of allowing an oral explanation by the financial institution to replace the written explanation required by § 205.11(f)(1). The Board contemplates that this provision would only apply where the consumer discovers that no error occurred (for example, that a questioned transfer was in fact authorized and in the amount and on the date indicated) and voluntarily withdraws the notice.

In § 205.11(h) the Board proposes to make clear that a financial institution has no further responsibility under § 205.11 after complying with that section's provisions if the consumer continues to make substantially the same allegation with respect to the alleged error. This provision would also preclude a consumer from reasserting the same error that appears in a different form (e.g., if the consumer alleges that a certain $20 transfer was erroneous, the consumer cannot reassert the same error by claiming that a subsequent periodic statement should reflect an account balance of $500 instead of $480).

Section 205.11(i) corresponds to § 205.10(d) of the first proposal which provided that the error resolution procedures of the Electronic Fund Transfer Act and Regulation E, rather than those of the Truth in Lending Act and Regulation Z, govern electronic fund transfers that also involve credit extensions made under an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account. Many commenters requested the Board to specify which provisions of Regulation Z were superseded by Regulation E. In response to these requests, the current proposal

indicates that, in these combined EFT-credit transactions, the financial institution must comply with the error resolution procedures of § 205.11 and that the billing error definition of § 226.2(j), the error notification requirements contained in § 226.2(cc), and the error resolution procedures of § 226.14(a) do not apply. The Board contemplates that other provisions of Regulation Z, such as § 226.14(e) (which governs credit reports on amounts in dispute) will still apply to the credit extension portion of the combined transaction. The Board, in soliciting comment on this section, is particularly interested in receiving comment on operational problems that financial institutions foresee in satisfying their error resolution responsibilities in combined EFT-credit transactions.

(3) Economic Impact Analysis. Introduction. Section 904(a)(2) of the Act requires the Board to prepare an analysis of the economic impact of the regulation that the Board issues to implement the Act. The following economic analysis accompanies sections of the regulation that are being reissued in proposed form for public comment. 1/

The analysis must consider the costs and benefits of the regulation to suppliers and users of electronic fund transfer (EFT) services, the effects of the regulation on competition in the provision of electronic fund transfer services among large and small financial institutions, and the effects of the regulation on the availability of EFT services to different classes of consumers, particularly low-income consumers.

The regulation in part reiterates provisions of the statute and in part amplifies the statute. Therefore, the economic analysis considers impacts of both the regulation and the statute, and throughout the analysis a distinction will be made between costs and benefits of the regulation and those of the statute. It is also important to note that the following analysis assumes that the regulation and the Act have no relevant economic impact if they are less restrictive than current industry practices or state law. In this case, the regulation will not affect costs, benefits, competition, or availability and will not inhibit the market mechanism. The following analysis of the regulation and the Act is relevant only if their provisions are more constraining than those provisions under which institutions would otherwise operate.

Analysis of regulatory and statutory provisions. Section 205.4(b) proposes rules for compliance when the service-providing financial institution effects an electronic transfer to a consumer's account at another institution. The service provider must perform all applicable duties imposed by

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1/ The analysis presented here is to be read in conjunction with the economic impact analyses that accompany the Board's final rules in this issue and at 44 FR 18474, March 28, 1979. The sections of the regulation have been redesignated.

the Act in accordance with its agreement with the consumer. The financial institution receiving the electronic transfer on behalf of a consumer is relieved of the responsibility to issue disclosures, resolve errors, or otherwise comply with the Act. Institutions, especially small institutions, not offering electronic transfer services may have no choice about accepting externally initiated electronic debits and credits to their consumer accounts; these institutions are therefore not burdened with regulatory compliance costs, while consumers are assured of the Act's protection through the service provider.

