

FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 7274]
November 20, 1973]

PROPOSED REVISION OF REGULATION J

Electronic Transfer of Funds

*To All Banks, and Others Concerned,
in the Second Federal Reserve District:*

Following is the text of a statement issued November 19 by the Board of Governors of the Federal Reserve System:

The Board of Governors of the Federal Reserve System today invited comment on the basic structure of the nation's payments mechanism, and the appropriate roles of the Federal Reserve and other institutions in it.

The comment was solicited in connection with proposed regulatory changes concerning the framework for the use of the Federal Reserve's inter-regional electronic funds transfer network. Thus, comment may be addressed not only to the technical details of the proposal but also to issues arising from electronic funds transfer, such as ownership and operation, conditions of access and payment of the costs of such a system.

The technical proposal is the latest in a series of steps aimed at reducing reliance on checks for handling money payments. It is intended to delineate the legal rights and responsibilities of the parties to electronic transfer of funds using Federal Reserve facilities.

The proposal would expand the Board's Regulation J, which currently governs the use of Federal Reserve facilities to collect checks. It is an outgrowth of the Board's policy statement issued on June 18, 1971, in which the Board gave high priority to modernizing the nation's payments mechanism, including development, in the interests of an efficient, low cost payments system, of an electronic substitute for making payments by check.

Written comment on the proposed legal framework for electronic funds transfer will be received by the Board through March 8, 1974. The lengthy period for comment—120 days—was given to accommodate comment not only on the specifics of the proposed changes in Regulation J, but also upon broader issues such as:

(1) The appropriate roles in the ownership and operation of an electronic payments system—including adjuncts thereto—of (a) the Federal Reserve System, (b) other public bodies, and (c) individual or groups of private institutions, including commercial banks, automated clearing houses, credit card companies, thrift institutions, credit unions, the "bank wire," and other institutions or organizations such as those specified in the attached proposal;

(2) The extent and conditions of access to the electronic funds transfer system by various kinds of depository institutions, and of other financial institutions, as well as the terms of access;

(3) How the cost of electronic funds transfer should be allocated, including such questions as whether the Federal Reserve should charge for the use of its facilities; if so, against whom should the charges be levied, whether they should cover all costs, and whether reserves maintained by member banks should be taken into account in any fee schedule which might differentiate between Federal Reserve member and nonmember institutions.

The Board's efforts to modernize the payments mechanism are based on estimates that check volume is increasing at a rate that will double the total check volume during the next decade, from the current

estimate of 26 billion items yearly. Unless there is a large scale transition to electronic funds transfer, the growth in check usage may eventually impede the flow of funds in the economy and make the use of checks slow and expensive.

Under section 16 of the Federal Reserve Act (12 U.S.C. 248(o)), the Board of Governors is authorized to promulgate regulations governing the transfer of funds through Federal Reserve Banks, their branches, and regional facilities. Since the inception of wire transfers of funds—a forerunner of modern electronic funds transfers—some 50 years ago, such transfers have been regulated by instructions issued by the Board to the Federal Reserve Banks, and by Federal Reserve Bank operating circulars issued to member banks.

The current proposal would expand the Board's Regulation J, which currently governs the collection of checks through the Federal Reserve. The existing Regulation J would become Subpart A of the expanded regulation. Two new sections, dealing with electronic transfer of funds, propose rules under which Reserve Banks could accept and deliver both credit and debit transfers of funds by wire, over the Federal Reserve's national communications network.

Subpart B would codify, in regulation form, current practices in the forwarding of credits—that is, the *sending* of funds from one point to another—for member banks and their customers over Federal Reserve communications. To forward credits, a member bank authorizes the Federal Reserve to deduct an amount from its reserve account, and to credit that amount to another commercial bank. Present wire transfer volumes in most Reserve Banks have already exceeded a level at which manual processing is feasible. Displacement of such low speed manual operations by high speed processing is nearing completion.

Subpart C proposes the legal framework within which member banks and their customers would use Federal Reserve facilities to *collect* funds electronically from another commercial bank (as they now use other Federal Reserve facilities for the collection of funds moved by check)—a procedure that does not now exist. The proposed process would thus duplicate—electronically and generally within a single business day—what a check accomplishes in a period of several days. The new procedure would involve:

(a) A request initiated by a member bank that the Federal Reserve use its facilities to collect an amount—by wire, usually the same day—from another bank;

(b) Immediate credit given by the Federal Reserve to the requesting bank's reserve account of the amount it wishes to collect from another bank; and

(c) Use of the Federal Reserve's communications facilities to notify the commercial bank from which the amount is to be collected that the Federal Reserve is deducting the amount from the bank's reserve account.

In this process, both the credit given to the bank requesting collection, and the debiting of the paying bank's account with the Federal Reserve, would be subject to reversal, within prescribed time limits, if the amount could not be collected.

Printed on the following pages is the text of the proposed revision of Regulation J. Comments thereon should be submitted by March 8, 1974, and may be sent to our Payment Systems Department.

ALFRED HAYES,
President.

