FEDERAL RESERVE BANK
OF NEW YORK

ATCIR No. 8571
May 10, 1979

To Institutions Subject to Regulation E
in the Second Federal Reserve District:

As indicated in our Circular No. 8568, dated May 4, 1979, the Board of Governors of the Federal Reserve System has invited comment on proposals to amend its Regulation E, and has scheduled a public hearing for June 18 and 19 on the regulation.

Enclosed is a copy of the full text of the proposals and of the notice.

Circulars Division

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FEDERAL RESERVE SYSTEM

[12 CFR Part 205]

[Reg. E; Docket No. R-0221]

ELECTRONIC FUND TRANSFERS

Proposals and Hearing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule and notice of hearing.

SUMMARY: The Board is publishing for comment sections of Regulation E, electronic fund transfer regulations (including model disclosures) to implement those provisions of the Electronic Fund Transfer Act that become effective on May 10, 1980. The sections of Regulation E that implement sections 909 and 911 of the Act were issued by the Board on March 21, 1979. The Board is also proposing to amend § 205.3 (to expand the exemptions) and § 205.5—Liability of Consumer for unauthorized transfer, of the existing regulations (to make a clarifying amendment). The Board is publishing for comment an economic impact analysis, as required by section 904 of the Act. A public hearing will be held on the Board's proposal on June 18 and 19, 1979.

DATES: Comments must be received on or before July 2, 1979. Hearings will be held on June 18 and 19, 1979. Requests to appear at the hearing must be received on or before June 8, 1979.

ADDRESSES: Send comments and requests to appear at the hearing to: Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. All material submitted and all requests to appear at the hearing should refer to docket number R–0221. The hearing will be held before available members of the Board on the Terrace level of the Martin Building at 20th and C Streets, N.W., Washington, D.C., to begin at 9:30 a.m. each day.

FOR FURTHER INFORMATION CONTACT: Regarding the regulations: Dolores S. Smith, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202–452–2412). Regarding the economic impact analysis: Frederick J. Schroeder, Economist, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202–452–2584).

SUPPLEMENTARY INFORMATION: (1) *Introduction; General Matters; Hearing.* The Board recently issued sections of Regulation E (44 FR 18468, March 28, 1979) implementing sections 909 and 911 of the Electronic Fund Transfer Act (Title XX, Pub. L. 95–630), which became effective on February 8, 1979. The Board is now publishing for comment regulatory provisions to implement the remainder of the Act that will go into effect on May 10, 1980. No implementing regulations are being proposed for the sections of the Act that deal with civil and criminal liability (sections 910, 915, and 916), or for those sections that are straightforward and need no regulatory clarification (sections 912, 913, and 914). Section 910(a)(1)(E) of the Act does authorize the Board to specify circumstances under which a financial insitution would not be liable for damages arising from the institution's failure to make an electronic fund transfer authorized by a consumer. Commenters are invited to specify circumstances not already contained in section 910(a)(1) that the Board may wish to particularize in implementing regulations.

Section 904(a)(1) of the Act requires the Board, when prescribing regulations, to consult with the other Federal agencies that have enforcement responsibilities under the Act. Members of the Board's staff have met with staff members from the enforcement agencies.

Federal savings and loan associations should note that they are subject to the provisions of Regulation E and that there may be some inconsistency between this regulation and the Federal Home Loan Bank Board's regulation governing remote service units (12 CFR 545.4–2). The Board of Governors has been advised by the Bank Board that § 545.4–2 will be promptly amended to conform to the Act and Regulation E.

Section 904(a)(2) requires the Board to prepare an analysis of the economic impact of the regulation on the various participants in electronic fund transfer systems, the effects upon competition in the provision of electronic fund transfer services among large and small financial institutions, and the availability of such services to different classes of consumers, particularly low-income consumers. Section 904(a)(3) requires the Board, to the extent practicable, to demonstrate that the consumer protections provided by the proposed regulation outweigh the compliance costs imposed upon consumers and financial institutions. The Board's preliminary statement on these issues is published in section (5) below. The statement and the proposed regulation have been transmitted to Congress, as required by section 904(a)(4).

Section 904(b) requires the Board to isue model disclosure clauses, writen in readily understandable language, that will make it easier for financial institutions to comply with the disclosure requirements of section 905 and that will aid consumer understanding of their rights and responsibilities. The proposed model clauses are discussed in section (4) of this material.

Section 904(c) permits the Board to modify the requirements of the Act as they affect small financial institutions if the Board determines that modifications are necessary to alleviate any undue compliance burden. The Board solicits comment on the extent to which compliance with the proposed regulation would impose undue cost and administrative or other burdens upon small financial institutions and what criteria should be use in determining what constitutes "small financial institutions" for purposes of section 904(c).

Section 904(d) requires the Board to assure that the requirements of the Act are imposed upon all persons that offer electronic fund transfer services to consumers. The Board previously solicited information regarding the offering of such services by non-financial institutions, a description of the services, and whether specific provision should be made in the regulation to insure that such persons are subject to the Act's requirements. Any further information or opinions would be welcome.

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The Board also gives notice of a public hearing to be held on its proposed regulation on June 18 and 19, 1979. The hearing will be held before available members of the Board on the Terrace level of the Martin Building at 20th and C Streets, N.W., Washington, D.C. to begin at 9:30 a.m. each day.

The proceeding will consist of presentation of written or oral statements. Any person wishing to testify at the hearing should file with the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, on or before June 8, 1979, a written request containing a statement of the nature of the person's interest in the proceeding, a summary of the matters concerning which the person desires to give testimony, and the names and identity of witnesses who propose to appear. A request to appear at the hearing should include the docket number set forth above. The Board reserves the right to limit participation should time constraints so require.

(2) *Amendments to Existing Sections of Regulation.* The Board proposes to amend certain sections of Regulation E that are already in effect. The existing sections that would be amended are §§ 205.2 (Definitions), 205.3 (Exemptions), and 205.5 (Liability of Consumer for Unauthorized Transfers).

Section 205.2—Definitions. The Board proposes to amend two definitions that appear in existing Regulation E, and to add two new ones. in order to avoid relettering many of the existing definitions at this time, the new definitions appear as §§ 205.2(l) and (m), following the existing definitions.

(i) "Financial institution." The Board proposes to delete the last sentence, concerning agreements among financial institutions that share compliance responsibilities. The substance of this provision has been incorporated in proposed § 205.13(a).

(k) "Unauthorized electronic fund transfer." The definition would be revised by deleting, after "error," the phrase "committed by the financial institution," and inserting instead "except as defined in § 205.2(l)(1)."

The existing definition poses a technical problem in that it excludes errors, yet the definition of "error" includes unauthorized electronic fund transfers. The proposed amendment would eliminate the inconsistency.

(l) "Error." The proposed definition is similar to the corresponding definition in the Act. The Board wishes to point out that § 205.2(l)(1), which defines an unauthorized electronic fund transfer as an error, would include a consumer's notifying a financial institution of the loss or theft of an access device. Such a notification would alert the financial institution to the possibility that unauthorized transfers have occurred or may ocur. By interpreting § 205.2(l)(1) to include notification of loss or theft of an access device, the protections of the error resolution procedures will be triggered upon notification of loss or theft (which may involve *possible* unauthorized use), rather than upon the consumer's awareness and notification of an *actual* occurrence of unauthorized use.

In addition, the Board proposed, in §§ 205.2(l)(7) and (8), to include two other types of errors in the definition. Section 205.2(l)(7) defines as an "error" any failure to provide a consumer with documentation required by the regulation. this would insure that a consumer would be able to receive promptly a copy of any required documentation that was not provided. The Board anticipates that this additional type of error will be of particular importance where a consumer did not receive a receipt at a terminal either because of terminal malfunction or because the terminal is out of paper.

Section 205.2(l)(8) would define as an error any misidentified or insufficiently identified transfer or any transfer that was not in the amount or on the date indicated on or with any required documentation. This addition would cover types of errors that may not be covered by § 205.2(l)(2). For example, § 205.2(l)(2) would cover the instance in which a transfer should not have been made at all, while § 205.2(l)(8) would cover the instance in which a transfer was properly made, but incorrectly identified on the periodic statement.

(m) "Preauthorized electronic fund transfer." The proposed definition is identical to the one contained in section 903(9) of the Act.

Section 205.3—Exemptions. The Board is proposing amendment of two paragraphs of § 205.3, Exemptions.

First, it proposes to delete the words "through a broker-dealer registered with," in paragraph (c) as adopted. This proposal would exempt electronic fund transfers occurring under mutual funds, pension and profit-sharing plans. It may be appropriate to exempt them because such transfers are regulated under other Federal laws even when the transfer is not with a registered broker-dealer and such laws require written preauthorization and documentation of transfers.

This exemption, if adopted as proposed, would not exclude all electronic transfers involving the purchase or sale of securities or commodities, but only those in which the primary purpose of the transfer is such a purchase or sale. If the purchase or sale is incidental to the primary purpose of the transfer (e.g., the payment of a third party from a money market account), the regulation's requirements would apply.

The Board solicits comment on the proposed exemption, particularly on the costs and compliance burdens that would be incurred by mutual funds and pension and profit-sharing plans if such transfers were not exempted, the consumer protections to be gained from covering such transfers, and whether the disclosure requirements of Regulation E would be duplicative (and the extent of the duplication) of requirements imposed under other applicable Federal or State law.

The Board is also proposing amendment of § 205.3(d) of the regulation. The Board had solicited comment in the original proposal on whether the exemption should be expanded. A large number of commenters suggested expansion of the exemption in various ways, but the Board decided to defer action on the issue until public comment could be elicited on specified means of broadening the exemption.

The following table shows the automatic transfers that the proposal would exempt from the regulation's scope and gives examples of the types of transfers that would be exempted. Note that to be exempted, the transfers would have to be automatic (without an individual request from the consumer) under an agreement between the consumer and the financial institution.

Automatic transfers	*Example*
(1) Between a consumer's accounts at a financial institution	Savings or share accounts to checking, NOW or share draft accounts; checking, NOW or share draft accounts to savings or share accounts.
(2) To a consumer's account by a financial institution	Crediting of interest to interest-bearing accounts.
(3) From a consumer's account to the financial institution	Debiting of service charges; automatic loan payments where the institution is the creditor; payroll deductions for institution employees.

The Board solicits comment on whether some or all of the enumerated types of transfers should be exempted, the costs that would be incurred by financial institutions (e.g., major programming or statement system changes, administrative costs) if such transfers were not exempted, and the

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consumer benefits that would result if such transfers were covered.

