

**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. 8581
May 29, 1979]

REGULATION E—ELECTRONIC FUND TRANSFERS

**Comment Invited on Proposal That Written Notice of Loss
of EFT Card Be Effective When Mailed**

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

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

The Federal Reserve Board today [May 21] proposed a change in its rules for implementing the Electronic Fund Transfer Act that would make written notice of loss or theft of an EFT card effective when the consumer mails or otherwise transmits the notice.

The Board asked for comment by June 25, 1979.

The object of the proposed amendment to Regulation E—which implements the EFT Act—is to assist consumers who promptly notify the institution of loss or theft of an EFT card to take advantage of a \$50 limit on potential liability provided by Congress for unauthorized use of EFT cards. The proposed amendment seeks to avoid loss of this protection due to delays in the mail or other delays in delivery of written notice. The EFT Act provides that consumer liability is limited to \$50 when consumers give notice to financial institutions within two business days of learning of loss, theft or unauthorized use of an EFT card.

The Board had earlier provided, in publishing Regulation E March 21, that written notice of loss or theft of an EFT card would be effective upon receipt of the notice by the financial institution concerned or upon expiration of the normal time for delivery, whichever is earlier.

Regulation E also provides that notice can be given orally, by telephone or in person.

In proposing revision of the rule for giving written notice, the Board said that, in adopting its “receipt rule” March 21:

...the Board believed that the great majority of consumers whose EFT cards are lost or stolen would notify (the financial institutions that issued their cards) by telephone or in person, rather than in writing, in order to minimize potential losses. To further encourage the more rapid method of telephone notification, the Board adopted a model disclosure clause for financial institutions to distribute to consumers which states that telephoning is the best way of limiting possible losses.

Nevertheless, despite its continuing belief that telephone notification is the best means for notification—and is the means most likely to be used—the Board, in view of comment on its rule for written notification, believes that the public should have an opportunity to comment on the merits and costs of the proposed revision making written notification effective when it is mailed, or otherwise transmitted (i.e., a “mailbox” rule).

The Board asked particularly for comment on a number of issues, including the following:

1. The difficulties that consumers and financial institutions may encounter in proving when a written notice is deposited in the mail, or is otherwise transmitted, especially in light of the fact that first class mail often no longer bears dated postmarks.

2. The effects of shifting to financial institutions liability for losses from unauthorized transfers during the time when a written notification is in transit.
3. What percentage of consumers give notice by mail to financial institutions of loss or theft of EFT cards.
4. The amount of and per cent of losses experienced by financial institutions during the transmission period of written notices.
5. How would the efficiency of the payments system and the growth of EFT be affected by a requirement that telephone receiving systems be maintained by financial institutions?

The EFT Act, and Regulation E, provide that notice of loss or theft of an EFT card, or of unauthorized use of it, is effective when the consumer has taken such steps as are reasonably necessary to provide the card issuer with the pertinent information.

The EFT Act provides that a consumer's liability for unauthorized use of an EFT card is limited to \$50 if the consumer notifies the card issuer within two business days of learning of loss or theft of the card, or unauthorized use. Potential liability rises to \$500 if notification occurs after two business days. If the consumer fails to notify the card issuer within 60 days after transmittal of a periodic statement that shows unauthorized use of the EFT card, the consumer's liability may be unlimited for transfers made after the 60 days.

In testimony to the Congress on May 1, 1979, the Board suggested a single liability limit for unauthorized use of an EFT card, such as is provided for credit cards under the Truth in Lending Act. The Board said:

The Truth in Lending Act imposes a flat \$50 limit on the liability of a credit card holder when a card is lost or stolen.... A majority of the Board believes consumers' potential exposure under the EFT Act is too great, although there may be instances in which the consumer *should* bear some liability for carelessness. The structure of the liability provisions is unduly complicated, and the benefit to the industry of escalating liability limits may ultimately be more illusory than real. The Board favors the Truth in Lending approach of a single liability limit for unauthorized use.

Printed below is the text of the proposal. Comments thereon should be submitted by June 25 and may be sent to our Consumer Affairs and Bank Regulations Department..

PAUL A. VOLCKER,
President.

FEDERAL RESERVE SYSTEM

[12 CFR Part 205]

ELECTRONIC FUND TRANSFERS

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment an amendment of § 205.5(c) of Regulation E (Electronic Fund Transfers) to provide that written notice of loss or theft of an access device of possible unauthorized electronic fund transfers is effective at the time the

consumer mails or otherwise sends the notice to the financial institution. The regulation presently provides that written notice is effective upon receipt of the notice by the financial institution (or upon expiration of the time normally required for transmission, if earlier). The Board is publishing the amendment for comment to give interested parties an opportunity to comment on the benefits and costs associated with the proposed change. A draft economic impact analysis is included as item (2) of the supplementary information.

DATE: Comments must be received on or before June 25, 1979.

ADDRESS: Comments should be addressed to Secretary, Board of Governors of the Federal Reserve System, Washington, D. C. 20551 and should refer to docket number R-224.

FOR FURTHER INFORMATION: Regarding the regulation: Lynne B. Barr, Senior Attorney, 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) *Proposed Amendment.* On March 21, 1979, the Board adopted sections of Regulation E (Electronic Fund Transfers) to implement §§ 909 and 911 of the EFT Act (44 FR 18468, March 28, 1979). Section 205.5 of the regulation sets limits on a consumer's liability for unauthorized transfers. Generally, the consumer's liability for such transfers is limited to \$50 if the consumer notifies the financial institution within 2 business days of learning of the loss or theft of the access device, to \$500 if notification occurs after 2 business days, and can be unlimited if the consumer fails to notify the institution within 60 days after transmittal of a periodic statement that reflects unauthorized transfers.

