FEDERAL RESERVE BANK
OF DALLAS

WILLIAM H. WALLACE
FIRST VICE PRESIDENT

DALLAS, TEXAS 75222

January 22, 1985

Circular 85-10

TO: The Chief Executive Officer of all member banks and others concerned in the Eleventh Federal Reserve District

SUBJECT

Regulation E -- Electronic Fund Transfers

DETAILS

The Board of Governors of the Federal Reserve System has issued a revised Regulation E pamphlet as amended effective April 16, 1985. The enclosed pamphlet should be filed in Volume 2 of your Regulations Binders. The pamphlet and the amendments slip sheet dated May 20, 1980, and December 1982, respectively, should be removed.

ATTACHMENTS

The new Regulation E pamphlet is attached.

MORE INFORMATION

For more information, please contact this Bank's Legal Department at (214) 651-6228.

Sincerely yours,

William H. Wallace

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For additional copies of any circular please contact the Public Affairs Department at (214) 651-6289. Banks and others are encouraged to use the following incoming WATS numbers in contacting this Bank (800) 442-7140 (intrastate) and (800) 527-9200 (interstate).

Board of Governors of the Federal Reserve System

Regulation E
Electronic Fund Transfers

12 CFR 205; as amended effective April 16, 1985

Any inquiry relating to this regulation should be addressed to the Federal Reserve Bank of the District in which the inquiry arises.

December 1984

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Regulation E
Electronic Fund Transfers

12 CFR 205; effective March 30, 1979; as amended effective April 16, 1985

SECTION 205.1—Authority, Purpose, and Scope

(a) *Authority.* This regulation, issued by the Board of Governors of the Federal Reserve System, implements title IX (Electronic Fund Transfer Act) of the Consumer Credit Protection Act, as amended (15 USC 1601 et seq.). Information-collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 USC 3501 et seq. and have been assigned OMB No. 7100-0200.

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

SECTION 205.2—Definitions and Rules of Construction

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

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

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

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

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

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

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

(c) "*Act*" means the Electronic Fund Transfer Act (title IX of the Consumer Credit Protection Act, 15 USC 1601 et seq.).

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

(e) "*Consumer*" means a natural person.

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

(g) "*Electronic fund transfer*" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephone, or computer or

magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes, but is not limited to, point-of-sale transfers, automated teller machine transfers, direct deposits or withdrawals of funds, and transfers initiated by telephone. It includes all transfers resulting from debit card transactions, including those that do not involve an electronic terminal at the time of the transaction. The term does not include payments made by check, draft, or similar paper instrument at an electronic terminal.

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

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

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

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

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

(m) Footnotes have the same legal effect as the text of the regulation.

SECTION 205.3—Exemptions

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

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

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

(c) *Certain securities or commodities transfers.* Any transfer the primary purpose of which is the purchase or sale of securities or commodities 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;[1a]

(3) From a consumer's account to an

[1a] The financial institution remains subject to section 913 of the act regarding compulsory use of electronic fund transfers. A financial institution may, however, require the automatic repayment of credit that is extended under an overdraft credit plan or that is extended to maintain a specified minimum balance in the consumer's account. Financial institutions also remain subject to sections 915 and 916 regarding civil and criminal liability.

account of the financial institution, such as a loan payment;[1a] or

(4) From a consumer's account to an account of another consumer, within the financial institution, who is a member of the transferor's family.

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

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

(g) *Preauthorized transfers to small financial institutions.* (1) Any preauthorized transfer to or from an account if the assets of the account-holding financial institution are $25 million or less on December 31. [1a]

(2) If the account-holding financial institution's assets subsequently exceed $25 million, the institution's exemption for this class of transfers shall terminate one year from the end of the calendar year in which the assets exceed $25 million.

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 sections 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.

[1a] The financial institution remains subject to section 913 of the act regarding compulsory use of electronic fund transfers. A financial institution may, however, require the automatic repayment of credit that is extended under an overdraft credit plan or that is extended to maintain a specified minimum balance in the consumer's account. Financial institutions also remain subject to sections 915 and 916 regarding civil and criminal liability.

(b) *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.

(c) *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.

SECTION 205.5—Issuance of Access Devices

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

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

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

(3) As a renewal of, or in substitution for, an access device issued before February 8, 1979 (other than an accepted access device, which can be renewed or substituted under paragraph (a)(2) of this section), provided that the disclosures set forth in sections 205.7(a)(1), (2), and (3) accompany the renewal or substitute device; except that for a renewal or substitution that occurs before July 1, 1979, the disclosures may be sent within a reasonable time after the renewal or substitute device is issued.

(b) *Exception.* Notwithstanding the provisions of paragraph (a)(1) of this section, a

[1b] In the case of a joint account, a financial institution may issue an access device to each account holder for whom the requesting holder specifically requests an access device.

financial institution may distribute an access device to a consumer on an unsolicited basis if:

(1) The access device is not validated;

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

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

(4) The access device is validated only in response to the consumer's oral or written request or application for validation and after verification of the consumer's identity by any reasonable means, such as by photograph, fingerprint, personal visit, or signature comparison.

An access device is considered validated when a financial institution has performed all procedures necessary to enable a consumer to use it to initiate an electronic fund transfer.

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

(i) Issuance of access devices;

(ii) Addition to an accepted credit card, as defined in 12 CFR 226.12(a)(2), footnote 21 (Regulation Z), of the capability to initiate electronic fund transfers; and

(iii) Issuance of access devices that permit credit extensions only under a preexisting agreement between a consumer and a financial institution to extend the credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.

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

(i) Issuance of credit cards as defined in 12 CFR 226.2(a)(15);

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

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

SECTION 205.6—Liability of Consumer for Unauthorized Transfers

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

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

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

(3) The financial institution has provided the following information, in writing, to the consumer:

(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.

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

(iii) The financial institution's business days, as determined under section 205.2(d), unless applicable state law or an agreement between the consumer and the financial institution sets a liability limit not greater than $50.

(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:

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

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

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

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

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

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

(3) Paragraphs (b)(1) and (2) of this section may both apply in some circumstances. Paragraph (b)(1) shall determine the consumer's liability for any unauthorized transfers that appear on the periodic statement and occur before the close of the 60-day period, and paragraph (b)(2)(ii) shall determine liability for transfers that occur after the close of the 60-day period.

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

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

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

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

(i) Was initiated by use of an access device that is also a credit card as defined in 12 CFR 226.2(a)(15), or

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

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

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 that the consumer may retain, the following terms and conditions of the electronic fund transfer service, as applicable:

(1) A summary of the consumer's liability under section 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 section 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 sections 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 section 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 section 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 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 recieve 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 three 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 section 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 section 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 such a change 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 section 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 section 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 business 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 205.9—Documentation of Transfers

(a) *Receipts at electronic terminals.* At the time an electronic fund transfer is initiated at an electronic terminal by a consumer, the financial institution shall make available [2] to the consumer a written receipt of the transfer(s) that clearly sets forth the following information, as applicable:

(1) The amount of the transfer. A charge for the transfer may be included in this amount if the terminal is owned or operated by a person other than the financial institution holding the consumer's account, provided the amount of the charge is disclosed on the receipt and on a sign posted on or at the terminal.

