



FEDERAL RESERVE BANK
OF DALLAS

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

January 29, 1997

DALLAS, TEXAS
75265-5906

Notice 97-10

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

SUBJECT

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

DETAILS

The Board of Governors of the Federal Reserve System has requested public comments on proposed amendments to Regulation E (Electronic Fund Transfers).

The proposed amendments exempt certain "needs-tested" electronic benefit transfer (EBT) programs established or administered by state or local government agencies from requirements of the Electronic Fund Transfer Act. The modified regulatory requirements that the Board established in its 1994 rulemaking would continue to apply to federally administered EBT programs and state and local employment-related EBT programs, such as state pension programs.

The Board must receive comments by February 19, 1997. Please address comments 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-0959.

ATTACHMENT

A copy of the Board's notice as it appears on pages 3242-44, Vol. 62, No. 14, of the *Federal Register* dated January 22, 1997, is attached.

MORE INFORMATION

For more information, please contact Peggy Atcher at (214) 922-6202. For additional copies of this Bank's notice, please contact the Public Affairs Department at (214) 922-5254.

Sincerely yours,

Robert D. McTeer, Jr.

For additional copies, bankers and others are encouraged to use one of the following toll-free numbers in contacting the Federal Reserve Bank of Dallas: Dallas Office (800) 333-4460; El Paso Branch *Intrastate* (800) 592-1631, *Interstate* (800) 351-1012; Houston Branch *Intrastate* (800) 392-4162, *Interstate* (800) 221-0363; San Antonio Branch *Intrastate* (800) 292-5810.

Proposed Rules

Federal Register

Vol. 62, No. 14

Wednesday, January 22, 1997

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-0959]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment proposed amendments to Regulation E, (Electronic Fund Transfers). The proposed revisions implement an amendment to the Electronic Fund Transfer Act (EFTA), contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, that exempts certain electronic benefit transfer (EBT) programs from the EFTA. Generally, 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 Board's proposal exempts from Regulation E needs-tested EBT programs established or administered by state or local government agencies. Federally administered EBT programs and state and local employment-related EBT programs (such as state pension programs) would continue to be subject to modified requirements that recognize the special characteristics of EBT programs.

DATES: Comments must be received on or before February 19, 1997.

ADDRESSES: Comments should refer to Docket No. R-0959, and may be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments also may be delivered to Room B-2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, N.W. (between Constitution Avenue and C Street) at any time.

Comments may be inspected in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell, Staff Attorney, Division of Consumer and Community Affairs, at (202) 452-2412 or (202) 452-3667; for users of Telecommunications Device for the Deaf (TDD) *only*, contact Dorothea Thompson at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

I. Background

EFT Act and Regulation E

Regulation E implements the Electronic Fund Transfer Act (EFTA). The act and regulation cover any consumer 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 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.

Electronic Benefit Transfer Programs

Electronic benefit transfer (EBT) programs are designed to deliver government benefits such as Aid to Families with Dependent Children (AFDC), food stamps, Supplemental Security Income (SSI) and social security. These systems function much like commercial systems for EFT. 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 terminals may include ATMs that are part of existing commercial networks; for food stamp benefits, POS terminals in grocery stores are typically used.

EBT offers numerous advantages over paper-based delivery systems, both for recipients and for program agencies. For recipients, these advantages include faster access to benefits, greater convenience in terms of times and locations for obtaining benefits, improved security because funds may be accessed as needed, lower costs because recipients avoid check-cashing fees, and greater privacy and dignity. For agencies, EBT programs offer a system that can more efficiently deliver benefits for both state and federal programs by reducing the cost of benefit delivery, facilitating the management of program funds, and helping to reduce fraud.

In March 1994, the Board amended Regulation E to bring EBT programs expressly within its coverage. 59 FR 10678 (March 7, 1994). The special provisions, contained in § 205.15, applied most of the requirements of the regulation—including those relating to liability for unauthorized transactions and error resolution—with some modifications. The major exception related to the requirement to provide periodic statements of account activity: EBT programs need not provide periodic statements as long as (1) account balance information is made available to benefit recipients via telephone and electronic terminals and (2) a written account history is given upon request. The basic premise underlying the Board's 1994 amendments to Regulation E was that all consumers using EFT services should receive substantially the same protection under the EFTA and Regulation E. To enable states that are interested in EBT to test and implement their programs, the Board delayed the date of mandatory compliance to March 1, 1997.

II. Proposed Regulatory Provisions

On August 22, 1996, the Congress enacted the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, a comprehensive welfare reform law (Pub. L. 104-193, 110 Stat. 2105) ("the 1996 Act"). The 1996 Act contains

amendments to the EFTA that exempt "needs-tested" EBT programs established or administered under state or local law (for example, benefits such as the food stamp and AFDC programs). The 1996 amendments were enacted by the Congress at the urging of state officials, who expressed concern about the costs of compliance with the EFTA and Regulation E. In particular, the states believed that the EFTA provisions limiting a recipient's liability for unauthorized transfers could raise serious budgetary problems at the state level.

