



FEDERAL RESERVE BANK
OF DALLAS

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

March 24, 1994

DALLAS, TEXAS
75265-5906

Notice 94-33

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

SUBJECT

**Final Amendments to Regulation E
(Electronic Fund Transfers)**

DETAILS

The Board of Governors of the Federal Reserve System has issued final amendments to Regulation E (Electronic Fund Transfers) to cover 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 be accessed through automated teller machines and point-of-sale terminals. The EBT amendments to Regulation E call for general application of the rules on liability for unauthorized transfers, error resolution, and most other provisions, except for periodic statement requirements. This rulemaking directly affects depository institutions and other private-sector entities.

Mandatory compliance was set for March 1, 1997, as requested by a Federal EBT Task Force that represents all the major federal agencies with benefit programs. The task force is working to establish a nationwide system for electronic delivery of government benefits and asked for the three-year delay so that agencies could implement these EBT programs in compliance with Regulation E.

ATTACHMENT

A copy of the Board's notice as it appears on pages 10678-83, Vol. 59, No. 44, of the Federal Register dated March 7, 1994, is attached.

- 2 -

MORE INFORMATION

For more information, please contact Eugene Coy at (214) 922-6201.
For additional copies of this Bank's notice, please contact the Public Affairs
Department at (214) 922-5254.

Sincerely yours,

Robert D. McTeer, Jr.

**FINAL AMENDMENTS
TO REGULATION E
(ELECTRONIC FUND TRANSFERS)
(DOCKET R-0829)**

FEDERAL RESERVE SYSTEM**12 CFR Part 205**

[Regulation E; Docket No. R-0829]

Electronic Fund Transfers**AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Final rule.

SUMMARY: The Board is publishing a final rule to amend Regulation E, pursuant to its authority under sections 904(c) and (d) of the Electronic Fund Transfer Act, to cover electronic benefit transfer (EBT) programs established by federal, state, or local government agencies. EBT programs involve the issuance of access cards and personal identification numbers to recipients of government benefits so that they can obtain their benefits through automated teller machines and point-of-sale terminals. The final rule applies Regulation E to EBT programs but sets forth certain limited modifications under authority granted to the Board by section 904(c) of the act. In particular, periodic account statements are not required if account balance information and written account histories are made available to benefit recipients by other specified means. This rulemaking directly affects government agencies that administer EBT programs and indirectly affects depository institutions and other private-sector entities.

DATES: *Effective date:* February 28, 1994. *Compliance date.* To provide adequate time to prepare for compliance, the Board has delayed mandatory compliance until March 1, 1997.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell or Mary Jane Seebach, Staff Attorneys, or John C. Wood, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452-2412 or (202) 452-3667. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452-3544.

SUPPLEMENTARY INFORMATION:**(1) Background***EFT Act and Regulation E*

Regulation E implements the Electronic Fund Transfer Act (EFTA). The act and regulation cover any electronic fund transfer initiated through an automated teller machine (ATM), point-of-sale (POS) terminal, automated clearinghouse, telephone bill-payment system, or home banking program and provide rules that govern these and other electronic transfers. The regulation sets rules for the 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 for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized transfers.

The EFTA is not limited to traditional financial institutions holding consumers' accounts. For EFT services made available by entities 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. The regulation also applies to entities that issue access devices and enter into agreements with consumers to provide EFT services.

Government Programs Involving Electronic Delivery of Benefits

The federal government, in conjunction with state and local agencies, is working to expand electronic delivery of government benefits both for direct federal benefit programs and for federally funded programs that are state administered. An electronic benefit transfer (EBT) system functions much like a private-sector EFT program. Benefit recipients receive plastic magnetic-stripe cards and personal identification numbers (PINs) and access benefits through electronic terminals. For cash benefits such as Aid to Families with Dependent Children (AFDC) or Supplemental Security Income (SSI), the programs may use existing private-sector ATM networks as well as POS terminals to disburse benefits. For food stamp purchases, the programs use POS terminals in grocery stores. In some cases the POS equipment is dedicated solely to the EBT program, while in others it also is used for private-sector transactions.

For many state and local agencies, EBT may provide a way to increase operational efficiency, to reduce costs, and to improve service to benefit recipients. Federal legislation that took effect April 1, 1992, provided new impetus for the use of EBT, 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. Currently, about 30 states have EBT programs in different stages of operation or development.

