FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 8669
October 29, 1979]

ELECTRONIC FUND TRANSFERS

Amendments to Regulation E

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

Enclosed is a copy of the recent amendments to Regulation E, "Electronic Fund Transfers," of the Board of Governors of the Federal Reserve System, which were announced in our Circular No. 8657. The amendments are designed to implement the provisions of the Electronic Fund Transfer Act.

Also enclosed—for commercial banks, mutual savings banks, savings and loan associations, and credit unions in this District—is a copy of the text of the supplementary notice issued by the Board of Governors, which has been reprinted from the *Federal Register*. It will also be made available to others upon request directed to the Circulars Division of this Bank.

Any questions regarding the amendments to Regulation E should be directed to our Bank Regulations and Consumer Affairs Department (Tel. No. 212-791-5919).

THOMAS M. TIMLEN,
First Vice President.

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

ELECTRONIC FUND TRANSFERS

AMENDMENTS TO REGULATION E †

1. Effective September 10, 1979, section 205.5(c) is amended by deleting the third sentence, which reads, "Notice in writing is considered given at the time of receipt or, whether or not received, at the expiration of the time ordinarily required for transmission, whichever is earlier," and substituting in its place "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."

2. Effective May 10, 1980, § 205.2 is amended by deleting the last sentence of paragraph (i), by redesignating paragraph (j) as (k), by adding new paragraph (j), by redesignating paragraph (k) as (l), and by revising paragraph (3) of new § 205.2(l), to read as follows:

SECTION 205.2 — DEFINITIONS

* * * * *

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

(k) "State"***

(l) "Unauthorized electronic fund transfer"***

(3) that is initiated by the financial institution or its employee.

3. Effective November 15, 1979, § 205.3 is amended by revising the introductory statement and paragraphs (c) and (d), to read as follows:

SECTION 205.3 — EXEMPTIONS

The Act and this regulation do not apply to the following:

* * * * *

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

(1) Between a consumer's accounts within the financial institution, such as a transfer from a checking account to a savings account;

(2) Into a consumer's account by the financial institution, such as the crediting of interest to a savings account (except that the financial institution is subject to §§ 913(2), 915, and 916 of the Act); or

(3) From a consumer's account to an account of the financial institution, such as a loan payment (except that the financial institution is subject to §§ 913(1), 915, and 916 of the Act).

* * * * *

4. Effective May 10, 1980, § 205.4 is redesignated as § 205.5, and new § 205.4 is added, to read as follows:

SECTION 205.4 — SPECIAL REQUIREMENTS

(a) **Services offered by two or more financial institutions.** Two or more financial institutions that jointly provide electronic fund transfer services may contract among themselves to comply with the requirements that this regulation imposes on any or all of them. When making disclosures under §§ 205.7 and 205.8, a financial institution that provides electronic fund transfer services under an agreement with other financial institutions need make only those disclosures which are within its knowledge and the purview of its relationship with the consumer for whom it holds an account.

(b) **[Reserved]**

† For this Regulation to be complete retain:
1) Printed Regulation pamphlet dated August 1, 1979.
2) This slip sheet.

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

(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.

(d) **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 combined with the disclosures required by this regulation.

5. Effective May 10, 1980, new § 205.5 is amended by revising paragraph (b)(2) and by deleting paragraph (d), to read as follows:

SECTION 205.5 — ISSUANCE OF ACCESS DEVICES

* * * * *

(b) **Exception.*****

(1) ***

(2) The distribution is accompanied by a complete disclosure, in accordance with § 205.7(a), of the consumer's rights and liabilities that will apply if the access device is validated;

* * * * *

6. Effective November 15, 1979, former § 205.5 is amended by redesignating it as § 205.6 and by revising paragraphs (a)(3)(i) and (b), to read as follows:

SECTION 205.6 — LIABILITY OF CONSUMER FOR UNAUTHORIZED TRANSFERS

(a) **General rule.*****

(3) ***

(i) A summary of the consumer's liability under this section, or under other applicable law or agreement, for unauthorized electronic fund transfers and, at the financial institution's option, notice of the advisability of promptly reporting loss or theft of the access device or unauthorized transfers.