COLLECTION OF CHECKS AND OTHER ITEMS AND TRANSFERS OF FUNDS

Under Section 16 of the Federal Reserve Act (12 U.S.C. 248(o)), the Board of Governors is authorized to promulgate regulations governing the transfer of funds through Federal Reserve Banks, their Branches, and regional facilities. Since the inception of wire transfers of funds—a forerunner of modern electronic fund transfers—some 50 years ago, such transfers have been regulated only by instructions issued by the Board to the Federal Reserve Bank and by Federal Reserve Bank operating circulars issued to member banks.

The Board is currently considering the promulgation of regulations relating to this matter in the form hereinafter set forth, which will be consistent with the expanding use of electronic funds transfers as a substitute for checks. This regulation is intended to delineate the legal rights and responsibilities of the parties and the procedures to be used henceforth for such funds transfers within the Federal Reserve System. At the same time, as the processing of check volume becomes increasingly costly to the economy, and as the technology of funds transfers enters a new phase, the Board takes this opportunity to solicit comments on the basic structure of the nation's payments mechanism, including the role of the Federal Reserve System and other institutions.

The proposed new rules are in the form of an amendment to Regulation J. The present provisions relating to check collections would become Subpart A of the Regulation. The rules regarding electronic transfers of funds through Federal Reserve facilities would be designated as Subpart B and Subpart C of the Regulation, dealing, respectively, with the transfers of credits and debits. The rules regarding collection of checks and other items, contained in Subpart A, would not apply to the processing of electronic items.

Under the proposed regulation, a request for transfer of funds through a Reserve Bank initiated by one bank (the "transferor") for credit to another bank (the "transferee") contained in certain approved media, would be referred to as a "credit item" in Subpart B. An instruction for the payment of money by a "payor" bank, initiated by a "payee" bank, contained in approved media, is designated as a "debit item" under Subpart C. The regulation would specify the terms and conditions under which such items would be processed for member banks by the Reserve Banks.

In the past, telegraphic transfers of funds have been initiated primarily by means of an oral or written communication from the transferor bank and manually processed through Reserve Banks for subsequent delivery to the transferee bank. Present wire transfer volumes in most Reserve Banks have already exceeded a level at which manual processing is feasible. Displacement of such low speed manual operations by high speed electronic processing is nearing completion.

The context in which the proposed regulation is presented is set forth in the Board's statement of policy issued on June 18, 1971, (57 *Federal Reserve Bulletin*, June, 1971 at 546-547). In that statement the Board assigned a high priority to the improvement of the nation's payments mechanism and to the development of an electronic substitute for an overburdened check collection system.

To aid in the consideration of further action in this area by the Board, interested persons are given the opportunity herein, for a period of 120 days, to submit relevant data, views, or arguments. The Board wishes to encourage the widest possible participation in this process and may extend the period if circumstances warrant. In addition to comment on the specific proposal contained in the regulation, and in recognition of the fact that Regulation J is but one part of a system which has broad economic and financial implications, the Board invites comments on other issues concerning electronic funds transfers, including:

1. What are the appropriate roles in the ownership and operation of the various components and adjuncts of an electronic funds transfer system of (a) the Federal Reserve System; (b) other public bodies; and (c) private institutions or groups thereof, including: commercial banks; automated clearing houses operated by clearing house associations or other associations of commercial banks; bank or non-bank credit card companies; savings and loan associations; mutual savings banks; credit unions; the "bank wire"; and non-depository institutions such as: communication utilities or companies, electronic equipment vendors or service bureaus, and vendors generally whose convenience or other credit extension may cause them to act as "concentrators" or otherwise to affect the flow of money payments.

2. What should be the extent and conditions of access to the funds transfer system by various depository institutions? Should other financial or nonfinancial institutions have access to the system? If so, on what terms?

3. How the cost of electronic funds transfers should be allocated, including such questions as whether the Federal Reserve should charge for any use of its transfer facilities; if so, against whom should the charges be levied, whether they should cover all costs, and whether reserves maintained by member banks should be taken into account in any fee schedule which might differentiate between Federal Reserve member and nonmember institutions?

This notice is published pursuant to section 553(b) of Title 5, United States Code, and section 262.2(a) of the Rules of Procedure of the Board of Governors.

Any material should be submitted in writing to the Secretary, Board of Governors of the Federal Reserve System, Washington, D. C. 20551, to be received not later than March 8, 1974. Such material will be made available for inspection and copying upon request, except as provided in Section 261.6(a) of the Board's Rules Regarding Availability of Information.

To implement its proposal, the Board is considering amending Regulation J [12 CFR Part 210] as set forth below:

1. The title of Part 210 would be changed to read: "COLLECTION OF CHECKS AND OTHER ITEMS AND TRANSFERS OF FUNDS."

2. The Table of Contents of Part 210 would be changed to read as follows:

SUBPART A—COLLECTION OF CHECKS AND OTHER ITEMS

Sec.	
210.1	Authority and scope
210.2	Definitions
210.3	General provisions
210.4	Sending of items to Federal Reserve Banks
210.5	Sender's agreement
210.6	Status and warranties of Federal Reserve Bank
210.7	Presentment for payment
210.8	Presentment of noncash items for acceptance
210.9	Remittance and payment

Sec.	
210.10	Time schedule and availability of credits with respect to cash items
210.11	Availability of proceeds of noncash items
210.12	Return of cash items
210.13	Chargeback of unpaid cash items and non-cash items
210.14	Timeliness of action
210.15	Effect of direct presentment of certain warrants
210.16	Operating letters