In November 1993, the Clinton administration established a Federal Electronic Benefits Task Force. The group's assigned task is to develop and implement a nationwide system for the

electronic delivery of benefits from government programs, pursuant to a recommendation from the National Performance Review. In December, the EBT Task Force wrote to the Federal Reserve Board, expressing the federal agencies' commitment to providing consumer protection for EBT recipients, and noting at the same time the need for program integrity and accountability for public funds. The EBT Task Force asked that the Board provide a three-year delay in the effective date if the Board should ultimately decide to apply Regulation E to EBT programs. The EBT Task Force stated that this delay was necessary for implementing EBT in accordance with Regulation E; among other things, the agencies needed the time to collect and evaluate comparative loss data at EBT test sites, data that they could then use as the basis for seeking legislative authorization and funding to pay for replacing benefits lost due to unauthorized transfers.

(2) Discussion*Board Authority*

The Federal Reserve Board has a broad mandate under the EFTA to determine coverage when electronic services are offered by other than traditional financial 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 EFTA provides guidance on the Board's authority to determine if particular services should be covered by the act, based on whether 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 enables 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. See S. Rep. No. 915; S. Rep. No. 1273, 95th Cong., 2d Sess. 25-26 (1978).

In February 1993 the Board published a proposal to amend Regulation E to cover EBT programs, with certain modifications. 58 FR 8714, February 17, 1993. The Board believes that a number

of factors support Regulation E coverage of EBT programs. EBT recipients use the same kinds of access devices 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.

To obtain benefits, recipients insert a magnetic-stripe card into a terminal that reads the encoded information, and enter a 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. From a recipient's viewpoint, an EBT system functions much the same as if the recipient had an ordinary checking account with direct deposits of government benefits and with ATM and POS service available to access the benefits.

The Board believes that the strong similarity of EBT systems and other EFT services, the act's legislative history, and the language of the EFTA and Regulation E support coverage of EBT programs under the act and regulation. Therefore, the Board has determined that EBT programs must comply with the requirements of Regulation E as modified by this final rule, pursuant to its authority under 904(c) and (d) of the EFTA.

The Board's action, amending the regulation, supersedes an interpretation in the Official Staff Commentary to Regulation E (12 CFR part 205, supp. II). The commentary stated that an electronic payment of government benefits was not a credit or debit to a "consumer asset account" because the account was established by a government agency rather than the consumer (the recipient). The Board has reexamined that interpretation, and has concluded that a sufficient basis does not exist for excluding these accounts from Regulation E's coverage.

The act defines the term "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, and refers to "other consumer asset account." The reference to

"consumer" asset accounts distinguishes them from business-purpose accounts, which are not subject to the regulation.

The EFTA's coverage is not limited to traditional depository institutions, but may extend to any person (including a government agency) " * * * who issues an access device and agrees with a consumer to provide electronic fund transfer services." In the case of EBT programs, the Board's action will affect primarily government agencies that administer EBT programs and issue EBT cards to benefit recipients for accessing benefits, or that arrange for such services to be provided. The revised rule will affect only indirectly most depository institutions and other private-sector entities.

Board's Proposal

While the Board proposed general coverage of EBT under the EFTA, the proposal published in February 1993 modified certain documentation requirements, recognizing differences between EBT and EFT systems. A periodic statement would not be required if information about account balances and account histories were otherwise made available to consumers. In addition, modifications were proposed in the rules on the issuance of access devices, initial disclosures, and the notices on error resolution procedures, to tailor the requirements to EBT programs.

The Board received approximately 175 comment letters on its proposal from a broad range of commenters. About 125 commenters—including state and local agencies that provide benefits, federal agencies, financial institutions, and a bank trade association—opposed the Board's proposal. Many of them requested an exemption for EBT programs from the Regulation E liability and error resolution rules. They asserted 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 expressed the view that the expected advantages of EBT might not be realized if Regulation E were to apply, and that its application would hinder the introduction or expansion of EBT programs.

In place of the Board's proposal, the majority of the commenters supported recommendations given to the Board in May 1992 by an interagency steering committee established within the federal government to coordinate EBT efforts among program agencies.