Section 205.3(d)(3) would exempt transfers from a consumer's account to the financial institution (such as automatic loan payments) from all the regulation's requirements, except the periodic statement requirements of § 205.8(b). With respect to § 205.3(d)(3), the Board proposes and solicits comment on the following alternatives: (a) consideration of a complete exemption of such transfers and (b) consideration of a partial exemption (by addition of the parenthetical phrase). Comment on (b) above should focus on whether or not documentation of such transfers is already provided to the consumer, whether consumers would gain any additional protection from a periodic statement requirement, and whether, if adopted by the Board in the proposed form, related sections of the regulation should also apply (for example, § 205.10 on error resolution).

The Board also solicits comment on whether other automatic transfers should be exempted. Comment on this question should specifically address the costs, compliance burdens and loss of consumer protections that would result from exemption of such other transfers.

Section 205.5—Liability of Consumer for Unauthorized Transfers. The introductory language of § 205.5(b) would be amended by changing the phrase "series of transfers arising from a single loss or theft of the access device" to "series of related transfers." Since unauthorized transfers can occur in circumstances other than those involving loss or theft of an access device, the liability limitations should apply to a series of unauthorized transfers occurring under any circumstances. The amended language would make clear, however, that the transfers in the series must be related. For example, the transfers could arise from a single loss or theft of the access device; where the access device is not lost or stolen, they could all be effectuated by the same person (or by a group of persons acting together).

(3) *Addition of New Sections to Regulation.* The Board proposes to add to Regulation E eight new sections, number § 205.6 through § 205.13.

Section 205.6—Initial Disclosure of Terms and Conditions. Section 205.6(a) implements section 905(a) of the Act and provides for disclosure to consumers of terms and conditions of electronic fund transfer services. The disclosures need be made by the financial institution only to the extent that they apply to the offered services. The Board proposes to require that the disclosures be made in a written statement that the consumer may retain. Aside from the requirement that the disclosures be made in readily understandable language, the regulation would not contain any requirements with respect to number of pages, size of type, front or reverse pages, or relative prominence.

The Act provides that the disclosures must be made "at the time the consumer contracts for an electronic fund transfer service," while the proposal would permit the disclosures to be made at the time the consumer contracts for the service or before the first electronic fund transfer is made involving a consumer's account. The Board believes early disclosure of the terms and conditions of EFT services is desirable, but is proposing this change because of the difficulty of determining when the consumer has contracted for the service, particularly when there is an oral application or a preexisting account relationship between the consumer and the institution. Consumers would have the right to cancel the EFT service after receiving the disclosures. Comment is solicited on whether disclosure at the later time should be permitted.

Sections 205.6(a) (1) and (2) provide for disclosure of the consumer's liability for unauthorized transfers, optional disclosure of the advisability of prompt reporting of unauthorized transfers, and the name and address for notification of such transfers. These disclosures are virtually unchanged from the Act.

Section 205.6(a)(3) would require disclosure of the institution's business days. The Board is proposing this additional disclosure (which has been adopted as a transitional disclosure to accompany unsolicited distribution of access devices under § 205.4) because the term "business day" is used throughout the disclosure and substantive requirements of the regulation (e.g., consumer liability for unauthorized transfers, error resolution procedures). It is thus important for consumers to be aware of the institution's business days.

Section 205.6(a)(4) would be virtually identical to the Act, except that the Board proposes to delete the words "and nature" as unnecessary after "type." It is the Board's opinion that the exception from the disclosure of the limitations on transfers if their confidentiality is necessary to maintain security of the system only obviates disclosure of the details of the limitations; the fact that such limitations exist must be disclosed.

The disclosure required by § 205.6(a)(5) is identical to the Act. It appears that this disclosure need only include those charges that relate to electronic fund transfers or to EFT capability on an account and would not include account maintenance charges (which must be disclosed on periodic statements under section 906(c)(2) of the Act and § 205.8(c)) or check charges.

The disclosure under § 205.6(a)(6) is identical to the Act. The Board's preliminary opinion is that the financial institution need disclose only that documentation at terminals will be made available, that the consumer will receive periodic statements on a monthly or quarterly basis, and that the consumer will receive notice of preauthorized credits or the means by which the consumer can determine whether the transfer has been completed. The disclosure would not have to include a description of the information that is required to be disclosed on the documentation or periodic statement. (See the model disclosure clause for an example of the type of disclosure envisioned.)

Sections 205.6(a) (7) and (8) are proposed in virtually the same form as in the Act. It should be noted that under the Board's proposal, § 910 of the Act would not be implemented in the regulation. The Board solicits comment on whether this section should be incorporated in the regulation, particularly as to whether the Board should add other instances where the institutions should not be liable for failure to make transfers, as permitted by Section 910(a)(1)(E).

Section 205.6(a)(9) is proposed in virtually the same form as it appears in the Act. The Board believes that this disclosure should include conditions under which the financial institution will in the ordinary course of business disclose any account information to third parties, and would not be limited to disclosure of information concerning electronic fund transfers.

The Board is proposing, in § 205.6(a)(10), a notice of the error resolution procedures of the Act as a required initial disclosure, to comply with Section 905(a)(7) of the Act. This notice will also be required as a subsequent disclosure under § 205.7. The notice has been drafted in what the Board believes is "readily understandable" language; comment is solicited on ways in which the notice could be redrafted to improve the format and style. Certain provisions of Section 908 of the Act have been summarized where it appears that the details of the statutory requirements would not be particularly useful (and might be somewhat confusing) to the consumer. The Board solicits comment on whether

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greater or lesser detail should be provided in the notice.

The Board's intention is that this notice must be substantially similar to the form in which it appears in the regulation in order for the institution to be assured of compliance with the statutory requirements. Deletion of inapplicable provisions (e.g., requirement of written confirmation of oral notification) and substitutions (.e.g., of trade names) may be made by the financial institution.

Section 205.6(b) implements Section 905(c) of the Act and would require that the disclosures contained in paragraph (a) of § 205.6 must be given to consumers who hold accounts from or to which electronic fund transfers could be made before May 10, 1980. The disclosures would have to be given within 30 days of the effective date of the statute or with the first required periodic statement after the effective date, whichever is earlier.

Section 205.7—Subsequent Disclosures. Section 205.7(a) implements Section 905(b) of the Act and requires advance disclosure to the consumer of any unfavorable change in the account terms affecting the cost, liability for, or availability of electronic fund transfers. Paragraph (1) of § 205.7(a) requires that the financial institution mail or deliver a written notice to the consumer at least 21 days before the effective date of the change in terms. The changes that would be required to be disclosed are (a) increased fees or charges, (b) increased liability for the consumer, (c) fewer types of available EFTs, and (d) stricter limitations on the dollar or frequency amounts of transfers. The Board solicits comment on whether there are other types of unfavorable changes in terms or conditions of the account for which advance disclosure to the consumer should be made.

Paragraph (2) of § 205.7(a) provides an exception to the requirement of advance notice of changes in terms and conditions of the account, if an adverse change is immediately necessary to maintain or restore the security of the EFT system or a particular account, for example, when the security of an institution's EFT system has been breached by a thief. The paragraph would further provide that if an immediate change is later made permanent by the institution and disclosure will not jeopardize the security of the system or the account, the financial institution must provide written notice to the consumer within 30 days after the change has been made permanent. The Board proposes to specify 30 days as a reasonable time within which the subsequent notice must be given. The 30-day period would permit institutions, in most instances, to provide the notice with the next periodic statement after the change has been made permanent.

Section 205.7(b) implements § 905(a)(7) of the Act and would require that the financial institution mail or deliver the error resolution notice prescribed in § 205.6(a)(10) annually to the consumer.

Paragraph (2) of § 205.7(b) would permit an alternative method of compliance with the annual error resolution notice requirement. The proposed method is similar to that permitted under Regulation Z (12 CFR § 226.7(d)(5)). It would permit institutions to include a "short-form" notice on or with each periodic statement required by § 205.8(b) instead of sending the longer notice annually. The short notice is prescribed in the regulation and the limitations on amendment of the long notice referenced above would also apply to this shorter version. Comment is solicited on ways in which the style and format of the notice can be improved and whether it would convey sufficient information to the consumer to enable the consumer to notify the institution of an error or question.

It appears to the Board that a significant consumer benefit may accrue from permitting the alternative method of disclosure. Although the form of the notice is much abbreviated, the consumer will be able to know immediately how to assert an error in the periodic statement and where to call or write simply by looking at the back of the statement (or another piece of paper included with the periodic statement). Comment is solicited on whether such latitude should be permitted and whether institutions will take advantage of this alternative requirement.

The provision would also require institutions to send the consumer the long notice prescribed in § 205.6(a)(10) within 10 business days of receiving notice of an error from the consumer.

Section 205.8—Documentation of Transfers. Section 205.8(a) implements section 906(a) of the Act, which requires institutions to provide documentation to a consumer who initiates an electronic fund transfer from an electronic terminal. The documentation must include up to six items of information, to the extent the items are applicable to the transfer. These items correspond to the information set forth in section 906(a) (1) through (5) of the Act.

The introductory paragraph requires that the documentation be made "available" to the consumer. For example, the institution could instruct the customer to press a particular key at the time of the transfer, if he or she wishes to receive the documentation.

Footnote 1 relates to the phrase "directly or indirectly," which is taken from the statutory language. The Board believes that the use of the term "indirectly" simply permits an institution to fulfill its obligations under § 205.8(a) through a third party, most commonly a merchant at whose place of business the institution's point-of-sale terminal is located.

While the proposed regulation requires documentation to be in a written form retainable by the consumer, it does not impose any particular requirement regarding type size, the length of the document or similar factors. The section would require, however, that the information be "clearly" set forth. An institution would be obligated to adequately label the items of information on the documentation as to the type of information being conveyed. For example, the use of a series of numbers or codes for the various types of information, if unrelated to a category such as "terminal location" or "amount of transfer," would not be "clearly" set forth, within the meaning of the proposal.

The legislative history regarding section 906(a) indicates that the "type" of transfer referred to in § 205.8(a)(3) is intended to include transfers such as those listed. As proposed, this paragraph would permit financial institutions to use simple abbreviations or codes, such as "P" or "1." However, if an abbreviation or code is used, it must be explained elsewhere on the documentation—by a preprinted list on the back of the documentation, for example.