Under the proposal, however, a consumer may be subjected to certain risks. An error may occur at the transfer-receiving institution that is not reflected in the documentation furnished by the service provider. For example, an electronic transfer of $100 initiated by the consumer through the service provider may, through some error, be reflected as a $1,000 debit to the consumer's account at the receiving institution. Under the proposal, the receiving institution will not be required to furnish periodic statements or follow the statutory error resolution procedures. The Board requests comment on whether consumer protections are likely to be lost as a result of this regulatory provision. The Board also solicits comment on the relative costs and benefits of the following alternatives: requiring full compliance by both institutions; the current proposal requiring no compliance by an institution that merely receives externally initiated electronic debits and credits to consumer accounts; and requiring that the institutions jointly provide full documentation and error resolution for the consumer's account at the transfer-receiving institution.

Section 205.9 sets out the Act's transfer documentation requirements. Comment is invited on costs likely to be associated with this proposed revision of the section.

The Act requires that written documentation be made available to the consumer for every transfer at every terminal. Almost all existing terminals are equipped with printing devices. Commenters pointed out, however, that most devices can print only numerals. Replacement of existing devices with devices capable of printing alphabetic information would require large hardware and software expenditures by institutions. For this reason, the regulatory language was drafted to allow transfers at terminals to be documented by means of numeric codes, with the provision that codes must be explained on the document. This provision is expected to reduce the compliance cost burden.

The Act further requires identification of the type of account from or to which funds are transferred. This would be a problem in a shared system if the institution operating the terminal did not know the type of account being accessed at the institution holding the account, but it is expected that the consumer will be able to enter the required information at the terminal, so that compliance with this statutory provision will be

possible. The Board solicits information on whether consumer entry of account type is a problem and on the costs of interchanging information regarding the type of account.

The Act requires that a periodic statement be delivered to the consumer at least monthly for each monthly or shorter cycle in which an EFT has occurred, and at least quarterly if no EFT has occurred. 2/ This timing requirement will impose substantial cost burdens on many financial institutions that otherwise would issue periodic statements less frequently than monthly (or, in the case of § 205.9(d) exempted accounts, on institutions that issue statements less frequently than quarterly). The costs of increased statement frequency will be passed on to consumers to some degree in the form of higher EFT prices or reduced availability of EFT services. The costs cannot be avoided because financial institutions must send statements even if consumers do not want them.

Another substantial cost burden will result from the lack of any statutory exception for inactive accounts. One commenter estimated that costs would average $0.25 per quarterly statement to an inactive account, implying a probable yearly nationwide cost from inactive account statements of $2.2 million in 1980. 3/ Another commenter estimated that each statement will cost $0.52 to prepare and deliver. The Board solicits comments on the reasonableness of these estimates. This statutory provision may encourage financial institutions to close inactive EFT accounts or assess large inactivity fees, thereby restricting the availability, and increasing the costs, of electronic transfers to consumers.

The Act will impose another substantial cost on participants in the payments system by requiring statement documentation of the items of information listed in § 205.9(b) of the regulation. The costs of the Act's periodic statement requirements are likely to result mainly from initial fixed costs for conversion to new statement forms and for new computer hardware and software.

It may be especially costly to document the names of third parties involved in transfers. In many cases, the names of third parties will have to be added to the data stream manually by the consumer's financial institution. This may require the alteration or re-pricing of many well-established payment mechanisms which allow consumers to pay utility and other bills at electronic terminals but do not now result in a listing of the payee's name on the periodic statement. On the other hand, consumers may be able to identify payee names at terminals by the use of codes. Most terminals are not now equipped with alphabetic keyboards. Transfers to third parties may

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2/ Exceptions to the monthly statement requirement are given in §§ 205.9(c) and (d).

3/ This assumes that 10 percent of an estimated 22 million consumer EFT accounts are inactive in any quarter.

be facilitated if third-party creditors provide machine-readable payment coupons. The Board solicits comment on the feasibility and cost of alternative means of identifying names of payees, including individual consumers who are payees. Would individuals be precluded from receiving electronic payments from other consumers because of the Act's requirement that payee names be documented? The Board also solicits estimates of the cost of interchanging payee and terminal location names among institutions.

The Act requires that the periodic statement document the initiation date of each electronic transfer. The regulation relaxes that requirement for preauthorized and telephone transfers by requiring documentation of the posting or value date; many such transfers are initiated in advance of the dates on which value is to be transferred. This provision of the regulation assures that actual transfer dates are disclosed to consumers and that institutions need not incur costs in documenting initiation dates for these transfers. For transfers initiated by a consumer at a terminal, however, both the initiation date and the transfer date must be disclosed on the periodic statement. The Board requests comment on the costs and benefits associated with this regulatory provision.