Agencies represented on that group included 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. The steering committee's proposal primarily differed from the Board's proposal in that benefit recipients would be liable for unauthorized transfers subject to certain conditions, and the error resolution requirements would not apply if an agency maintained "efficient, fair, and timely procedures" for resolving errors and disputes, including an appeals process.

Anticipating public opposition to Regulation E coverage, the Board in the proposal indicated that commenters should offer explanations of why modifications in the regulatory requirements were needed, together with specifics such as data on costs. Approximately 35 commenters included estimates of the additional cost they believed would be imposed by Regulation E. In some cases the estimates were quite detailed. A few estimates were based on agency experience with the replacement of lost or stolen cards in EBT programs. Most of the cost estimates were based on loss and fraud experience under existing paper-based benefit programs (such as mailed AFDC checks and mailed food coupons). Nationwide, one group estimated the projected costs due to Regulation E, in worst-case scenarios, to be between \$164 million and \$986 million annually.

Many commenters suggested that private-sector financial institutions differ from government agencies in ways that relate to how compliance costs can be borne. For example, financial institutions can control their costs by selecting the customers to whom they are willing to offer EFT services, while program agencies must accept all who qualify for the benefit program. If a customer of a financial institution is suspected of engaging in fraud, the institution can terminate the account relationship. In a like situation, an agency could shift a recipient from EBT back to the paper-based system, but commenters believe it may not be feasible to operate dual systems.

Similarly, commenters noted, private-sector institutions handle losses related to the Regulation E customer-liability limitations by spreading the losses over their entire customer base in the form of

increased fees or reduced interest paid. Agencies cannot do so, and thus losses would have to be paid out of tax revenues, or, where permitted, by reducing benefits. If neither method is available, then the EBT program would be eliminated or cut back.

Approximately 35 commenters supported the Board's proposal. This group included advocacy groups for benefit recipients, financial institutions, a bank trade association, and individuals. These commenters agreed with the premise that the same rules should apply to both EBT recipients and EFT users in the general public, and that both government and private-sector organizations offering EFT services should be subject to the same rules.

Some commenters in this group called for even greater consumer protection for EBT recipients than would be provided by existing Regulation E. For example, one advocacy group argued that the regulation should prohibit mandatory EBT programs. Other commenters urged the Board to require disputed amounts to be provisionally credited to the consumer's account within one business day (instead of 10 business days for ATM transactions, or 20 business days for POS transactions, as allowed by existing Regulation E). A coalition of consumer groups suggested that the limits on liability for unauthorized transactions are too high in the EBT context, and that, for example, the \$50 liability that can be imposed even if a recipient promptly reports a lost or stolen debit card should be reduced or eliminated.

Final Action on Proposal

After a review of the comments, further analysis, and a weighing of policy considerations, the Board has adopted a final rule pursuant to its authority under 904 (c) and (d) of the EFTA. The Board's action requires EBT programs to comply with the requirements of Regulation E as modified by this final rule. The Board continues to believe that all consumers using EFT services should receive substantially the same protection under the EFTA and Regulation E, absent a showing that compliance costs outweigh the need for consumer protections. The Board recognizes that benefit program agencies are concerned about the operational and cost impacts of coverage, specifically in the areas of liability for unauthorized transfers and error resolution, but believes that the cost data presented to support exemptions in these areas were not definitive.

The Board has provided a delayed implementation date, making

compliance optional until March 1, 1997, in keeping with a request received in December 1993 from the Federal EBT Task Force. As discussed above, the EBT Task Force, which represents all the major agencies with large individual benefit programs, asked for the three-year delay so that agencies could develop and implement a nationwide system for delivering multiple-program benefits in compliance with Regulation E.

The Board's modified rules for EBT programs are limited to programs for disbursing welfare and similar government benefits. Some of the military services, as well as certain private-sector employers, have installed ATMs through which salary and other payments can be made in a manner similar to EBT systems. Such systems remain fully covered by Regulation E.

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

Some commenters asked for clarification on whether the Board viewed specialized types of programs, such as Medicaid, or programs using different technology (specifically, smart card programs) as covered by the EFTA and Regulation E. The Board believes that when a consumer can access funds in an account using electronic means, Regulation E is applicable. The Board believes that Medicaid programs do not involve an account within the meaning of Regulation E, given that benefits under these programs are not made available to the consumer in terms of a dollar amount available to be accessed by the consumer, as is the case in EBT programs such as AFDC, SSI, and food stamps.