* * * * *

(b) **Limitations on amount of liability.** The amount of a consumer's liability for an unauthorized electronic fund transfer or a series of related unauthorized 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, whichever is less, unless one or both of the following exceptions apply:

* * * * *

7. Effective May 10, 1980, §§ 205.7, 205.8, 205.10(b), (c), and (d), 205.12, and 205.13 are added, to read as follows:

SECTION 205.7 — 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, the following terms and conditions of the electronic fund transfer service, as applicable:

(1) A summary of the consumer's liability under § 205.6, or other applicable law or agreement, 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 essential 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) A summary of the consumer's right to receive documentation of electronic fund transfers, as provided in §§ 205.9, 205.10(a), and 205.10(d).

(7) A summary of 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 § 205.10(c).

(8) A summary of 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 circumstances under which the 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. We must hear from you no later than 60 days after we sent you the FIRST statement on which the problem or error appeared.

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

(2) Describe the error or the transfer you are unsure about, and explain as clearly as 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 after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 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 during the time it takes us to complete our investigation. 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 recredit 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.** A financial institution shall mail or deliver to the consumer the information required by paragraph (a) of this section on or before June 9, 1980, or with the first periodic statement required by § 205.9(b) after May 10, 1980, whichever is earlier, for any account that is open on May 10, 1980, and

(1) From or to which electronic fund transfers were made prior to May 10, 1980;

(2) With respect to which a contract for such transfers was entered into between a consumer and a financial institution; or

(3) For which an access device was issued to a consumer.

SECTION 205.8 — CHANGE IN TERMS; ERROR RESOLUTION NOTICE

(a) **Change in terms.** 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 § 205.7(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. Prior notice need not be given where an immediate change in terms or conditions is necessary to maintain or restore the security of an electronic fund transfer system or account. However, if a change required to be disclosed under this paragraph is to be made permanent, the financial institution shall provide written notice of the change to the consumer on or with the next regularly scheduled periodic statement or within 30 days, unless disclosure would jeopardize the security of the system or account.

(b) **Error resolution notice.** 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 § 205.7(a)(10). Alternatively, 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 § 205.9(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. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

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

(2) Describe the error or the transfer you are unsure about, and explain as clearly as 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. If we take more than 10 business days to do this, we will recredit your account for the amount you think is in error, so that you will have use of the money during the time it takes us to complete our investigation.

SECTION 205.10 — PREAUTHORIZED TRANSFERS

(a) **[Reserved]**

(b) **Preauthorized transfers from a consumer's account; written 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 party that obtains the authorization from the consumer.

(c) **Consumer's right to stop payment.** A consumer may stop payment of a preauthorized electronic fund transfer from the consumer's account by notifying the financial institution 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 requirement is disclosed to the consumer together with the address to which confirmation should be sent. If written confirmation has been required by the financial institution, the oral stop-payment order shall cease to be binding 14 days after it has been made.

(d) **Notice of transfers varying in amount.** Where a preauthorized electronic fund transfer from the consumer's account varies in amount from the previous transfer relating to the same authorization, or 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. If the financial institution or designated payee informs the consumer of the right to receive notice of all varying transfers, the consumer may elect 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.

SECTION 205.12 — RELATION TO STATE LAW

(a) **Preemption of inconsistent state laws.** The Board shall determine, upon the request of any state, financial institution, or other interested party, whether the Act and this regulation preempt state laws relating to electronic fund transfers. Only those state laws that are inconsistent with the Act and this regulation shall be preempted and 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) **Standards for preemption.** The following are examples of the standards the Board will apply in determining whether a state law, or a provision of that law, is inconsistent with the Act and this regulation. Inconsistency may exist when state law

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

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

(3) Provides for longer time periods than the Act and this regulation for investigation and correction of errors alleged by a consumer, or fails to

provide for the recrediting of the consumer's account during the institution's investigation of errors as set forth in § 205.11(c); or

(4) Provides for initial disclosures, periodic statements, or receipts that are different in content from that required by the Act and this regulation except to the extent that the disclosures relate to rights granted to consumers by the state law and not by the Act or this regulation.

