



**FEDERAL RESERVE BANK
OF DALLAS**

WILLIAM H. WALLACE
FIRST VICE PRESIDENT
AND CHIEF OPERATING OFFICER

March 27, 1987

DALLAS, TEXAS 75222

Circular 87-23

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

SUBJECT

**Slip sheet to the Official Staff Commentary on
Regulation E -- Electronic Fund Transfers**

DETAILS

The Board of Governors of the Federal Reserve System has published amendments in slip-sheet form to its Official Staff Commentary on Regulation E, effective August 1986. The new slip sheet should be inserted in Volume 2 of your Regulations Binder.

ENCLOSURE

The slip sheet is enclosed.

MORE INFORMATION

For more information, please contact John Rogers of this Bank's Legal Department at (214) 651-6182.

Sincerely yours,

A handwritten signature in cursive script that reads "William H. Wallace".

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).

Amendments to the Official Staff Commentary on Regulation E Electronic Fund Transfers August 1986*

The following comments were added or amended effective April 1, 1986. These amendments were included in the previous slip sheet, dated April 1985.

SECTION 205.2—Definitions and Rules of Construction

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Q2-5.5: Retail repurchase agreements. A retail repurchase agreement (repo) is essentially a loan made to a financial institution by a consumer that is collateralized by government or government-insured securities. Is a repo an account for purposes of Regulation E?

A: While repos may not be deposits for purposes of some other banking regulations, repos are accounts as defined in Regulation E. (§ 205.2(b))

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Q2-12.5: Fund transfer—withholding of income tax on interest. A financial institution electronically debits a portion of the interest on a consumer account for transmittal to the Internal Revenue Service, to comply with withholding requirements. Is the debit subject to the regulation?

A: No. (§ 205.2(g))

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Q2-25.5: Card-activated telephones. Does the regulation cover transfers to pay for calls made from a telephone that is activated when the consumer inserts a card into a magnetic strip or card reader, and does the terminal-receipt requirement apply?

* The complete commentary, as amended effective April 16, 1986, consists of—
• Regulation E commentary pamphlet dated October 1981 (see inside cover) and
• this slip sheet.

A: The regulation applies to transfers initiated electronically. As a result the electronic transfers from a consumer's account to pay for telephone calls are covered by the regulation as electronic fund transfers. A receipt is not required provided the only transfer of funds occurring as a result of the use of the card at the combination telephone/reader is to pay for the charges incurred by use of the telephone. (§ 205.2(h))

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Q2-27: Unauthorized transfers—access device obtained from the consumer. A consumer is robbed or induced by fraud to furnish another person with an access device. Are transfers initiated at an ATM by the person who obtained the access device from the consumer "unauthorized electronic fund transfers"?

A: The transfers are unauthorized for purposes of Regulation E. Although the definition of "unauthorized electronic fund transfer" excludes any transfer initiated by a person "who was furnished with the access device to the consumer's account by the consumer," it assumes that the consumer has authorized the person to make transfers with the access device. This exclusion does not apply when the access device is "furnished" as the result of a robbery, or as the result of a fraud on the consumer in which the consumer does not authorize the use of the access device to make transfers. But if the consumer furnishes an access device and grants actual authority to make transfers to another person (a family member or co-worker, for example) who then exceeds that authority, the consumer is liable for the transfers unless the financial institution has been notified that transfers by that person are no longer authorized. (§ 205.2(l))

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SECTION 205.3—Exemptions

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Q3-19.5: Telephone transfers—money market deposit accounts, retail repurchase agreements. Are telephone transfers between a money market deposit account (or a retail repo account) and another account within the institution subject to the regulation?

A: The answer depends on whether the transfers are made pursuant to a written plan or agreement in which periodic or recurring transfers are contemplated. An agreement that merely permits the consumer to telephone institutions for the rollover of all or a portion of the funds at maturity does not meet this test. (§ 205.3(e))

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Q3-22: Small-institution exemption—grace period. If the assets of a previously exempt financial institution exceed \$25 million on December 31, when must the institution begin complying with the regulation?

A: Such an institution would have a one-year grace period. For example, if the assets exceed \$25 million on December 31, 1983, compliance is not required until January 1, 1985. On the other hand, a previously covered institution whose assets fall below \$25 million on December 31, 1983, may take advantage of the exemption beginning on January 1, 1984. (§ 205.3(g))

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SECTION 205.7—Initial Disclosure of Terms and Conditions

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Q7-18.5: Error-resolution disclosure—foreign-initiated transfers. The regulation expands the time periods for resolving errors that involve transfers initiated outside the United States, from 10 to 20 business days and from 45 to 90 calendar days. Must the error-resolution disclosure reflect the longer time periods with respect to accounts on which transfers may be initiated outside the United States?