With regard to smart card systems, the Board has issued a proposal to review Regulation E, also published in today's **Federal Register**, that solicits comment on the question of coverage of smart card systems in general (both public and private sector). Any determination made on coverage of smart cards in the review could apply to EBT smart card programs.

(3) Explanation of New § 205.15

Section 205.15—Electronic Fund Transfer of Government Benefits

A new section is added to the regulation to specifically address the rules on the electronic fund transfer of government benefits. Agencies are

generally required to comply with all applicable sections of the regulation. Section 205.15 contains the modified rules for EBT programs on the issuance of access devices, periodic statements, initial disclosures, liability for unauthorized use, and error resolution notices.

Paragraph (a)—Government Agency Subject to Regulation

Paragraph (a)(1)

The act and regulation define coverage in terms of "financial institution." Coverage applies to entities that provide EFT services to consumers whether these entities are banks, other depository institutions, or other types of organizations entirely. The substance of paragraph (a)(1), which defines when a government agency is a financial institution for purposes of the act and regulation, is unchanged from the proposal. Editorial changes have been made for clarity.

Paragraph (a)(2)

The term "account," which is defined generally 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 electronically, such as through ATMs or POS terminals, whether or not the account is directly held by the agency or a bank or other depository institution. For example, an "account" under this section would include use of a database containing the consumer's name and record of benefit transfers that is accessed for verification purposes before a particular transaction is approved. For purposes of this section, government benefits include cash benefits such as AFDC and SSI and noncash benefits such as benefits under the food stamp program.

Paragraph (b)—Issuance of Access Devices

Under § 205.5, debit cards, PINs, and other access devices may not be issued except in response to a consumer's request or application for a device, or to replace a device previously accepted by the consumer. Financial institutions are permitted to issue unsolicited access devices in limited circumstances under § 205.5(b). The general prohibition against unsolicited issuance is intended to protect a consumer against the issuance of an access device that 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 applicable to the device.

The Board's final rule makes clear that in the case of EBT, an agency may

issue an access device to a recipient without a specific request. A recipient of government benefits is deemed to have requested an access device by applying for benefits that the agency disburses or will disburse by means of EBT. The Board believes that it is unlikely that a government agency would issue an access device without the recipient's being made aware that the way to access benefits is by use of the device and that to safeguard benefits the device must be protected. Moreover, given that initial disclosures would be provided during training, the recipient will be informed of the account's terms and conditions.

The Board does recognize, however, commenters' concerns about the need for agencies to verify the identity of the consumer receiving the device before it is activated. As in the case of the private sector, an issuing agency will have to verify the identity of the consumer by a reasonable means before a device is activated. Reasonable means include methods of identification such as a photograph or signature comparison.

Some commenters expressed concern about the statutory prohibition against the compulsory use of EFT and its implications for EBT programs. Section 913 of the EFTA prohibits requiring a consumer to establish an account at a particular institution for receiving electronic fund transfers as a condition of employment or receipt of government benefits. This prohibition does not prevent an agency from requiring benefits to be delivered electronically.

In EBT programs, agencies do not require recipients to open or maintain bank accounts at a particular institution for the electronic receipt of government benefits. This is the case even when an agency enters into an arrangement with a single financial institution that then serves as the agency's financial intermediary. Consequently, the Board believes that the prohibition against compulsory use is not an impediment to mandatory EBT programs. Nevertheless, pursuant to its authority under section 904(c) of the EFTA, the Board has determined that a government agency with a mandatory EBT program should ensure that recipients of cash benefits have access to other electronic options (for example, direct deposit of benefits to an existing bank account or to an account established by the recipient for that purpose).

Paragraph (c)—Alternative to Periodic Statement

Regulation E requires financial institutions to provide periodic statements for an account to or from which EFTs can be made. Periodic

statements are a central component of Regulation E's disclosure scheme. But as long as other means of obtaining account information are available to benefit recipients, the Board believes that periodic statements are not absolutely necessary for EBT programs due to the limited types of transactions involved, particularly given the expense of routinely mailing monthly statements to all recipients. Moreover, requiring periodic statements could impede the effort to eliminate paper and move toward a fully electronic system. Most commenters supported the Board's proposal to exempt government agencies from the requirement if the agency furnishes the consumer with other means of accessing account information.