Section 906(a)(3) requires an identification of the consumer's account from or to which funds are transferred. The Board draws attention to two issues in § 205.8(a)(4), which implements this requirememt. First, the Board envisions that the means of identification chosen will usually be an account number, since this appears to be a unique and universal means of identification. However, the Board solicits comment on how financial institutions propose to identify the accounts, if not by account number. Second, the language would require, in cases where the consumer is transferring funds between accounts (from checking to savings, for example), that both accounts be identified on the terminal documentation. The Board solicits comment on any operational

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problems which would arise from this requirement, and on any alternative means of identification which might be provided for transfers between a consumer's accounts.

Section 205.8(a)(5), which implements section 906(a)(5), requires an identification of the terminal at which the consumer initiated the electronic fund transfer. The Board wishes to focus special attention on two issues. First, the Board believes that the statutory language calling for the "location or identification" of the terminal is best served by providing the consumer with the location. The word "identification" is believed to be unnecessary in this provision since the proposal would permit use of a code, which is a type of identification. The location given should be specific enough to permit the consumer at a later time to recall the transfer. The Board envisions that in most cases a street address would be the most meaningful identification. In other cases, the name of the business establishment or the shopping center where the terminal is located may have greater meaning for the consumer than the street address. Where there is more than one terminal at a particular location, such as a department store or a bank, this paragraph would not require a more specific identification such as "housewares department" or "second floor."

The second issue relates to the use of a terminal code in place of a readily understandable location. The Congressional history of the Act indicates that Congress envisioned such an alternative. In addition, at the time of the transfer, the location of the terminal may not be an essential item of information to the consumer. It is only when the consumer later receives the periodic statement under § 205.8(c) that the location of the terminal, in readily understandable language, becomes important in assisting the consumer to identify that transfer. The Board proposes to require institutions using a code to show, on the periodic statement which reflects the transfer, the code given on the initial documentation and, in close proximity, the terminal location to which it relates. The Board believes that this alternative would provide consumers with needed information at the time when it is most useful to them. It would also take account of the present limitations of terminals, which may not be capable of generating a complete alphabetic description of location on the terminal documentation.

Section 205.8(a)(6) implements section 906(a)(4) of the Act and requires an institution to identify any third party to or from whom funds are transferred. Such transfers most often will involve a point-of-sale terminal in which a merchant is the third party. The merchant would also constitute the third party in transactions involving credits for returned goods, with the funds transferred from the merchant's account to that of the consumer.

As both the Act and the proposed regulation are written, however, the identification requirement is not limited to cases in which the third party is a seller of goods or services. This paragraph may apply as well to other types of transfers such as bill-paying services, in which consumers use a terminal to transfer funds from their accounts to, for example, a utility company. The operational limitations which warrant the use of codes in identifying a terminal location may also apply here. For this reason, paragraph (a)(6), as proposed, would permit a financial institution to use a code on the initial documentation in identifying the third party. If this option is used, however, the portion of the periodic statement which describes the transfer must provide both the code and the third party's name in a readily understandable form.

The exception for non-machine-readable documents in paragraph (a)(6) is intended to apply particularly to bill-paying services that use an automated teller machine. It is the Board's understanding that such systems may call for the consumer to key in information regarding the amount, date, and type of transfer (all of which are immediately captured by the terminal) but to provide information on the identity of the third-party payees by means of a written or other non-machine-readable document. This document is collected from the terminal and translated into a computer-readable form by the institution at a later time. The Board is particularly interested in comments relating to the availability of these services, operational problems which may prevent immediate identification of the third party in such systems, and the extent to which the exception for non-machine-readable documents proposed in paragraph (A)(6) would alleviate these problems. The Board wishes to emphasize that, if adopted, this exception would not relieve the institution of responsibility for identifying the third party, in readily understandable language, on the periodic statement which reflects the transfer.

Section 205.8(b) requires financial institutions, subject to certain exceptions, to provide consumers with periodic statements which summarize the electronic fund transfer activity occurring in the consumer's account during the period covered by the statement.

Section 205.8(b)(1) sets forth the timing requirements for the delivery of periodic statements. Together with § 205.8(b)(2), it implements § 906(c) of the Act and requires financial institutions to provide a written statement to the consumer for each month in which there was activity in the consumer's account. If no activity has occurred, the statement must be provided on at least a quarterly basis.

Section 205.8(b)(2) specifies the information which must be provided on the periodic statement. It should be noted that the statement containing electronic fund transfer information may be combined with information regarding other types of activity in the account. For example, the statement (which may encompass more than one page) may include information regarding electronic fund transfers, checking account transactions, and credit transactions subject to the Truth in Lending Act.

Section 205.8(b)(2)(i) requires that the periodic statement include, as applicable, the six items of information described in § 205.8(a). Although the content of the periodic statement is defined, in part, in terms of the initial documentation under paragraph (a), it should be emphasized that the transfers to be reflected on the periodic statement are not limited to transfers subject to that paragraph. For example, preauthorized electronic fund transfers credited to the consumer's account must also be described on the periodic statement. In such cases, the information described in paragraph (a) need only be shown on the periodic statement "as applicable." Thus, no terminal location would be shown on the periodic statement regarding a preauthorized credit. However, the "type of transfer" required by § 205.8(a)(3) must be stated with enough specificity to inform the consumer that the transfer shown was a preauthorized credit. In a transfer subject to paragraph (a) of this section, if the financial institution used a code to identify the terminal location or a third party on the initial documentation, the periodic statement must include both the code used originally and the location or name to which it relates. In all cases, the information shown under this paragraph must be sufficient to enable the consumer to identify the transfer to which it relates.

The Board recognizes that disclosure of the date of the transfer, as required

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by this section, may present special difficulties. In certain cases, the date on which a consumer authorized or initiated a transfer of funds may not be the same date on which the funds were debited. This could occur, for example, in electronic bill payment systems in which the consumer instructs an automated teller machine to make a payment to a utility at a later date. Under § 205.8(a)(2), the date of the transfer would be the date of the consumer's instruction to the terminal. However, if this date is used on the periodic statement, the consumer may not know when the account was debited for the amount of the transfer. The Board solicits comment on whether this fact warrants the imposition of special requirements, such as disclosure of both the initiation date and the debiting date.

Section 205.8(b)(2)(ii) requires disclosure of the amount of any fees or charges related to electronic fund transfers. It specifically excludes any charges which constitute a finance charge pursuant to § 226.7(b) of Regulation Z (Truth in Lending), even though such fees or charges may also be related to an electronic fund transfer. Since finance charges will be reflected on the periodic statement required by Regulation Z or on the Truth in Lending portion of a combined periodic statement, it may be unnecessary and possibly confusing to disclose them twice. Under this paragraph, the financial institution must also disclose any charges which are imposed for "account maintenance." The Board notes that there is a discrepancy between this term and the term "right to make such transfers," which is used to describe one of the initial disclosures made under § 205.6. This variation reflects the statutory language.

Section 205.8(b)(2)(iv) requires disclosure of an address and telephone number to be used by the consumer for making inquiries or reporting errors regarding electronic fund transfers. This information must be labeled in some manner to indicate to the consumer that the address and number are to be used for these purposes. If the financial institution, utilizing the provisions of § 205.7(b)(2)(i), sends the error resolution notice containing the address and telephone number along with the periodic statement, the institution need not repeat that information elsewhere on the statement.

Section 205.8(b)(3) implements section 906(d) of the Act. If the consumer maintains a passbook account which cannot be accessed electronically except by preauthorized electronic credits, the financial institution need not provide a periodic statement for that account. Instead, whenever the consumer presents the passbook, the institution may at that time update the passbook or provide a separate written statement to the consumer setting forth the amount and date of each preauthorized credit occurring since the passbook was last presented.

Section 205.8(b)(4) implements section 906(e) of the Act and provides a limited exception to the timing requirements of § 205.8(b). Where a nonpassbook account cannot be accessed electronically except by preauthorized credits, the financial institution need only send the statement on a quarterly basis, although the statement must otherwise comply with the requirements of § 205.8(b).

Section 205.8(c) implements section 906(b) of the Act. The Act requires financial institutions, as a general rule, to inform consumers, by either a positive or a negative form of notice, whether a regularly scheduled preauthorized credit to the consumer's account has occurred. This section would apply only where the credit is from the same payor and is scheduled to take place at least every 60 days. Transfers such as direct deposits of payroll checks and Social Security payments would be subject to this provision. The Act and regulation provide an exception to the institution's responsibility to provide notice of the transfer, where the payor initiating the transfer provides positive notice to the consumer that the transfer has been initiated.

Section 906(b) gives the Board wide discretion in implementing this provision. As proposed by the Board, § 205.8(c) provides five methods of notifying consumers of preauthorized credits, any one of which may be chosen by the financial institution, subject to one exception discussed below. An institution utilizing paragraph (1)(i) would supply a notice whenever the transfer occurs as scheduled. If no transfer occurs, no notice need be given. If the institution elects to provide negative notice pursuant to paragraph (1)(ii), it would notify the consumer only in those instances in which a preauthorized credit is not made as expected. The two-business day period would permit the institution to wait a short time before sending the negative notice, to ascertain whether the payment has merely been delayed.

Paragraph (1)(iii) would permit the financial institution to utilize the periodic statement required by paragraph (b) as the notice, in those cases where the statement, reflecting the credit, is due to be mailed to the consumer within two business days after the credit is made.

Under paragraph (1)(iv), the financial institution may provide a telephone number which the consumer may call in order to find out whether the transfer took place. If the institution choose this option, it must inform the consumer, on either the initial disclosures or the periodic statement, that this service is available.

A financial institution which chooses to utilize paragraph (1)(v) would be required to notify a consumer only in those cases in which the institution's nonreceipt of a preauthorized credit results in an overdraft of the consumer's account or triggers an extension of credit to prevent an overdraft, provided that the institution pays any items presented for payment and imposes no overdraft or other charges.

Paragraph (2) would require financial institutions that accept preauthorized transfers of the type subject to this subsection to credit the amount of the transfers and make the funds available to consumers as of the date of receipt. While this requirement is not specifically mandated by the Act itself, the Board believes that such a provision may be considered a logical extension of the Act's requirements and that it could assist in carrying out the legislative purpose of section 906(b). The proposal would require institutions to credit direct deposits as of the opening of business on the transfer date; those institutions that receive direct deposits after the opening of business on the transfer date would be required to credit the transfer by the opening of business on the next business day. The Board specifically requests comment on this requirement.

Section 205.9—Preauthorized Transfers from a Consumer's Account. This section implements section 907 of the Act. Section 205.9(a) states the general rule that preauthorized transfers from an account must be authorized by the consumer in writing, and a copy of the authorization must be given to the consumer. Section 205.9(b) provides for the consumer's stopping payment of a preauthorized transfer by giving notice up to three business days before the transfer is scheduled to occur. Notice may be either oral or written. If it is given orally the financial institution may require written confirmation within fourteen days if the consumer, when giving notice, is advised of that requirement and of the address to which confirmation should be sent.