(c) **Procedures for preemption.** Any request for a determination shall include the following:

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

(2) A comparison of the provisions of state law with 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

(3) A comparison of the civil and criminal liability for violation of state law with the provisions of §§ 915 and 916(a) of the Act.

(d) **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 § 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.

SECTION 205.13 — 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 Board, 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 is enforced by the Federal Trade Commission.

(b) **Issuance of staff interpretations.** (1) Unofficial staff interpretations are issued at the staff's discretion where the protection of § 915(d) of the Act is neither requested nor required, or where a rapid response is necessary.

(2)(i) Official staff interpretations are 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 made 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 statement 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 acknowledgment 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 made 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 § 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. Records may be stored by use of microfiche, microfilm, magnetic tape, or other methods capable of accurately retaining and reproducing information.

(2) Any person subject to the Act and this regulation that has actual notice that it is being investigated or is subject to an enforcement proceeding by an 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 that pertains to the action or proceeding until final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

8. Effective May 10, 1980, Appendix A is amended by revising the introductory statement and by adding §§ A(8)(a), (c), (d), (9), and (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 §§ 205.5(a)(3), (b)(2), and (b)(3), 205.6(a)(3), and 205.7. 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 §§ 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 clauses, but may use clauses of their own design in conjunction with the model clauses. The inapplicable words or portions of 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 § A(2)). Sections A(3) and A(9) include references to a telephone number and address. Where two or more of these clauses are used in a disclosure, the telephone number and address need not be repeated if referenced.

* * * * *

SECTION A(8) — DISCLOSURE OF RIGHT TO RECEIVE DOCUMENTATION OF TRANSFERS (§§ 205.5(b)(2), 205.7(a)(6))

(a) **Terminal transfers.** You can get a receipt at the time you make any transfer to or from your account using one of our (automated teller machines) (or) (point-of-sale terminals).

(b) **[Reserved]**

(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 the 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 (§§ 205.5(b)(2), 205.7(a)(6), (7), and (8))

(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 also require you to put your request in writing and get it to us within 14 days after you call. (We will charge you [insert amount] for each stop-payment order you give.)

(b) **Notice of varying amounts.** If these regular payments may vary in amount, (we) (the person you are going to pay) will tell you, 10 days before each payment, when it will be made and how much it will be. (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 3 business days or more before the transfer is scheduled, 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
(§§ 205.5(b)(2), 205.7(a)(8))

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

- If, through no fault of ours, your account does not contain enough money to make the transfer.
- If the transfer would go over the credit limit on your overdraft line.
- If the automated teller machine where you are making the transfer does not have enough cash.
- If the (terminal)(system) was not working properly and you knew about the breakdown when you started the transfer.
- If circumstances beyond our control (such as fire or flood) prevent the transfer.
- There may be other exceptions.

federal register

Monday
October 15, 1979

Part VI

Federal Reserve System

Electronic Fund Transfers

[Enc. Cir. No. 8669]

FEDERAL RESERVE SYSTEM

12 CFR Part 205

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

Electronic Fund Transfers; Definitions, Exemptions, Special Requirements, Issuance of Access Devices, Liability of Consumer for Unauthorized Transfers, Initial Disclosure of Terms and Conditions, Change in Terms; Error Resolution Notice, Preauthorized Transfers, Relation to State Law, Administrative Enforcement, Model Disclosure Clauses

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting in final form (1) additional sections of Regulation E to implement certain provisions of the Electronic Fund Transfer Act that take effect May 10, 1980, and (2) amendments to existing sections of Regulation E. The regulatory proposal was published for comment at 44 FR 25850 (May 3, 1979). The Board is separately republishing today, for further comment, additional sections of the regulation to implement other provisions of the Act effective May 1980. Finally, the Board is issuing an analysis of the economic impact of the portions of the regulation adopted in final form.

EFFECTIVE DATES: Sections 205.3 and 205.6 (originally 205.5): November 15, 1979; §§ 205.2, 205.4 (a), (c), and (d), 205.5 (originally 205.4), 205.7, 205.8, 205.10 (b), (c), and (d), 205.12, 205.13, and Appendix A: May 10, 1980.