(2) The calendar date the consumer initiated the transfer.

(3) The type of transfer and the type of the consumer's account(s) [3] to or from which funds are transferred, such as "withdrawal from checking," "transfer from savings to checking," or "payment from savings." These descriptions may be used for transfers to or from accounts that are similar in function to checking accounts (such as share draft or negotiable order of withdrawal accounts) or to savings accounts (such as share accounts). Codes may be used only if they are explained elsewhere on the receipt.

(4) A number or code that uniquely identifies the consumer initiating the transfer, the consumer's account(s), or the access device used to initiate the transfer.

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

(6) The name of any third party to or from whom funds are transferred; a code may be used only if it is explained elsewhere on the

[2] A financial institution may arrange for a third party, such as a merchant, to make the receipt available.

[3] If more than one account of the same type may be accessed by a single access device, the accounts must be uniquely identified unless the terminal is incapable of such identification and was purchased or ordered by the financial institution prior to February 6, 1980. The type of account need not be identified if the access device may access only one account at that terminal.

receipt. This requirement does not apply if the name is provided by the consumer in a form that the electronic terminal cannot duplicate on the receipt.

(b) *Periodic statements.* For any account to or from which electronic fund transfers can be made, the financial institution shall mail or deliver a statement for each monthly or shorter cycle in which an electronic fund transfer has occurred, but at least a quarterly statement if no transfer has occurred. The statement shall include the following, as applicable:

(1) For each electronic fund transfer occurring during the cycle,[4]

(i) The amount of the transfer. If a transfer charge was added at the time of initiation by the owner or operator of an electronic terminal in accordance with paragraph (a)(1) of this section, that charge may be included in the amount of the transfer.

(ii) The date the transfer was credited or debited to the consumer's account.

(iii) The type of transfer and the type of the consumer's account(s) to or from which funds were transferred.

(iv) For each transfer initiated by the consumer at an electronic terminal,[4a] the location that appeared on the receipt or, if an identification (such as a code or terminal number) was used, that identification and one of the following descriptions of the terminal's location:

(A) The address, including number and street (the number may be omitted if the street alone uniquely identifies the terminal location) or intersection, city, and state or foreign country;[5]

(B) A generally accepted name for a specific location (such as a branch of the financial institution, a shopping center, or an airport), city, and state or foreign country;[6] or

(C) The name of the entity at whose place of business the terminal is located or which owns or operates the terminal (such as the financial-institution[7] or the seller of goods or services), city, and state or foreign country.[8]

(v) The name of any third party to or from whom funds were transferred.[9]

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

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

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

(5) The address and telephone number to be used for inquiry 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 section 205.8(b).

(6) If the financial institution uses the notice procedure set forth in section 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 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 the account,[9a] the finan-

[4] The information required by paragraph (b)(1) of this section may be provided on accompanying documents. Codes explained on the statement or on accompanying documents are acceptable.

[4a] A financial institution need not identify the terminal location for deposits of cash, checks, drafts, or similar paper instruments at electronic terminals.

[5] The city and state may be omitted if all the terminals owned or operated by the financial institution providing the statement (or by the system in which it participates) are located in the same city. The state may be omitted if all the terminals owned or operated by the financial institution providing the statement (or by the system in which it participates) are located in that state. The state may also be omitted for transfers occurring at terminals within 50 miles of the financial institution's main office.

[6] See footnote 5.

[7] If the financial institution providing the statement owns or operates terminals at more than one location, it shall describe the location of its electronic terminals by use of paragraphs (b)(1)(iv)(A) or (B) of this section.

[8] See footnote 5.

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

[9a] Accounts that also are accessible by the intra-institutional transfers described in paragraph (h) of this section may continue to be documented in accordance with paragraph (c) or (d) of this section.

cial 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 on a separate document the amount and date of each electronic fund transfer made 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 the account,[9a] the financial institution need provide the periodic statement required by paragraph (b) of this section only quarterly.

(e) *Use of abbreviations.* A financial institution may use commonly accepted or readily understandable abbreviations in complying with the documentation requirements of this section.

(f) *Receipt requirements for certain cash-dispensing terminals.* The failure of a financial institution to comply with the requirement of paragraph (a) of this section that a receipt be made available to the consumer at the time an electronic fund transfer is initiated at an electronic terminal shall not constitute a violation of the act or this regulation, provided—

(1) The transfer occurs at an electronic terminal that—

(i) Does not permit transfers other than cash withdrawals by the consumer,

(ii) Cannot make a receipt available to the consumer at the time the transfer is initiated,

(iii) Cannot be modified to provide a receipt at that time, and

(iv) Was purchased or ordered by the financial institution prior to February 6, 1980; and

(2) The financial institution mails or delivers a written receipt to the consumer that complies with the other requirements of paragraph (a) of this section on the next business day following the transfer.

[9a] Accounts that also are accessible by the intra-institutional transfers described in paragraph (h) of this section may continue to be documented in accordance with paragraph (c) or (d) of this section.

(g) *Delayed effective date for certain periodic statement requirements.* The failure of a financial institution to describe an electronic fund transfer in accordance with the requirements of paragraphs (b)(1)(iv) and (v) of this section shall not constitute a violation of the act or this regulation unless the transfer occurs on or after August 10, 1980, if, when a transfer involves a payment to another person, the financial institution, upon the consumer's request and without charge, promptly provides the consumer with proof that such a payment was made.

(h) *Periodic statements for certain intra-institutional transfers.* A financial institution need not provide the periodic statement required by paragraph (b) of this section for an account accessed only by electronic fund transfers initiated by the consumer to or from another account of the consumer for which the financial institution documents transfers in compliance with paragraph (b) of this section.

(i) *Documentation for foreign-initiated transfers.* Failure to provide the terminal receipt and periodic statement required by paragraphs (a) and (b) of this section for a particular electronic fund transfer shall not be deemed a failure to comply with this regulation, if—

(1) the transfer is not initiated in a state as defined in section 205.2(k); and

(2) in accordance with section 205.11, the financial institution treats an inquiry for clarification or documentation as a notice of error and corrects the error.

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 least once every 60 days, except where the payor provides positive notice to the consumer that the transfer has been initiated, the financial institution shall provide notice by one of the following means:

(i) The institution shall transmit oral or written notice to the consumer, within

two business days after the transfer, that the transfer occurred;

(ii) The institution shall transmit oral or written notice to the consumer, within two business days after the date on which the transfer was scheduled to occur, that the transfer did not occur; or

(iii) The institution shall provide a readily available telephone line that the consumer may call to ascertain whether or not the transfer occurred, and shall disclose the telephone number on the initial disclosures required by section 205.7 and on each periodic statement.

(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 as of the day the funds for the transfer are received.