Section 205.9(c) requires the financial institution or designated payee of a preauthorized transfer to notify the

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consumer when that transfer varies from the preauthorized amount. The notice must be in writing, contain the date and amount of the varying transfer, and must be mailed or delivered no later than 10 days before the scheduled transfer date. This pre-transfer notification is intended to give the consumer enough time to insure that there are sufficient funds in the account to cover the transfer, and to enable the consumer to stop payment of the transfer should circumstances warrant. Comment is solicited on the form that authorizations of varying transfers may take. For example, are such authorizations generally open-ended as to amount, or do they customarily require consumers to initially specify an amount as part of the authorization?

Section 205.9(c) would also provide that under certain circumstances a consumer may waiver the right to notice of preauthorized transfers that vary in amount. It permits consumers to establish an acceptable amount of variance, or a particular range of amounts. For transfers varying within these tolerances consumers can elect to forego notice so long as the election is made in writing and with the knowledge that the consumer is otherwise entitled to receive notice of all varying transfers. The proposal would be consistent with the rules of the National Automated Clearing House Association, which permit consumers and payors to agree to vary the NACHA advance notice requirement.

This proposal stems from concern about the cost of requiring notice of varying transfers in all cases, and about the effect that cost may have in discouraging a preauthorized debit service. The Board solicits comment about the desirability of providing consumers with this option.

Section 205.10—Error Resolution Procedure. Section 205.10(a) implements, in part, section 908(a) of the Act. Since sections 908(a) (1)–(3) describes *procedures* that the consumer must follow to trigger a financial institution's error resolution responsibilities, the Board proposes that the regulatory language implementing sections 908(a) (1)–(3) be included in § 205.10, rather than in the definitional section. In so structuring the regulation, the Board has placed the requirements imposed on both the consumer and the financial institution with regard to error resolution in one section of the regulation.

The language and structure of sections 205.10(a) (1) and (2) differ in several respects from that of sections 908(a) (1)–(3). While section 908(a)(1) requires that the financial institution be able to identify the name and account number of the consumer, § 205.10(a)(1)(i) would only require identification of the consumer's account number. The Board invites comment on whether identification of the consumer's name is in fact necessary and, if so, examples of instances in which such information would prove necessary. The Board also invites the opinions of commenters as to whether other common identifying means, other than account number, are in use.

Since the requirements of sections 908(a) (2) and (3) are closely related, they have been combined in § 205.10(a)(1)(ii). This section proposes to clarify what information is expected to be provided by the consumer in alleging an error, so as to minimize the possibility that a consumer could be denied the protections of § 205.10 simply by not understanding the error or knowing its amount. Consequently, the proposed regulation states that the reasons for the consumer's belief that an error has occurred and a description of the type and amount of the suspected error need only be provided to the extent possible. While the regulation contemplates that the consumer articulate at least a general assertion or description of the suspected error, a financial institution would not be relieved of error resolution responsibilities where a consumer is unable to describe the error or articulate the amount of or the reasons for the error.

The language of § 205.10(a)(1)(ii) contemplates that the error resolution procedures can be triggered by a notification of an error in a consumer's account even where the error is discovered by the consumer prior to its appearing on a periodic statement. This interpretation is supported by the definition of "error" in § 205.2(1) in that errors are not limited to information appearing on documentation.

It should be noted that the proposed regulation would permit a consumer to assert an error reflected on any documentation required by the regulation, including notices provided under § 205.9 for preauthorized debits. This interpretation would differ from the statutory provision that refers only to errors appearing on documentation required by § 906.

In order to simplify the calculation of the 60–day time period within which the consumer must notify the financial institution about a possible error, § 205.10(a)(2) provides that the consumer will have 60 days from the periodic statement that first reflects the suspected error to allege the error, rather than, as the statute provides, 60 days from documentation or notice provided pursuant to § 906. By including the word "first" in this provision, the Board intends to define precisely the time within which a consumer must allege a possible error.

Section 205.10(b)(1) implements the general rule in § 908(a) requiring the financial institution to investigate the alleged error, determine whether an error occurred, and report or mail the results of the investigation and determination to the consumer within 10 business days of receiving a notification of an error. The regulatory language is identical to that of the statute. However, the Board proposes to add language in the introduction to § 205.10(b) relieving a financial institution of its duty to comply with the error resolution procedures should the consumer agree, after having notified the financial institution of a suspected error, that no error in fact occurred.

Section 205.10(b)(2) implements section 908(c) of the Act which permits a creditor to take up to 45 days to resolve an alleged error, provided the financial institution provisionally recredits a consumer's account for the amount of the alleged error pending its resolution. Since section 908(c) of the Act requires that the consumer have full use of recredited funds, the Board proposes, in § 205.10(b)(2)(iii), to require a notification of the recrediting to insure that the consumer know of the availablility of the funds and that the funds will not be debited without further notice to the consumer.

A portion of the final paragraph of § 205.10(b)(2) implements language in Section 908(a) waiving the provisional recrediting requirement when a financial institution requires but does not timely receive written confirmation of an error. The Board proposes to add language to the final paragraph indicating that a financial institution is not relieved of its duty to comply with the error resolution procedures if written confirmation is not timely received. The proposal would also permit a financial institution to use the 45-day time limit in those instances in which written confirmation was required but not timely received. The Board is particularly interested in soliciting comments regarding these two interpretations of the Act. The Board also requests comment on whether a financial institution should have less than 45 days to resolve the alleged error in those cases in which written confirmation was required but not timely received.

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In addition, the Board intends that the reference in § 205.10(b)(2)(i) to § 205.5(b), which states that any recrediting is subject to the liability limitations set forth in that paragraph, would permit financial institutions, when recrediting amounts allegedly resulting from unauthorized transfers, to withhold a maximum of $50 of the amount to be recredited pending the resolution of the investigation. This same interpretation would apply in correcting a consumer's account under § 205.10(c)(1)(i).

The Board is particularly interested in receiving comments on the investigation procedures that financial institutions anticipate conducting for alleged errors concerning preauthorized transfers and the documentation required for such transfers. The Board wishes to solicit comment on an interpretation that would require a financial institution's in-house investigation, in such cases, to be completed within 10 days. The financial institution, however, would be required to investigate the alleged error with the third-party payor where necessary to resolve the possible error, but the interpretation would give the financial institution more time to investigate without having to provisionally recredit the consumer's account.

Section 205.10(c) deals with correcting a consumer's account and providing a consumer with a notice of its findings after completion of its investigation and determination of whether an error has occurred. This section implements language in Sections 908 (a), (b), and (d) of the Act.

The Board proposes to add language in § 205.10(c)(1)(i) that would require the financial institution, in correcting a consumer's account, to refund any fees or charges imposed as a result of the error.

Section 205.10(c)(1)(ii) implements the general rule of Section 908(a) that the financial institution report or mail the results of the investigation and determination to the consumer within 10 business days. Where the financial institution agrees with the consumer, the Board proposes to require no more than a notice of the correction in the account, or if applicable, notice that a provisional recredit has been made final.

Section 205.10(c)(2) details the financial institution's responsibilities where it determines that no error occurred or that an error occurred in a manner differing from that described by the consumer. The regulatory language of § 205.10(c)(2)(i) regarding the financial institution's providing the consumer with an explanation of its findings is almost identical to the statute. However, the Board would interpret the language "deliver or mail" as requiring a *written* explanation.

The Board proposes to require in § 205.10(c)(2)(ii) that the financial institution notify the consumer prior to debiting a provisionally recredited amount in order to insure that consumers know they can use provisionally recredited funds.

Section 205.10(c)(2)(iii) deals with information that must be provided to the consumer in those instances where the financial institution does not agree with the consumer. The Board requests commenters to describe the types of documents or other data that may be used and relied upon in investigating and reaching conclusions about alleged errors.

The proposed language of § 205.10(d) explains the relationship between the error resolution provisions of the Truth in Lending and the Electronic Fund Transfer Acts where electronic fund transfers also involve credit extentions made under an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account. For example, an error may occur when a consumer uses an ATM to withdraw cash from an account and accessess an overdraft. An error in that transfer would be subject to the error resolution procedures of the EFT Act. An error in a cash advance loan obtained at an ATM or a credit purchase made at a merchant POS terminal with a combined EFT-credit card would be subject to the error resolution procedures of the TIL Act because, although the transaction is initiated electronically, no electronic fund transfer from a consumer's account has occurred.

The Board proposes and solicits comments on the addition of § 205.10(d) to provide that the Act and its corresponding regulatory provisions govern where an overdraft occurs in conjunction with an electronic fund transfer. This proposal would not only afford greater protection to the consumer, but would also simplify procedures for financial institutions where an electronic fund transfer results in both a debit to a consumer's account and a credit extension.

Section 205.11—Relation to State Law. Section 205.11(a) implements §§ 919 and 920 of the Act. Paragraph (a) states the general rule that State laws inconsistent with the Act and regulation are preempted, and explains that laws more protective of the consumer or identical to Federal law are not considered to be inconsistent.

Section 205.11(b) specifies some differences between State and Federal law that are deemed inconsistencies, states the right of appropriate parties to ask for Board review of State laws, and provides minimal requirements for requests for review. Examples of State laws that are deemed to be inconsistent include those that provide for greater consumer liability for unauthorized transfers, longer periods of time or different provisions for investigating errors alleged by consumers, or disclosure, documentation, or notification different in form from that required by the Act and regulation, except where the disclosure or information relates to substantive rights granted by State, but not Federal law. The Board requests comment on whether these and other areas of potential inconsistency should be specifically addressed in the regulation.

Section 205.11(c) states the general rule on exemption of classes of electronic fund transfers from the substantive requirements of the Act and regulation. Any State may apply for an exemption; it must show that a class of electronic fund transfers is subject to requirements that are substantially similar to those of Federal law, and that there is adequate provision for enforcement of the State law. As is the case in Regulations B and Z, concurrent jurisdiction of Federal and State courts over civil actions is specifically preserved when a class of transfers is exempted from the substantive provisions of Federal law. Once an exemption has been granted, however, the criminal penalty provisions contained in section 916(a) of the Act would not apply to violations of the State law. The Board solicits comment on its construction of the inapplicability of Federal criminal sanctions to State law violations.

Section 205.12—Administrative Enforcement. This section implements sections 915(d) and 917 of the Act. Section 205.12(a) lists the Federal agencies that are charged with responsibility for enforcing the Act and regulation. Section 205.12(b) prescribes procedures and criteria for issuance of staff interpretations.