A: The financial institution may but need not refer to the longer time periods in the error-resolution disclosure. (§§ 205.7(a)(10), 205.8(b), and 205.11(c)(4))

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SECTION 205.9—Documentation of Transfers

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Q9-9: Receipts—type of account. A footnote states that the type of account need not be identified if the access device used to initiate the transfer can access only one account at a given terminal. When does this exception apply?

A: The exception applies to point-of-sale terminals, ATMs, and any other electronic terminals. It is available even if the access device can access more than one account when used at another terminal. For example, it is available when, in a shared ATM system, an access device can access only one account at a terminal operated by an institution other than the account-holding institution, even though the access device can access more than one account at terminals operated by the account-holding institution. Moreover, account refers only to asset accounts. If a consumer can use an access device at a terminal to debit an asset account and also to access a credit line, for example, the exception is still available. (§ 205.9(a)(3), footnote 3)

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Q9-10.5: Receipts—type of account, interchange system. What about an interchange system in which consumers can access multiple accounts of the same type at their account-holding institution's terminals, but only a primary account of each type at other terminals in the system—may the receipt at such other terminals describe the account in terms of "checking" or "savings," without unique identification?

A: Yes. (§ 205.9(a)(3), footnote 3)

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Q9-16: *Periodic statements—frequency.* How often must periodic statements be sent for accounts that are subject to the regulation?

A: A monthly statement is required for any account to or from which an EFT has occurred during the month, if the account is one that can be debited electronically (by use of an access device, telephone bill-payment service, or preauthorized transfers from the consumer's account, for example) or if the account can be credited electronically by other than preauthorized deposits. If no transfers occur during some months, the statement must be provided at least quarterly.

There are certain exceptions for accounts on which the only EFT service relates to preauthorized credits. The institution may send quarterly statements or, if the account is a passbook account, the institution may simply update the passbook when it is presented for updating (with the amount and date of each EFT since the last update).

Also, to eliminate duplicative statements, the regulation provides an exception from the periodic statement required for certain intrainstitutional transfers between a consumer's accounts. This exception does not alter the statement provisions, however, with respect to accounts that receive preauthorized credits; such accounts continue to require quarterly statements or passbook updates. (§ 205.9(b), (c), (d), and (h))

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Q9-22 [Reserved]

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Q9-26: *Periodic statements—terminal location omitted.* When a consumer makes a deposit at an ATM, the institution need not identify the ATM location on the periodic statement. Does the consumer's request for the terminal location (or any other information about the deposit) trigger the error-resolution procedures under the regulation?

A: Yes, if the request for the location is made in accordance with the requirements of the error-resolution section. However, in re-

sponding, the institution need only provide the consumer with the ATM location if it has captured that information with regard to deposits. If the consumer merely calls to ascertain whether or not a deposit (ATM, preauthorized, or any other type of electronic transfer) was credited to the account, the error-resolution procedures do not apply. (§§ 205.9(b)(1)(iv), footnote 4a, and 205.11(a)(7))

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Q9-50: *Periodic statements—transfers between accounts.* The regulation provides that an account is exempted from the periodic-statement requirements for transfers to or from another account of the consumer within the institution, if these transfers are described on a complying statement for the other account. What effect does this have on the periodic-statement requirements for accounts that also are accessed by other electronic transfer activity?

A: The exception applies only to the transfers between accounts. The financial institution must comply with the applicable periodic-statement requirements for any other electronic transfers to or from the account. For example, a quarterly Regulation E statement must be sent for an account that also receives payroll deposits electronically; and a Regulation E statement must be sent for any month in which an account is also accessed by a withdrawal at an ATM. However, a financial institution need not comply with the Regulation E requirements on such statements for transfers that are otherwise exempt, such as the transfers between accounts discussed above. (§ 205.9(c), (d), and (h))

Q9-51: *Periodic statements—foreign-initiated transfers.* Failure to provide terminal receipts and periodic statements for transfers initiated outside the United States is deemed not to be a failure to comply with the regulation if an inquiry or request for documentation is treated as a notice of an error. What does this mean?