FOR FURTHER INFORMATION CONTACT: Regarding the regulation: Anne Geary, Assistant Director (202–452–2761), or Lynne B. Barr, Senior Attorney (202–452–2412), Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. Regarding the economic impact analysis: Frederick J. Schroeder, Economist (202–452–2584), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: (1) *Introduction; General Matters.* The Board is adopting in final form additional sections of Regulation E to implement provisions of the Electronic Fund Transfer Act that become effective May 10, 1980. The sections adopted today are §§ 205.4 (a), (c), and (d), 205.7, 205.8, 205.10 (b), (c), and (d), 205.12 and 205.13. The Board is also issuing additional model disclosure clauses (Appendix A to the regulation). These additional sections and model clauses were published on May 3, 1979, in the **Federal Register** for public comment (44 FR 25850). Note that the section numbers as adopted differ from those in the proposal.

The Board is also adopting amendments to §§ 205.2 and 205.3. Sections 205.4 and 205.5 in the existing regulation are being redesignated as §§ 205.5 and 205.6, respectively, and technical amendments to these sections are being adopted.

Other sections of the regulation proposed in May are being republished separately today for further public comment. See the proposed rules document affecting Regulation E in this issue.

The Board proposed in May not to implement in the regulation §§ 910 and 912–914 of the Act. Although some commenters suggested that the Board issue regulations on these sections, the Board has decided not to do so. With respect to §§ 912 through 914, the Board continues to feel that they are straightforward and regulatory implementation is not needed. Implementation of § 910 presents a different problem. That section imposes upon a financial institution liability for failure to make or stop electronic fund transfers in accordance with the terms and conditions of an account, except in certain enumerated instances. The Board is authorized to add to the list of instances in which an institution is absolved from liability. The Board is concerned that adding to this "laundry list" might reduce consumer protections and unduly complicate the regulation. Since § 910 explicitly states that a financial institution is liable only when it fails to act in accordance with the terms and conditions of its agreement with its customer, institutions may wish to review their customer agreements.

The Board solicited comment on whether the requirements of the Act and regulation should be modified, as permitted by § 904(c) of the Act, for small financial institutions, as necessary to alleviate undue compliance burdens for such institutions. The Board has determined that such modifications are not necessary at this time.

The Board received 202 written comments on the proposed amendments. Public hearings were also held on the proposal on June 18 and 19, 1979.

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 met with staff members from the enforcement agencies both before and after the proposal was issued.

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 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 demonstrate, to the extent practicable, that the consumer protections provided by the proposed regulation outweigh the compliance costs imposed upon consumers and financial institutions. The Board's analysis of the economic impact of the provisions adopted today is published in section (3) below. The final regulatory amendments and the economic impact statement have been transmitted to Congress.

Section 917 of the Act and § 205.13 of the regulation, which assign administrative enforcement to various federal agencies, do not become effective until 1980. The Board intends, however, to enforce the effective requirements of the Act and Regulation E as to state member banks under the general enforcement authority contained in § 1818(b) of the Financial Institutions Supervisory Act (12 U.S.C. 1818(b) (1974)). Other financial institutions should consult the agency with supervisory jurisdiction over them to determine the agency's position as to enforcement.

(2) *Regulatory Provisions. Section 205.2—Definitions.* The definition of "error" has been deleted from § 205.2 and placed in § 205.11 (Procedures for Resolving Errors), thus bringing together in one section the provisions relating to error resolution.

The Board has decided to amend the definition of "unauthorized electronic fund transfer" so that the third exclusion reads: "or (3) that is initiated by the financial institution or its employee." This language is closer than that of the proposal to the statutory language in that it refers specifically to acts of the financial institution. The intent of the proposed amendment was to eliminate

the apparent inconsistency created by the fact that the existing definition of "unauthorized electronic fund transfer" excluded errors, yet "error" includes unauthorized transfers. The amendment as adopted also resolves this problem, by dropping the reference to errors.