The Act's requirement for descriptive periodic statements after May 10, 1980, will probably have a relatively greater adverse cost effect on small institutions than on larger institutions. Timely statement redesign and computer software changes will require fixed costs that larger institutions will be able to spread over their larger account bases. In any case, the Act's descriptive statement requirements will impose substantial adjustment costs on the financial institution industry.

Small-balance account holders, including many low-income consumers, will be adversely affected by the Act's documentation requirements because financial institutions will find more of their accounts too costly to service. Some institutions have recently offered semi-annual or annual statement accounts as a cost-saving alternative to closing many low-balance accounts. Some of these accounts that are eligible to receive electronic credits, such as Social Security payments, may be charged higher fees, or they may be closed rather than converted to quarterly statement accounts.

Section 205.10(a) implements the Act's requirement that a notification system be established for all recurring preauthorized credits to a consumer's account. The regulation provides that institutions furnish positive or negative notice to a consumer unless the consumer, having been informed of the right to receive positive or negative notice, elects to receive confirmation by telephone in accordance with § 205.10(a)(1)(iii), or unless the payor furnishes positive notice to the consumer. Institutions are not prohibited from charging fees for notices of preauthorized credits. The Board requests comment on the costs and current relative extent of each means of notification, and whether institutions presently charge consumers for notification. Under what circumstances would financial institutions find it least costly to arrange for notification by payors?

This subsection would also require a financial institution to credit a preauthorized electronic transfer to a consumer's account on the business day the transfer is received by the institution. The Act makes no comparable provision. The Board proposes this rule to ensure prompt availability of electronically transferred funds to consumers. Comment is solicited on the operational cost burdens and consequent consumer benefits of this proposal.

Section 205.11 of the regulation reiterates the Act's error resolution provisions, adding specific deadlines, increasing the number of procedural options, and clarifying the definition of error for purposes of resolution. The Act and regulation encourage prompt resolution of EFT errors. Prompt resolution benefits both consumers and financial institutions by reducing payment delays, lessening uncertainty, and increasing the effectiveness of the EFT payments mechanism.

Consumers receive a number of specific protections from the error resolution procedure. Consumers are entitled to prompt investigation of their error claims, prompt correction of errors, provisional recrediting of disputed amounts should the financial institution take longer than 10 days to investigate, documentation of evidence used to resolve errors, and prompt, formal notice from the financial institution of various procedural steps it has taken. It is not possible to predict the magnitude of financial and psychic benefits consumers will enjoy from these protections. In particular, the provisional recrediting rule will benefit low-income consumers relatively more by protecting them from "catastrophic" losses of the use of their funds.

These consumer protections depend critically, however, on the consumer's compliance with a number of the Act and regulation's provisions. The consumer must act in a timely manner to allege that an error has occurred and, if requested by the institution, must provide written confirmation of an oral allegation. Furthermore, the allegation must be complete according to § 205.11(b)(1). Without timely action and an actual allegation of error, the consumer may forfeit certain rights to error resolution.

Financial institutions are likely to incur substantial costs in complying with error resolution provisions of the Act and regulation. Provisional recrediting of disputed amounts may prove to be the biggest cost; the provisional recrediting requirement will give institutions an incentive to resolve error allegations within 10 business days. Institutions that recredit disputed amounts expose themselves to the possible withdrawal and loss of those funds by persons acting fraudulently or in a financially irresponsible manner. In particular, § 205.11(c)(1)(ii)(B) requires that institutions honor certain items (including other electronic debit transfers) that the consumer has drawn on provisionally recredited funds, even if the institution has discovered no error occurred. There is no statutory limit on the amount that may be disputed and, hence, that may have to be provisionally recredited by the institution. The Board solicits suggestions of

alternative, less costly means to implement the statutory requirement that consumers have full use of their funds if the error investigation exceeds 10 business days.

