



FEDERAL RESERVE BANK
OF DALLAS

March 4, 1993

ROBERT D. McTEER, JR.
PRESIDENT
AND CHIEF EXECUTIVE OFFICER

DALLAS, TEXAS 75222

Notice 93-33

TO: The Chief Executive Officer of
all financial institutions in the
Eleventh Federal Reserve District

SUBJECT

**Request for Comment on Proposal to Extend the
Provisions of Regulation E (Electronic Funds Transfer)
to Electronic Benefit Transfer Programs**

DETAILS

The Federal Reserve Board has issued for public comment a proposal to extend the provisions of its electronic funds transfer regulation (Regulation E) to Electronic Benefit Transfer (EBT) programs.

EBT programs involve the issuance of plastic access cards and personal identification numbers to recipients of government benefits, such as food stamps, Aid to Families with Dependent Children, and Supplemental Security Income. Benefits can then be accessed through automated teller machines and point-of-sale terminals.

The proposal, which would primarily affect government agencies that administer EBT programs, sets forth some limited modifications. In particular, periodic account statements would not be required if certain conditions are met, such as giving the cardholder information about the balance remaining in the account.

The Board must receive comments by May 21, 1993. Comments should be addressed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. All comments should refer to Docket No. R-0796.

ATTACHMENT

A copy of the Board's notice as it appears on pages 8714-19, Vol. 58, No. 30, of the Federal Register dated February 17, 1993, is attached.

MORE INFORMATION

For more information, please contact Larry Ripley at (214) 922-6429 or (800) 333-4460, extension 6429. For additional copies of this Bank's notice, please contact the Public Affairs Department at (214) 922-5254.

Sincerely yours,

Robert D. McTeer, Jr.

Proposed Rules

Federal Register

Vol. 58, No. 30

Wednesday, February 17, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R-0796]

Electronic Fund Transfers; Proposed Revisions Regarding Electronic Benefit Transfer Programs

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment a proposal to revise Regulation E, which implements the Electronic Fund Transfer Act (EFT Act), to cover electronic benefit transfer (EBT) programs established by federal, state, or local government agencies. EBT programs involve the issuance of plastic access cards and personal identification numbers to recipients of government benefits, and enable recipients to access their benefits—such as Aid to Families with Dependent Children, food stamps, or Supplemental Security Income—through automated teller machines and point-of-sale terminals.

The proposal generally would apply Regulation E to EBT programs but sets forth certain limited modifications under authority granted to the Board by section 904(c) of the EFT Act. In particular, periodic account statements would not be required provided certain conditions are met.

This proposal would affect primarily government agencies that administer EBT programs, and would affect only indirectly most depository institutions and other private-sector entities.

The Board is providing a 90-day comment period, in view of the complexity of the subject matter and the need for extra time for commenters to assemble supporting information.

DATES: Comments must be received on or before May 21, 1993.

ADDRESSES: Comments should refer to Docket No. R-0796 and be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They

may also be delivered to the guard station in the Eccles Building Courtyard on 20th Street, NW. (between Constitution Avenue and C Street, NW.) between 8:45 a.m. and 5:15 p.m.

weekdays. Except as provided in § 261.8 of the Board's Rules Regarding the Availability of Information (12 CFR 261.8), comments received will be available for inspection and copying by members of the public in the Freedom of Information Office, room B-1122 of the Eccles Building between 9 a.m. and 5 p.m. weekdays.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell, Dale I. Nishimura, Mary Jane Seebach, Staff Attorneys, or John C. Wood, Senior Attorney (202/452-2412 or 202/452-3667), Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202/452-3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

Regulation E

Regulation E implements the Electronic Fund Transfer Act. Types of transfers covered by the act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale (POS) terminal, automated clearinghouse (ACH), telephone bill-payment system, or home banking program. The act and regulation provide rules that govern these and other electronic fund transfers. The rules prescribe restrictions on the unsolicited issuance of ATM cards and other access devices; disclosure of terms and conditions of an EFT service; documentation of electronic fund transfers by means of terminal receipts and account statements; limitations on consumer liability; procedures for error resolution; and certain rights related to preauthorized transfers.

