



FEDERAL RESERVE BANK OF DALLAS

Station K, Dallas, Texas 75222

Circular No. 84-124
December 26, 1984

TO: All member banks and others concerned in the Eleventh Federal Reserve District

ATTENTION: Chief Executive Officer

SUBJECT: **Official Staff Commentary to Regulation E --
Electronic Funds Transfer**

SUMMARY: The Board of Governors of the Federal Reserve System has requested comments on proposed changes to the official staff commentary to Regulation E. The commentary is designed to provide guidance to financial institutions in applying the regulation to specific situations. The proposed revisions address a variety of questions that have arisen about the regulation, and include new interpretations and changes in existing interpretations. Interested parties are invited to submit their views to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C., 20551. Comments should include a reference to EFT-2 and are due by January 31, 1985.

ATTACHMENTS: Board's press release and material as submitted for publication in the Federal Register

MORE INFORMATION: Legal Department, Extension 6171

ADDITIONAL COPIES: Public Affairs Department, Extension 6289

FEDERAL RESERVE press release



For immediate release

November 29, 1984

The Federal Reserve Board today published for comment proposed changes to the official staff commentary to Regulation E -- Electronic Fund Transfers. The changes pertain to questions that have arisen about the regulation, and include new interpretations and changes to existing interpretations. Comment is requested by January 31, 1985.

The Board's notice is attached.

-0-

Attachment

FEDERAL RESERVE SYSTEM
12 CFR Part 205
[Reg. E; EFT-2]
ELECTRONIC FUND TRANSFERS

Proposed Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: The Board is publishing for comment proposed changes to the official staff commentary to Regulation E (Electronic Fund Transfers). The commentary applies and interprets the requirements of Regulation E and is a substitute for individual staff interpretations of the regulation. The proposed revisions address a variety of questions that have arisen about the regulation, and include new material and changes in existing material.

DATE: Comments must be received on or before January 31, 1985.

ADDRESS: Comments should be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to Room B-2223, 20th and C Streets, N.W., Washington, D.C., between 8:45 a.m. and 5:15 p.m. weekdays. Comments should include a reference to EFT-2. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays.

FOR FURTHER INFORMATION: Contact Gerald P. Hurst or John C. Wood, Senior Attorneys, or Richard S. Garabedian, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202) 452-3667 or (202) 452-2412.

SUPPLEMENTARY INFORMATION: (1) General. The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) governs any transfer of funds that is electronically initiated and that debits or credits a consumer's account. This statute is implemented by the Board's Regulation E (12 CFR Part 205). Effective September 24,

1981, an official staff commentary (EFT-2, Supp. II to 12 CFR Part 205) was published to interpret the regulation. The commentary is designed to provide guidance to financial institutions in applying the regulation to specific situations. The commentary is updated periodically to address significant questions that arise. There have been two updates so far, the first on April 6, 1983 (48 FR 14880), and the second on October 18, 1984 (49 FR 40794). This notice contains the proposed third update. It is expected that it will be adopted in final form in March 1985.

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows and underlined, while language to be deleted is set off with brackets.

(2) Proposed revisions. The material that has been added or revised is largely self-explanatory. Questions 7-18.5 and 11-11.5 relate to amendments to Regulation E adopted by the Board on October 11, 1984 (49 FR 40794), which cover all debit card transactions whether or not an electronic terminal is involved. The amendments also extend the time periods for resolution of errors involving point-of-sale (POS) debit card transactions; the longer periods parallel those applicable to foreign-initiated transfers.

The proposed revision of question 7-18.5 reverses the present interpretation; currently, disclosure of the longer error resolution time periods in the case of foreign-initiated transfers is not required. Transfers resulting from POS debit card transactions (unlike foreign-initiated transfers) are quite common, however, and to assure accurate disclosures and avoid confusion on the part of consumers, proposed question 7-18.5 requires financial institutions to disclose the longer error resolution periods. Since most institutions would be required to revise their error resolution disclosures for POS debit card transactions, it seems likely that making the further revision for foreign-

initiated transfers would result in little or no additional expense. Consequently, revised question 7-18.5 would require that the error resolution disclosures for accounts subject to foreign-initiated or POS debit card transactions state the extended time periods.

The other proposal relating to the October amendments (new question 11-11.5) discusses the meaning of POS debit card transaction for purposes of the longer error resolution periods.

Other proposed changes to the commentary respond to inquiries received by the staff. New question 2-28 addresses unauthorized transfers. New question 5-4.5 states that an institution may not issue, without a request from the consumer, a validated personal identification number (PIN) to permit a debit card previously issued for POS transactions to be used at ATMs. This interpretation differs from a proposed interpretation under Regulation Z that permits such PIN issuance. The different treatment is based on the definition of an access device in Regulation E. Under Regulation E a PIN is an access device in all cases, even when it cannot be used alone to initiate an EFT; in contrast, a PIN issued to existing cardholders that cannot be used by itself to obtain credit is not a credit card under Regulation Z. (See the proposed update to the official staff commentary to Regulation Z, Truth in Lending, published elsewhere in this Federal Register issue.) The rule regarding access devices is more restrictive in part because of the consumer's potentially greater risk; for example, the consumer may be liable for as much as \$500 (or even an unlimited amount) rather than only \$50 as under Regulation Z. Moreover, unauthorized use of an access device entails the loss of use, and perhaps even permanent loss, of the consumer's own funds in an asset account; in the case of unauthorized credit card use, only extensions of credit are involved. In addition, when the

debit card was originally issued without a PIN, the consumer may not have contemplated that the card could later be used at ATMs to obtain cash.