(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 three 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 205.11—Procedures for Resolving Errors

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

(1) An unauthorized electronic fund transfer;

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

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

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

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

(6) An electronic fund transfer not identified in accordance with the requirements of sections 205.9 or 205.10(a); or

(7) A consumer's request for any documentation required by sections 205.9 or 205.10(a), or for additional information or clarification concerning an electronic fund transfer. This includes any request for documentation, information, or clarification in order to assert an error within the meaning of paragraphs (a)(1) through (6) of this section. It does not include a routine inquiry about the balance in the consumer's account or a request for duplicate copies of documentation or other information that is made only for tax or other record-keeping purposes.

(b) *Notice of error from consumer.* (1) A notice of an error is an oral or written notice from the consumer that—

(i) Is received by the financial

institution[10] no later than 60 days after the institution—

(A) Transmitted a periodic statement or provided documentation under section 205.9(c) on which the alleged error is first reflected; or

(B) Transmitted additional information, clarification, or documentation described in paragraph (a)(7) of this section that was initially requested in accordance with paragraph (b)(1)(i)(A) of this section;

(ii) Enables the financial institution to identify the consumer's name and account number; and

(iii) Except for errors described in paragraph (a)(7) of this section, indicates the consumer's belief, and the reasons for that belief, that an error exists in the consumer's account or is reflected on documentation required by sections 205.9 or 205.10(a), and indicates to the extent possible the type, the date, and the amount of the error.

(2) A financial institution may require a written confirmation to be received within 10 business days of an oral notice if, when the oral notice is given, the consumer is advised of the requirement and of the address to which confirmation must be sent.

(c) *Investigation of errors.* (1) After receiving a notice of an error, the financial institution shall promptly investigate the alleged error, determine whether an error occurred, and transmit the results of its investigation and determination to the consumer within 10 business days.

(2) As an alternative to the 10-business-day requirement of paragraph (c)(1) of this section, the financial institution shall investigate the alleged error and determine whether an error occurred, promptly but in no event later than 45 calendar days after receiving a notice of an error, and shall transmit the results of its investigation and determination to the consumer, provided—

(i) The financial institution provisionally recredits the consumer's account in the amount of the alleged error (including interest where applicable) within 10 business days after receiving the notice of error. If the financial institution has a reasonable basis for believing that an unauthorized electonic fund transfer may have occurred and that it has satisfied the requirements of section 205.6(a), it may withhold a maximum of $50 from the amount recredited;

(ii) The financial institution, promptly but no later than two business days after the provisional recrediting, orally reports or mails or delivers notice to the consumer of the amount and date of the recrediting and of the fact that the consumer will have full use of the funds pending the determination of whether an error occurred;

(iii) The financial institution gives the consumer full use of the funds provisionally recredited during the investigation; and

(iv) If the financial institution determines that no error occurred and debits the account, the institution gives notice of the debiting and continues to honor certain items as required by paragraph (f)(2) of this section.

(3) A financial institution shall comply with all requirements of this section except that it need not provisionally recredit the consumer's account if—

(i) it requires but does not receive timely written confirmation of oral notice of an error; or

(ii) the notice of an error involves an account that is subject to the margin requirements or other aspects of Regulation T (12 CFR 220).

(4) If a notice of an error involves an electronic fund transfer that was not initiated in a state as defined in section 205.2(k), or involves an electronic fund transfer resulting from a point-of-sale debit card transaction, the applicable time periods for action in subsections (c), (e), and (f) shall be 20 business days in place of 10 business days, and 90 calendar days in place of 45 calendar days.

[10] A financial institution may require the consumer to give notice only at the telephone number or address disclosed by the institution, provided the institution maintains reasonable procedures to refer the consumer to the specified telephone number or address if the consumer attempts to give notice to the institution in a different manner.

(d) *Extent of required investigation.* (1) A financial institution complies with its duty to investigate, correct, and report its determination regarding an error described in paragraph (a)(7) of this section by transmitting the requested information, clarification, or documentation within the time limits set forth in paragraph (c) of this section. If the institution has provisionally recredited the consumer's account in accordance with paragraph (c)(2) of this section, it may debit the amount upon transmitting the requested information, clarification, or documentation.

(2) Except in the case of services covered by section 205.14, a financial institution's review of its own records regarding an alleged error will satisfy its investigation responsibilities under paragraph (c) of this section if the alleged error concerns a transfer to or from a third party and there is no agreement between the financial institution and the third party[11] regarding the type of electronic fund transfer alleged in the error.

(3) A financial institution may make, without investigation, a final correction to a consumer's account in the amount or manner alleged by the consumer to be in error, but must comply with all other applicable requirements of this section.

(e) *Procedure after financial institution determines that error occurred.* If the financial institution determines that an error occurred, it shall—

(1) Promptly, but no later than one business day after its determination, correct the error (subject to the liability provisions of sections 205.6(a) and (b)), including, where applicable, the crediting of interest and the refunding of any fees or charges imposed, and

(2) Promptly, but in any event within the 10-business-day or 45-day time limits, orally report or mail or deliver to the consumer notice of the correction and, if applicable, notice that a provisional credit has been made final.[12]

(f) *Procedures after financial institution determines that no error occurred.* If the financial institution determines that no error occurred or that an error occurred in a different manner or amount from that described by the consumer—

(1) The financial institution shall mail or deliver to the consumer a written explanation of its findings within 3 business days after concluding its investigation, but in no event later than 10 business days after receiving notice of the error if the institution is proceeding under paragraph (c)(1) of this section. The explanation shall include notice of the consumer's right to request the documents upon which the institution relied in making its determination.

(2) Upon debiting a provisionally recredited amount, the financial institution—

(i) Shall orally report or mail or deliver notice to the consumer of the date and amount of the debiting and the fact that the financial institution will honor checks, drafts, or similar paper instruments payable to third parties and preauthorized transfers from the consumer's account (using the provisionally recredited funds) for five business days after transmittal of the notice.

(ii) Shall honor checks, drafts, or similar paper instruments payable to third parties and preauthorized transfer from the consumer's account (without charge to the consumer as a result of an overdraft) for five business days after transmittal of the notice. The institution need only honor items that it would have paid if the provisionally recredited funds had not been debited.

(3) Upon the consumer's request, the financial institution shall promptly mail or deliver to the consumer copies of the documents on which it relied in making its determination.

[11] Institutions do not have an agreement for purposes of paragraph (d)(2) of this section solely because they participate in transactions under the federal recurring payments program, or that cleared through an automated or other clearing house or similar arrangement for the clearing and settlement of fund transfers generally, or because they agree to be bound by the rules of such arrangements. An agreement that a third party will honor an access device is an agreement for purposes of this paragraph.

[12] This notice 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.

(g) *Withdrawal of notice of error.* The financial institution has no further error-resolution responsibilities as to a consumer's assertion of an error if the consumer concludes that no error did in fact occur and voluntarily withdraws the notice.

(h) *Reassertion of error.* A financial institution that has fully complied with the requirements of this section with respect to an error has no further responsibilities under this section if the consumer subsequently reasserts the same error, regardless of the manner in which it is reasserted. This paragraph does not preclude the assertion of an error defined in paragraphs (a)(1) through (6) of this section following the assertion of an error described in paragraph (a)(7) of this section regarding the same electronic fund transfer.

(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 shall comply with the requirements of this section rather than those of 12 CFR 226.13(a), (b), (c), (e), (f), and (h).