SUBPART B—TRANSFERS OF FUNDS—CREDIT TRANSFERS

Sec.	
210.50	Authority and scope
210.51	Definitions
210.52	General provisions
210.53	Approved media for issuance, transmission or recording of transfer items
210.54	Transferor's agreement
210.55	Transferee's agreement
210.56	Issuance of transfer items and telephonic requests for transfers of funds
210.57	Handling of transfer items and telephonic requests
210.58	Time limits
210.59	Advice of credit
210.60	Issuance and handling of requests for revocation of transfer items and telephonic requests
210.61	Final payment, right to withdraw or use funds
210.62	Timeliness of action
210.63	Liability of a Federal Reserve Bank
210.64	Operating circulars

SUBPART C—TRANSFERS OF FUNDS—DEBIT TRANSFERS

Sec.	
210.70	Authority and scope
210.71	General provisions
210.72	Definitions
210.73	Receipt of debit items
210.74	Handling of debit items
210.75	Ordering bank's agreement
210.76	Federal Reserve Bank agreement
210.77	Payment
210.78	Time schedule

Sec.

- 210.79 Return
- 210.80 Chargeback
- 210.81 Timeliness of action
- 210.82 Liability of a Federal Reserve Bank
- 210.83 Operating circulars

3. Part 210 would be amended by inserting immediately before § 210.1 a heading reading: "SUBPART A—COLLECTION OF CHECKS AND OTHER ITEMS."

4. Paragraph (a) of § 210.2 would be amended, but without change in footnotes, to read as follows:

(a) The term "item" means any instrument for the payment of money, whether negotiable or not, which is payable in a Federal Reserve district,¹ is sent by a sender or a nonbank depositor to a Federal Reserve Bank for handling under this Part, and is collectible in funds acceptable to the Federal Reserve Bank of the district in which the instrument is payable; except that the term does not include any check which cannot be collected at par,² nor does it include any item as defined in § 210.51(a) of this Part.

5. Part 210 would be amended to change the words "this Part" wherever they occur in §§ 210.1-210.16 to read "this Subpart."

6. Part 210 would be amended by adding after § 210.16 the following:

SUBPART B—TRANSFERS OF FUNDS—CREDIT TRANSFERS

§ 210.50—Authority and scope

Pursuant to the provisions of paragraph 1 of section 13 of the Federal Reserve Act, as amended (12 U.S.C. § 342), paragraph (f) of section 19 of the Federal Reserve Act (12 U.S.C. § 464), paragraph 14 of section 16 of the Federal Reserve Act (12 U.S.C. § 248(o)), paragraphs (i) and (j) of section 11 of the Federal Reserve Act (12 U.S.C. § 248(i) and (j)), and other provisions of law, the Board of Governors of the Federal Reserve System has promulgated this Subpart governing the handling by Federal Reserve Banks of transfer items and telephonic requests for transfers of funds (hereinafter referred to as telephonic requests).

§ 210.51—Definitions

As used in this Subpart, unless the context otherwise requires:

(a) The term "item" means any instrument for the payment of money, issued, transmitted or received in accordance with this Subpart.

(b) The term "instrument for the payment of money" means any writing evidencing a right to the payment of money, addressed by one person to another, and contained in or on any medium approved by § 210.53 of this Subpart for the issuance, transmission or recording of transfer items.

(c) The term "transferor" means a member bank, a corporation which maintains an account with a Federal Reserve Bank in conformity with the requirements of § 211.7 of Part 211 of this Chapter (Regulation K), a Federal Reserve Bank, an international organization, or a foreign correspondent, or other institution authorized by a Federal Reserve Bank, to issue or send a transfer item to a Federal Reserve Bank, or to request a Federal Reserve Bank by telephone to debit its account and transfer funds to a designated transferee.

(d) The term "transferee" means a member bank, a corporation which maintains an account with a Federal Reserve Bank in conformity with the requirements of § 211.7 of Part 211 of this Chapter (Regulation K), a Federal Reserve Bank, an international organization, or a foreign correspondent, or other institution maintaining an account on the books of a Federal Reserve Bank, which is designated in a transfer item or telephonic request to receive the amount thereof.

(e) The term "beneficiary" means a person, firm or corporation (other than the transferee) designated in a transfer item or telephonic request to receive the amount thereof for his or its own use by credit to an account maintained with the transferee or otherwise from the transferee.

(f) The term "transfer item" means either (i) an item issued by a transferor (other than a Federal Reserve Bank) to a Federal Reserve Bank for a debit to an account of the transferor at such Federal Reserve Bank and for a credit to a transferee named in such item, or (ii) an item issued by a Federal Reserve Bank to another Federal Reserve Bank for credit to such other Federal Reserve Bank or any other transferee.

(g) The term "international organization" means any international organization for which the Federal Reserve Banks are empowered to act as depositaries or fiscal agents subject to regulation by the Board of Governors of the Federal Reserve System and for which a Federal Reserve Bank has opened and is maintaining an account.

(h) The term "foreign correspondent" means any of the following for which a Federal Reserve Bank has opened and is maintaining an account: a foreign bank or banker, or foreign state as defined in section

25(b) of the Federal Reserve Act (12 U.S.C. § 632), or a foreign correspondent or agency referred to in section 14(e) of that Act (12 U.S.C. § 358).