(3) Transition issues relating to amendments. The staff has received other inquiries dealing with the interim period between the adoption of the POS debit card amendments in October 1984 (discussed above) and the April 16, 1985, effective date. Since guidance on these matters is needed now and will cease to be relevant after the transition period, the staff believes it is appropriate to address them separately from the proposed commentary.

Industry representatives have asked whether revised disclosures must be provided to existing customers who have already been given Regulation E disclosures for certain debit card transactions, or to customers who contract for EFT services before April 16, 1985. Revised disclosures may but need not be provided prior to April 16, 1985; however, beginning on that date, any disclosure given (e.g., initial disclosures to a new customer, or the long-form or short-form error resolution notice to an existing customer) must accurately reflect the terms and conditions of the EFT services (including debit card transactions) offered by the institution. For example, initial disclosures to new customers will have to reflect that all transfers resulting from debit card transactions are electronic fund transfers, and that the error resolution periods for POS debit card transactions are 20 business days and 90 calendar days (if the institution wishes to take advantage of the longer periods).

After April 16, error resolution notices, whether given annually or on periodic statements, also must reflect the longer periods. Similarly, initial disclosures and error resolution notices must reflect the exception from provisional recrediting in cases where accounts are subject to the Board's Regulation T (Credit by Brokers and Dealers). Institutions may comply by modifying appropriately the error notice forms that appear in §§ 205.7(a)(10) and 205.8(b).

An institution that wishes to use existing forms until its supplies are exhausted may reflect the changed terms and conditions by any appropriate means such as by use of an insert, attachment, or computer-generated notice on periodic statements (in the case of a short-form notice on the statement). Institutions are not required to make a special mailing of revised error resolution notices or of other disclosures.

List of Subjects in 12 CFR Part 205

Banks, banking; Consumer protection; Electronic fund transfers; Federal Reserve System; Penalties.

(4) Text of revisions. The proposed revisions to the Official Staff Commentary on Regulation E (EFT-2, Supp. II to 12 CFR Part 205) read as follows:

* * * * *

SECTION 205.2 -- DEFINITIONS AND RULES OF CONSTRUCTION

* * * * *

►Q 2-28: Unauthorized transfers -- forced initiation. A consumer is forced by a robber, at gunpoint, to withdraw cash at an ATM. Do the liability limits for unauthorized transfers apply?

A: Yes. The transfer is unauthorized for purposes of Regulation E. Under those circumstances, the actions of the robber are tantamount to use of a stolen access device. (§§ 205.2(1) and 205.6)◄

* * * * *

SECTION 205.5 -- ISSUANCE OF ACCESS DEVICES

* * * * *

►Q 5-4.5: Unsolicited issuance -- PINs. May a financial institution issue, without a specific request, validated personal identification numbers (PINs), thus allowing consumers to use their existing debit cards at automated teller machines?

A: No. Issuance of a validated PIN for an existing debit card does not meet the regulation's requirement that an unsolicited access device be unvalidated when issued. (The issuance of PINs for existing credit cards is, however, permissible under the Truth in Lending Act and Regulation Z; see Comment 12(a)(1)-8 of the Official Staff Commentary to Regulation Z.) (§§ 205.5(a) and (b) and 205.2(a))◀

* * * * *

SECTION 205.7 -- INITIAL DISCLOSURE OF TERMS AND CONDITIONS

* * * * *

Q 7-18.5: Error resolution disclosure -- [foreign-initiated transfers]

▶extended time periods◀. The regulation expands the time periods for resolving errors that involve transfers initiated outside the United States ▶or transfers resulting from POS debit card transactions◀, from 10 to 20 business days and from 45 to 90 calendar days. Must the error-resolution disclosure reflect the longer time periods with respect to accounts on which [transfers may be initiated outside the United States] ▶these types of transfers can be made◀?

A: A financial institution [may but need not refer to the longer time periods in the error-resolution disclosure.] ▶must give error-resolution disclosures that reflect its actual procedures. An institution that takes advantage of the longer time periods applicable to POS and foreign-initiated transfers must, therefore, state them in its error-resolution disclosures. Similarly, an institution that relies on the exception from provisional recrediting (for accounts subject to Regulation T) must phrase its disclosures appropriately.◀
(§§ 205.7(a)(10), 205.8(b), and 205.11▶(c)(3) and◀ (c)(4))

* * * * *

SECTION 205.11 -- PROCEDURES FOR RESOLVING ERRORS

* * * * *

►Q 11-11.5: POS debit card transactions. The deadlines for investigating errors are extended for all transfers resulting from POS debit card transactions, regardless of whether an electronic terminal is involved. For purposes of these deadlines, what types of transactions can be viewed as POS debit card transactions?

A: POS debit card transactions generally take place at merchant locations, but also include mail and telephone orders of goods or services involving a debit card. Transactions at ATMs, however, are not POS even though the ATM may be in a merchant location. (§ 205.11(c)(4)◄

* * * * *

Board of Governors of the Federal Reserve System, November 28, 1984.

(signed) William W. Wiles

William W. Wiles
Secretary of the Board