The application of the EFT Act and Regulation E is not limited to traditional financial institutions holding consumers' accounts. The regulation also applies to any entities that issue access devices and enter into agreements with consumers to provide EFT services. For EFT services made

available by other than an account-holding financial institution, the act directs the Board to assure, by regulation, that the provisions of the act are made applicable.

Government benefit programs involving electronic delivery. For a number of years the federal government has taken steps, in conjunction with state and local agencies, to expand electronic delivery of government payments. Besides direct deposit, the government has explored the feasibility of "electronic benefit transfer" (EBT) programs to deliver benefits such as Aid to Families with Dependent Children (AFDC), food stamps, and Supplemental Security Income (SSI).

An EBT program functions much like a private-sector system for electronic fund transfers. Eligible recipients receive plastic magnetic-stripe cards and personal identification numbers (PINs) and they access benefits through electronic terminals. In the case of cash benefits such as AFDC or SSI, the programs use ATMs that are part of existing private-sector networks, as well as POS terminals. For food stamp benefits, they use POS terminals in grocery stores; in some cases the equipment is dedicated solely to the EBT program, while in others it also is used for private-sector transactions.

To obtain funds, recipients insert the magnetic-stripe card into a terminal that reads the encoded information, and enter the PIN to verify their identity. The terminal communicates with a database to ascertain that a recipient is eligible for benefits, that the card has not been reported lost or stolen, and that benefits are available in an amount sufficient to cover the requested transaction. In cash benefit programs, the recipient receives a cash disbursement; in the case of food stamp benefits, the recipient's allotment is charged and the merchant's account credited for the amount of the food purchase.

Recipients who have participated in EBT pilots have overwhelmingly reported that EBT offers advantages over the paper-based system. These advantages include faster access to benefits, greater convenience in terms of times and locations for obtaining benefits, greater security, lower costs (for example, by eliminating check-cashing fees), and, in the case of food

stamp benefits, greater privacy and dignity.

Benefit program agencies are interested in expanding the use of EBT, both for direct federal benefit programs and for federally funded programs that are state administered. For many agencies, EBT may provide a way to increase operational efficiency, to reduce costs, and to improve service to benefit recipients. New impetus for the use of EBT comes from federal legislation that took effect April 1, 1992, authorizing the states to use electronic delivery of food stamp benefits in place of paper coupons; states previously could seek approval to use EBT for food stamp benefits only on a demonstration basis.

An important goal for agencies involved in EBT is the achievement of uniform operating guidelines for EBT programs to allow the combination of multiple programs into a single system, thereby reducing operating costs through economies of scale. The Treasury Department, through its Financial Management Service, performs a coordinating role in assisting efforts to work toward uniformity; since 1989 it has convened periodic meetings of staff from more than a dozen federal agencies, as well as hosting meetings with state agencies, private-sector organizations, and consumer groups with interests in EBT.

About thirty states have EBT programs in different stages of development. Currently, there are eight states, most of them operating on a limited geographic basis. The first statewide expansion is currently taking place in the state of Maryland. About twenty other states have programs in different stages of development.

Board's Authority

A question that has arisen for EBT programs, and is addressed by this proposal, concerns coverage of EBT by the EFT Act and Regulation E. The Federal Reserve Board has a broad mandate under the EFT Act to determine coverage when electronic services are offered by other than traditional banking institutions. Section 904(d) provides that in the event EFT services are made available to consumers by a person other than a financial institution holding a consumer's account, the Board shall ensure that the act's provisions are made applicable to such persons and services.

The legislative history of the EFT Act elaborates on the Board's authority to determine if particular services should be covered by the Act, based on whether such transfers are initiated

electronically, whether current laws provide adequate consumer safeguards, and whether coverage is necessary to achieve the Act's basic objectives. A Senate Banking Committee report noted that the statutory delegation of authority to the Board would enable the Board to examine new services on a case-by-case basis, thereby contributing substantially to the act's overall effectiveness. The Congress contemplated that, as no one could foresee EFT developments in the future, "regulations would keep pace with new services and assure that the act's basic protections continue to apply." S. Rep. No. 95-915, 95th Cong., 2d Sess. 9-10 (1978).