Under the proposal, agencies were to provide balance information by means of an electronic terminal, balance inquiry terminal, or a readily available telephone line, and to make available a written account history upon request. The final rule contains these alternatives with modifications that respond to the comments.

To make balance information readily available, the proposal also would have required that the terminal receipt show the balance available to the consumer after the transfer. A number of commenters stated that this requirement would be difficult for some EBT systems to implement because existing ATM networks may not be capable of providing current account balances at all times. Commenters suggested that giving consumers access to balance information by other means (such as telephone or balance inquiry terminals) would achieve the same purpose. Accordingly, the final rule does not require that terminal receipts include the account balance as long as a consumer can access balance information by the other means set forth in paragraph (c) of this section.

A number of commenters urged that agencies should not make telephone access the only method by which a recipient can obtain an account balance. Taking these comments into consideration, the Board has modified the final rule. The final rule requires, in addition to a telephone line, at least one alternative method (such as a balance inquiry terminal) for access to balance information.

Commenters suggested that the telephone line be toll-free and available on a 24-hour basis. For EFT systems generally, the Board interprets a readily available telephone line to mean at least a local or toll-free line available during standard business hours. The Board believes that the same interpretation is

appropriate for EBT systems, although an agency may of course choose to provide recipients with a 24-hour line.

Commenters requested that the Board provide certainty by clarifying how a consumer may request a written account history and the time period for compliance. The final rule clarifies that a request may be either written or oral, that the history should cover the 60 calendar days preceding the request date, and that the history should be provided promptly upon request. In addition, commenters asked for clarification about whether an agency could charge for written account histories or other disclosures required by the regulation. The Board believes that imposing fees in such instances would be contrary to public policy.

The Board had solicited comment on whether more complex EBT systems developed in the future (for example, systems allowing third-party payments) may necessitate periodic statements or other documentation, and whether the Board should address this issue at present. Several commenters encouraged the Board not to address the issue at this time, but to delay a decision until performance under the final rule can be assessed. Accordingly, the Board has deferred taking a position at this time.

Paragraph (d)—Modified Requirements

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. Three disclosures have been modified for EBT programs. Under paragraph (d)(1)(i), government agencies must disclose the means by which the consumer may obtain account balance information, including the telephone number for that purpose. The disclosures will explain the ways in which balance information will be made available. (See model disclosure form A(12) below.) Under paragraph (d)(1)(ii), agencies must disclose that the consumer has the right to receive a written account history, upon request, and must provide a telephone number for obtaining the account history. This disclosure substitutes for the disclosure of a summary of the consumer's right to a periodic statement under § 205.7(a)(6) of the regulation. Under paragraph (d)(1)(iii), agencies must provide an error resolution notice substantially similar to model disclosure form A(13) rather than the notice currently contained in § 205.7(a)(10).

Paragraph (d)(2)—Annual Error Resolution Notice

Section 205.8(a) of the regulation requires that financial institutions provide a notice in advance of certain adverse changes to terms that were disclosed in the initial disclosures. No modification has been made for EBT programs. Consequently, agencies will have to provide a notice for certain changes in terms, such as in transaction limitations. Other changes, such as a decrease in the amount of a consumer's benefits, continue to be governed only by the agencies' program rules.

Section 205.8(b) of the regulation requires financial institutions to provide periodic error resolution notices to consumers, either annually or with each monthly account statement. In substitution for these notices, paragraph (d)(2) requires agencies to provide an error resolution notice substantially similar to model disclosure form A(13). The notice is to be provided annually.

Paragraph (d)(3)—Limitations on Liability

Section 205.6 of the regulation limits a consumer's liability for unauthorized transfers. If the consumer notifies the account-holding institution within two business days after learning of the loss or theft of a debit card, the consumer's liability is limited to \$50. If notification is not made until after two business days, liability can rise another \$450 for transfers made after two business days, for a total of \$500. If the consumer does not notify the institution until more than 60 days after a periodic statement is sent showing an unauthorized transfer, the consumer's liability is unlimited for unauthorized transfers occurring after the 60th day and before notification.