Section 205.12(c) sets forth a general requirement that records evidencing compliance with the Act and regulation must be kept by all persons subject to the Act and regulation for a period of two years. In addition, if those persons are aware that they are the subject of an administrative, civil, or criminal enforcement action or investigation,

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they must retain required records during the pendency of the action or investigation unless otherwise permitted by the appropriate agency or court. These record retention requirements are similar to those contained in Regulations B and Z, and the Board solicits comment as to any justification for varying them with respect to this regulation.

Section 205.13—General Disclosure Requirements. This section states some general rules that would apply in connection with many of the specific requirements of other sections of the regulation. Section 205.13(a) permits financial institutions to agree among themselves as to which one will carry out the duties imposed by the Act and regulation. This provision is now contained in § 205.2(i) of existing Regulation E.

Section 205.13(b)(1) would allow combined disclosures to be given to any consumer holding two or more accounts at a financial institution. For example, a single periodic statement could be used to cover all accounts. Section 205.13(b)(2) would permit financial institutions to give one copy of the disclosures required by the regulation to joint account holders.

Section 205.13(c) would parallel § 226.6(c) of Regulation Z. Financial institutions would be permitted to give additional information or other required disclosures, such as those required by Regulation Z, along with the Regulation E disclosures.

The Board solicits comment on the usefulness of these proposed general rules, as well as on whether other general provisions should be added to this section.

(4) *Model Disclosure Clauses.* Appendix A to the portions of Regulation E that took effect on March 30, 1979, contains seven model disclosure clauses. Those clauses may be used, at the option of financial institutions, to satisfy the requirements of §§ 205.4(b)(2), (b)(3), and (d)(1) through (d)(6) of Regulation E. In addition, use of sections A(2), A(3), and A(4) will fully comply with § 205.4(a)(3).

On May 10, 1980, the requirements of the Act concerning disclosures to be made upon the opening of an EFT account will become effective. The model clauses already adopted in final form are suitable for making some of the required initial disclosures. Sections A(2) through A(7), respectively, may be used at an institution's option to comply with proposed §§ 205.6(a)(1) through (5) and 205.6(a)(9).

There remain certain initial disclosure requirements for which no model clauses have previously been issued. Therefore, the Board proposes to add to Appendix A three new model disclosure clauses. Proposed § A(8) may be used to satisfy § 205.6(a)(6); proposed § A(9), to satisfy § 205.6(a)(7), part of § 205.6(a)(8), and § 205.9(c); and proposed § A(10), to satisfy the remainder of § 205.6(a)(8).

Use of clauses that apropriately reflect an institution's EFT program, in conjunction with other requirements of the regulation, will protect the institution from civil and criminal liability under §§ 915 and 916 of the Act. Again, however, the Board emphasizes that use of these clauses is optional.

Financial institutions may choose appropriate clauses from the alternatives available, may make changes such as deleting inapplicable words, phrases, and clauses, and inserting trade names. They may also change the order in which the model clauses appear, and may use some of the model clauses, while drafting others themselves.

The Board solicits comment on whether these clauses are readily understandable to consumers and whether other clauses are needed.

(5) *Economic Impact Analysis. Introduction.* Section 904(a)(2) of the Act requires the Board to prepare an analysis of the economic impact of the regulation that the Board issues to implement the Act. The following economic analysis accompanies proposed §§ 205.6 through 205.13 and proposed amendments to certain parts of §§ 205.1 through 205.5 of the regulation.[1]

The analysis must consider the costs and benefits of the regulation to suppliers and users of EFT services, the effects of the regulation on competition in the provision of electronic fund transfer services among large and small financial institutions, and the effects of the regulation on the availability of EFT services to different classes of consumers, particularly low-income consumers.

The regulation in part reiterates provisions of the statute and in part amplifies the statute. Therefore, the economic analysis considers impacts of both the regulation and the statute, and throughout the analysis a distinction will be made between costs and benefits of the regulation and those of the statute. *It is also important to note that the following analysis assumes that the regulation and the Act have no relevant economic impact if they are less restrictive than current industry practices or State law. In this case, the regulation will not affect costs, benefits, competition, or availability and will not inhibit the market mechanism. The following analysis of the regulation and the Act is relevant only if their provisions are more constraining than those provisions under which institutions would otherwise operate.*

Impact of the Act and regulation on costs and benefits to institutions, consumers and other users. The Act requires that consumers using electronic fund transfer (EFT) services receive disclosures of the terms and conditions of those services. Section 205.6 of the regulation changes the Act's provision requiring initial disclosures at the time the consumer contracts for EFT services, so that the financial institution must make the disclosures to the consumer before the first electronic transfer is made (or by June 9, 1980, in the case of accounts in existence on May 10, 1980). This regulatory provision eliminates none of the Act's protection and obviates the need to make a determination under State law when a contract for such services is created.

The initial disclosures will benefit consumers by providing them with more information than otherwise may have been readily available. With the disclosures consumers will be better able to assess the risks and benefits associated with EFT, to plan their financial transactions, and to compare EFT services offered by different institutions. By fostering greater awareness of the risks of liability associated with EFT use, the disclosures may encourage consumers to exercise greater care in the use of access devices. The required listing of offered services may have some marketing effect, leading to greater use of EFT services and, to the extent that scale economies are possible, to lower average cost of fund transfers. Finally, the disclosures benefit consumers by describing the steps they must take to guarantee the investigation and resolution of errors; proper use of the error resolution procedure will lead to greater recovery of consumer losses resulting from errors.

Financial institutions will benefit from their mandatory disclosures to the extent that consumer understanding of the terms and conditions leads to more widespread, careful use of EFT services. Consumers will know the correct channels through which to notify an institution of loss, theft, or suspected error. The Act and regulation do not preclude financial institutions from realizing cost savings by routinizing notification procedures and by

[1] Sections 205.1 through 205.5 of the regulation took effect on March 30, 1979. The analysis presented here is to be read in conjuction with the economic impact analysis that accompanies those sections at 44 FR 18474, March 28, 1979.

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establishing shared or centralized reporting channels.

Financial institutions will incur drafting, legal advice, printing, distribution, and administrative costs in complying with the disclosure requirements of the Act. The regulation sets forth a mandatory disclosure statement regarding error resolution procedures, and the Board provides model disclosure clauses, but disclosure statements must be drafted by the institution to reflect its unique terms and conditions. The 1980 disclosure deadlines themselves will probably allow adequate time for all institutions to be able to include disclosure statements for existing accounts in regularly scheduled periodic statements. The deadlines are not likely to impose significant additional cost burdens on institutions by necessitating rushed compliance efforts or special mailings. The Board solicits estimates of the cost of sending the required disclosures.

Section 205.7 of the regulation reiterates the Act's requirements that financial institutions make subsequent disclosures of the error resolution procedures and prompt disclosure of any changes in their terms and conditions that increase consumer costs or restrict available services. The regulation permits financial institutions to choose either to send the full error resolution procedure disclosure, as given in § 205.6(a)(10), every year; or to send the abridged disclosure, as given in § 205.7(b)(2)(i), with every periodic statement, and to send the full disclosure within 10 business days of receiving an error notification from the consumer. These disclosures, which may be timed for distribution with periodic statements to avoid extra distribution costs, will benefit consumers by making useful information promptly available. At the same time, the requirements for subsequent disclosures will impose additional cost burdens on institutions. The Board solicits estimates of the costs of making these subsequent disclosures.

Section 205.8 of the regulation restates the Act's provisions for documentation of transfers. By requiring that written documentation be made available to the consumer for every transfer at every terminal, the Act forces every terminal to have a printing device; this provision may impose costs on society by restricting innovation in, or availability of, financial services. On the other hand, consumers and financial institutions can benefit from the record-keeping and error-detection opportunities inherent in such documentation. These benefits could outweigh the at-terminal documentation costs and encourage more widespread acceptance of EFT as a payments mechanism. The Board solicits information on the number of terminals that cannot provide the proposed documentation and the costs of modification or replacement of such terminals.

The Act, in requiring that a notification system be established for all recurring preauthorized credits to a consumer's account, allows three alternative methods of notification. The regulation allows six methods of notification, thereby expanding the range of choice for financial institutions and consumers and adding certain lower-cost alternative methods, such as a consumer-initiated telephone inquiry service. The notice alternatives that allow the institution to contact the consumer either after scheduled transfers have occurred or if scheduled transfers fail to occur would require that the institution know and monitor individual payment schedules. The costs of the monitoring and communication required by the alternative methods will offset some of the savings in transfer costs and document handling afforded by EFT. Telephone notification may be a less-costly means than written notification for some payors or institutions. The Board solicits estimates of the relative costs of telephone and written notifications and of the costs per typical account for each of these alternatives.

The Act requires that a periodic statement be delivered to the consumer not later than one month after any EFT, and at least quarterly if no EFT has occurred. This requirement may impose substantial cost burdens on those financial institutions that otherwise would issue periodic statements less frequently than monthly. The Act further requires that periodic statements, or documents accompanying them, present all the information required for atterminal documentation. Longer statements and costly changes in statement generation procedures may result. Estimates of additional costs imposed by these provisions are solicited by the Board.

Certain preauthorized transfers involving the consumer and his or her financial institutions would be exempted from the regulation by § 205.3(d), except that transfers from a consumer's account to the financial institution at which the account is held must be fully documented in the periodic statement according to § 205.8(b). This regulatory provision would ensure that the consumer would obtain adequate documentation of intrainstitutional transfers. In exempting such transfers, the regulation also allows financial institutions to pass on to the consumer the cost savings from automation of transfers. For example, institutions, in anticipation of cost savings, may offer lower mortgage interest rates or longer mortgage payment grace periods to consumers who choose automatic transfer of mortage payments.

The Act imposes certain notice requirements, as set forth in § 205.9 of the regulation, for all preauthorized transfers from a consumer's account. A written authorization must be provided to the financial institution only once to assure continuing automatic transfer service, and the consumer may specify that the transfers can be in variable amounts within set limits, so that payment services for variable-amount bills are not ruled out and benefits associated with these EFT services are not precluded.