A legal issue raised in regard to Regulation E's coverage of EBT programs is whether, for purposes of the EFT Act, these systems involve the initiation of an electronic transfer of funds that results in debiting or crediting an account. The act defines "account" to mean "a demand deposit, savings deposit, or other asset account * * * as described in regulations of the Board, established primarily for personal, family, or household purposes * * *." Regulation E uses substantially the same wording, except that it uses the phrase "or other consumer asset account." The reference to "consumer" asset accounts distinguishes them from business-purpose accounts, which are not subject to the regulation.

The Board has issued an Official Staff Commentary to Regulation E to provide guidance in interpreting the requirements of the regulation. In 1987, an interpretation was added which stated that an electronic payment of government benefits was not subject to Regulation E because there was no credit or debit to a "consumer asset account." The interpretation, made on policy grounds, focused on the fact that a government agency (rather than the recipient) had established the account from which funds were being disbursed. Because EBT programs were still in an experimental stage, it seemed important at that time to allow pilot projects to proceed without added concerns about compliance with the EFT Act. That position has been reexamined and, in the Board's opinion, the fact that a government agency establishes an asset account for a recipient's use (as opposed to the recipient's doing so) is not a sufficient basis for excluding these accounts from Regulation E's coverage.

Options Considered by the Board

In keeping with the authority granted by the statute, the Board has considered whether: EBT programs should be entirely exempt from Regulation E; should be fully covered; or should be

covered, but with modifications to deal with aspects of EBT (both as to possible compliance difficulties and recipient needs) that differ from other EFT services.

A number of factors support Regulation E's coverage of EBT programs. EBT recipients use the same kinds of magnetic-stripe plastic cards and electronic terminals in conducting transactions as do consumers of EFT services in general. Indeed, in EBT systems that piggyback on existing EFT networks, the terminals used are one and the same. The transactions themselves, such as cash withdrawals and purchases, are also similar. From the recipient's viewpoint, an EBT system functions in much the same way as if the recipient had an ordinary checking account with direct deposits of government benefits going in and with ATM and POS service available to access the benefits.

In regard to the disbursement of food stamp benefits, an argument has been made that the account cannot be used to obtain cash, but only to buy food, and thus, that it differs so greatly from an ordinary bank account that Regulation E should not apply. Nothing in the act or regulation, however, excludes an account from coverage because it can only be accessed electronically for limited purposes or in limited ways. Moreover, the food stamp program clearly involves the transfer of money, with transactions clearing the banking system in a similar way to other types of payments.

The Board believes that, considering the language of the EFT Act, its legislative history, and the close similarity of EBT systems to other EFT services, legal support is lacking for a complete exemption of EBT programs (either cash or food stamp programs) from coverage.

The two remaining options are full coverage of EBT under Regulation E, or coverage with certain modifications.

Option proposed by the Board

Following its preliminary analysis of the issues and a weighing of policy considerations, the Board proposes to revise Regulation E to cover EBT programs with certain modifications.

The EFT Act gives the Board the authority to make appropriate modifications to the requirements of the Act. The Act provides in section 904(c) that regulations "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 facilitate compliance therewith." This provision is virtually identical to section 105 of the Truth in

Lending Act, a provision interpreted by the United States Supreme Court as granting the Board great discretion in defining coverage. The Court consistently has recognized the Congress's delegation of broad authority to the Board. *Mourning v. Family Publications Serv.*, 411 U.S. 356 (1973); *Ford Motor Credit Co. v. Milhollin*, 444 U.S. 555, at 566 (1980); *Anderson Bros. Ford v. Valencia*, 452 U.S. 205, at 219 (1981).