The Board believes that the EFTA generally mandates the same degree of protection for benefit recipients as for the general public. The Board solicited 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. Commenters submitted data on the expected cost impact of Regulation E on EBT programs, specifically on costs related to the limitations on consumer liability for unauthorized transfers and error resolution requirements; as discussed earlier, however, the Board believes the data are not definitive. Under the final rule, therefore, the limits on liability for unauthorized use, the error resolution

requirements, and most other provisions of Regulation E would apply to EBT.

The Board recognizes the concerns about the potential cost impact of coverage, especially in regard to unauthorized use because of the potential for abuse through fraudulent claims. The Board believes, however, that through the leadership of the Federal Electronic Benefits Task Force, which has the goal of developing a nationwide system for delivering government benefits electronically, it should be possible for the agencies to implement cost-effective procedures that will help minimize the risk of fraudulent claims and potential abuse of EBT systems.

The Board notes in particular that Regulation E does not mandate an automatic replacement when a claim of lost or stolen funds is made. In the case of EBT as in the private sector, the agency would investigate the claim, consider the available evidence, and exercise judgment in making a determination about whether the transfer was unauthorized or was made by the recipient or by someone to whom the recipient gave access. The Board does not underestimate the difficulties that these investigations may pose for EBT program agencies. But the Board also believes that practical ways can be found, within the scope of Regulation E, that will enable EBT administrators to control potential losses.

The operational procedures developed to minimize risk will need to address some aspects of EBT that are different from the commercial setting—such as the fact that program agencies, unlike private sector institutions, may not be able in cases of suspected fraud or abuse simply to terminate their relationship with the recipient. Some of the measures that federal agencies have inquired about, which may be compatible with the special requirements of EBT, relate to aspects of the relationship that are not addressed by Regulation E. Thus their implementation would not conflict with regulatory requirements. Some of these include putting recipients on restricted issuance systems—requiring, for instance, that the recipient call in advance for authorization before each access to benefits, or restricting the sites at which the recipient could obtain benefits, or crediting the recipient's benefits in weekly increments rather than the full monthly amounts. Or the agency could appoint a representative payee, or place the recipient on a backup paper-based benefit payment system. Imposing these or other limitations may not be desirable from either an agency's or the recipients'

perspective except in circumscribed situations. But if found to be cost-effective, such measures represent some possible approaches for dealing with recipients who show themselves to be irresponsible in their use of the EBT system.

In regard to recurring claims for the replacement of benefits, EBT agencies may not establish a presumption that, because a recipient has filed a claim in the past, the recipient's assertion of a second claim of unauthorized withdrawals can be automatically rejected. On the other hand, depending on the circumstances, it would not be unreasonable for the agency, in making its determination about the validity of a claim, to give weight to the fact that a particular recipient within a certain period of time has previously filed a claim, or multiple claims, of stolen funds. The Board believes that these are just some of the areas in which the Federal EBT Task Force can be helpful in setting operating guidelines and procedures.

Regulation E provides that a consumer may bear unlimited liability for failing to report within 60 days any unauthorized transfers that appear on a periodic statement. Because EBT recipients will not receive periodic statements, under the Board's proposal the 60 days would have run from the transmittal of a written account history provided upon the consumer's request. The final rule differs somewhat in that the 60-day period also can be triggered when the consumer obtains balance information via a terminal or telephone or on a terminal receipt.

Paragraph (d)(4)—Error Resolution

Section 205.11 of Regulation E sets certain time limits within which a consumer must file a notice of an alleged error. Under the Board's proposal for EBT, government agencies were to comply with the error resolution procedures in § 205.11 in response to an oral or written notice of error from the consumer received no later than 60 days after the consumer obtained a terminal receipt or a written account history on which the alleged error was reflected. The final rule differs somewhat, in that error resolution procedures can be triggered by any information provided to the consumer under paragraph (c).

List of Subjects in 12 CFR Part 205

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

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

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

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

Authority: 15 U.S.C. 1693.

2. Section 205.15 is added to read as follows:

§ 205.15 Electronic fund transfer of government benefits.