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 section 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 sections 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 corre-

sponding 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 section 915 of the act; and

(ii) After an exemption has been granted, for the purposes of section 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 section 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 and Community 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 five 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 section 915(d) of the act, the Board has designated the director and other officials of the Division of Consumer and Community 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 two 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 proceeeding 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 sections 910, 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.

SECTION 205.14—Services Offered by Financial Institutions not Holding Consumer's Account

(a) *Compliance by service-providing institution.* Except as provided in this section, where a financial institution issues an access device to a consumer to be used for initiating electronic fund transfers to or from the 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 service-providing institution shall comply with all requirements of the act and this regulation that relate to the service or the electronic fund transfers made by the consumer under the service. For this purpose, the following special rules shall apply:

(1) Section 205.6 shall require the service-providing institution to reimburse the consumer for unauthorized electronic fund transfers in excess of the limits set by that section.

(2) Sections 205.7, 205.8, and 205.9 shall require the service-providing institution to provide those disclosures and documentation that are within its knowledge and the purview of its relationship with the consumer.

(3) Section 205.11(b)(1)(i) shall require the service-providing institution to extend by a reasonable time the time periods within which notice of an error must be received if a delay in notifying the service-providing institution was due to the fact that the consumer initially notified or attempted to notify the account-holding institution.

(4) Sections 205.11(c)(2)(i) and (e)(1) shall require the service-providing institution to transfer funds, in the appropriate amount and within the applicable time period, to the consumer's account at the account-holding institution.

(5) Section 205.11(c)(2)(ii) shall require the service-providing institution to disclose the date on which it initiates a transfer to effect the provisional recredit.

(6) Section 205.11(f)(2) shall require the service-providing institution to notify the account-holding institution of the date until which the account-holding institution must honor any debit to the account as required by section 205.11(f)(2). If an overdraft results, the service-providing institution shall promptly reimburse the account-holding institution in the amount of the overdraft.

(b) *Compliance by account-holding institution.* An account-holding institution described in paragraph (a) of this section need not comply with the requirements of the act and this regulation with respect to electronic fund transfers to or from the consumer's account made by the service-providing institution, except that the account-holding institution shall comply with section 205.11 by—

(1) Promptly providing, upon the request of the service-providing institution, information or copies of documents required for the purpose of investigating alleged errors or furnishing copies of documents to the consumer; and

(2) Honoring debits to the account in accordance with section 205.11(f)(2).

(c) *Definition of agreement.* For purposes of this section, an agreement between the service-providing and the account-holding institutions regarding the electronic fund transfer service refers to a specifc agreement(s) among institutions (or among institutions and another person that participates in the operation of the service) which sets forth the rights and obligations of the institutions with respect

to a service involving the issuance of an access device to the consumer. Institutions do not have such an agreement solely because they participate in transactions that are cleared through an automated or other clearinghouse or similar arrangement for the clearing and settlement of fund transfers generally, or because they agree to be bound by the rules of such an arrangement.

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 sections 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 sections 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 in section A(2)). Sections A(3), A(8) 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(1)—Disclosure That Access Device is Not Validated and How to Dispose of Device if Validation is Not Desired (§ 205.5(b)(3))

(a) *Account using cards.* YOU CANNOT USE THE ENCLOSED CARD TO TRANSFER MONEY INTO OR OUT OF YOUR ACCOUNT UNTIL WE HAVE VALIDATED IT. IF YOU DO NOT WANT TO USE THE CARD, PLEASE (destroy it at once by cutting it in half).

[Financial institution may add validation instructions here.]

(b) *Accounts using codes.* YOU CANNOT USE THE ENCLOSED CODE TO TRANSFER MONEY INTO OR OUT OF YOUR ACCOUNT UNTIL WE HAVE VALIDATED IT. IF YOU DO NOT WANT TO USE THE CODE, PLEASE (destroy this notice at once)

[Financial institution may add validation instructions here.]

SECTION A(2)—Disclosure of Consumers Liability for Unauthorized Transfers and Optional Disclosure of Advisability of Prompt Reporting (§ 205.7(a)(1))

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

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

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

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

SECTION A(3)—Disclosure of Telephone Number and Address to Be Notified in Event of Unauthorized Transfer (§ 205.7(a)(2))

(a) *Address and telephone number.* If you believe your (card)(code) has been lost or stolen or that someone has transferred or may transfer money from your account without your permission, call:

[Telephone number]
or write:
[Name of person or office to be notified]
[Address]

SECTION A(4)—Disclosure of What Constitutes Business Day of Institution (§ 205.7(a)(3))

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

SECTION A(5)—Disclosure of Types of Available Transfers and Limits on Transfers (§ 205.7(a)(4))

(a) *Account access.* You may use your (card)(code) to

(1) Withdraw cash from your (checking)(or)(savings) account.
(2) Make deposits to your (checking)(or)(savings) account.
(3) Transfer funds between your checking and savings accounts whenever you request.
(4) Pay for purchases at places that have agreed to accept the (card)(code).
(5) Pay bills directly (by telephone) from your (checking)(or)(savings) account in the amounts and on the days you request.

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

(b) *Limitations on frequency of transfers.*
(1) You may make only [insert number, e.g., three] cash withdrawals from our terminals each [insert time period, e.g., week].
(2) You can use your telephone bill-payment service to pay [insert number] bills each [insert time period] (telephone call).
(3) You can use our point-of-sale transfer service for [insert number] transactions each [insert time period].
(4) For security reasons, there are (other) limits on the number of transfers you can make using our (terminals)(telephone bill-payment service)(point-of-sale transfer service).

(c) *Limitations on dollar amounts of transfers.* (1) You may withdraw up to ([insert dollar amount] from our terminals each [insert time period])(time you use the (card) (code)).
(2) You may buy up to [insert dollar amount] worth of goods or services each ([insert time period])(time you use the (card) (code)) in our point-of-sale transfer service.

SECTION A(6)—Disclosure of Charges for Transfers or Right to Make Transfers (§ 205.7(a)(5))

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

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

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

SECTION A(7)—Disclosure of Account Information to Third Parties (§ 205.7(a)(9))

(a) *Account information disclosure.* We will disclose information to third parties about your account or the transfers you make:

(1) where it is necessary for completing transfers.

or

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

or

(3) in order to comply with government agency or court orders.

or

(4) If you give us your written permission.

SECTION A(8)—Disclosure of Right to Receive Documentation of Transfers (§ 205.7(a)(6))

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

(b) *Preauthorized credits.* If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company,

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

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

(you can call us at [insert telephone number] to find out whether or not the deposit has been made.)

(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 (§ 205.7(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 three 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 three 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 (§ 205.7(a)(8))

(a) *Liability for failure to make transfers.* If we do not complete a transfer to or from your account on time or in the correct amount 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, you do not have enough money in your account 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, despite reasonable precautions that we have taken.

There may be other exceptions stated in our agreement with you.

APPENDIX B—Federal Enforcement Agencies

The following list indicates which federal agency enforces Regulation E for particular classes of institutions. Any questions concerning compliance by a particular institution should be directed to the appropriate enforcing agency.