Federal and state agencies operating or considering EBT programs, advocates for government benefit recipients, and others have recommended regulatory modifications (for example, in the limitations on consumer liability for unauthorized electronic fund transfers and in the provisions concerning error resolution). The agencies have suggested that full application of Regulation E would increase the costs of delivering benefits to the point that offering EBT might not be economically feasible, because EBT programs may be only marginally cost-effective even without factoring in Regulation E compliance costs. They have expressed the view that as a result the expected advantages of EBT, for benefit recipients as well as for program agencies and other participants in the payment system, could not be realized.

The Board also received recommendations from an interagency EBT Steering Committee that was established within the federal government to coordinate EBT efforts among federal agencies, providing a high-level forum for addressing policy and operational issues. Agencies represented include the Treasury Department's Financial Management Service, the Agriculture Department's Food and Nutrition Service, the Health and Human Services Department's Social Security Administration and Administration for Children and Families, the Office of Management and Budget, and other federal agencies that have an interest in planning for EBT systems. During 1992 the EBT Steering Committee considered whether and in what manner Regulation E might apply to EBT programs, and recommended the modification of certain requirements of Regulation E should the Board bring EBT programs under regulatory coverage.

The Board has incorporated part of the EBT Steering Committee's recommendations in the proposed revisions to Regulation E. The Board proposes to modify the documentation rules as they apply to EBT, so that a periodic statement would not be required if certain conditions were met (including availability of account

balance information). The Board believes that this proposed modification is warranted because the most relevant information would be available through other means to benefit recipients under the Board's proposal. Providing periodic statements would also have a considerable cost impact upon EBT programs. The proposed modification concerning documentation is explained in detail in the discussion of proposed § 205.15, in section (5) below.

The proposed revisions to Regulation E follow part of the EBT Steering Committee's recommendations. The Board recognizes that benefit program agencies are concerned about the operational and cost impacts in the areas of liability for unauthorized transfers and error resolution, for example, but believes that insufficient information has been presented thus far to support the suggested modifications in these areas. This is particularly true in light of the importance of these provisions of Regulation E to users of EFT services generally.

The basic premise followed in this proposal is that all consumers using EFT services should receive substantially the same protection under the EFT Act and Regulation E, unless good reason can be shown that would require different provisions for different groups of consumers. The Board requests comment on whether additional modifications should be considered, together with an explanation of why modifications are needed and supporting data. For example, a recommendation against full application of Regulation E on the grounds that it would hinder the introduction or expansion of EBT programs should be supported by an explanation of why modifications are needed, together with specifics such as data on costs.

The Board's proposal contains certain other modifications to account for differences between EBT programs and other EFT services, and for the fact that periodic statements may not be sent under this proposal (since other provisions of the regulation relate closely to the statement requirement). These proposed modifications are explained in detail in the discussion of proposed § 205.15, in section (5) below.

Coverage of EBT under Regulation E would affect primarily state and federal benefit program agencies, and would directly involve only those depository institutions and others in the private sector that may contract with government agencies to provide EBT service.

The Board's proposal is limited to programs for disbursing government

benefits, as opposed to salaries (whether government or private). Some of the military services, as well as certain private-sector employers, have installed ATMs through which salary and perhaps other payments can be made in a manner similar to EBT systems. Such systems already are fully covered by Regulation E.

In bringing EBT accounts within the scope of the EFT Act's definition of "account," the Board does not express a position about the status of the funds for any other legal purpose. For example, legal ownership of the funds in EBT accounts (by the recipient or a state, for example) is not affected by this rule-making.

The Board is providing a 90-day comment period on this proposal, instead of the usual 60 days, due to the complexity of the issues that have to be addressed and the need to allow extra time that commenters may need to gather data supporting arguments in favor of or against additional modifications in regulatory requirements, as discussed earlier.

Explanation of Proposed New § 205.15

Paragraph (a)—Compliance by government agency

The new section would extend Regulation E's coverage to the electronic transfer of government benefits.

The term "account" (otherwise defined in § 205.2(b)) is defined for purposes of § 205.15 to mean an account established by a government agency for distributing benefits to a consumer by electronic terminals such as ATMs or POS terminals, whether or not the account is directly held by a financial institution (for example, an "account" that consists of a computerized database—with the consumer's name and record of benefit transfers that is accessed for verification purposes before a particular transaction is approved—would also be covered).

