

**FEDERAL RESERVE BANK  
OF NEW YORK**

Circular No. 8568  
May 4, 1979

**REGULATION E — ELECTRONIC FUND TRANSFERS**

**Comment Invited, and Hearing Scheduled, on Proposed  
Additions and Changes**

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

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

The Federal Reserve Board today [April 30] issued for public comment proposals for completion of its rules necessary to carry out provisions of the Electronic Fund Transfer Act.

The Board asked for comment to be received by July 2, 1979.

To encourage full participation in formulating the rules to protect the public in the transfer of funds by electronic means, the Board also scheduled a hearing — to be held June 18 and 19 — to receive views and information bearing on any aspect of the Act or rules to implement it.

The Board's proposals follow up publication on March 21 of final rules under two provisions of the Act that became effective early this year. These rules — the initial parts of Regulation E — limit consumers' liability for unauthorized use of an EFT card and specify the conditions under which EFT cards may be issued. The proposals issued today for completing Regulation E would implement other portions of the Act that become effective May 10, 1980. The Board is developing Regulation E to comply with a congressional directive that the Federal Reserve write rules to implement the Act, and publish model disclosure forms.

The Electronic Fund Transfer Act (Title XX of the Financial Institutions Regulatory and Interest Rate Control Act of 1978) protects consumers in their use of services for the electronic transfer of their funds. EFT services permit consumers and others to transfer funds without the use of checks. The use of an EFT card is one means by which consumers can make such transfers. Consumers may also make electronic transfers by authorizing financial institutions to make payments (for example, to make mortgage, utility or automobile loan payments). Consumers may use other EFT services authorizing direct electronic credits to be made to the consumer's account (such as wages or salary, Social Security benefits, dividend payments and the like). Consumers can use EFT cards to make payments (for instance, by using the card at the point of sale to debit their account at a financial institution for the purchase of goods or services). This differs from the use of a credit card in that the EFT card authorizes funds to be *taken directly out* of the consumer's account, while use of a credit card *creates a debt* that the consumer pays at a later time. The EFT card may also be used by consumers at automated tellers to withdraw cash from their accounts.

The EFT Act requires certain disclosures by financial institutions to consumers about the terms and conditions of the electronic fund transfer services they offer, and the regulatory proposals issued today seek to implement these disclosure requirements.

The proposals also seek to deal with other principal requirements of the Act that will become effective in May 1980.

These requirements raise a number of issues. A summary of these issues and the Board's proposals for dealing with them in Regulation E follow. . . .



### *1. Exemptions from the requirements of the Act:*

Comment previously received by the Board (when it was considering the rules published March 21) suggested that the exemptions provided for in the Act be expanded in the implementing regulation. The Board believes the Act gives it authority to do so. To get further comment on this question, and to focus attention on the further exemptions the Board believes may be in order, the Board proposes to amend a section of the rules published in final form March 21 (205.3(d)) to exempt certain types of electronic transfers within an institution made automatically by agreement between the customer and the institution:

1. Transfers made from one to another of the customer's accounts in a financial institution, such as transfers from a demand account to a savings account.
2. Transfers from the financial institution to the consumer's account, such as crediting of interest on savings accounts.
3. Transfers from the consumer's account to the financial institution, such as debiting of automatic mortgage payments, other loan payments and checking account charges.
4. A partial exemption for automatic loan payments that would require the financial institution to comply with rules for periodic statements.

Also, the Board proposes to amend another section of the previously adopted Regulation E (205.3(c)) to exempt most electronic transfers arising from mutual fund, pension and profit-sharing plan transactions.

### *2. Timing of disclosures:*

Another issue is raised by the provision of the Act requiring that initial disclosure to consumers of the terms of the EFT service must be made at the time the consumer contracts for the service. Financial institutions may have difficulty in determining when consummation of an EFT service contract occurs (particularly when consumers contract by telephone or have an existing account with the institution). The Board proposes to permit the terms and conditions of the EFT service to be disclosed to the consumer at the time of the contract, or before the first electronic transfer is made involving the consumer's account.

The Board proposes that this disclosure should be made in written form that the consumer may retain.

The disclosures required by the Act include:

- The consumer's liability for unauthorized transfers made with the consumer's EFT card;
- The types of EFT services the institution offers, limitations on the services and any charges involved;
- The consumer's right to receive documentation of EFT transfers effected at a terminal and in periodic statements;
- The consumer's right to have errors corrected promptly;
- How preauthorized credits and payments may be arranged, and how preauthorized payments may be stopped, and
- The financial institution's liability to the consumer for any failure on its part to make or stop transfers.

The Board's proposals give effect to these and other disclosure requirements of the Act (Section 205.6 and 205.7 of proposed Regulation E).

When fully effective the Act will require that delivery of required disclosures as to consumer liability for unauthorized use of EFT cards, how to report theft or loss of cards and the institutions' business days be a precondition of imposing any liability on consumers. The Board proposed on March 21 to require these disclosures in the interim as a precondition of imposing any consumer liability.