The definition of "preauthorized electronic fund transfer" and the amendment to the existing definition of "financial institution" are adopted as proposed.

Section 205.3—Exemptions. The Board proposed to amend §§ 205.3 (c) and (d) which were adopted on March 21, 1979. Section 205.3(c) exempts transfers made primarily for the purchase or sale of securities or commodities. The Board proposed to eliminate the words "through a broker/dealer registered with" in order to broaden the scope of the exemption to include securities transactions made by mutual funds. A significant percentage of mutual fund transactions are accomplished through sources other than registered broker/dealers. The Board has adopted the exemption as proposed because it believes that existing federal laws and the regulations of the Securities and Exchange Commission (SEC) and the Commodity Futures Trading Commission (CFTC), although not specifically promulgated for the regulation of payment transfers, provide protection to consumers regarding payment transfers consistent with the requirements of the Act and Regulation E. Under the provision as amended, if payment is the primary purpose of the transfer and a securities purchase or sale only an incidental purpose, the regulation would apply.

The Board also solicited comment on whether pension and profit-sharing plans should be covered by this exemption. No comments were received on this issue. Since pension and profit-sharing plans are not regulated by the SEC or the CFTC, the Board does not believe an exemption is appropriate.

The Board proposed to revise § 205.3(d) in order to exempt:

1. Transfers between a consumer's accounts at a single financial institution, such as transfers from a demand deposit account to a savings account.

2. Transfers from the financial institution to the consumer's account, such as crediting of interest on savings accounts.

3. Transfers from the consumer's account to the financial institution, such as debiting of automatic mortgage payments, other loan payments, and checking account charges.

Comment was solicited as to whether transfers from the consumer's account to the financial institution should receive total or partial exemption.

The Board has decided to adopt § 205.3(d) as proposed with the change discussed below. Public comment supports the Board's belief that intra-institutional transfer services have been provided by financial institutions for many years. The focus of the Act is on new and developing electronic payment systems, not on traditional intra-institutional transfers that have become "electronic fund transfers" by computerization. In addition, these services are beneficial for consumers and institutions. The costs of providing them would increase if they were subject to the Act's requirements, particularly the monthly periodic statement requirement.

The Board has decided against making transfers from the consumer's account to the financial institution subject to the requirement of periodic statements. It believes that the periodic statements which financial institutions provide supply sufficient and timely information to consumers, and that the possibility of unauthorized use is not great for intra-institutional transfers. Comments did not demonstrate that the Act's protections were needed and the Board believes that the cost of these protections would outweigh the potential benefits.

Commenters pointed out, however, that complete exemption of the transfers described in paragraphs (2) and (3) of § 205.3(d) would conflict with § 913 of the Act. That section prohibits conditioning the granting of credit or the receipt of employment or government benefits on participating in a preauthorized electronic fund transfer arrangement. Accordingly, subsection (d)(2), exempting transfers into a consumer's account(s) by a financial institution, has been modified to require compliance with § 913(2) of the Act, and subsection (d)(3), exempting transfers from a consumer's account(s) to the financial institution, has been changed to require compliance with § 913(1) of the Act. Violations of § 913 will be enforced under §§ 915 and 916.

The Board also solicited comment as to whether any other automatic transfers should be exempted from the regulation. Several commenters suggested that additional exemptions should be made but did not provide a rationale for their recommendations. The Board does not believe that additional exemptions are warranted.

Section 205.4—Special Requirements. Section 205.4 corresponds to § 205.13 in the first proposal. The first sentence of § 205.4(a) permits two or more financial institutions that jointly provide electronic fund transfer services to contract among themselves to fulfill the requirements that the regulation imposes on any or all of them. The second sentence is new. It states that when making disclosures under §§ 205.7 and 205.8, a financial institution providing electronic fund transfer services under an agreement with other financial institutions need only make those required disclosures that are within its knowledge and the purview of its relationship with the consumer for whom it holds an account. This provision responds to a problem raised by commenters, namely, that a financial institution that is part of a shared system is unable to disclose the terms and conditions imposed by other participants in the system.