A: The relaxation in documentation requirements takes account of the fact that some foreign-based terminals do not capture all of

the information required by the regulation. However, it is expected that the institution would make a good faith attempt to provide on the periodic statement the information required by the regulation to identify the transfer. For example, even though the institution may not be able to provide the location of the specific terminal, it should, if possible, identify the country and city in which the transfer was initiated. (§ 205.9(i))

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The following comments were added or amended effective October 16, 1984. These amendments were included in the previous slip-sheet, dated April 1985.

SECTION 205.2—Definitions and Rules of Construction

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Q2-21.5: Fund transfer—debit card transaction. A consumer uses a debit card to purchase goods or services or to obtain cash. The card is used to generate a sales slip and no electronic terminal is involved. The consumer's asset account is later debited for the amount of the transaction. Is this transfer subject to the regulation?

A: Yes. The definition of "electronic fund transfer" covers transfers resulting from debit-card transactions whether or not an electronic terminal is involved at the time of the transaction. (See question 2-24.) (§ 205.2(g))

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Q2-24: Point-of-sale terminals. Does the regulation cover POS transactions in which the consumer presents an access device such as a debit card, and does the terminal-receipt requirement apply?

A: The regulation applies to all transfers resulting from debit card transactions at point of sale whether or not an electronic terminal is involved. However, if there is no electronic terminal, a terminal receipt is not required and the periodic statement need not disclose terminal location. Point-of-sale terminals are

electronic terminals for purposes of the regulation if they capture data electronically, for debiting or crediting to the consumer's asset account, using the consumer's access device—for example, when the consumer's personal identification number is required, in part to activate the terminal. (See question 2-21.5. Also see § 205.11(c)(4) regarding the extension of certain error-resolution deadlines.) (§§ 205.2(h) and 205.9(a))

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SECTION 205.3—Exemptions

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Q3-3.5: Securities exemption—asset-management accounts. Some consumer financial services include both an electronic fund transfer service and the purchase and sale of securities. An example is a program involving a debit card issued by a bank or other card issuer which the consumer uses to purchase goods or services, and a money market mutual fund held by a broker. Debits are processed by the card issuer and transmitted to the broker for payment from the money market mutual fund. Are such transfers exempt from coverage under the securities exemption?

A: No. The exemption applies only to transfers whose "primary purpose" is the purchase or sale of securities—for example, a telephone order to a stockbroker to buy or sell securities. It does not apply to transfers resulting from use of the card for the purchase of goods or services or to obtain cash. (A transaction involving the purchase or sale of securities also remains subject to the Board's margin requirements under Regulation T (12 CFR 220) and other applicable securities regulations.) (§ 205.3(c))

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SECTION 205.5—Issuance of Access Devices

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Q5-1.5: Issuance—addition of new accounts. A consumer has been issued an access device for accessing an asset account. The account-holding institution wants to make an addition-

al account accessible to the consumer by means of the same access device. May the institution do so without a request by the consumer?

A: No. Making an additional account accessible through an existing access device is equivalent to issuing an access device for the account and is subject to the unsolicited-issuance provisions. (Additional disclosures may be required in some circumstances. See question 7-5.5. (§ 205.5(a)(1))

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SECTION 205.6—Liability of Consumer for Unauthorized Transfers

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Q6-6.5: *Consumer negligence.* A consumer writes the PIN on the ATM card or on a piece of paper kept with the card—actions that may constitute negligence under state law. Do such actions affect the liability for unauthorized transfers that may be imposed on the consumer?

A: No. The extent of the consumer's liability is determined by the promptness in reporting loss or theft of an access device or unauthorized transfers appearing on a periodic statement. Negligence on the consumer's part cannot be taken into account to impose greater liability than is permissible under the act and Regulation E. (§ 205.6(b))

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SECTION 205.7—Initial Disclosure of Terms and Conditions

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Q7-5.5: *Addition of new accounts.* A consumer arranges for electronic fund transfers to and from an account, and receives disclosures. Later, the consumer arranges for transfers involving an additional account at the same financial institution. Does the addition of the new account require further disclosures?

A: The addition of a new account would require the institution to furnish any of the required disclosures that differ from those previ-

ously given. (See questions 5-1.5 and 7-6.) (§ 205.7(a))

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Q7-6.5: *Addition of service—in interchange system.* A financial institution operates electronic terminals through which consumers can access their accounts, and gives the required disclosures regarding the service. Later, the institution joins an interchange or shared system of terminals, giving consumers access to terminals operated by other institutions in the system. Are new disclosures required?