(i) The terms "nonbank transferor" and "nonbank transferee" respectively mean any department, agency, instrumentality, independent establishment, or office of the United States, or any corporation other than a transferor or a transferee, which maintains or uses an account with a Federal Reserve Bank. Except as may otherwise be provided by any applicable statutes of the United States or regulations issued or arrangements made thereunder, the provisions of this Subpart and of the operating circulars of the Federal Reserve Banks applicable to a transferor or to a transferee, as the case may be, are applicable respectively to a nonbank transferor, and to a nonbank transferee.

§ 210.52—General provisions

In order to afford to the banks of the country a direct, expeditious, and economical system for the transfer of funds, each Federal Reserve Bank, in accordance with the terms and conditions set forth in this Subpart, shall receive, process and act upon transfer items and telephonic requests and, where appropriate, shall itself issue transfer items and telephonic requests; and the provisions of this Subpart and the operating circulars of the Federal Reserve Banks shall be binding upon transferors and transferees.

§ 210.53—Approved media for issuance, transmission or recording of transfer items

A transfer item may be contained in any one of the following media:

(a) a letter, memorandum or other similar writing;

(b) a telegram (including TWX, TELEX and any similar form of communications); and

(c) any form of communication, other than voice, which is registered upon, or is in form suitable for being registered upon, magnetic tape, disc or any other medium designed to capture and contain in durable form conventional signals used for the electronic communication of messages.

§ 210.54—Transferor's agreement

By its action in issuing and sending any transfer item, contained in any of the media specified in § 210.53, to a Federal Reserve Bank, or by its action in telephonically requesting a Federal Reserve Bank to transfer funds to a designated trans-

feree, a transferor shall be deemed: (1) to authorize said Federal Reserve Bank to apply a corresponding debit to its account; (2) to authorize said Federal Reserve Bank to handle and act upon the transfer item or telephonic request and the Federal Reserve Bank at which the transferee's account is maintained to handle and act upon a transfer item or telephonic request of equivalent import, in accordance with the provisions of this Subpart and the operating circulars of such Federal Reserve Banks; and (3) to agree that such provisions shall, insofar as they are made applicable thereto, govern the relationships between such transferor and such Federal Reserve Banks.

§ 210.55—Transferee's agreement

(a) A transferee, other than a Federal Reserve Bank, designated in a transfer item or telephonic request to receive the amount thereof, by its action in maintaining or using an account at a Federal Reserve Bank, shall be deemed to authorize that Federal Reserve Bank to execute a transfer of funds to it by making corresponding credit entries on its books.

(b) A transferee, other than a Federal Reserve Bank, receiving from a Federal Reserve Bank the amount of a transfer item or of a telephonic request and an advice of credit which designates a beneficiary to receive the amount, shall be deemed to agree (1) that it will promptly credit said beneficiary's account or otherwise make the amount of the transfer item or telephonic request available to the beneficiary for withdrawal or other use; and (2) that, if it is unable to do so because of circumstances beyond its control, it will give prompt notice of the facts to the Federal Reserve Bank from which it received such amount.

§ 210.56—Issuance of transfer items and telephonic requests for transfer of funds

(a) Any transferor, other than a Federal Reserve Bank, may, in accordance with the provisions of this Subpart and the operating circulars of the Federal Reserve Bank with which it maintains or uses an account, issue transfer items and telephonic requests to that Federal Reserve Bank for the transfer of funds to transferees for their own use or the use of beneficiaries: *Provided*, That each transferor shall maintain with such Federal Reserve Bank a daily net balance sufficient to cover the transfers of funds debited to its account.

(b) Any Federal Reserve Bank may, in accordance with the provisions of this Subpart, issue transfer items or telephonic requests to another

Federal Reserve Bank for its own use or the use of any other transferee or any beneficiary.

(c) If, at any time during a Federal Reserve Bank's business day, a transferor does not have a daily net balance sufficient to cover the transfers of funds debited to its account at the Federal Reserve Bank during that day, that Federal Reserve Bank shall have a security interest in any or all assets of such transferor in its possession.

(d) The Federal Reserve Banks may, from time to time, establish in their operating circulars the minimum or maximum dollar amounts, or both, which will be transferred without charge upon receipt of a transfer item or telephonic request and may also impose reasonable service charges for transfers of funds below any such minimum so established.

§ 210.57—Handling of transfer items and telephonic requests

(a) Where the transferor and the transferee maintain or use accounts at the same office of a Federal Reserve Bank, such office receiving a transfer item or telephonic request shall execute a transfer of funds by making corresponding debit and credit entries to those accounts.

(b) Where the transferor and the transferee do not maintain or use accounts at the same office of a Federal Reserve Bank, the office first receiving the transfer item or telephonic request shall debit the transferor's account in the amount to be transferred and shall, as a transferor, issue a transfer item or telephonic request of equivalent import to the office at which the transferee's account is maintained; and that office shall execute a transfer of funds to the transferee by making corresponding debit and credit entries.

(c) When a Federal Reserve Bank having in due time received a transfer item or telephonic request subsequently obtains knowledge that, for whatever reason, it will be unable to effectuate a transfer of funds to the transferee on the day requested, said Federal Reserve Bank shall, within a reasonable time thereafter, notify the transferor of the delay.