Section 205.4(b) is being proposed for comment. Sections 205.4 (c) and (d) correspond to §§ 205.13 (b) and (c) in the first proposal. Only technical changes have been made in these sections. Commenters asked whether financial institutions may choose to which joint account holder they will send disclosures or statements; § 205.4(c)(2) does not restrict the institution's choice.

Section 205.4(d) permits financial institutions to provide additional information or disclosures required by other laws (Truth in Lending disclosures or state law disclosures) with the disclosures required by Regulation E. Commenters asked that a specific provision permitting inconsistent state laws to be combined with the Regulation E disclosures (similar to § 226.6(b) of Regulation Z) be added to the regulation. The Board does not believe that such a provision is necessary at this time, given the stringent placement requirements in Regulation Z. Other commenters asked that the Board add a provision similar to one contained in Regulation Z requiring that additional information or other disclosures combined with the required disclosures not mislead or confuse the consumer or detract attention from the disclosures required by Regulation E. The Board is reluctant to add such a provision because of difficulty in enforcing it. It could also conflict with the similar provision in Regulation Z, particularly because Truth in Lending disclosures and EFT disclosures will often be combined by the financial institution into a single disclosure statement.

Section 205.5—Issuance of Access Devices. Section 205.4 has been redesignated § 205.5. The existing regulation provides that an access device that is sent unsolicited to the

consumer must be accompanied by a disclosure that complies with § 205.4(d). However, § 205.4(d) is a transitional provision and is effective only until May 10, 1980. For this reason, the Board is amending, effective May 10, 1980, § 205.4(b)(2) to read, ". . . in accordance with § 205.7(a), . . . ," and deleting § 205.4(d).

Section 205.6—Liability of Consumer for Unauthorized Transfers. Section 205.5 has been redesignated § 205.6. The Board is adopting a technical amendment to paragraph (a)(3)(i), to make clear that the information required to be disclosed is identical to that required by § 205.7(a)(1).

The Board has decided to adopt the proposed amendment to paragraph (b); the phrase "series of transfers arising from a single loss or theft of the access device" is changed to "series of related unauthorized transfers." This revision recognizes that unauthorized transfers may occur in circumstances other than those involving loss or theft of an access device.

A few commenters found the term "related transfers" to be ambiguous. Whether several unauthorized transfers are related is a question of fact; typically transfers arising from a single loss or theft of the access device will be related.

In addition, the phrases "electronic fund" and "whichever is less," which were inadvertently omitted, have been inserted.

Section 205.7—Initial Disclosure of Terms and Conditions. Section 205.7 corresponds to § 205.6 in the proposal. Comment was solicited on whether disclosure should be permitted "before the first electronic fund transfer is made involving a consumer's account." A large number of responses were received, the majority supporting the proposal. The proposed language was considered particularly important where the consumer contracts with an employer (in the case of direct payroll deposit) or with a utility (in the case of preauthorized debits) for an EFT service rather than directly with the account-holding financial institution. The financial institution would be unable to provide disclosures at the time the consumer contracts for the service. For that reason, and because of the difficulty of determining when a consumer has contracted for an EFT service, the Board is adopting this provision as proposed.

Several commenters were concerned about the difficulty of providing disclosures before the first electronic fund transfer. It was pointed out that, through an oversight or other error, an institution may not receive prenotification of an electronic fund transfer, such as a payroll deposit, or may not receive prenotification far enough in advance to enable it to give the required disclosures before the transfer is made. The Board believes, however, that applicable Treasury Department regulations governing the federal recurring payments program and industry practices, such as the automated clearing house rules, will minimize the likelihood of such occurrences, and that no further extension of the deadline for making disclosures is necessary.

Section 205.7(a)(1) has been amended to make it clear that a complete description of the consumer's potential statutory liability for unauthorized transfers need not be recited on the initial disclosure statement. The Board believes that a summary description, in plain English, will be easier for consumers to understand, and also less cumbersome for financial institutions. Examples showing the amount of information the Board considers appropriate for compliance with §§ 205.7 (a)(6), (a)(7), and (a)(8), as well as this paragraph, are contained in the model disclosure clauses.