Section 205.10 of the regulation reiterates the Act's error resolution provisions, adding specific deadlines and clarifying the definition of error for purposes of resolution. Prompt resolution of errors, as encouraged by the Act and regulation, benefits both consumers and institutions by reducing delays and errors in payments, thereby increasing efficiency in the payments mechanism. However, a consumer may lose rights to error resolution, including the provisional recrediting of disputed funds, by failing to comply with any of the Act's several error resolution procedure requirements. The provisional recrediting clause benefits consumers by protecting them from lengthy periods of illiquidity with respect to disputed amounts, while at the same time encouraging institutions through cost incentives to resolve error claims within 10 days. If an institution elects to take more than 10 days to investigate and resolve an alleged error, the institution may be required to generate as many as four different notices to a consumer, although the notices need not be written. Current industry practices regarding the reversibility of transfers that pass through automated clearing houses may provide more favorable error resolution opportunities to the consumer than the Act and regulation provide. The Board invites comments on the adequacy and cost of current industry error resolution practices and solicits estimates of the costs of the proposed error resolution procedure.

In addition, the instituition is required to furnish to the consumer, at his or her request, the information upon which its decision was based. Documents that are stored electronically or that contain confidential information on other

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persons may be costly to duplicate. Consolidating the information into a report to the consumer may be costly for the institution. Another potential problem is that an allegation of an error, which triggers a costly investigation process, is almost a free good for consumers even though investigation costs may eventually be reflected in charges for EFT services or in other ways. The Board solicits estimates of error resolution procedure costs and of the costs of supplying to the consumer, in document copies or in a report, the information used to investigate an alleged error.

Sections 205.11 and 205.12 of the regulation determine under what circumstances the provisions of other sections are binding and which agencies shall enforce them. They impose no costs or benefits directly, except in the § 205.12(c) requirement that evidence of compliance be preserved for at least two years by any person subject to the Act and regulation. This requirement, which is not an explicit provision of the statute, may impose document storage and handling costs on financial institutions or their agents to the extent that these records would not otherwise be retained in the normal course of business.

Finally, § 205.13 modifies that Act's requirements so that financial institutions jointly providing EFT services may contract among themselves to comply with the Act. The regulation also specifies that an institution need send no more than one set of disclosures per customer or per joint account. These provisions encourage cost savings by institutions as they comply with the disclosure requirements of the Act.

Effects of the Act and regulation upon competition among large and small financial institutions in the provision of electronic transfer services. The proposed regulatory provisions probably will have less effect than the existing issuance and liability provisions on the ability of small financial institutions to compete with larger institutions.[2] Small institutions must spread fixed costs for the preparation and distribution of required disclosures over a smaller account and card base. Documentation printing requirements, if they make it necessary to modify existing terminals or statement generation procedures, could disadvantage small institutions, partly because they would be less able to get quantity discounts from vendors and partly because fixed costs would have to be spread over smaller bases. If smaller institutions tend to issue periodic statements less frequently, then a disproportionate cost burden may be placed on them by the Act's requirement that a periodic statement must be issued no later than one month after an EFT. Sharing arrangements might overcome these disadvantages. A recent survey of EFT services at depository institutions disclosed that small institutions may use correspondent bank or interstate interchange systems, and that 15 percent of all United States commercial banks offering non-shared EFT programs in 1978 had deposits of less than $50 million.[3]

Larger financial institutions might enjoy scale and specialization economies in error resolution, particularly if they were able to devote some staff members exclusively to it. Toll-free or 24-hour reporting services would be more costly relative to transaction volume for smaller institutions. On the other hand, if the disclosure, documentation, and error resolution provisions lead to greater consumer acceptance of EFT, small institutions can more easily build up an adequate card base for a given customer population.

The Board solicits comments on these or other size effects and on whether or not the regulation should have exceptions or special provisions for small financial institutions.

Effects of the Act and regulation on availability of electronic transfer services to different classes of consumers, especially low-income. The availability of EFT services to low-income consumers depends mainly on the already-adopted issuance and liability provisions of the regulations.[4] The provisions currently proposed would also affect availability to the extent that consumers receiving disclosures or other information about EFT services would not have known about or used them otherwise. The disclosures required by §§ 205.6 and 205.7 serve to convey information on the terms and conditions associated with other sections of the regulation. Because low-income consumers hold relatively fewer accounts at financial institutions than consumers with higher incomes, low-income consumers as a group will receive relatively less information through the disclosure statements about the availability and conditions of EFT services.[5] On the other hand, all consumers will benefit from more disclosure of information in that they will be better able to shop for financial services.

For low-income consumers who use EFT services, provisions of the Act and proposed regulation could provide the following benefits. First, by summarizing time and place information about financial transactions, the mandatory periodic statements could help all consumers organize, plan, and control their financial activities better. Second, because a transaction of a given size would likely represent a relatively larger share of his or her liquid assets, a lower-income consumer would benefit relatively more from the provisional recrediting of disputed amounts, as required by the error resolution procedures of § 205.10. Third, preauthorized transfers, especially bill payments, will benefit low-income consumers by eliminating postage costs, promoting promptness and regularity of payment and thereby serving to improve credit ratings, providing a safer means of payment, consolidating records of payments, and possibly encouraging saving. Finally, under the Act and § 205.11 of the regulation, State law provisions that are more protective of low-income consumers will not be preempted.

The Act and regulation, in requiring disclosures, documentation, and error resolution procedures that otherwise would not be offered, increase direct costs to financial institutions of providing EFT services. If institutions adopt cost-based user-charge pricing schemes, then low—income consumers may be priced out of the market. The Board invites comment on these and other aspects of the Act and regulation's probable impact on low-income consumers.

(6) Pursuant to the authority granted in Pub. L. 95–630 (to be codified in 15 U.S.C. 1693b), the Board proposes to amend Regulation E, 12 CFR Part 205, as follows:

1. Section 205.2 would be amended by deleting the last sentence of paragraph (i), by revised paragraph (k)(3), and by adding new paragraphs *(l) and (m), to read as follows:*

§ 205.2 Definitions.

* * * * *

(k) * * * (3) that constitutes an error, except as defined in § 205.2(1)(1).

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[2] See the economic impact analysis accompanying §§ 205.1 through 205.5 at 44 FR 18474, March 28, 1979.

[3] RoseMary Butkovik, *Consumer Use of Electronic Payments in the United States*, Brookfield, Illinois: November 1978, as quoted in *American Banker*, April 5, 1979, p. 2.

[4] These provisions became effective March 30, 1979, as 12 CFR §§205.4 and 205.5.

[5] For evidence of the distribution of consumer accounts by income class, see Thomas A. Durkin and Gregory E. Elliehausen *1977 Consumer Credit Survey* (Washington, D.C.: Board of Governors of the Federal Reserve System, 1977), tables 21–7, 21–8, and 21–9.

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(l) "Error" means

(1) An unauthorized electronic fund transfer;

(2) An incorrect electronic fund transfer from or to the consumer's account;

(3) The omission from a periodic statement of an electronic fund transfer affecting the consumer's account that should have been included;

(4) A computational error or similar error of an accounting nature made by the financial institution;

(5) The consumer's receipt of an incorrect amount of money from an electronic terminal;

(6) A consumer's request for additional information or clarification concerning an electronic fund transfer or any documentation required by this regulation;

(7) Any failure to provide a consumer with documentation required by this regulation; or

(8) Any transfer that was misidentified, insufficiently identified, or was not in the amount indicated or on the date specified on or with any documentation required by this regulation.

(m) "Preauthorized electronic fund transfer" means an electronic fund transfer authorized in advance to recur at substantially regular intervals.

2. Section 205.3 would be amended, by revising paragraphs (c) and (d) to read as follows:

§ 205.3 Exemptions.

* * * * *

(c) *Certain securities or commodities transfers.* Any transfer the primary purpose of which is the purchase or sale of securities or commodities regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission.

(d) *Automatic transfers.* Any transfer under an agreement between a consumer and a financial institution which provides that the financial institution will initiate individual transfers without a request from the consumer

(1) Between a consumer's accounts within a financial institution;

(2) Into a consumer's accounts by a financial institution; or

(3) From a consumer's accounts to the financial institution (except that the financial institution must comply with the requirements of § 205.8(b)).

* * * * *

3. Section 205.5 would be amended by revising paragraph (b) to read as follows:

§ 205.5 Liability of consumer for unauthorized transfers.

* * * * *

(b) *Limitations on amount of liability.* The amount of a consumer's liability for an unauthorized transfer or a series of related transfers shall not exceed $50 or the amount of unauthorized transfers that occur before notice to the financial institution under paragraph (c) of this section, unless one or both of the following exceptions apply:

* * * * *

4. Sections 205.6 through 205.13 would be added, to read as follows:

§ 205.6 Initial disclosure of terms and conditions.

(a) *Content of disclosures.* At the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving a consumer's account, a financial institution shall disclose to the consumer, in a readily understandable written statement that the consumer may retain, the following terms and conditions of the electronic fund transfer service, as applicable:

(1) The consumer's liability for unauthorized electronic fund transfers and, at the financial institution's option, the advisability of promptly reporting loss or theft of the access device or unauthorized transfers.

(2) The telephone number and address of the person or office to be notified when the consumer believes that an unauthorized electronic fund transfer has been or may be made.

(3) The financial institution's business days, as determined under § 205.2(d).

(4) The type of electronic fund transfers that the consumer may make and any limitations on the frequency and dollar amount of transfers. The details of the limitations need not be disclosed if their confidentiality is necessary to maintain the security of the electronic fund transfer system.

(5) Any charges for electronic fund transfers or for the right to make transfers.

(6) The consumer's right to receive documentation of electronic fund transfers, as provided in § 205.8.

(7) The consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure for initiating a stop-payment order, as provided in § 205.9.

(8) The financial institution's liability to the consumer for its failure to make or to stop certain transfers under § 910 of the Act.

(9) The conditions under which a financial institution in the ordinary course of business will disclose information to third parties concerning the consumer's account.

(10) A notice that is substantially similar to the following notice concerning error resolution procedures and the consumer's rights under them:

In Case of Errors or Questions About Your Electronic Transfers

Telephone us at [insert telephone number] or Write us at [insert address] as soon as you can if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. You must tell us no later than 60 days after the statement was sent to you.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain (if you can) why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will tell you the results of our investigation within 10 business days and will correct any error promptly. However, we may instead take 45 days to investigate your complaint or question. If we decide to do this, we will recredit your account within 10 business days for the amount you think is in error, so that you will have the use of the money. 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.

If we decide that there was no error, we will send you a written explanation within 3 business days after we finish our investigation. You may ask for copies of the documents that we used in our investigation.

(b) *Timing of disclosures for accounts in existence on May 10, 1980.* For any account from or to which electronic fund transfers could be made before May 10, 1980, a financial institution shall mail or deliver the information required by paragraph (a) of this section by June 9, 1980, or with the first periodic statement required by § 205.8(b) after May 10, 1980, whichever is earlier.