### *3. Documentation of transfers:*

The Board's proposed rules would give effect to the Act's requirements that receipts available to consumers at EFT terminals provide the consumer with the date and amount of transfers, identification of the consumer's account, location of the terminal and name of any third party to whom payment is being made.



The proposal would also require, as does the Act, that periodic statements must usually be sent monthly and must include, in addition to the information provided upon the receipt that the consumer receives at the terminal, opening and closing account balances, account numbers and charges for account services.

*4. Notice whether a preauthorized credit to a consumer's account has been made:*

The Act requires that where consumers arrange for a recurring preauthorized credit to the consumer's account by electronic means the financial institution must provide positive notice that it has received the credit (unless this notice of the transfer is provided by the payor) or negative notice that the credit has not been received.

This requirement may involve increased costs for EFT services, the need for computerized information that all financial institutions may not be able to maintain and possible dilution of one of the principal benefits that the use of electronic services rather than paper checks for transferring funds is expected to produce: reduction of the relatively slow and costly flow of paper through the payments system.

The Act permits the Board to specify what constitutes adequate notice. The Board proposes three additional methods that could be used to fulfill the requirement of the Act:

1. Notice of receipt or non-receipt of a scheduled credit by means of a periodic statement sent within two days of the date of the scheduled transfer;
2. Provision of a telephone number consumers could use to ascertain whether the prearranged transfer had been made; or
3. In the event that a scheduled credit is not received, and the consumer writes a check or other payment instrument upon the assumption that the credit is in the consumer's account, the financial institution must give notice, when the item is presented for payment:
  - That the consumer's account will be overdrawn;
  - Or that payment will trigger a prearranged automatic loan or transfer of funds from the consumer's savings to checking account;

The institution would be required to pay the item without cost to the consumer.

*5. Availability to the consumer of electronically deposited credits:*

It is believed that most financial institutions make electronically deposited funds available to their customers immediately upon receipt. The United States Treasury Department (whose electronically transferred Social Security payments make up some 90 per cent of preauthorized credits) requires this. However, the Board is aware of some instances in which immediate credit has not been given to the customer. Since electronically deposited preauthorized credits are immediately available to the financial institution receiving them, the Board proposes to require in Regulation E that:

- When a financial institution has received a credit before the opening of business on the transfer date, the credit would have to be available for use by the customer at the opening of business, or
- Where the credit is received during the business day, it would have to be available to the customer for withdrawal by the opening of business on the next business day.

*6. Notice of varying amounts in preauthorized payments:*

Preauthorized payments, such as utility bills, may vary in amount from payment to payment. The Act requires that "reasonable advance notice" of the amount to be transferred and the scheduled date of the transfer be given to the consumer when scheduled payments will vary.

To this end, the Board proposes to:

- Permit consumers who have been notified of their right to receive advance notice to authorize payments within a specified range of amounts and to be notified in advance only when the amount falls outside that range, or



- Permit consumers to require advance notice only when a transfer differs in amount from a previous authorized transfer for the same purpose.

#### 7. *Stopping preauthorized payments:*

The Act requires that a consumer may stop any preauthorized payment up to three business days before the scheduled date of the payment, orally or in writing. The financial institution could require written confirmation within 14 days of the oral notice to stop a preauthorized payment.

#### 8. *Error resolution procedures:*

When a consumer alleges that an error has been made in an electronic transfer to or from a consumer's account, the Act requires that the financial institution complete an investigation of the allegation within 10 days of being notified, or, failing that, to recredit provisionally the consumer's account for the amount alleged to be in error, pending completion of the investigation.

If the financial institution determines that no error occurred it may deduct the recredited amount from the consumer's account.

The Act does not call for the consumer to be notified of the recrediting or deduction, but it does require that the consumer have full use of the recredited amount during the investigation.

The Board believes that it would, therefore, be helpful to consumers to be notified of a recrediting of an amount alleged to be in error, and, even more importantly, that consumers should know that the amount has subsequently been deducted. Consequently, the Board proposes to require that the financial institution:

- Within two business days of taking action, notify the consumer that an amount alleged to be in error has been recredited and that the institution will give notice of any subsequent deduction of the amount, and
- Notify the consumer that a provisional recrediting has been made final or has been deducted (at least three business days before the deduction takes place).

#### 9. *Record retention:*

Although the Act does not provide for record retention, the Board proposes that financial institutions keep evidence of compliance with the Act for two years (or longer, if the institution is involved in an enforcement or judicial proceeding).

The full text of the proposals described in the Board's statement will be made available upon request. It will also be sent to commercial banks, mutual savings banks, savings and loan associations, and credit unions in this District after publication in the *Federal Register*.

Comments on the proposals should be submitted by July 2 and may be sent to our Consumer Affairs Division. The Board's public hearing on the matter will be held on June 18 and 19; requests to appear should be received by the Secretary of the Board by June 8. (Both comments and requests to appear should refer to Docket No. R-0221.)

PAUL A. VOLCKER,  
*President.*