Paragraph (b)—Issuance of access devices

Under § 205.5, debit cards, PINs or other access devices may not be issued unless the consumer has requested the device, although an institution may issue an unsolicited access device in limited circumstances under § 205.5(b). The limitations protect a consumer from having an access device issued which could be used to access the consumer's funds without the consumer's knowledge and approval or without the consumer's being informed of the terms and conditions of having such a device.

The proposal does not incorporate the exceptions for unsolicited issuance that

are contained in § 205.5(b). Recipients need the devices to obtain their benefits, and the Board believes that agencies are unlikely to issue cards and PINs without the consumer's involvement. The proposal provides that, for purposes of the section, a consumer has requested an access device if the consumer has applied for government benefits that the agency disburses or will disburse by means of electronic fund transfer.

The Board recognizes that many states' EBT programs may require compulsory use of an access device to obtain benefits. Section 913 of the EFT Act prohibits requiring a consumer to establish an account at a particular institution, as a condition of employment or receipt of government benefits, to receive electronic fund transfers. The Board does not believe, however, that this prohibition against compulsory use is an impediment to EBT programs.

The ban clearly prevents agencies from requiring consumers to open accounts at a particular institution in order to receive electronic fund transfers; it does not bar agencies from requiring recipients to receive benefits electronically. Typically, participants in EBT programs do not maintain personal bank accounts, nor are they required to open bank accounts to receive government benefits. Instead, the government agency establishes an account for the consumer's use in collecting benefits only (the account is not a full-service banking account; for example, the consumer cannot deposit funds). Consequently, the Board views the Act's compulsory-use prohibition as inapplicable in the context of EBT programs. The Board solicits comment on whether stating the restrictions on unsolicited issuance is appropriate or necessary in light of the compulsory nature of EBT programs.

Paragraph (c)—Alternative to periodic statement

Regulation E requires financial institutions to provide periodic statements for any account to or from which electronic fund transfers can be made. EBT programs have not required periodic statements, as recipients' account balance information is available through other means and transfers under EBT programs are limited to cash withdrawals at ATMs and purchases at POS terminals. Thus, producing and mailing monthly periodic statements could represent an unnecessary cost (estimates range from about \$.32 to \$.75 per recipient per month).

The proposal requires that in lieu of a periodic statement, an agency must furnish the consumer with some other

means of accessing balance information. An agency would be required to provide balance information, for example, by means of balance inquiry terminals or a readily available telephone line. In some instances, however, recipients may need a detailed written accounting of EBT transactions. Under the proposal, they would be entitled, upon request, to a written transaction history itemizing transactions that go back at least two months before the request date.

The Board solicits comment on whether more complex EBT systems developed in the future (for example, allowing third-party payments) may necessitate periodic statements or other documentation, and whether the Board should address this issue at present.

Paragraph (d)—Modified requirements

Periodic statements are a central component of Regulation E's disclosure scheme, and the Board recognizes that certain modifications are necessary to facilitate compliance by government agencies that do not issue statements. The proposal requires such agencies to comply with the modified regulatory requirements discussed below. The Board solicits comment on whether additional modifications are necessary to assist compliance.

Paragraph (d)(1)—Initial disclosures

Section 205.7 requires that written disclosures of the terms and conditions of an EFT service be given at or before the commencement of the service. While government agencies would be required to provide such disclosures, three of the disclosures would be modified. First, government agencies would provide a telephone number, or numbers, the consumer could use to obtain information about the balance remaining in the consumer's account or to obtain a written account history. Second, agencies would disclose that the consumer has a right to receive a written account history, upon request. Third, agencies would provide an error resolution notice different from the notice set forth in § 205.7(a)(10) (see discussion concerning proposed error resolution notice, below).

Paragraph (d)(2)—Annual notice

Section 205.8(a) of the regulation requires an annual notice explaining the error resolution procedures required by the regulation. Under the proposal, agencies would have to provide a notice that is substantially similar to the proposed notice in appendix A(12) (see discussion concerning proposed error resolution notice below).