National Banks
Comptroller of the Currency
Office of Customer and Community Programs
Washington, D.C. 20219

State Member Banks
Federal Reserve Bank serving the District in which the state member bank is located.

Nonmember Insured Banks
Federal Deposit Insurance Corporation regional director for the region in which the nonmember insured bank is located.

Savings Institutions Insured by the FSLIC and Members of the FHLB System (except for Savings Banks insured by FDIC)
The Federal Home Loan Bank Board supervisory agent in the District in which the institution is located.

Federal Credit Unions
Division of Consumer Affairs
National Credit Union Administration
2025 M Street, N.W.
Washington, D.C. 20456

Creditors Subject to Civil Aeronautics Board
Director
Bureau of Consumer Protection
Civil Aeronautics Board
Washington, D.C. 20428

Brokers and Dealers
Division of Market Regulations
Securities and Exchange Commission
Washington, D.C. 20549

Retail, Department Stores, Consumer Finance Companies, Certain Other Financial Institutions, and All Nonbank Debit Card Issuers
Federal Trade Commission
Electronic Fund Transfers
Washington, D.C. 20580

Electronic Fund Transfer Act

15 USC 1693 et seq.; 92 Stat. 3728; Pub. L. 95-630, Financial Institutions Regulatory and Interest Rate Control Act, Title XX (November 10, 1978)

FIRA, TITLE XX—Electronic Fund Transfers

SECTION 2001

The Consumer Credit Protection Act (15 U.S.C. 1601 et seq.*) is amended by adding at the end thereof the following new title:*

TITLE IX—ELECTRONIC FUND TRANSFERS

SECTION 901—Short Title

This title may be cited as the "Electronic Fund Transfer Act".

SECTION 902—Findings and Purpose

(a) The Congress finds that the use of electronic systems to transfer funds provides the potential for substantial benefits to consumers. However, due to the unique characteristics of such systems, the application of existing consumer protection legislation is unclear, leaving the rights and liabilities of consumers, financial institutions, and intermediaries in electronic fund transfers undefined.

(b) It is the purpose of this title to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. The primary objective of this title, however, is the provision of individual consumer rights.

SECTION 903—Definitions

As used in this title—

(1) the term "accepted card or other means of access" means a card, code, or other means of access to a consumer's account for the purpose of initiating electronic fund transfers when the person to whom such card or other means of access was issued has requested and received or has signed or has used, or authorized another to use, such card or other means of access for the purpose of transferring money between accounts or obtaining money, property, labor, or services;

(2) the term "account" means a demand deposit, savings deposit, or other asset account (other than an occasional or incidental credit balance in an open end credit plan as defined in section 103(i) of this Act), as described in regulations of the Board, established primarily for personal, family, or household purposes, but such term does not include an account held by a financial institution pursuant to a *bona fide* trust agreement;

(3) the term "Board" means the Board of Governors of the Federal Reserve System:

(4) the term "business day" means any day on which the offices of the consumer's financial institution involved in an electronic fund transfer are open to the public for carrying on substantially all of its business functions;

(5) the term "consumer" means a natural person;

(6) the term "electronic fund transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone. Such term does not include—

(A) any check guarantee or authorization service which does not directly result in a debit or credit to a consumer's account;

(B) any transfer of funds, other than those processed by automated clearinghouse, made by a financial institution on behalf of a consumer by means of a service that transfers funds held at either

Federal Reserve banks or other depository institutions and which is not designed primarily to transfer funds on behalf of a consumer;

(C) any transaction the primary purpose of which is the purchase or sale of securities or commodities through a broker-dealer registered with or regulated by the Securities and Exchange Commission;

(D) any automatic transfer from a savings account to a demand deposit account pursuant to an agreement between a consumer and a financial institution for the purpose of covering an overdraft or maintaining an agreed upon minimum balance in the consumer's demand deposit account; or

(E) any transfer of funds which is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution which is not pursuant to a prearranged plan and under which periodic or recurring transfers are not contemplated; as determined under regulations of the Board;

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

(8) the term "financial institution" means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer;

(9) the term "preauthorized electronic fund transfer" means an electronic fund transfer authorized in advance to recur at substantially regular intervals;

(10) the term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing; and

(11) the term "unauthorized electronic fund transfer" means an electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate such transfer and from which the consumer receives no benefit, but the term does not include any electronic fund transfer (A) initiated by a person other than the consumer who was furnished with the card, code, or other means of access to such consumer's account by such consumer, unless the consumer has notified the financial institution involved that transfers by such other person are no longer authorized, (B) initiated with fraudulent intent by the consumer or any person acting in concert with the consumer, or (C) which constitutes an error committed by a financial institution.

SECTION 904—Regulations

(a) The Board shall prescribe regulations to carry out the purposes of this title. In prescribing such regulations, the Board shall:

(1) consult with the other agencies referred to in section 917 and take into account, and allow for, the continuing evolution of electronic banking services and the technology utilized in such services,

(2) prepare an analysis of economic impact which considers the cost and benefits to financial institutions, consumers, and other users of electronic fund transfers, including the extent to which additional documentation, reports, records, or other paper work would be required, and the effects upon competition in the provision of electronic banking services among large and small financial institutions and the availability of such services to different classes of consumers, particularly low income consumers,

(3) to the extent practicable, the Board shall demonstrate that the consumer protections of the proposed regulations outweigh the compliance costs imposed upon consumers and financial institutions, and

(4) any proposed regulations and accompanying analyses shall be sent promptly to Congress by the Board.

(b) The Board shall issue model clauses for optional use by financial institutions to facili-

tate compliance with the disclosure requirements of section 905 and to aid consumers in understanding the rights and responsibilities of participants in electronic fund transfers by utilizing readily understandable language. Such model clauses shall be adopted after notice duly given in the Federal Register and opportunity for public comment in accordance with section 553 of title 5, United States Code. With respect to the disclosures required by section 905(a)(3) and (4), the Board shall take account of variations in the services and charges under different electronic fund transfer systems and, as appropriate, shall issue alternative model clauses for disclosure of these differing account terms.

(c) Regulations prescribed hereunder may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of electronic fund transfers, as in the judgment of the Board are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. The Board shall by regulation modify the requirements imposed by this title on small financial institutions if the Board determines that such modifications are necessary to alleviate any undue compliance burden on small financial institutions and such modifications are consistent with the purpose and objective of this title.

(d) In the event that electronic fund transfer services are made available to consumers by a person other than a financial institution holding a consumer's account, the Board shall by regulation assure that the disclosures, protections, responsibilities, and remedies created by this title are made applicable to such persons and services.