A: The institution must provide any of the required disclosures that differ from those previously given. (§ 205.7(a))

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Q7-15.5: *Charges—in interchange system.* Charges are imposed on the account-holding institution by the operator of a shared or interchange ATM system for the use of the system. In addition, charges may be imposed by other institutions in the system for the use of their ATMs. Must such charges be disclosed by the account-holding institution in the initial disclosures?

A: The fact that charges are imposed on the account-holding institution by the system or terminal-operating institution does not, by itself, require a disclosure to the consumer. However, the institution must disclose any charges it imposes on the consumer for EFT services, including charges for ATM transactions in an interchange or shared ATM system.

Charges for use of an ATM imposed on the consumer by an institution other than the account-holding institution are not within the purview of the account-holding institution's relationship with its customer and need not be disclosed in the initial disclosures. (See question 4-1.) (§§ 205.7(a)(5) and 205.4(a))

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SECTION 205.9—Documentation of Transfers

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Q9-31: *Periodic statements—charges.* What charges must be disclosed on the periodic statement?

A: Financial institutions should disclose the charges assessed against the account during the statement period for electronic fund transfers or the right to make transfers, or for account maintenance (including both EFT and non-EFT and both fixed fees and per-item charges). The charges may be disclosed as a total or may be itemized in part or in full, at the institution's option. (§ 205.9(b)(3))

Q9-31.5: *Periodic statements—charges in interchange system.* Charges are imposed on the account-holding institution by the operator of a shared or interchange ATM system for the use of the system. In addition, charges may be imposed by other institutions in the system for use of their ATMs. Must such charges be disclosed by the account-holding institution on the periodic statement?

A: The fact that charges are imposed on the account-holding institution by the system or terminal-operating institution does not, by itself, require a disclosure to the consumer. However, the institution must disclose any charges it imposes on the consumer for EFT services, including charges for ATM transactions in an interchange or shared ATM system.

Charges for use of an ATM imposed on the consumer by an institution other than the account-holding institution and included in the amount of the transfer by the terminal-operating institution need not be separately disclosed on the periodic statement. (§ 205.9(a)(1), (b)(1)(i), and (b)(3))

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Q9-36: *Receipts/periodic statements—type of transfer.* What degree of specificity is required on terminal receipts and periodic statements for the type of transfer?

A: Common descriptions are sufficient. There is no prescribed terminology, although

some examples are contained in the regulation. On periodic statements, for example, it is enough simply to show the amount of the transfer in the debit or the credit column if other information on the statement (such as a terminal location or third-party name) enables the consumer to identify the type of transfer. As a further example, when a consumer obtains cash from a merchant in addition to purchasing goods, it is not necessary to treat the transaction as involving two different types of transfers. (§ 205.9(a)(3) and (b)(1)(iii))

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Q9-40.5: *Receipts/periodic statements—interchange system; terminal locations.* In a shared or interchange system, a consumer uses terminals operated by institutions other than the account-holding institution. The terminal operators have terminals at more than one location, and the terminal receipts include a street address, city, and state in addition to the name of the terminal operator. In contrast, the periodic statement provided by the account-holding institution identifies the terminal location for these transfers by listing the name of the terminal operator and the city and state. Does this identification comply with the regulation?

A: Yes. For transfers initiated at nonproprietary terminals, the account-holding institution may describe the location on the periodic statement by naming the entity at whose place of business the terminal is located (or which owns or operates the terminal), plus the city and state. It need not repeat on the periodic statement the street address given on the terminal receipt; similarly, it need not include identification codes or terminal numbers shown on the receipt by the terminal operator. (§ 205.9(a)(5) and (b)(1)(iv))

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SECTION 205.10—Preauthorized Transfers

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Q10-18.5: *Preauthorized debits—authorization.* A consumer telephones the financial institution or designated payee to arrange for

preauthorized electronic fund transfers from the consumer's account, and subsequently receives a form for authorizing the fund transfers. The consumer signs and returns one copy of the form, and retains a copy. Does this procedure comply with the regulation?

A: Yes; the confirmation form serves as the required written authorization. The regulation does not require that a prescribed format be used. (§ 205.10(b))

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SECTION 205.12—Relation to State Law

Q12-1: Preemption of state EFT laws—specific determinations. The regulation prescribes standards for determining whether state laws that govern electronic fund transfers are preempted by the act and the regulation. If, under these standards, a state law is inconsistent with the federal law, and is not more protective, is it automatically preempted by operation of law, absent a Board determination of preemption?