§ 210.58—Time limits

(a) Each Federal Reserve Bank shall include in its operating circulars a schedule of the time limits showing, with respect to interdistrict, interoffice, and intraoffice transfers of funds, the hours on each business day during which it will receive from transferors transfer items and telephonic requests for

consummation on the day of receipt and may include therein a schedule of time limits during which it will receive transfer items and telephonic requests for consummation on the next business day.

(b) Unless otherwise instructed, each Federal Reserve Bank handling transfer items and telephonic requests will use its best efforts to effect the transfers of funds to the designated transferees on the day of receipt: *Provided*, That such items and requests reach the Federal Reserve Bank not later than the time shown in its schedule of time limits, except that no representation shall be made by a Federal Reserve Bank to the effect that transfers will be consummated on the day requested.

(c) In emergency or other unusual circumstances, a Federal Reserve Bank may, in its discretion, receive after the hours shown in its schedule of time limits transfer items and telephonic requests for consummation on that business day, but only upon the understanding, in the case of an interoffice or interdistrict transfer, that completion of each requested transfer shall be discretionary with the office at which the transferee's account is maintained.

§ 210.59—Advices of credit and debit

(a) Written advice of credit in respect of an executed transfer of funds shall be given to the transferee by the Federal Reserve Bank with which it maintains or uses an account or, when the transferor or transferee has so requested, immediate advice of credit shall be given to the transferee by telegraph, telephone, or other form of electronic telecommunications. Immediate advice may also be given where, in the judgment of said Federal Reserve Bank, the nature of the transaction or the amount involved justifies such an action.

(b) Written advice of debit in respect of a transfer of funds shall be given to the transferor by the Federal Reserve Bank with which it maintains or uses an account where funds have been transferred, pursuant to a telephonic request, to a transferee for the account of a beneficiary. Immediate advice of debit (in lieu of written advice) may be given by telegraph, telephone, or other form of electronic telecommunications where, in the judgment of said Federal Reserve Bank, the nature of the transaction or the amount involved justifies such action. If, within 10 business days of the transferor following receipt of the advice of debit, the transferor fails to send to said Federal Reserve Bank written objection to such debit, the transferor shall be deemed to have approved the debit.

§ 210.60—Issuance and handling of requests for revocation of transfer items and telephonic requests

(a) Any transferor including a Federal Reserve Bank that has issued a transfer item or a telephonic request may issue to the Federal Reserve Bank with which it maintains or uses an account a request for revocation of such transfer item or telephonic request. A Federal Reserve Bank shall handle a request for revocation in accordance with the provisions of its operating circulars and this Subpart.

(b) *Intraoffice revocation.* Where the transferor including a Federal Reserve Bank and transferee maintain or use accounts at the same Federal Reserve Bank, that Federal Reserve Bank upon receipt of a request for revocation:

(1) shall cancel the transfer item or telephonic request, if the request for revocation is received at such time and in such manner as to afford that Federal Reserve Bank a reasonable opportunity to act prior to the final payment of the transfer item or telephonic request in question; or

(2) at the transferor's request, shall send a request to the transferee that it return the funds described in the request for revocation to the transferor, if the request for revocation is received later than the time specified in subparagraph (1) of this paragraph.

(c) *Interdistrict and interoffice revocation.* Where the transferor and transferee do not maintain accounts at the same Federal Reserve Bank or at the same Federal Reserve office, the transferor's Federal Reserve Bank upon receipt of a request for revocation:

(1) shall cancel the transferor's transfer item or telephonic request, if the request for revocation is received at such time and in such manner as to afford it a reasonable opportunity to act prior to issuing its own transfer item or telephonic request; or

(2) at the transferor's request, shall issue a request for revocation of its transfer item or telephonic request to the Federal Reserve Bank at which the transferee's account is maintained, if the request for revocation is received later than the time specified in subparagraph (1) of this paragraph; and

(i) if the Federal Reserve Bank's request for revocation is received at such time and in such manner as to afford the transferee's Federal Reserve Bank a reasonable opportunity to act prior to final payment of the Federal Reserve Bank's transfer

item, the transferee's Federal Reserve Bank shall return the funds described in the request for revocation to the transferor; or

(ii) if the Federal Reserve Bank's request for revocation is received later than the time specified in subdivision (i) of this subparagraph, transferee's Federal Reserve Bank, at the transferor's request, shall send a request to the transferee that it return the funds described in the request for revocation to the transferor.

(d) To correct an erroneous or otherwise irregular transfer of funds, a Federal Reserve Bank, upon its own initiative or at the request of another Federal Reserve Bank, may send a request to the transferee to return funds previously transferred to it.

§ 210.61—Final payment, right to withdraw or use funds

(a) A transfer item or telephonic request issued by a transferor is finally paid at the time an advice of credit is sent or telephoned to the transferee by a Federal Reserve Bank.

(b) Subject to the right of a Federal Reserve Bank to apply the transferred funds to an obligation owed to the Federal Reserve Bank by the transferee, credit given by a Federal Reserve Bank for a transfer of funds to the transferee's account becomes available for withdrawal as of right by the transferee upon the sending or telephoning of an advice of credit by the Federal Reserve Bank.