SECTION 905—Terms and Conditions of Transfers

(a) The terms and conditions of electronic fund transfers involving a consumer's account shall be disclosed at the time the consumer contracts for an electronic fund transfer service, in accordance with regulations of the Board. Such disclosures shall be in readily understandable language and shall include, to the extent applicable—

(1) the consumer's liability for unauthorized electronic fund transfers and, at the financial institution's option, notice of the advisability of prompt reporting of any loss, theft, or unauthorized use of a card, code, or other means of access;

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

(3) the type and nature of electronic fund transfers which the consumer may initiate, including any limitations on the frequency or dollar amount of such transfers, except that the details of such limitations need not be disclosed if their confidentiality is necessary to maintain the security of an electronic fund transfer system, as determined by the Board;

(4) any charges for electronic fund transfers or for the right to make such transfers;

(5) the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure to initiate such a stop payment order;

(6) the consumer's right to receive documentation of electronic fund transfers under section 906;

(7) a summary, in a form prescribed by regulations of the Board, of the error resolution provisions of section 908 and the consumer's rights thereunder. The financial institution shall thereafter transmit such summary at least once per calendar year;

(8) the financial institution's liability to the consumer under section 910; and

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

(b) A financial institution shall notify a consumer in writing at least twenty-one days prior to the effective date of any change in any term or condition of the consumer's account required to be disclosed under subsection (a) if such change would result in greater cost or liability for such consumer or decreased access to the consumer's account. A financial

institution may, however, implement a change in the terms or conditions of an account without prior notice when such change is immediately necessary to maintain or restore the security of an electronic fund transfer system or a consumer's account. Subject to subsection (a)(3), the Board shall require subsequent notification if such a change is made permanent.

(c) For any account of a consumer made accessible to electronic fund transfers prior to the effective date of this title, the information required to be disclosed to the consumer under subsection (a) shall be disclosed not later than the earlier of—

(1) the first periodic statement required by section 906(c) after the effective date of this title; or

(2) thirty days after the effective date of this title.

SECTION 906—Documentation of Transfers; Periodic Statements

(a) For each electronic fund transfer initiated by a consumer from an electronic terminal, the financial institution holding such consumer's account shall, directly or indirectly, at the time the transfer is initiated, make available to the consumer written documentation of such transfer. The documentation shall clearly set forth to the extent applicable—

(1) the amount involved and date the transfer is initiated;

(2) the type of transfer;

(3) the identity of the consumer's account with the financial institution from which or to which funds are transferred;

(4) the identity of any third party to whom or from whom funds are transferred; and

(5) the location or identification of the electronic terminal involved.

(b) For a consumer's account which is scheduled to be credited by a preauthorized electronic fund transfer from the same payor at least once in each successive sixty-day period, except where the payor provides positive notice of the transfer to the consumer, the financial institution shall elect to provide promptly either positive notice to the consumer when the credit is made as scheduled, or negative notice to the consumer when the credit is not made as scheduled, in accordance with regulations of the Board. The means of notice elected shall be disclosed to the consumer in accordance with section 905.

(c) A financial institution shall provide each consumer with a periodic statement for each account of such consumer that may be accessed by means of an electronic fund transfer. Except as provided in subsections (d) and (e), such statement shall be provided at least monthly for each monthly or shorter cycle in which an electronic fund transfer affecting the account has occurred, or every three months, whichever is more frequent. The statement, which may include information regarding transactions other than electronic fund transfers, shall clearly set forth—

(1) with regard to each electronic fund transfer during the period, the information described in subsection (a), which may be provided on an accompanying document;

(2) the amount of any fee or charge assessed by the financial institution during the period for electronic fund transfers or for account maintenance;

(3) the balances in the consumer's account at the beginning of the period and at the close of the period; and

(4) the address and telephone number to be used by the financial institution for the purpose of receiving any statement inquiry or notice of account error from the consumer. Such address and telephone number shall be preceded by the caption "Direct Inquiries To:" or other similar language indicating that the address and number are to be used for such inquiries or notices.

(d) In the case of a consumer's passbook account which may not be accessed by electronic fund transfers other than preauthorized electronic fund transfers crediting the account, a financial institution may, in lieu of complying with the requirements of subsection (c), upon presentation of the passbook provide the consumer in writing with the amount and date of each such transfer involving the account since the passbook was last presented.

(e) In the case of a consumer's account other than a passbook account, which may not be accessed by electronic fund transfers other than preauthorized electronic fund transfers crediting the account, the financial institution may provide a periodic statement on a quarterly basis which otherwise complies with the requirements of subsection (c).

(f) In any action involving a consumer, any documentation required by this section to be given to the consumer which indicates that an electronic fund transfer was made to another person shall be admissible as evidence of such transfer and shall constitute *prima facie* proof that such transfer was made.

SECTION 907—Preauthorized Transfers

(a) A preauthorized electronic fund transfer from a consumer's account may be authorized by the consumer only in writing, and a copy of such authorization shall be provided to the consumer when made. A consumer may stop payment of a preauthorized electronic fund transfer by notifying the financial institution orally or in writing at any time up to three business days preceding the scheduled date of such transfer. The financial institution may require written confirmation to be provided to it within fourteen days of an oral notification if, when the oral notification is made, the consumer is advised of such requirement and the address to which such confirmation should be sent.

(b) In the case of preauthorized transfers from a consumer's account to the same person which may vary in amount, the financial institution or designated payee shall, prior to each transfer, provide reasonable advance notice to the consumer, in accordance with regulations of the Board, of the amount to be transferred and the scheduled date of the transfer.

SECTION 908—Error Resolution

(a) If a financial institution, within sixty days after having transmitted to a consumer documentation pursuant to section 906 (a), (c), or (d) or notification pursuant to section 906(b), receives oral or written notice in which the consumer—

(1) sets forth or otherwise enables the financial institution to identify the name and account number of the consumer;

(2) indicates the consumer's belief that the documentation, or, in the case of notification pursuant to section 906(b), the consumer's account, contains an error and the amount of such error; and

(3) sets forth the reasons for the consumer's belief (where applicable) that an error has occurred, the financial institution shall investigate the alleged error, determine whether an error has occurred, and report or mail the results of such investigation and determination to the consumer within ten business days. The financial institution may require written confirmation to be provided to it within ten business days of an oral notification of error if, when the oral notification is made, the consumer is advised of such requirement and the address to which such confirmation should be sent. A financial institution which requires written confirmation in accordance with the previous sentence need not provisionally recredit a consumer's account in accordance with subsection (c), nor shall the financial institution be liable under subsection (e) if the written confirmation is not received within the ten-day period referred to in the previous sentence.

(b) If the financial institution determines that an error did occur, it shall promptly, but in no event more than one business day after such determination, correct the error, subject to section 909, including the crediting of interest where applicable.

(c) If a financial institution receives notice of an error in the manner and within the time period specified in subsection (a), it may, in lieu of the requirements of subsections (a) and (b), within ten business days after receiving such notice provisionally recredit the consumer's account for the amount alleged to be in error, subject to section 909, including interest where applicable, pending the conclusion of its investigation and its determination of whether an error has occurred. Such investigation shall be concluded not later than for-

ty-five days after receipt of notice of the error. During the pendency of the investigation, the consumer shall have full use of the funds provisionally recredited.

(d) If the financial institution determines after its investigation pursuant to subsection (a) or (c) that an error did not occur, it shall deliver or mail to the consumer an explanation of its findings within 3 business days after the conclusion of its investigation, and upon request of the consumer promptly deliver or mail to the consumer reproductions of all documents which the financial institution relied on to conclude that such error did not occur. The financial institution shall include notice of the right to request reproductions with the explanation of its findings.