An institution is not required to investigate error claims beyond the information available to it directly, except where the institution has an agreement with a third party, as in the case of point-of-sale terminals operated under agreement with a merchant. This provision of the regulation encourages rapid response to error allegations.

Investigating alleged errors and providing the required notices, explanations, and documentation of evidence used will be costly to institutions. Section 205.11(e)(1) requires institutions to provide written explanations of findings for every error allegation that is discovered to be wholly or partially without merit. Commenters made estimates of average error resolution costs that ranged from $3.50 to $10.00 per error allegation. One financial institution with relatively extensive EFT experience commented that 96 percent of allegations of error were discovered not to be errors; yet written explanations are required for these allegations. Legal, clerical, and administrative costs of furnishing written explanations are likely to be substantial.

Commenters made estimates of the average cost of providing documentation pursuant to § 205.11(e)(3) that ranged from $3 to $12 per request. One commenter, estimating an average cost of $12 per request, predicted a nationwide cost of $26 million in 1980 for providing requested error resolution documentation alone. 4/ Substantial costs may result from institutions' uncertainty as to what constitutes an error allegation and institutions' consequent formal investigation of a wide range of consumer inquiries. 5/ On the other hand, the regulation will limit costs by specifically excluding certain inquiries from the error resolution procedure, freeing institutions from compliance responsibility if a consumer withdraws an error claim, and freeing institutions from the responsibility to investigate reasserted errors.

The regulation as proposed does not prevent financial institutions from imposing charges for the investigation of consumer error claims. The Board solicits comment on the costs and present levels of charges for error investigations by institutions, on the probable costs to consumers under the proposal, and on the desirability of amending the proposal to permit only reasonable charges for error investigation.

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4/ This assumes that 2.2 million requests for such documentation are made in 1980, or an average of one request per year for every 10 consumer EFT accounts.

5/ Failure to comply with the prescribed error resolution procedure can result in liability to the institution for actual damages, a penalty of from $100 to $1,000, court costs, and attorney's fees, as provided by § 915 of the Act.

Uncertainties and possible costs associated with the error resolution provisions may give financial institutions an incentive to restrict EFT services to consumers who have demonstrated a high degree of financial responsibility. This may result in higher costs for all EFT users if system costs must be spread over fewer users, and it may lead to reduced availability of EFT services to low-income consumers, to the extent that low-income consumers are less likely to have had accounts at institutions and therefore to have established records of financial responsibility.

Small financial institutions may find the costs of error investigation to be proportionately greater drains on EFT profitability than larger institutions. Small institutions may also find error resolution aids such as terminal surveillance cameras to be relatively too costly. The error resolution provisions thus appear to place small financial institutions at some competitive disadvantage in the provision of EFT services.

The Board solicits estimates of the costs and benefits to consumers and financial institutions of the proposed error resolution provisions.

(4) Pursuant to the authority granted in Pub. L. 95-630 (to be codified in 15 U.S.C. 1693b), the Board proposes to amend Regulation E, 12 CFR Part 205, by adding §§ 205.4(b), 205.9, 205.10(a), 205.11, and § A(8)(b) of Appendix A, to read as follows:

205.4 — SPECIAL REQUIREMENTS

* * * * *

(b) <u>Services offered by financial institutions not holding a consumer's account</u>. Where a financial institution provides an electronic fund transfer service to or from a consumer's account held by another financial institution and the service-providing institution does not have an agreement with the account-holding institution regarding the service, the account-holding institution need not comply with the requirements of this regulation with respect to that service. The service-providing institution must comply with all requirements of this regulation, to the extent that the requirements relate to the service it provides to the consumer or the electronic fund transfers made by the consumer under the service. The service-providing institution shall comply with the requirements of § 205.11(c)(1)(ii)(A) (provisional recrediting) by ordering funds to be recredited to the consumer's account at the account-holding institution and, when complying with § 205.11(c)(1)(ii)(C), shall disclose the date the recrediting was initiated.

* * * * *

SECTION 205.9 — DOCUMENTATION OF TRANSFERS

(a) <u>Receipts at electronic terminals</u>. At the time an electronic fund transfer is initiated at an electronic terminal by a consumer, the

financial institution shall make available 1/ to the consumer a written receipt of the transfer which clearly sets forth the following information, as applicable:

(1) The amount of the transfer.