A: State law may be preempted even if the Board has not issued a determination. Interested parties may seek a Board determination by following the procedures set forth in the regulation. (§ 205.12(a) and (b))

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The following comments were added effective April 1, 1985. These amendments were included in the previous slip sheet, dated April 1985.

SECTION 205.2—Definitions and Rules of Construction

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Q2-28: Unauthorized transfers—forced initiation. A consumer is forced by a robber (at gunpoint, for example) to withdraw cash at an ATM. Do the liability limits for unauthorized transfers apply?

A. Yes. The transfer is unauthorized for purposes of Regulation E. Under these circumstances, the actions of the robber are tant-

amount to use of a stolen access device. (§§ 205.2(l) and 205.6)

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SECTION 205.5—Issuance of Access Devices

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Q5-4.5: Unsolicited issuance—PINs. May a financial institution issue, without a specific request, validated personal identification numbers (PINs), thus allowing consumers to use their existing debit cards at automated teller machines or at merchant locations with POS terminals that require PINs?

A: Yes. A validated PIN may be issued to an existing debit-card holder without a specific request provided the PIN cannot be used alone to make an electronic fund transfer. The institution may impose no liability on the consumer for unauthorized transfers involving use of the PIN, however, until this new combination of debit card and PIN becomes an "accepted access device" under the regulation. The card-PIN combination can be treated as an accepted access device, for example, if the card and PIN have been used and the consumer does not dispute having used them. (§§ 205.5(a) and 205.2(a))

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SECTION 205.11—Procedures for Resolving Errors

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Q11-11.5: POS debit-card transactions. The deadlines for investigating errors are extended for all transfers resulting from POS debit-card transactions, regardless of whether an electronic terminal is involved. For purposes of these deadlines, what types of transactions can be viewed as POS debit-card transactions?

A: POS debit-card transactions generally take place at merchant locations but also include mail and telephone orders of goods or services involving a debit card. Transactions at ATMs, however, are not POS even though

the ATM may be in a merchant location.
(§ 205.11(c)(4))

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Comment 7-18.5 was amended effective October 1, 1985, to read as follows:

SECTION 205.7—Initial Disclosure of Terms and Conditions

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Q7-18.5: Error-resolution disclosure—extended time periods. The regulation expands the time periods for resolving errors that involve transfers initiated outside the United States or transfers resulting from POS debit-card transactions, from 10 to 20 business days and from 45 to 90 calendar days. Must the error-resolution disclosure reflect the longer time periods with respect to accounts on which these types of transfers can be made?

A: A financial institution's error-resolution disclosures must reflect its actual procedures. An institution that takes advantage of the longer time periods applicable to POS and foreign-initiated transfers must therefore disclose the longer periods in its error-resolution disclosures. Similarly, an institution that relies on the exception from provisional recrediting (for accounts subject to Regulation T) must phrase its disclosures accordingly. (§§ 205.7(a)(10), 205.8(b), and 205.11(c)(3) and (c)(4))

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The following comments were added effective April 16, 1986:

Section 205.3—Exemptions

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Q3-7.5: Compulsory use—biweekly loan pro-

grams. A lender offers consumers the option of a mortgage or other loan involving biweekly payments. Use of this option results in a somewhat lower total finance charge than a plan involving monthly payments. An integral part of this option is a requirement that consumers make the biweekly payments by preauthorized electronic fund transfers. Does this requirement violate the act's prohibition against compulsory use of electronic fund transfers?

A: No, because the biweekly repayment plan is optional and because the lower finance charge resulting from the more frequent payments offers a cost-related incentive. (§ 205.3(d)(3), § 913)

Section 205.10—Preauthorized Transfers

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Q10-18.6: Preauthorized debits—authorization by agent. A telemarketing company (directly or through an agent) asks consumers to make the monthly payments for their purchases by preauthorized electronic fund transfers. If a consumer agrees, the company obtains the consumer's bank account number and completes a written authorization based on the telephone conversation (which the company records). The company signs the authorization as the consumer's agent and sends the consumer a written confirmation of the transaction. Does this procedure satisfy the requirement of the act and regulation that preauthorized EFTs may be authorized by the consumer only in writing?

A: No. The requirement that preauthorized EFTs may be authorized by the consumer only in writing cannot be met by a payee signing a written authorization on the consumer's behalf, with only an oral authorization from the consumer. The tape recording of the telephone conversation does not constitute an authorization by the consumer "in writing" for purposes of the requirement. (§ 205.10(b))