Section 205.5(c), Notice to financial institution, implements a statutory provision (§ 909(a)) by stating that notice to a financial institution of loss or theft of an EFT access device or possible unauthorized transfers is considered given when the consumer takes such steps as are reasonably necessary to provide the institution with the pertinent information. The Board has provided that notice may be given by the consumer in person, by telephone or in writing. The Board, when adopting the regulation, added a sentence which provides that written notification is effective upon receipt of the notice by the financial institution, or upon expiration of the time normally required for transmission, whichever is earlier.

This "receipt rule" is similar to one in Regulation Z (12 CFR § 226.13(e)) implementing identical language in the Truth in Lending Act. The Board believed that consumers will usually notify the institution in person or by telephone, rather than in writing, in order to minimize potential losses. Telephone notification is the quickest and most efficient means of telling an institution of a lost or stolen EFT card. To encourage such notification, the Board issued a model disclosure clause for financial institutions to distribute to consumers stating that telephone notification is the best way of limiting losses.

A number of comments have been received by the Board on the receipt rule. These comments point out that the liability structure of the EFT Act and Regulation E operates in a manner that may increase a consumer's liability significantly when the consumer notifies the institution in writing of the possibility of unauthorized transfers. A notice mailed by the consumer immediately upon learning of the loss or theft of the card may not be received by the financial institution within 2 business days and would subject the consumer to the \$500 liability limit (instead of the \$50 limit imposed if notice is received within 2 business days). This is in contrast to the operation of the rule in Truth in Lending, where a delay in receiving written notice would not increase a consumer's liability above the \$50 statutory maximum.

The Board believes that interested parties should be given an opportunity to comment on the merits and costs of the proposed "mailbox rule." The Board therefore proposes to amend § 205.5(c) to provide that written notice is effective at the time the consumer deposits the notice in the mail or transmits the notice by any other usual means to the financial institutions. Comment is solicited on the proposal, particularly as to the following issues:

(a) The difficulties that may be encountered by consumers and financial institutions in proving when a written notice is transmitted, particularly in light of the fact that first class mail often no longer bears dated postmarks.

(b) The effect of shifting liability to financial institutions for losses from unauthorized transfers during the transmission period of a written notice.

(c) What percentage of consumers notify institutions by mail of loss or theft of EFT cards.

(d) The amount and per cent of losses experienced by institutions during the transmission period of written notices.

The Board believes that an expedited rulemaking procedure for this proposal is necessary in order to protect the public interest, as the comments on the present regulatory provision suggest that unnecessary harm to consumers may result from imposition of the receipt rule. Accordingly, the expanded procedures set forth in the Board's policy statement of January 15, 1979, will not be followed in connection with this proceeding.

(2) *Economic Impact Analysis.* 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 the proposed revision of § 205.5(c), which implements, in part, § 909 of the Act.¹

Offered for comment is the proposal that, for purposes of the liability provisions of § 205.5 of the regulation, written notice by the consumer to the financial institution shall be considered given when notice is put in the mail or otherwise transmitted. With the existing notice provisions the consumer's liability exposure would depend on the vagaries of mail or other written message delivery. At present it is uncertain when notice will be considered given and whether the delivery system will validate the consumer's actions. The proposed change would give the consumer more time in which to give notice of loss, theft or suspected unauthorized transfer before a higher liability limit is imposed according to the liability timing requirements of the Act.

The proposed change would ensure that the consumer's liability would not depend on mail delivery times, which vary by sending point, receiving point and other factors, such as time of day, week and year. The Postal Service has established a service standard which calls for overnight delivery if an item is ZIP coded and mailed first class by 5:00 p.m., if the sending and receiving points are in the same metropolitan area. It is estimated that this standard is met approximately 95 per cent of the time. A consumer meeting all of the service standard conditions cannot be certain of delivery within two days, and a consumer failing to meet even one of the conditions would find delivery within two days unlikely.

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The analysis must consider the costs and benefits of the proposed regulation to suppliers and users of EFT services, the effects of the proposed regulation on competition in the provision of electronic fund transfer services among large and small financial institutions, and the effects of the proposed regulation on the availability of EFT services to different classes of consumers, particularly low-income consumers. The analysis presented here is to be read in conjunction with the economic impact analysis that accompanied the Board's Regulation E at 44 FR 18474, March 28, 1979.

Although corrective action by financial institutions would be delayed if the proposed change encouraged less prompt notification by consumers, consumers would still have an incentive to give prompt notice, by telephone if possible, because their funds are at stake. The Board, in emphasizing the desirability of telephone notification by consumers to financial institutions, believes that most notice delivery problems will be obviated by the likelihood that consumers will give notice promptly by telephone. The proposal may encourage financial institutions to set up or improve their systems for receiving telephone notification. The Board invites comment on these possible effects and requests information on the present and planned extent of telephone notification receiving systems. Further, how would the efficiency of the payments system and the growth of EFT be affected by a requirement that telephone notification receiving systems be maintained by financial institution? Finally, the Board solicits estimates of the additional costs financial institutions expect to incur from (a) delayed receipt of consumer notifications, (b) additional message reception activity, including toll-free telephone service and message logging procedures, and (c) promotional efforts to encourage prompt notification.

(3) Pursuant to the authority granted in Pub. L. 95-630 (to be codified in 15 U.S.C. 1693b), the Board proposes to amend paragraph (c) of 12 CFR § 205.5 (Regulation E), by deleting the third sentence and substituting the following sentence, to read as follows:

§ 205.5—LIABILITY OF CONSUMER FOR UNAUTHORIZED TRANSFERS.

* * *

(c) * * * Notice in writing is considered given at the time the consumer deposits the notice in the mail or delivers the notice for transmission by any other usual means to the financial institution. * * *