§ 205.7 Subsequent disclosures.

(a) *Change in terms.* (1) A financial institution shall mail or deliver a written notice to the consumer at least 21 days before the effective date of any change in a term or condition required to be disclosed under § 205.6(a) if the change would result in increased fees or charges, increased liability for the consumer, fewer types of available electronic fund transfers, or stricter limitations on the frequency or dollar amounts of transfers.

(2) A financial institution may change the terms and conditions disclosed under § 205.6(a) without prior notice if

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an immediate change is necessary to maintain or restore the security of an electronic fund transfer system or an account. If the change is to be made permanent and disclosure will not jeopardize the security of the system or account, the financial institution shall provide written notice of the change to the consumer within 30 days after the change has been made permanent.

(b) *Annual error resolution procedure notice.* (1) For each account from or to which electronic fund transfers can be made, a financial institution shall mail or deliver to the consumer, at least once each calendar year, the notice set forth in § 205.6(a)(10).

(2)(i) As an alternative to the requirement of paragraph (b)(1) of this section, a financial institution may mail or deliver a notice that is substantially similar to the following notice on or with each periodic statement required by § 205.8(b):

In Case of Errors or Questions About Your Electronic Transfers

Telephone us at [insert telephone number] or write us at [insert address] as soon as you can if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. You must tell us no later than 60 days after the statement was sent to you.

(1) Tell us you name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain (if you can) why you believe there is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. We will also send you a complete explanation of your rights and obligations.

(ii) A financial institution that uses the alternative notice set forth in paragraph (b)(2)(i) of this section shall mail or deliver the notice set forth in § 205.6(a)(10) within 10 days of receiving an error notification.

§ 205.8 Documentation of transfers.

(a) *Transfers initiated by consumers at electronic terminals.* At the time an electronic fund transfer is initiated at an electronic terminal by a consumer, the financial institution shall, directly or indirectly,[1] make available to the consumer written documentation of the transfer that the consumer may retain and that clearly sets forth the following information, as applicable:

(1) The amount of the transfer.

(2) The date the transfer was initiated.

(3) The type of transfer, such as a purchase, payment, deposit or withdrawal. A code may be used if it is explained elsewhere on the documentation.

(4) The identification of the consumer's account(s) from or to which funds are transferred.

(5) The location of the terminal at which the transfer was initiated. A code may be used if it is explained on that portion of the periodic statement on which the transfer is reflected.

(6) The identification of any third party from or to whom funds are transferred, unless the information is provided by the consumer in a form that the electronic terminal cannot duplicate on the documentation. A code may be used if it is explained on that portion of the periodic statement on which the transfer is reflected.

(b) *Periodic statements.* (1) For each account that may be accessed by an electronic fund transfer, the financial institution shall mail or deliver a statement that the consumer may retain for each monthly cycle in which an electronic fund transfer has occurred, but at least quarterly if no transfer has occurred.

(2) The statement shall include the following, as applicable:

(i) For each electronic fund transfer occurring during the cycle, the information described in paragraphs (a)(1) through (6) of this section. This information may be provided on an accompanying document. If a code was used on the documentation required by paragraph (a) of this section to identify the terminal under paragraph (a)(5) or any third party under paragraph (a)(6), the code must be explained in readily understandable language on that portion of the periodic statement which reflects the transfer.

(ii) The amount of any fee or charge, other than a finance charge under 12 CFR 226.7(b)(1)(iv), assessed against the account for electronic fund transfers or for the right to make such transfers during the statement period.

(iii) The balances in the consumer's account at the beginning and the close of the statement period.

(iv) The address and telephone number to be used for inquiries or errors on the statement or other documentation preceded by "Direct Inquiries To:" or similar language. The address and telephone number may be provided on the notice of error resolution procedures set forth in § 205.7(b)(2)(i).

(3) If a consumer's passbook account may not be accessed by any electronic fund transfers other than preauthorized transfers crediting the account, the financial institution may satisfy the requirements of paragraph (b) of this section, upon presentation of the consumer's passbook, by entering in the passbok or providing on a separate document the amount and date of each electronic fund transfer since the passbook was last presented.

(4) If a consumer's account, other than a passbook account, may not be accessed by any electronic fund transfers other than preauthorized transfers crediting the account, the financial institution need only provide the periodic statement quarterly.

(c) *Preauthorized transfers to a consumer's account.* (1) Where a consumer's account is scheduled to be credited by a preauthorized electronic fund transfer from the same payor at least once every 60 days, except where the payor provides positive notice of the transfer, the financial institution shall notify the consumer as to whether the transfer occurred, by one of the following means:

(i) By providing oral or written notice to the consumer, within 2 business days after the transfer, that the transfer occurred.

(ii) By providing oral or written notice to the consumer, within 2 business days after the date on which the transfer was scheduled to occur, that the transfer did not occur.

(iii) By mailing or delivering a periodic statement that reflects the transfer and that is mailed or delivered to the consumer within 2 business days after the transfer occurred or was scheduled to occur.

(iv) By providing a telephone number that the consumer may call to ascertain whether a transfer occurred, if the financial institution has previously advised the consumer of this procedure and of the number to be used, on the initial disclosures required by § 205.6 or on the periodic statement required by paragraph (b) of this section.

(v) By providing oral or written notice to the consumer that the consumer's account is overdrawn, or that a line of credit has been accessed or an automatic transfer from a savings account to a checking account has occured to cover an overdraft, because a scheduled transfer did not occur, provided that the institution pays any items presented and imposes no overdraft or other charges.

(2) A financial institution that receives a preauthorized transfer of the type described in paragraph (c)(1) of this section shall credit the amount of the transfer and make the amount available for withdrawal or other use by the consumer no later than the opening of business on the day the transfer is received, or, if the transfer is not

[1] A financial institution may arrange to have a third party, such as a merchant, provide the documentation required by this paragraph.

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received by the opening of business on the day the transfer is scheduled to occur, by the opening of business on the next business day.

§ 205.9 Preauthorized transfers from a consumer's account.

(a) *Authorization.* Preauthorized electronic fund transfers from a consumer's account may be authorized by the consumer only in writing, and a copy of the authorization shall be provided to the consumer by the financial institution or the designated payee.

(b) *Stopping payment.* A consumer may stop payment of a preauthorized electronic fund transfer by notifying the financial insitution orally or in writing at any time up to 3 business days before the scheduled date of the transfer. The financial institution may require written confirmation of the stop-payment order to be made within 14 days of an oral notification if, when the oral notification is made, the consumer is advised of the requirement and of the address to which confirmation should be sent.

(c) *Notice of varying amounts.* Where a preauthorized electronic fund transfer varies in amount from the preauthorized amount, the financial institution or the designated payee shall mail or deliver, at least 10 days before the scheduled transfer date, a written notice of the amount and scheduled date of the transfer. The consumer may modify this notice requirement if the financial institution or designated payee informs the consumer of the right to receive notice of all varying transfers and the consumer elects to receive notice only when a transfer does not fall within a specified range of amounts or, alternatively, only when a transfer differs from the most recent transfer by more than an agreed-upon amount.

§ 205.10 Error resolution procedure.

(a) *Notification of an error.* (1) A notification of an error is an oral or written notification that

(i) Enables the financial institution to identify the consumer's account, and

(ii) Indicates the consumer's belief, and the reasons for that belief, that the consumer's account is in error or that any documentation required by this regulation reflects an error, including the type and the amount of the error, to the extent possible.

(2) Notification of an error must be received by the financial institution no later than 60 days from transmitting to the consumer the periodic statement that first reflects the alleged error.

(3) The financial institution may require that written confirmation be received within 10 business days of an oral notification of error if, when the oral notification is made, the consumer is advised of the requirement and the address to which the confirmation should be sent.

(b) *Investigation of errors.* After the financial institution receives a notification of an error and unless the consumer subsequently agrees that no error has occurred

(1) The financial institution shall promptly investigate the alleged error, determine whether an error has occurred, and, in accordance with paragraph (c)(1)(ii) or (c)(2) of this section, report or mail the results of the investigation and determination to the consumer within 10 business days of receipt of a notification of an error.

(2) As an alternative to the requirements of paragraph (b)(1) of this section, the financial institution shall promptly investigate the alleged error, determine whether an error has occurred, and, in accordance with paragraph (c)(1)(ii) or (c)(2) of this section, report or mail the results of the investigation and determination to the consumer within 45 days after receipt of a notification of an error provided that

(i) The financial institution, pending its investigation and determination of whether an error occurred, provisionally recredits the consumer's account for the amount of the alleged error, including interest where applicable, but subject to the liability provisions of § 205.5(b), within 10 business days after receiving a notification of an error;

(ii) The consumer has full use of the funds provisionally recredited; and

(iii) The financial institution, promptly but no later than 2 business days after the recrediting, reports or mails notice to the consumer of

(A) The amount and date of the recrediting; and

(B) The fact that the consumer will be notified no later than 3 business days before debiting the consumer's account by an amount provisionally recredited, should the financial institution determine that an error did not occur as alleged by the consumer.

A financial institution that requires but does not timely receive written confirmation of an error as provided by paragraph (a) of this section need not provisionally recredit the consumer's account, but must nevertheless investigate the alleged error, determine whether an error occurred, and report or mail its findings to the consumer in accordance with paragraph (c)(1)(ii) or (c)(2) of this section, promptly but no later than 45 days after receipt of a notification of an error.

(c) *Correction of account and notice of findings.* (1) If the financial institution determines that an error occurred, it shall

(i) Promptly, but in no event more than 1 business day after determining that an error occurred, correct the error (subject to the liability provisions of § 205.5) including the crediting of interest where applicable, and the refunding of any fees or charges imposed as a result of the error, and

(ii) Promptly, but in no event later than the time set forth in paragraph (b)(1) or (b)(2) of this section, report or mail to the consumer notice of the correction in the account or, if applicable, notice that a provisional credit has been made final.

(2) If the financial institution determines that no error occurred or that the error occurred in a manner differing from that described by the consumer, it shall

(i) Deliver or mail to the consumer within 3 business days after concluding its investigation, but in no event later than the time set forth in paragraph (b)(1) or (b)(2) of this section, a written explanation of its findings;

(ii) If the consumer's account has been provisionally recredited under paragraph (b)(2) of this section, notify the consumer, no later than 3 business days before debiting the account, of the date and the amount of debiting the account by an amount provisionally recredited; and

(iii) Upon the consumer's request, promptly mail or deliver to the consumer copies of the documents, if possible, or a report containing the data that the financial institution relied on in reaching its conclusion. The explanation of the financial institution's findings provided under paragraph (c)(2)(i) of this section shall include notice of the right to request such information.