(2) The date the transfer was initiated.

(3) The type of transfer and the type of the consumer's account(s) from or to which funds are transferred, such as "withdrawal from checking," "transfer from savings to checking," or "payment from savings." A code may be used only if it is explained elsewhere on the receipt.

(4) The number or other identification of the access device used to initiate the transfer.

(5) The identification, such as a terminal number, or location (in a form prescribed by paragraph (b)(1)(iv) of this section) of the terminal at which the transfer was initiated.

(6) The name of any third party from or to whom funds are transferred, unless the name is provided by the consumer in a form that the electronic terminal cannot duplicate on the receipt. A code may be used only if it is explained elsewhere on the receipt.

(b) Periodic statements. For each account from or to which electronic fund transfers can be made, the financial institution shall mail or deliver a statement for each monthly cycle in which an electronic fund transfer has occurred, but at least quarterly if no transfer has occurred. The information required by paragraph (b)(1) of this section may be provided on accompanying documents. The statement shall include the following, as applicable:

(1) For each electronic fund transfer occurring during the cycle,

(i) The amount of the transfer.

(ii)(A) For each transfer initiated by a consumer at an electronic terminal, the date the transfer was initiated and the date the transfer was debited or credited to the account, if different; or

(B) For each preauthorized electronic fund transfer or transfer initiated by telephone, the date the transfer was debited or credited to the account.

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1/ A financial institution may arrange to have a third party, such as a merchant, provide the receipt.

(iii) The type of transfer and the type of the consumer's account(s) from or to which funds were transferred. A code may be used only if it is explained elsewhere on or with the statement.

(iv) For each transfer initiated by a consumer at an electronic terminal, the location that appeared on the receipt or, if an identification (such as a terminal number) was used, that identification and one of the following descriptions of the terminal's location:

(A) The address, including number and street or intersection, city, and state or foreign country;

(B) A generally accepted name that refers to a specific location, such as a shopping center, airport, or railroad terminal, and the city, and state or foreign country; or

(C) The name of the entity, such as the financial institution 2/ or seller of goods or services, at whose place of business the terminal is located, and the city, and state or foreign country.

(v) The name of any third party from or to whom funds are transferred. 3/ If the transfer was initiated by a consumer at an electronic terminal, the statement shall include the name by which the third party was identified on the receipt, or the code, if one was used on the receipt, and the name of the third party.

(2) The number(s) of the consumer's account(s) for which the statement is issued.

(3) The total amount of any fees or charges, other than a finance charge under 12 CFR 226.7(b)(1)(iv), assessed against the account for electronic fund transfers or for the right to make such transfers during the statement period.

(4) The balances in the consumer's account at the beginning and at the close of the statement period.

(5) The address and telephone number to be used for inquiries or notice of errors preceded by "Direct Inquiries To:" or similar language. Alternatively, the address and telephone number may be provided on the notice of error resolution procedures set forth in § 205.8(b).

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2/ A financial institution holding the consumer's account must describe the location of electronic terminals located at its place of business by use of paragraphs (b)(1)(iv)(A) or (B) of this section.

3/ A financial institution need not identify third parties whose names appear only on checks, drafts, or similar paper instruments deposited to the consumer's account at an electronic terminal.

(6) If the financial institution uses the notice procedure set forth in § 205.10(a)(1)(iii), the telephone number the consumer may call to ascertain whether a preauthorized transfer to the consumer's account has occurred.

(c) Documentation requirements for certain passbook accounts. In the case of a consumer's passbook account which may not be accessed by any electronic fund transfers other than preauthorized transfers to a consumer's account, the financial institution may, in lieu of complying with paragraph (b) of this section, upon presentation of the consumer's passbook, provide the consumer with documentation by entering in the passbook or providing on a separate document the amount and date of each electronic fund transfer since the passbook was last presented.