§ 210.62—Timeliness of action

If, because of interruption of communications facilities, war, emergency conditions or other circumstances beyond its control, a Federal Reserve Bank shall be delayed beyond the time limits provided in this Subpart or in the Bank's operating circulars or by the applicable law of any State in taking any action with respect to a transfer item or a telephonic request, including but not limited to making corresponding credit and debit entries on its books, sending appropriate advice of credit to the transferee and otherwise making funds available for withdrawal or other use, or, where necessary, effectively transmitting a transfer item or telephonic request of equivalent import to the Federal Reserve Bank at which the transferee's account is maintained, the time of such Bank for taking or completing such action, as limited by this Subpart or by the operating circulars, or by the applicable law of any State, thereby delayed shall be extended for such time after the cause of the delay ceases to operate as shall be necessary to

take or complete the action, provided the Bank exercises such diligence as the circumstances require.

§ 210.63—Liability of a Federal Reserve Bank

(a) A Federal Reserve Bank, in connection with the matters specified in this Subpart or its operating circulars, shall not have, nor shall it assume, any responsibility to a transferee, a beneficiary, or any other party, except its immediate transferor nor shall a Federal Reserve Bank have or assume any liability except for its own or another Federal Reserve Bank's lack of good faith or failure to exercise ordinary care, and, except as herein provided, a Federal Reserve Bank shall not be liable for the insolvency, neglect, misconduct, mistake, or default of another bank or person, including a transferor.

(b) Subject to the limitations on liability hereinabove stated, where a Federal Reserve Bank's conduct, notwithstanding its exercise of good faith and ordinary care, results in a failure to credit the amount of a transfer item or telephonic request to the account of a transferee on the day requested, unless otherwise instructed at the time notice is given the transferor, the Federal Reserve Bank shall complete the transfer on the next business day with debits and credits posted to the appropriate accounts as of the day the transfer was to have been consummated.

(c) Subject to the limitations on liability hereinabove stated, if the failure to credit the amount of the transfer item or telephonic request to the account of the transferee resulted from a failure on the part of any Federal Reserve Bank to exercise ordinary care or to act in good faith, the transferor shall have the right to recover from the Federal Reserve Bank with which it maintains or uses an account any damages proximately caused by such failure: *Provided, however,* That whether any consequential damages are proximately caused by the Federal Reserve Bank's failure to exercise ordinary care or lack of good faith is a question of fact to be determined in each case.

(d) The Federal Reserve Bank at which the account of the transferee is maintained shall be deemed to agree to indemnify the Federal Reserve Bank at which the transferor's account is maintained for any loss or expense sustained (including but not limited to attorneys' fees and expense of litigation) as a result of the transferee's Federal Reserve Bank's failure to exercise ordinary care or to act in good faith with respect to a transfer

item or telephone request issued to it by the transferor's Federal Reserve Bank at the request of the transferor.

§ 210.64—Operating circulars

Each Federal Reserve Bank shall issue operating circulars (sometimes referred to as operating letters or bulletins), not inconsistent with this Subpart, governing the details of its funds transfer operation and containing such provisions as are required or permitted by this Subpart.

SUBPART C—TRANSFERS OF FUNDS—DEBIT TRANSFERS

§ 210.70—Authority and scope

Pursuant to the provisions of section 13 of the Federal Reserve Act, as amended (12 U.S.C. § 342), paragraph (f) of section 19 of the Federal Reserve Act (12 U.S.C. § 464), section 16 of the Federal Reserve Act (12 U.S.C. § 248(o); 12 U.S.C. § 360), paragraphs (i) and (j) of section 11 of the Federal Reserve Act (12 U.S.C. § 248(i) and (j)), and other provisions of law, the Board of Governors of the Federal Reserve System has promulgated this Subpart governing the handling by Federal Reserve Banks of debit items.

§ 210.71—General provisions

In order to provide for the efficient and economical transfer of bank balances on the books of the Federal Reserve Banks and as a means of improving the nation's payments mechanism, the Board of Governors of the Federal Reserve System has promulgated this Subpart. Each Federal Reserve Bank, in accordance with the terms and conditions set forth in this Subpart, shall receive, process, and act upon debit items in accordance with the terms and conditions set forth in this Subpart, and the provisions of this Subpart and applicable operating circulars of the Federal Reserve Banks shall be binding upon ordering banks and payor banks.

§ 210.72—Definitions

As used in this Subpart, unless the context otherwise requires:

(a) The term "ordering bank" means a member bank issuing and sending a debit item to the Federal Reserve Bank with which it maintains an account.

(b) The term "payor bank" means the bank designated in a debit item as the bank by which the

amount of the item is payable and which is located in a Federal Reserve District.⁵

(c) The term "debit item" means an instrument for the payment of money, contained in any of the media approved by § 210.53 of Subpart B of this Regulation, for payment by a payor bank and for credit to the ordering bank, which is issued and sent by an ordering bank to a Federal Reserve Bank for handling under this Subpart.

(d) The term "State" means any State of the United States, the District of Columbia, or Puerto Rico, or any territory, possession or dependency of the United States.

(e) The term "banking day" means any day during which a bank is open to the public for carrying on substantially all its banking functions.

(f) The term "wire" includes telephone, telegraph, and cable.