(a) *Government agency subject to regulation.* (1) A government agency is deemed to be a financial institution for purposes of the act and regulation if directly or indirectly it issues an access device to a consumer for use in initiating an electronic fund transfer of government benefits from an account. The agency shall comply with all applicable requirements of the act and regulation, except as provided in this section.

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

(b) *Issuance of access devices.* For purposes of this section, a consumer is deemed to request an access device when the consumer applies for government benefits that the agency disburses or will disburse by means of an electronic fund transfer. The agency shall verify the identity of the consumer receiving the device by reasonable means before the device is activated.

(c) *Alternative to periodic statement.* A government agency need not furnish the periodic statement required by § 205.9(b) if the agency makes available to the consumer:

(1) The consumer's account balance, through a readily available telephone line and at a terminal (which may include providing balance information at a balance-inquiry terminal or providing it, routinely or upon request, on a terminal receipt at the time of an electronic fund transfer); and

(2) A written history of the consumer's account transactions for at least 60 days preceding the date of a request by the consumer. The account history shall be provided promptly in response to an oral or written request.

(d) *Modified requirements.* A government agency that does not furnish periodic statements, pursuant to paragraph (c) of this section, shall

comply with the following requirements:

(1) *Initial disclosures.* The agency shall modify the disclosures under § 205.7(a) by providing:

(i) *Account balance information.* The means by which the consumer may obtain information concerning the account balance, including a telephone number. This disclosure may be made by providing a notice substantially similar to the notice contained in section A(12) of appendix A of this part.

(ii) *Written account history.* A summary of the consumer's right to receive a written account history upon request, in substitution for the periodic statement disclosure required by § 205.7(a)(6), and a telephone number that can be used to request an account history. This disclosure may be made by providing a notice substantially similar to the notice contained in section A(12) of appendix A of this part.

(iii) *Error resolution notice.* A notice concerning error resolution that is substantially similar to the notice contained in section A(13) of appendix A of this part, in substitution for the notice required by § 205.7(a)(10).

(2) *Annual error resolution notice.* The agency shall provide an annual notice concerning error resolution that is substantially similar to the notice contained in section A(13) of appendix A of this part, in substitution for the notice required by § 205.8(b).

(3) *Limitations on liability.* For purposes of § 205.6(b) (2) and (3), in regard to a consumer's reporting within 60 days any unauthorized transfer that appears on a periodic statement, the 60-day period shall begin with the transmittal of a written account history or other account information provided to the consumer under paragraph (c) of this section.

(4) *Error resolution.* The agency shall comply with the requirements of § 205.11 in response to an oral or written notice of an error from the consumer that is received no later than 60 days after the consumer obtains the written account history or other account information, under paragraph (c) of this section, in which the error is first reflected.

3. Appendix A to part 205 is revised by adding sections A(12) and A(13) to read as follows:

Appendix A to Part 205—Model Disclosure Clauses

* * * * *

Section A(12)—Disclosure by Government Agencies of Information About Obtaining Account Balances and Account Histories (§ 205.15(d)(1) (i) and (ii))

You may obtain information about the amount of benefits you have remaining by calling [telephone number]. That information is also available [on the receipt you get when you make a transfer with your card at (an ATM)(a POS terminal)] [when you make a balance inquiry at an ATM] [when you make a balance inquiry at specified locations].

You also have the right to receive a written summary of transactions for the 60 days preceding your request by calling [telephone number]. [Optional: Or you may request the summary by contacting your caseworker.]

Section A(13)—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 [telephone number] or Write us at [address] as soon as you can, if you think an error has occurred in your [EBT] [agency's name for program] account. We must hear from you no later than 60 days after you learn of the error. You will need to tell us:

- Your name and [case] [file] number.
- Why you believe there is an error, and the dollar amount involved.
- Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days. We will generally complete our investigation within 10 business days and correct any error promptly. In some cases, an investigation may take longer, but you will have the use of the funds in question after the 10 business days. 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.

For errors involving transactions at point-of-sale terminals in food stores, the periods referred to above are 20 business days instead of 10 business days.

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.

If you need more information about our error resolution procedures, call us at [telephone number] [the telephone number shown above].

By order of the Board of Governors of the Federal Reserve System, February 24, 1994.

William W. Wiles,
Secretary of the Board.

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