The proposed amendments to Regulation E implement the amendments to the EFTA. Federally administered EBT programs and employment-related programs established by federal, state, or local governments (such as state pension programs) would continue to be subject to the modified rules established by the Board's 1994 rulemaking.

III. Section-by-Section Analysis of Proposed Amendments

Section 205.15—Electronic Fund Transfers of Government Benefits

Section 205.15 contains the rules that apply to EBT programs as defined by the regulation. It provides modified rules on the issuance of access devices, periodic statements, initial disclosures, liability for unauthorized use, and error resolution notices. Employment-related benefit programs established by federal, state, or local governments (as well as federally administered programs) remain subject to these modified rules.

15(a) Government Agency Subject to Regulation

15(a)(1)

The act and regulation define coverage in terms of "financial institution," a term that is broadly construed. Coverage applies to entities that provide EFT services to consumers whether these entities are banks, other depository institutions, or other types of organizations entirely. Paragraph (a)(1) specifies when a government agency is a financial institution for purposes of the act and regulation. Under the Board's proposal, this provision has been revised to exclude needs-tested benefits in a program established under state or local law or administered by a state or local agency, consistent with the 1996 statutory amendments.

15(a)(2)

The term "account" is defined generally in § 205.2(b). For purposes of EBT programs, "account" is defined in § 205.15(a)(2) 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 includes the 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. Under the Board's proposal, the definition would be revised to exclude needs-tested benefits in a program established under state or local law or administered by a state or local agency, consistent with the 1996 amendments to the EFTA. Government benefits that would remain covered include federally administered benefits such as social security and SSI and state and local benefits that are employment-related such as retirement and unemployment benefits.

IV. Form of Comments Letters

Comment letters should refer to Docket No. R-0959. The Board requests that, when possible, comments be prepared using a standard courier 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 also may be submitted on 3.5 or 5.25 inch computer diskettes, in any IBM-compatible DOS-based format. Comments on computer diskettes must be accompanied by a paper version.

V. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603), the Board's Office of the Secretary has reviewed the proposed amendments to Regulation E. The amendments, which establish an exemption for certain EBT programs established or administered by a state or local agency, are not expected to have a significant impact on small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget. Comments on the collections of information should be sent to the Office of Management and Budget, Paperwork

Reduction Project (7100-0200), Washington, DC 20503, with copies of such comments to be sent to Mary M. McLaughlin, Chief, Financial Reports Section, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

An agency may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number for Regulation E is 7100-0200.

The disclosures required by this regulation are found in 12 CFR Part 205 and are required to ensure adequate disclosure of basic terms, costs, and rights relating to electronic fund transfer services provided to consumers. The recordkeepers are providers of these services. Records must be retained for 24 months.

Regulation E applies to all types of institutions that offer EFT services, not just state member banks. Under the Paperwork Reduction Act, however, the Federal Reserve accounts for the paperwork burden associated with Regulation E only for state member banks. Any estimates of paperwork burden for institutions other than state member banks are provided by the federal agency or agencies that supervise those institutions.

There are 1,042 state member banks that are covered by Regulation E requirements, with an average frequency of 85,808 responses per year per bank. The total annual burden for all state member banks is estimated to be 478,804 hours; the combined annual cost is estimated to be \$9,496,080. The proposed amendments provide an exemption for state-administered or state-established electronic benefit transfer (EBT) programs; the amendments are not expected to increase the hour burden that the regulation imposes on state member banks or on other institutions.

The disclosures to consumers under Regulation E are mandatory. Because the records would be maintained at state member banks, no issue of confidentiality under the Freedom of Information Act arises. Disclosures relating to specific transactions or accounts are not publicly available.

Comments are invited on: (a) whether the proposed collection of information is necessary for the proper performance of the Federal Reserve's functions, including whether the information has practical utility; (b) the accuracy of the Federal Reserve's estimate of the burden of the proposed information collection, including the cost of compliance; (c)

ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology.

List of Subjects in 12 CFR Part 205

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

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to Regulation E. New language is shown inside bold-faced arrows.

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

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. 1693–1693r.

2. Section 205.15 would be amended by revising paragraphs (a)(1) and (a)(2) 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 this part 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^{f1}, other than needs-tested benefits in a program established under state or local law or administered by a state or local agency^{f1}. The agency shall comply with all applicable requirements of the act and this part, 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^{f1}, but does not include an account for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency.^{f1}

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By order of the Board of Governors of the Federal Reserve System, January 15, 1997.

William W. Wiles,
Secretary of the Board.

[FR Doc. 97-1384 Filed 1-21-97; 8:45 am]

BILLING CODE 6210-01-P