§ 210.73—Receipt of debit items

(a) A debit item may be contained in any of the media approved by § 210.53 of Subpart B that is acceptable to the Federal Reserve Bank handling the debit item and shall be deemed to be the same debit item notwithstanding that the medium in which it is contained may change during its handling or return under this Subpart.

(b) An ordering bank may, if permitted by the Federal Reserve Bank with which it maintains an account, telephone a debit item issued by the ordering bank to such Federal Reserve Bank. Such telephone message may be recorded by such Federal Reserve Bank.

(c) Unless otherwise agreed, a Federal Reserve Bank shall receive debit items only from the head office of an ordering bank and shall send debit items only to the head office of a payor bank.

§ 210.74—Handling of debit items

(a) An ordering bank may, in accordance with the provisions of this Subpart and the applicable operating circulars of the Federal Reserve Bank with which it maintains an account, issue and send debit items to that Federal Reserve Bank.

(b) Where the ordering bank and payor bank are located in the same Federal Reserve territory, the Federal Reserve Bank receiving the debit item will

transfer it to the payor bank over the Federal Reserve telecommunications network or by any other means selected by such Federal Reserve Bank.

(c) Where the ordering bank and payor bank are not located in the same Federal Reserve territory, the Federal Reserve office first receiving the debit item will transfer it over the Federal Reserve System telecommunications network to the Federal Reserve office of the territory within which the payor bank is located, and such other Federal Reserve office will transfer the debit item to the payor bank over the Federal Reserve telecommunications network or by any other means selected by such Federal Reserve office.

§ 210.75—Ordering bank's agreement

For purposes of this section, the term "ordering bank" includes a Federal Reserve Bank sending a debit item to another Federal Reserve Bank.

(a) By its action in sending any debit item to a Federal Reserve Bank, an ordering bank shall be deemed to authorize said Federal Reserve Bank and the Federal Reserve Bank in whose district the debit item is payable to handle and act upon the debit item, in accordance with the provisions of this Subpart and the applicable operating circulars of such Federal Reserve Banks.

(b) An ordering bank shall be deemed to warrant to each Federal Reserve Bank handling the debit item: (1) that it is authorized to give the authority specified in paragraph (a) of this section, and (2) that it is authorized to obtain transfer of the funds in the manner called for by the debit item; and such ordering bank shall be deemed to agree to indemnify each such Federal Reserve Bank for any loss or expense sustained (including but not limited to attorney's fees and expenses of litigation) resulting from the failure of such ordering bank to have the authority to give such authority and warranties or resulting from any action taken by the Federal Reserve Bank within the scope of its authority in handling the debit item.

(c) Whenever any action or proceeding is brought in any court against a Federal Reserve Bank, based upon the alleged failure of such ordering bank to have the authority to give the authority and warranties specified in paragraphs (a) and (b) of this section, or upon any action taken by the Federal Reserve Bank within the scope of its authority in handling such a debit item, or upon any warranty or authority with respect thereto made by the Federal Reserve Bank consistently with § 210.76 of this Subpart, the Federal Reserve Bank may, upon the

⁵ For the purposes of this Subpart, the Virgin Islands and Puerto Rico shall be deemed to be in or of the Second Federal Reserve District and Guam and American Samoa shall be deemed to be in or of the Twelfth Federal Reserve District.

entry of a final judgment or decree in such action or proceeding, recover from the ordering bank the amount of attorney's fees and other expenses of litigation actually incurred, and, in addition, any amount required to be paid by the Federal Reserve Bank under such judgment or decree, together with interest thereon, by charging the amount thereof to any account of the ordering bank maintained on the books of the Federal Reserve Bank (or if the ordering bank is another Federal Reserve Bank, by entering a charge therefor against such other Federal Reserve Bank), provided only (1) that the Federal Reserve Bank shall have made reasonable demand on the ordering bank in writing to assume the defense of the action or proceeding, and (2) that the ordering bank shall not have made any other provision acceptable to the Federal Reserve Bank for the payment of such amount. A Federal Reserve Bank against which any such charge has been entered may recover from the ordering bank, in any case herein provided, as if the action or proceeding against the Federal Reserve Bank which entered the charge had been brought against it. The failure of any Federal Reserve Bank to avail itself of the remedy provided by this paragraph shall not prejudice the enforcement by it in any other manner of the indemnity agreement referred to in paragraph (b) of this section.

§ 210.76—Federal Reserve Bank agreement

By its action in transferring any debit item, a Federal Reserve Bank shall be deemed to warrant to the payor bank and to any other Federal Reserve Bank handling such debit item that it is authorized to obtain payment of the funds called for by the debit item, but otherwise such a Federal Reserve Bank shall not have, and shall not be deemed to assume, any liability to such payor bank or Federal Reserve Bank except for its own lack of good faith or failure to exercise ordinary care.

§ 210.77—Payment

A payor bank becomes accountable for the amount of each debit item received by it from a Federal Reserve Bank at the close of the payor bank's banking day on which the debit item was so received⁶ if it retains such item after the close of such bank-

ing day, unless prior to such time, it pays for the item as herein provided. Payment therefor shall be effected on such day of receipt by a debit to an account on the books of a Federal Reserve Bank. If the banking day on which an item is received by a payor bank is not a banking day for the Federal Reserve Bank from which the item was received, any payment made hereunder shall be effected on the banking day of both such Federal Reserve Bank and such payor bank next following the day of receipt of such item.