(d) Periodic statements for certain non-passbook accounts. If a consumer's account, other than a passbook account, may not be accessed by any electronic fund transfers other than preauthorized transfers to a consumer's account, the financial institution need only provide the periodic statement required by paragraph (b) of this section quarterly.

SECTION 205.10 — PREAUTHORIZED TRANSFERS

(a) Preauthorized transfers to a consumer's account. (1) Where a consumer's account is scheduled to be credited by a preauthorized electronic fund transfer from the same payor at lease once every 60 days, except where the payor provides positive notice to the consumer that the transfer has been initiated, the financial institution shall notify the consumer, by one of the following means:

(i) By transmitting oral or written notice to the consumer, within 2 business days after the transfer, that the transfer occurred;

(ii) By transmitting oral or written notice to the consumer, within 2 business days after the date on which the transfer was scheduled to occur, that the transfer did not occur; or

(iii) By furnishing a telephone number that the consumer may call to ascertain whether or not a transfer has occurred, provided that

(A) the financial institution informs the consumer, before the first preauthorized electronic fund transfer to the consumer's account, of the right to receive positive or negative notice under this section,

(B) the consumer elects to receive notice by means of telephone inquiries, and

(C) the financial institution discloses, at that time and on each periodic statement required by § 205.9(b), the telephone number to be used by the consumer for this purpose.

(2) A financial institution that receives a preauthorized transfer of the type described in paragraph (a)(1) of this section shall credit the amount of the transfer no later than the business day on which the financial institution receives the funds from the payor.

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SECTION 205.11 — PROCEDURES FOR RESOLVING ERRORS

(a) Definition of error. (1) For purposes of this section, the term "error" means:

(i) An unauthorized electronic fund transfer;

(ii) An incorrect electronic fund transfer from or to the consumer's account;

(iii) The omission from a periodic statement of an electronic fund transfer affecting the consumer's account that should have been included;

(iv) A computational or bookkeeping error made by the financial institution relating to an electronic fund transfer;

(v) The consumer's receipt of an incorrect amount of money from an electronic terminal;

(vi) Any transfer not identified in accordance with the requirements of § 205.9 or not recognized by the consumer as it is identified on any documentation required by §§ 205.9 and 205.10(a); or

(vii) A consumer's request for any documentation required by §§ 205.9 and 205.10(a) or additional information or clarification concerning an electronic fund transfer including any request for information, clarification, or copies of documents in order to assert an error within the meaning of paragraphs (i) through (vi) of this section.

(2) For purposes of this section, the term "error" does not include a routine inquiry about the balance in the consumer's account or a request for copies of documentation or other information for tax or business purposes.

(b) Notice of an error. (1) A notice of an error is an oral or written notice from the consumer received by the financial institution no later than 60 days from transmittal of a periodic statement, or documentation under § 205.9(c), that first reflects the alleged error, or transmittal of additional information, clarification, or documentation as requested by the consumer under paragraph (a)(1)(vii) of this section. The notice must enable the financial institution to identify the consumer's name and account number and, except for errors asserted under paragraph (a)(1)(vii) of this section, must indicate the consumer's belief, and the reasons for that belief, that an

error exists in the consumer's account, or that any documentation required by §§ 205.9 or 205.10(a) reflects an error, including the type, the date, and the amount of the error, to the extent possible.

(2) The financial institution may require that written confirmation be received within 10 business days of an oral notice of error if, when the oral notice is made, the consumer is advised of the requirement and the address to which the confirmation should be sent.

(c) Investigation of errors. (1) After the financial institution receives a notice of an error, the institution shall promptly investigate the alleged error, determine whether an error has occurred, and orally report or mail or deliver the results of the investigation and determination to the consumer

(i) Within 10 business days after receipt of a notice of an error, or

(ii) Within 45 days after receipt of a notice of an error provided that:

(A) The financial institution, pending its investigation and determination of whether an error occurred, and within 10 business days after receiving notice of an error, provisionally recredits the consumer's account for the amount of the alleged error, including interest where applicable, but subject to the $50 liability provision of § 205.6(b) where an unauthorized electronic fund transfer may have occurred;

(B) The financial institution gives the consumer the full use of funds provisionally recredited, including honoring any items drawn on those funds by the consumer prior to the time that the consumer receives the notice under paragraph (f)(2) of this section or, whether or not received, prior to the expiration of the time ordinarily required for transmission of the notice, whichever is earlier; and

(C) The financial institution, promptly but no later than 2 business days after the recrediting, orally reports or mails or delivers notice to the consumer of the amount and the date of the recrediting and of the fact that the consumer will have use of the funds pending the financial institution's determination of whether any error occurred.