Under § 205.8, financial institutions also must provide an advance notice of

certain adverse changes to terms disclosed in the initial disclosures. No modification has been made for EBT programs. While certain term changes (such as transaction limitations) would be subject to § 205.8(a), however, other changes would continue to be governed only by EBT program rules. For example, the notice of change in terms would not apply to changes in the amount of a consumer's benefit, for which a notice is generally required under the agencies' program rules.

Paragraph (d)(3)—Terminal receipts

Section 205.9(a) requires a written receipt at the time a consumer initiates an electronic fund transfer at an electronic terminal. The receipts provide specific information about the transfer including, for example, the amount and date of the transfer.

For programs in which the government agency does not provide a periodic statement, the Board believes it is necessary to make balance information available on a more immediate basis. Thus, the proposal requires that the terminal receipt also show the balance available to the recipient after the transfer. (For food stamp EBT programs, disclosure of the balance is already required by the Food and Nutrition Service, 7 CFR 274.12(f)(3)(i).)

Paragraph (d)(4)—Liability of consumer

Regulation E limits the liability of consumers for unauthorized withdrawals from an account. Three tiers of maximum liability can apply. If the consumer notifies the institution within two business days of learning of the loss or theft of a debit card, the consumer's liability is limited to \$50. If the consumer delays reporting, the liability limit can rise to \$500 for any unauthorized withdrawals that occur after two business days. A third tier can apply if an account statement shows an unauthorized transfer and the consumer fails to notify the institution within 60 days: the consumer's liability will be unlimited for any subsequent unauthorized transactions.

In EBT programs that are currently in place, the agencies do not replace benefits unless the recipient has reported the loss or theft of the card before an unauthorized withdrawal takes place. Benefits are treated as cash once the recipient's account has been credited; any subsequent loss of benefits falls on the recipient (except in certain situations involving program or system error or fraud). In certain situations, agencies may provide emergency funds to assist the recipient who has reported losing funds, but not as a matter of right.

The Board proposes that government agencies be subject to the same liability rules as are applicable to financial institutions. The Board believes that the EFT Act generally mandates the same degree of protection for benefit recipients as for the general public. The Board solicits comment on potential costs associated with implementing the liability rules for EBT programs and why such implementation would present a greater burden for government agencies than that experienced by financial institutions.

To parallel the current regulation, the proposal provides for unlimited liability for subsequent losses if a consumer does not report unauthorized electronic fund transfers that appear on the written account history within 60 days after receiving that account history. The Board solicits comment on whether such a provision is pertinent to EBT programs given that recipients are likely, due to the pressing need for their benefits, to report unauthorized transfers much sooner than 60 days after requesting an account history.

Paragraph (d)(5)—Error resolution

Regulation E requires providers of EFT services to investigate and resolve alleged errors promptly and within specified time limits. "Error" includes an unauthorized electronic fund transfer, failure to properly credit or debit an account with an electronic transfer, and other types of discrepancies. A consumer's notice of error must be received by the institution within 60 days after the institution sent the periodic statement. Within 10 business days after receiving the consumer's notice, an institution must complete its investigation and resolution of the error. Alternatively, it may provisionally credit the account for the alleged error, in which case the institution is given a total of 45 days in which to resolve the claim; if no error is found to exist, the institution may debit the account for the amount provisionally credited.

The proposal would require government agencies to comply with the error resolution procedures when an oral or written notice is received within 60 days after the consumer obtains a terminal receipt or a written account history on which the alleged error is reflected.

Appendix A to Part 205—Model Disclosure Clauses

Section A(12)—Disclosure of Error Resolution Procedures for Government Agencies That Do Not Provide Periodic Statements (§ 205.15(d)(1)(iii) and (d)(2))

Sections 205.7 and 205.8 require notices describing procedures the consumer should follow in case of errors or questions about electronic transfers involving the consumer's account. These notices track the regulation's error resolution procedures and are triggered by the institution's receipt of a notice of error no later than 60 days after the institution provided a periodic statement.