(e) If in any action under section 915, the court finds that—

(1) the financial institution did not provisionally recredit a consumer's account within the ten-day period specified in subsection (c), and the financial institution (A) did not make a good faith investigation of the alleged error, or (B) did not have a reasonable basis for believing that the consumer's account was not in error; or

(2) the financial institution knowingly and willfully concluded that the consumer's account was not in error when such conclusion could not reasonably have been drawn from the evidence available to the financial institution at the time of its investigation, then the consumer shall be entitled to treble damages determined under section 915(a)(1).

(f) For the purpose of this section, an error consists of—

(1) an unauthorized electronic fund transfer;

(2) an incorrect electronic fund transfer from or to the consumer's account;

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

(4) a computational error by the financial institution;

(5) the consumer's receipt of an incorrect amount of money from an electronic terminal;

(6) a consumer's request for additional information or clarification concerning an electronic fund transfer or any documentation required by this title; or

(7) any other error described in regulations of the Board.

SECTION 909—Consumer Liability for Unauthorized Transfers

(a) A consumer shall be liable for any unauthorized electronic fund transfer involving the account of such consumer only if the card or other means of access utilized for such transfer was an accepted card or other means of access and if the issuer of such card, code, or other means of access has provided a means whereby the user of such card, code, or other means of access can be identified as the person authorized to use it, such as by signature, photograph, or fingerprint or by electronic or mechanical confirmation. In no event, however, shall a consumer's liability for an unauthorized transfer exceed the lesser of—

(1) $50; or

(2) the amount of money or value of property or services obtained in such unauthorized electronic fund transfer prior to the time the financial institution is notified of, or otherwise becomes aware of, circumstances which lead to the reasonable belief that an unauthorized electronic fund transfer involving the consumer's account has been or may be effected. Notice under this paragraph is sufficient when such steps have been taken as may be reasonably required in the ordinary course of business to provide the financial institution with the pertinent information, whether or not any particular officer, employee, or agent of the financial institution does in fact receive such information.

Notwithstanding the foregoing, reimbursement need not be made to the consumer for losses the financial institution establishes would not have occurred but for the failure of the consumer to report within sixty days of transmittal of the statement (or in extenuating circumstances such as extended travel or

hospitalization, within a reasonable time under the circumstances) any unauthorized electronic fund transfer or account error which appears on the periodic statement provided to the consumer under section 906. In addition, reimbursement need not be made to the consumer for losses which the financial institution establishes would not have occurred but for the failure of the consumer to report any loss or theft of a card or other means of access within two business days after the consumer learns of the loss or theft (or in extenuating circumstances such as extended travel or hospitalization, within a longer period which is reasonable under the circumstances), but the consumer's liability under this subsection in any such case may not exceed a total of $500, or the amount of unauthorized electronic fund transfers which occur following the close of two business days (or such longer period) after the consumer learns of the loss or theft but prior to notice to the financial institution under this subsection, whichever is less.

(b) In any action which involves a consumer's liability for an unauthorized electronic fund transfer, the burden of proof is upon the financial institution to show that the electronic fund transfer was authorized or, if the electronic fund transfer was unauthorized, then the burden of proof is upon the financial institution to establish that the conditions of liability set forth in subsection (a) have been met, and, if the transfer was initiated after the effective date of section 905, that the disclosures required to be made to the consumer under section 905(a) (1) and (2) were in fact made in accordance with such section.

(c) In the event of a transaction which involves both an unauthorized electronic fund transfer and an extension of credit as defined in section 103(e) of this Act pursuant to an agreement between the consumer and the financial institution to extend such credit to the consumer in the event the consumer's account is overdrawn, the limitation on the consumer's liability for such transaction shall be determined solely in accordance with this section.

(d) Nothing in this section imposes liability upon a consumer for an unauthorized electronic fund transfer in excess of his liability for such a transfer under other applicable law or under any agreement with the consumer's financial institution.

(e) Except as provided in this section, a consumer incurs no liability from an unauthorized electronic fund transfer.

SECTION 910—Liability of Financial Institutions

(a) Subject to subsections (b) and (c), a financial institution shall be liable to a consumer for all damages proximately caused by—

(1) the financial institution's failure to make an electronic fund transfer, in accordance with the terms and conditions of an account, in the correct amount or in a timely manner when properly instructed to do so by the consumer, except where—

(A) the consumer's account has insufficient funds;

(B) the funds are subject to legal process or other encumbrance restricting such transfer;

(C) such transfer would exceed an established credit limit;

(D) an electronic terminal has insufficient cash to complete the transaction; or

(E) as otherwise provided in regulations of the Board;

(2) the financial institution's failure to make an electronic fund transfer due to insufficient funds when the financial institution failed to credit, in accordance with the terms and conditions of an account, a deposit of funds to the consumer's account which would have provided sufficient funds to make the transfer, and

(3) the financial institution's failure to stop payment of a preauthorized transfer from a consumer's account when instructed to do so in accordance with the terms and conditions of the account.

(b) A financial institution shall not be liable under subsection (a)(1) or (2) if the financial institution shows by a preponderance of the evidence that its action or failure to act resulted from—

(1) an act of God or other circumstance

beyond its control, that it exercised reasonable care to prevent such an occurrence, and that it exercised such diligence as the circumstances required; or

(2) a technical malfunction which was known to the consumer at the time he attempted to initiate an electronic fund transfer or, in the case of a preauthorized transfer, at the time such transfer should have occurred.

(c) In the case of a failure described in subsection (a) which was not intentional and which resulted from a *bona fide* error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, the financial institution shall be liable for actual damages proved.

SECTION 911—Issuance of Cards or Other Means of Access

(a) No person may issue to a consumer any card, code, or other means of access to such consumer's account for the purpose of initiating an electronic fund transfer other than—

(1) in response to a request or application therefor; or

(2) as a renewal of, or in substitution for, an accepted card, code, or other means of access, whether issued by the initial issuer or a successor.

(b) Notwithstanding the provisions of subsection (a), a person may distribute to a consumer on an unsolicited basis a card, code, or other means of access for use in initiating an electronic fund transfer from such consumer's account, if—

(1) such card, code, or other means of access is not validated;

(2) such distribution is accompanied by a complete disclosure, in accordance with section 905, of the consumer's rights and liabilities which will apply if such card, code, or other means of access is validated;

(3) such distribution is accompanied by a clear explanation, in accordance with regulations of the Board, that such card, code, or other means of access is not validated and how the consumer may dispose of such code, card, or other means of access if validation is not desired; and

(4) such card, code, or other means of access is validated only in response to a request or application from the consumer, upon verification of the consumer's identity.

(c) For the purpose of subsection (b), a card, code, or other means of access is validated when it may be used to initiate an electronic fund transfer.

SECTION 912—Suspension of Obligations

If a system malfunction prevents the effectuation of an electronic fund transfer initiated by a consumer to another person, and such other person has agreed to accept payment by such means, the consumer's obligation to the other person shall be suspended until the malfunction is corrected and the electronic fund transfer may be completed, unless such other person has subsequently, by written request, demanded payment by means other than an electronic fund transfer.