§ 210.78—Time schedule

(a) Each Federal Reserve Bank shall include in its operating circulars a time schedule showing when the amount of any debit item received by it will be counted as reserve for the purposes of Part 204 of this Chapter (Regulation D) and become available for withdrawal or other use by the ordering bank. The ordering bank will be given either immediate credit or deferred credit for such amount in accordance with such time schedule. Notwithstanding the provisions of its time schedule, a Federal Reserve Bank may in its discretion refuse at any time to permit the withdrawal or other use of credit given for any debit item for which the Federal Reserve Bank has not yet received payment in actually and finally collected funds.

(b) A Federal Reserve Bank will use its best efforts to transmit debit items on the day of receipt: *Provided*, That the debit item is received by a Federal Reserve Bank not later than the time shown in the time schedule referred to in paragraph (a) of this section, except that no representation shall be made by a Federal Reserve Bank to the effect that debit items will be transmitted on the day of receipt.

§ 210.79—Return

(a) A payor bank that receives a debit item from a Federal Reserve Bank and that pays for such debit item as provided in this Subpart shall have the right to recover any payments so made if, before it has finally paid the debit item, it returns the debit item before the close of business of its banking day next following the banking day of receipt. In accordance with the provisions of this Subpart and the applicable operating circulars of the Federal Reserve Banks, debit items shall be returned to the Federal Reserve Bank from which they were received in a form acceptable to such Federal Reserve Bank, and in the same medium in which they were received by the payor bank unless the payor bank obtains the written authority of such Federal Reserve Bank to return debit items in another

⁶ A debit item received by a payor bank shall be deemed to have been received by the bank on its next banking day if the item is received under one of the following circumstances: (1) on a day other than a banking day for it, or (2) on a banking day for it, but (a) after its regular banking hours, or (b) after a "cut-off hour" established by the Federal Reserve Bank of the district in which the payor bank is located, or (c) during afternoon or evening periods when it is open for limited functions only.

medium specified in § 210.53 of Subpart B. In the event such medium is other than by the Federal Reserve telecommunications network to the Reserve Bank, wire advice of nonpayment shall be given as to any debit item of \$1,000 or over.

(b) Any payor bank which receives a credit or obtains a refund for the amount of any payment made by it in respect of a debit item received by it from a Federal Reserve Bank shall be deemed (1) to warrant to such Federal Reserve Bank, to any other Federal Reserve Bank handling the item and to the ordering bank that it took all action necessary to entitle it to recover such payment within the time or times limited therefor by the provisions of this Subpart, and (2) to agree to indemnify any such Federal Reserve Bank for any loss or expense sustained (including but not limited to attorneys' fees and expenses of litigation) resulting from its action in giving such credit or making such refund, or in making any charge to, or obtaining any refund from, the ordering bank. No Federal Reserve Bank shall have any responsibility for determining whether the action hereinabove referred to was timely.

§ 210.80—Chargeback

If a Federal Reserve Bank does not receive payment in actually and finally collected funds for any debit item for which it gave credit, the amount of such item shall be charged back to the party receiving such credit. If such a chargeback is made to the account of an ordering bank, such ordering bank shall not have any right of recourse upon, interest in, or right of payment from, any reserve account or other funds or property of the payor bank in the possession of a Federal Reserve Bank. No authorization to charge upon any reserve account or other funds or property in the possession of a Federal Reserve Bank, issued for the purpose of paying for any debit item handled under the terms of this Subpart, will be acted upon after receipt by such Federal Reserve Bank of notice of suspension or closing of the bank making the payment for its own or another's account.

§ 210.81—Timeliness of action

If, because of interruption of communication facilities, suspension of payments by another bank, war, emergency conditions or other circumstances beyond its control, any bank (including a Federal Reserve Bank) shall be delayed beyond the time limits provided in this Subpart or the operating circulars of the Federal Reserve Banks, or prescribed by the applicable law of any State in taking any action with respect to a debit item, the time of such bank, as limited by this Subpart or the operating circulars of the Federal Reserve Banks, or the applicable law of any State, for taking or completing the action thereby delayed shall be extended for such time after the cause of the delay ceases to operate as shall be necessary to take or complete the action, provided that the bank exercises such diligence as the circumstances require.

§ 210.82—Liability of a Federal Reserve Bank

A Federal Reserve Bank will act only as agent of its ordering bank, or of a Federal Reserve Bank transmitting debit items to it, with respect to the handling of debit items under this Subpart. A Federal Reserve Bank will not act as the agent or subagent of nor shall it assume any responsibility to any other person. A Federal Reserve Bank, in connection with the matters specified in this Subpart or its operating circulars, shall not have, nor shall it assume, any liability to an ordering bank, or another Federal Reserve Bank, except for its own lack of good faith or failure to exercise ordinary care.

§ 210.83—Operating circulars

Each Federal Reserve Bank shall issue operating circulars (sometimes referred to as operating letters or bulletins), not inconsistent with this Subpart, governing the details of its debit item operation and containing such provisions as are required or permitted by this Subpart.

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By order of the Board of Governors, November 15, 1973.