The proposed notice for EBT programs conforms to the modifications discussed under paragraph (d)(5) above. The Board solicits comment on what additional information should be included in the notice. For example, should the notice include a description of the process used by the agency to recover funds credited to the consumer's account if it turns out no error occurred?

Form of Comment Letters

Comment letters should refer to Docket No. R-0796. The Board requests that, when possible, comments be prepared using a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on computer diskettes, using either the 3.5" or 5.25" size, in any DOS-compatible format.

List of Subjects in 12 CFR Part 205

Consumer protection, Electronic funds transfers, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 205 as follows:

PART 205—ELECTRONIC FUND TRANSFERS

1. The authority citation for part 205 is revised to read as follows:

Authority: 15 U.S.C. 1693b.

2. Section 205.15 is added to read as follows:

§ 205.15 Government systems for electronic benefit transfer.

(a) *Compliance by government agency.* (1) A government agency is deemed to be a financial institution and, except as provided in this section, shall comply with the act and this regulation if it directly or indirectly issues an access device to a consumer for use in

initiating the electronic fund transfer of government benefits through electronic terminals such as automated teller machines or point-of-sale terminals.

(2) For purposes of this section, the term *account* means an account established by a government agency for distributing government benefits to a consumer through electronic terminals such as automated teller machines or point-of-sale terminals.

(b) *Issuance of access devices.* A government agency may issue a validated access device to a consumer only upon request. For purposes of this section, a consumer has requested an access device if the consumer applies for government benefits that the agency disburses or will disburse by means of electronic fund transfer.

(c) *Alternative to periodic statement.* A government agency need not furnish the periodic statements required by § 205.9(b) of this part if the agency:

(1) *Information access.* Makes information about the consumer's account balance available to the consumer through one or more of the following means:

(i) An electronic terminal or balance inquiry terminal; or
(ii) A readily available telephone line; and

(2) *Written account history.* Provides the consumer, upon request, with a written account history that lists transaction information about the consumer's account for at least two months preceding the request date.

(d) *Modified requirements.* A government agency that relies on the exception created by paragraph (c) of this section shall comply with the following requirements:

(1) *Initial disclosures.* The agency shall modify the disclosures required by § 205.7(a) of this part by providing:

(i) *Telephone number.* The telephone number the consumer may use to obtain the account balance and a written account history.

(ii) *Documentation.* A summary of the consumer's right to receive a written account history upon request (in place of the periodic statement disclosure required by § 205.7(a)(6) of this part).

(iii) *Error resolution notice.* A notice that is substantially similar to the error resolution notice contained in appendix A(12) of this part (in place of the disclosure required by § 205.7(a)(10) of this part).

(2) *Annual notice.* The agency shall provide an annual notice that is substantially similar to the error resolution notice contained in appendix A(12) of this part (in place of the notice required by § 205.8(b) of this part).

(3) *Terminal receipts.* The agency shall disclose on the terminal receipt the balance remaining in the consumer's account after a transfer.

(4) *Liability of consumer.* For purposes of § 205.6(b)(2) and (3) of this part, the agency shall substitute "written account history" for "periodic statement."

(5) *Error resolution.* The agency shall comply with the requirements of § 205.11 of this part in response to an oral or written notice from the consumer that is received no later than 60 days after the consumer obtains the terminal receipt or the written account history on which the alleged error is first reflected.

3. Appendix A is amended by adding section A(12) to read as follows:

Appendix A to Part 205—Model Disclosure Clauses

* * * * *

Section A(12)—Disclosure of Error Resolution Procedures for Government Agencies That Do Not Provide Periodic Statements (§ 205.15(d)(1)(iii) and (d)(2))

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 terminal receipt is wrong or if you need more information about a transfer shown on a receipt or written account history. We must hear from you no later than 60 days after the date you receive a terminal receipt or written account history on which the problem or error appears.

(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 credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account during the investigation.

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.

By order of the Board of Governors of the Federal Reserve System, February 5, 1993.

William W. Wiles,
Secretary of the Board.

[FR Doc. 93-3258 Filed 2-16-93; 8:45 am]

BILLING CODE 6210-01-F