(d) *Relation to Truth in Lending.* The provisions of the Act and this regulation concerning error resolution, rather than those of the Truth in Lending Act and 12 CFR Part 226, shall govern those instances in which electronic fund transfers also involve extensions of credit under an agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.

§ 205.11 Relation to State law.

(a) *Inconsistent State laws.* Except as otherwise provided in this section, the Act and this regulation preempt only those State laws that are inconsistent with the Act and this regulation and

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then only to the extent of the inconsistency. A State law is not inconsistent with the Act and this regulation if it is more protective of a consumer.

(b) *Preempted provisions of State law.* (1) A State law is deemed to be inconsistent with the Act and this regulation and less protective of a consumer within the meaning of section 919 of the Act to the extent that the State law:

(i) Requires or permits a practice or act prohibited by the Act or this regulation;

(ii) Provides for consumer liability for unauthorized electronic fund transfers which exceeds that imposed by the Act and this regulation;

(iii) Provides for longer time periods than does the Act and this regulation with respect to a financial institution's obligation to investigate and correct errors alleged by a consumer, or fails to provide for the financial institution's recrediting of an account during its investigation of account errors as set forth in § 205.10(b); or

(iv) Provides for initial disclosure, periodic statement disclosure, transfer documentation or notification that is different in content from that required by the Act and this regulation except to the extent that the disclosures or information relate to substantive rights granted to consumers by the State law and not by the Act or this regulation.

(2) Any State, financial institution, or other interested party, may apply to the Board for a determination of whether the State law offers greater protection to consumers than the comparable provisions of the Act and this regulation, or for a determination with respect to any issues not clearly covered by paragraph (b)(1) of this section as to the consistency or inconsistency of a State law with the Act or this regulation. All requests for such determinations shall include the following:

(i) A copy of the full text of the State law in question, including any regulatory implementation or judicial interpretation of that law;

(ii) A comparison of the provisions of State law to the corresponding provisions in the Act and this regulation, together with a discussion of reasons why specific provisions of State law are either consistent or inconsistent with corresponding sections of the Act and this regulation; and

(iii) A comparison of the civil and criminal liability for violation of State law with the provisions of sections 915 and 916(a) of the Act.

(c) *Exemption for State-regulated transfers.* (1) Any State may apply to the Board for an exemption from the requirements of the Act and the corresponding provisions of this regulation for any class of electronic fund transfers within the State. The Board will grant such an exemption if the Board determines that:

(i) Under the law of the State that class of electronic fund transfers is subject to requirements substantially similar to those imposed by the Act and the corresponding provisions of this regulation, and

(ii) There is adequate provision for State enforcement.

(2) To assure that the Federal and State courts will continue to have concurrent jurisdiction, and to aid in implementing the Act:

(i) No exemption shall extend to the civil liability provisions of section 915 of the Act; and

(ii) After an exemption has been granted, for the purposes of § 915 of the Act, the requirements of the applicable State law shall constitute the requirements of the Act and this regulation, except to the extent the State law imposes requirements not imposed by the Act or this regulation.

§ 205.12 Administrative enforcement.

(a) *Enforcement by Federal agencies.* (1) Administrative enforcement of the Act and this regulation for certain financial institutions is assigned to the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Board of Directors of the Federal Deposit Insurance Corporation, Federal Home Loan Bank Board (acting directly or through the Federal Savings and Loan Insurance Corporation), National Credit Union Administration, Civil Aeronautics Board and Securities and Exchange Commission.

(2) Except to the extent that administrative enforcement is specifically committed to other authorities, compliance with the requirements imposed under the Act and this regulation will be enforced by the Federal Trade Commission.

(b) *Issuance of staff interpretations.* (1) Unofficial staff interpretations will be issued at the staff's discretion where the protection of section 915(d) of the Act is either not requested or not required, or where a rapid response is necessary.

(2)(i) Official staff interpretations will be issued at the discretion of designated officials. No interpretations will be issued approving financial institutions' forms or statements. Any request for an official staff interpretation of this regulation shall be in writing and addressed to the Director of the Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. The request shall contain a complete staement of all relevant facts concerning the transfer or service, and shall include copies of all pertinent documents.

(ii) Within 5 business days of receipt of a request, an acknowledgement will be sent to the person making the request. If the designated officials deem issuance of an official staff interpretation to be appropriate, the interpretation will be published in the **Federal Register** to become effective 30 days after the publication date. If a request for public comment is received, the effective date will be suspended. The interpretation will then be republished in the **Federal Register** and the public given an opportunity to comment. Any official staff interpretation issued after opportunity for public comment shall become effective upon publication in the **Federal Register.**

(3) Any request for public comment on an official staff interpretation of this regulation shall be in writing and addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. It must be postmarked or received by the Secretary's office within 30 days of the interpretation's publication in the **Federal Register.** The request shall contain a statement setting forth the reasons why the person making the request believes that public comment would be appropriate.

(4) Pursuant to section 915(d) of the Act, the Board has designated the Director and other officials of the Division of Consumer Affairs as officials "duly authorized" to issue, at their discretion, official staff interpretations of this regulation.

(c) *Record retention.* (1) Evidence of compliance with the requirements imposed by the Act and this regulation shall be preserved by any person subject to the Act and this regulation for a period of not less than 2 years.

(2) Any person subject to the Act and this regulation which has actual notice that it is under investigation or is subject to an enforcement proceeding for an alleged violation of the Act or this regulation by an enforcement agency charged with monitoring that person's compliance with the Act and this regulation, or that has been served with notice of an action filed under §§ 915 or 916(a) of the Act, shall retain the information required in paragraph (c)(1) of this section until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

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§ 205.13 General disclosure requirements.

(a) *Services offered by multiple financial institutions.* Two or more financial institutions that jointly provide electronic fund transfer services may contract among themselves to fulfill the requirements that the Act and this regulation impose on any or all of them.

(b) *Multiple accounts and account holders.* (1) If a consumer holds two or more accounts at a financial institution, the financial institution may combine the disclosures required by the regulation into one statement (for example, mail or deliver a single periodic statement or annual error resolution notice to a consumer for multiple accounts held by that consumer).

(2) If two or more consumers hold a joint account from or to which electronic fund transfers can be made, the financial institution need provide only one set of the disclosures required by the regulation for each account.

(c) *Additional information; disclosures required by other laws.* At the financial institution's option, additional information or disclosures required by other laws (for example, Truth in Lending disclosures) may be given to the consumer with the disclosures required by this regulation.

5. Appendix A would be amended by revising the first two paragraphs, and by adding a new Sections A(8), A(9) and A(10) to read as follows:

Appendix A—Model Disclosure Clauses

This appendix contains model disclosure clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of §§ 205.4(a)(3), (b)(2), and (b)(3), 205.6(a), and 205.9(c). Section 915(d)(2) of the Act provides that use of these clauses in conjunction with other requirements of the regulation will protect financial institutions from liability under sections 915 and 916 of the Act to the extent that the clauses accurately reflect the institutions' electronic fund transfer services.

Financial institutions need not use any of the provided clauses, but may use clauses of their own design in conjunction with the model clauses. The inapplicable portions of words or phrases in parentheses should be deleted. The underscored catchlines are not part of the clauses and should not be used as such. Financial institutions may make alterations, substitutions, or additions in the clauses in order to reflect the services offered, such as technical changes (e.g., substitution of a trade name for the word "card," deletion of inapplicable services), or substitution of lesser liability limits in section A(2).

* * * * *

Section A(8)—Disclosure of Right To Receive Documentation of Transfers (§§ 205.4(b)(2), 205.6(a)(6))

(a) *Terminal transfers.* You can get a receipt for each transfer to or from your account that was made at our (automated teller machines) (or) (point-of-sale terminals). You can get the receipt when the transfer is made.

(b) *Preauthorized credits.* If you have arranged to have direct deposits made to your account,

(we will tell you when the deposit is (not) made as scheduled.)

(the person who sends the money will tell you when that has been done.)

(your periodic statement will be sent soon after the deposit is scheduled and will show whether or not it has been made.)

(you can call us at [insert telephone number] to find out whether or not the deposit has been made.)

(and if a deposit is not made as scheduled, resulting in an overdraft to your account) of (use of your overdraft line of credit) (an automatic transfer from you savings to your checking account), we will tell you. We will pay any (checks) ([insert other appropriate description]) drawn on your account that would have been paid if the deposit had been made as scheduled.

(c) *Periodic statements.* You will get a (monthly) (quarterly) account statement (unless there are no transfers in a particular month. In any case you will get the statement at least quarterly).

(d) *Passbook account where only possible electronic fund transfers are preauthorized credits.* If you bring your passbook to us, we will record any electronic deposits that were made to your account since the last time you brought in your passbook.

Section A(9)—Disclosure of right to stop payment of preauthorized transfers, procedure for doing so, right to receive notice of varying amounts and financial institution's liability for failure to stop payment (§§ 205.4(b)(2), 205.6(a)(7) and (8), 205.9(c))

(a) *Right to stop payment and procedure for doing so.* If you have told us in advance to make regular payments out of your account, you can stop any of these payments. Here's how:

Call us at [insert telephone number], or write us at [insert address], in time for us to receive your request 3 business days or more before the payment is scheduled to be made. If you call, we may require you to put your request in writing and get it to us within 14 days after you call.

(b) *Notice of varying amounts.* (We) ([insert name of designated payee]) will tell you, 10 days in advance, the scheduled amount and date of the payment. (You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.)

(c) *Liability for failure to stop payment of preauthorized transfer.* If you order us to stop one of these payments, and we do not do so, we will be liable for your losses or damages.

Section A(10)—Disclosure of Financial Institution's Liability for Failure to Make Transfers (§§ 205.4(b)(2), 205.6(a)(8))

(a) *Liability for failure to make transfers.* If we do not properly complete a transfer to or from your account as you have directed, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable:

If your account does not contain enough money to make the transfer (unless we previously did not complete a deposit to your account which would have provided enough money);

Or if your account is frozen because of a court order or some similar reason;

Or if the transfer would go over the credit limit on your overdraft line;

Or if the automated teller machine where you are making the transfer does not have enough cash;

Or if the electronic fund transfer system is not working properly and you know this at the time of the transfer;

Or if circumstances beyond our control (such as fire or flood) prevent the transfer.

By order of the Board of Governors, April 26, 1979.

Theodore E. Allison,

Secretary of the Board.

[Reg. E; Docket No. R-0221]

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