SECTION 913—Compulsory Use of Electronic Fund Transfers

No person may—

(1) condition the extension of credit to a consumer on such consumer's repayment by means of preauthorized electronic fund transfers; or

(2) require a consumer to establish an account for receipt of electronic fund transfers with a particular financial institution as a condition of employment or receipt of a government benefit.

SECTION 914—Waiver of Rights

No writing or other agreement between a consumer and any other person may contain any provision which constitutes a waiver of any right conferred or cause of action created by this title. Nothing in this section prohibits, however, any writing or other agreement which grants to a consumer a more extensive

right or remedy or greater protection than contained in this title or a waiver given in settlement of a dispute or action.

SECTION 915—Civil Liability

(a) Except as otherwise provided by this section and section 910, any person who fails to comply with any provision of this title with respect to any consumer, except for an error resolved in accordance with section 908, is liable to such consumer in an amount equal to the sum of—

(1) any actual damage sustained by such consumer as a result of such failure;

(2)(A) in the case of an individual action, an amount not less than $100 nor greater than $1,000; or

(B) in the case of a class action, such amount as the court may allow, except that (i) as to each member of the class no minimum recovery shall be applicable, and (ii) the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same person shall not be more than the lesser of $500,000 or 1 per centum of the net worth of the defendant; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court,

(b) In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors—

(1) in any individual action under subsection (a)(2)(A), the frequency and persistence of noncompliance, the nature of such noncompliance, and the extent to which the noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B), the frequency and persistence of noncompliance, the nature of such compliance, the resources of the defendant, the number of persons adversely affected, and the extent to which the noncompliance was intentional.

(c) Except as provided in section 910, a person may not be held liable in any action brought under this section for a violation of this title if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a *bona fide* error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) No provision of this section or section 916 imposing any liability shall apply to—

(1) any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor; or

(2) any failure to make disclosure in proper form if a financial institution utilized an appropriate model clause issued by the Board,

notwithstanding that after such act, omission, or failure has occurred, such rule, regulation, approval, or model clause is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(e) A person has no liability under this section for any failure to comply with any requirement under this title if, prior to the institution of an action under this section, the person notifies the consumer concerned of the failure, complies with the requirements of this title, and makes an appropriate adjustment to the consumer's account and pays actual damages or, where applicable, damages in accordance with section 910.

(f) On a finding by the court that an unsuccessful action under this section was brought in bad faith or for purposes of harassment, the court shall award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(g) Without regard to the amount in controversy, any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.

SECTION 916—Criminal Liability

(a) Whoever knowingly and willfully—

(1) gives false or inaccurate information or fails to provide information which he is required to disclose by this title or any regulation issued thereunder; or

(2) otherwise fails to comply with any provision of this title; shall be fined not more than $5,000 or imprisoned not more than one year, or both.

(b) Whoever—

(1) knowingly, in a transaction affecting interstate or foreign commerce, uses or attempts or conspires to use any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument to obtain money, goods, services, or anything else of value which within any one-year period has a value aggregating $1,000 or more; or

(2) with unlawful or fraudulent intent, transports or attempts or conspires to transport in interstate or foreign commerce a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(3) with unlawful or fraudulent intent, uses any instrumentality of interstate or foreign commerce to sell or transport a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(4) knowingly receives, conceals, uses, or transports money, goods, services, or anything else of value (except tickets for interstate or foreign transportation) which (A) within any one-year period has a value aggregating $1,000 or more, (B) has moved in or is part of, or which constitutes interstate or foreign commerce and (C) has been obtained with a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument; or

(5) knowingly receives, conceals, uses, sells, or transports in interstate or foreign commerce one or more tickets for interstate or foreign transportation, which (A) within any one-year period have a value aggregating $500 or more, and (B) have been purchased or obtained with one or more counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument; or

(6) in a transaction affecting interstate or foreign commerce, furnishes money, property, services, or anything else of value, which within any one-year period has a value aggregating $1,000 or more, through the use of any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained—

shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(c) As used in this section, the term "debit instrument" means a card, code, or other device, other than a check, draft, or similar paper instrument, by the use of which a person may initiate an electronic fund transfer.

SECTION 917—Administrative Enforcement

(a) Compliance with the requirements imposed under this title shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act, in the case of—

(A) national banks, by the Comptroller of the Currency;

(B) member banks of the Federal Reserve System (other than national banks), by the Board;

(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 5(d) of the Home Owners' Loan Act of 1933, section 407 of the National Housing Act, and sections 6(i) and 17 of the Federal Home Loan Bank Act, by the Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), in the case of any institution subject to any of those provisions;

(3) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union.

(4) the Federal Aviation Act of 1958, by the Civil Aeronautics Board, with respect to any air carrier or foreign air carrier subject to that Act; and

(5) the Securities Exchange Act of 1934, by the Securities and Exchange Commission, with respect to any broker or dealer subject to that Act.

(b) For the purpose of the exercise by any agency referred to in subsection (a) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title, any other authority conferred on it by law.

(c) Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under subsection (a), the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person subject to the jurisdiction of the Commission with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.

SECTION 918—Reports to Congress

(a) Not later than twelve months after the effective date of this title and at one-year intervals thereafter, the Board shall make reports to the Congress concerning the administration of its functions under this title, including such recommendations as the Board deems necessary or appropriate. In addition, each report of the Board shall include its assessment of the extent to which compliance with this title is being achieved, and a summary of the enforcement actions taken under section 917 of this title. In such report, the Board shall particularly address the effects of this title on the costs and benefits to financial institutions and consumers, on competition, on the introduction of new technology, on the operations of financial institutions, and on the adequacy of consumer protection.

(b) In the exercise of its functions under this title, the Board may obtain upon request the views of any other Federal agency which, in the judgment of the Board, exercises regulatory or supervisory functions with respect to any class of persons subject to this title.

SECTION 919—Relation to State Laws

This title does not annul, alter, or affect the laws of any State relating to electronic fund transfers, except to the extent that those laws are inconsistent with the provisions of this title, and then only to the extent of the inconsistency. A State law is not inconsistent with this title if the protection such law affords any consumer is greater than the protection afforded by this title. The Board shall, upon its own motion or upon the request of any financial institution, State, or other interested party, submitted in accordance with procedures prescribed in regulations of the Board, determine whether a State requirement is inconsistent or affords greater protection. If the Board determines that a State requirement is inconsistent, financial institutions shall incur no liability under the law of that State for a good faith failure to comply with that law, notwithstanding that such determination is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason. This title does not extend the applicability of any such law to any class of per-

sons or transactions to which it would not otherwise apply.

SECTION 920—Exemption for State Regulation

The Board shall by regulation exempt from the requirements of this title any class of electronic fund transfers within any State if the Board determines that under the law of that State that class of electronic fund transfers is subject to requirements substantially similar to those imposed by this title, and that there is adequate provision for enforcement.

SECTION 921—Effective Date

This title takes effect upon the expiration of eighteen months from the date of its enactment, except that sections 909 and 911 take effect upon the expiration of ninety days after the date of enactment.