(2) A financial institution that requires but does not timely receive written confirmation of an error need not provisionally recredit the consumer's account, but must comply with all other applicable requirements of this section, promptly but no later than 45 days after receipt of the oral notice of an error.

(d) Special rules for investigation. (1) The financial institution may finally correct the consumer's account in the amount or manner alleged by the consumer to be in error without investigation, but must comply with all other applicable requirements of this section.

(2) With regard to alleged errors concerning transfers to or from a third party with whom the financial institution does not have an agreement, a financial institution's review of its own records regarding the alleged error will satisfy the financial institution's investigation responsibilities under paragraph (c) of this section.

(3) A financial institution, in investigating an alleged error, may rely upon information supplied by third parties without the financial institution conducting its own independent investigation to verify the accuracy of such information.

(e) Procedures where financial institution determines that an error occurred. If the financial institution determines that an error occurred, it shall

(1) Promptly, but in no event more than 1 business day after determining that an error occurred, correct the error (subject to the liability provisions of §§ 205.6(a) and (b)), including the crediting of interest where applicable, and the refunding of any fees or charges imposed as a result of the error, and

(2) Promptly, but in no event later than the 10-business-day or 45-day time limits, orally report or mail or deliver to the consumer notice of the correction or, if applicable, notice that a provisional credit has been made final. This requirement may be satisfied by a notice on a periodic statement that is mailed or delivered within the 10-business-day or 45-day time limits and that clearly identifies the correction to the consumer's account.

(f) Procedures where financial institution determines that no error occurred. If the financial institution determines that no error occurred or that the error occurred in a manner or amount differing from that described by the consumer, it shall

(1) Deliver or mail to the consumer within 3 business days after concluding its investigation, but in no event later than the 10-business-day or 45-day time limits, a written explanation of its findings, which must include notice of the consumer's right to request the documents upon which the institution relied in reaching its conclusion;

(2) If the consumer's account has been provisionally recredited, orally report or mail or deliver to the consumer, upon debiting a provisionally recredited amount, notice of the date and amount of any such debiting and of the fact that the financial institution will honor any items that have been drawn on the provisionally recredited funds prior to the time that the consumer received the notice or prior to the expiration of the time ordinarily required for transmission of the notice, whichever is earlier; and

(3) Upon the consumer's request, promptly mail or deliver to the consumer copies of the documents, if possible, or a report containing the data upon which the financial institution relied in reaching its conclusion.

(g) Withdrawal of a notice of an error. The financial institution need not comply with the requirements of paragraphs (c), (d), (e), and (f) of this section if the consumer discovers that no error occurred and voluntarily withdraws the notice of the error.

(h) Reassertion of an error. A financial institution need not comply again with the requirements of this section if the consumer reasserts an error previously alleged regardless of the manner in which it is subsequently reasserted.

(i) Relation to Truth in Lending. Where an electronic fund transfer also involves an extension of credit under an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, the financial institution must comply with the requirements of this section rather than with those of 12 CFR 226.2(j), 226.2(cc), and 226.14(a) governing error resolution.

APPENDIX A — MODEL DISCLOSURE CLAUSES

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SECTION A(8) -- DISCLOSURE OF RIGHT TO RECEIVE DOCUMENTATION OF TRANSFERS (§§ 205.5(b)(2), 205.7(a)(6))

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(b) Preauthorized credits. If you have arranged to have direct deposits made to your account,

(we will let you know if the deposit is (not) made as scheduled.)

(the person or company making the payment will tell you every time they send us the money.)

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By order of the Board of Governors, October 5, 1979.

(signed) Theodore E. Allison

Theodore E. Allison
Secretary of the Board

[SEAL]