No changes have been made in §§ 205.7 (a)(2) and (a)(3).

The requirement of § 205.7(a)(4) that usage limitations on EFT devices be disclosed generated a great many comments. Three points were raised. A number of commenters were concerned that an account-holding institution would be unable to determine, and therefore disclose, limitations imposed by other financial institutions—especially in the context of an interchange network or an automated clearing house system. As provided in § 205.4(a), a financial institution need make only those disclosures that are within its knowledge and the purview of its relationship with the consumer.

The second issue raised in connection with this paragraph is the question of what types of limitations are exempt from the disclosure requirement as "necessary to maintain the security" of an EFT system. The Board believes that such a determination can only be made by financial institutions on a case-by-case basis. Section 205.7(a)(4), however, does not permit institutions to withhold the details of frequency and amount limitations merely because they are related to the security aspects of the system. Unless disclosure of such details would compromise the integrity of the system, consumers must be informed of them. In order to emphasize the narrow scope of this exemption, the Board has amended the second sentence of the paragraph, changing the word "necessary" to "essential." It should be noted, however, that even when disclosure of such limitations would jeopardize a system's security, the financial institution is only relieved of the duty to disclose the details of the limitations; the fact that certain limitations exist must still be disclosed to the consumer.

The third issue raised by the commenters was whether the deletion of the words "and nature" in the regulation from the statutory phrase "type and nature of electronic fund transfers" was intended as a substantive departure from the requirements of the Act. The reason for the deletion is simply that the Board considers the additional words unnecessary.

No change has been made in section 205.7(a)(5). A number of commenters requested clarification as to what types of charges must be disclosed under this paragraph. It is the Board's opinion that only those charges that relate specifically to electronic fund transfers, such as transaction charges, or to the right to make such transfers, such as monthly EFT service charges, should be disclosed. In cases where an institution imposes only a general, undifferentiated account maintenance charge that covers EFT as well as other services, or requires that a minimum balance be maintained, no disclosure need be made under this paragraph.

Sections 205.7(a)(6), (a)(7), and (a)(8) have been amended to require only a summary statement of the consumer's statutory rights, as in the case of section 205.7(a)(1), discussed above. The model clauses that relate to these paragraphs indicate how much information an adequate summary would contain. In connection with section 205.7(a)(8), it should also be noted that the Board has decided not to implement section 910 of the Act in the regulation.

Section 205.7(a)(9) is substantially similar to the proposal. Several commenters expressed concern that the Board's original proposal was drafted too broadly, and would require financial institutions to disclose their reporting practices with respect to every consumer's account, including accounts not accessible to electronic fund transfers. However, this paragraph, and indeed all of section 205.7(a), relate only to accounts that are accessible by electronic fund transfers. Therefore, the institution's practices concerning other accounts need not be disclosed. It should be noted that this paragraph requires the institution to describe the conditions under which *any* information relating to an account will be made available to third parties in the ordinary course of business.

The Board received a large number of comments regarding section 205.7(a)(10), most of which proposed amendments or additions to the error resolution procedure notice. In response to these comments, the notice has been redrafted in the interest of making the error resolution procedure more readily understandable to consumers. No change in substance or basic format was made, however, and the notice remains a summary of the statutory error resolution procedures, in compliance with section 905(a)(7) of the Act.

Section 205.7(b) has been substantially amended, in light of the comments received. The proposal could have been interpreted to require a large number of account holders to be given the disclosures required by paragraph (a) even where no electronic fund transfers were made or contemplated prior to May 10, 1980, and even if the account was closed on that date. The Board does not believe that such a result would be beneficial to consumers, or that it is required by section 905(c) of the Act. Under section 205.7(b), as adopted, institutions must make the disclosures required by section 205.7(a) for all accounts still open on May 10, 1980, from or to which electronic fund transfers were actually made or contracted for prior to that date, or for which an access devise was issued to a consumer (whether or not the device was an "accepted access device," as defined in section 205.2(a)(2)).

A number of commenters were also concerned that financial institutions which do not normally issue monthly statements will be forced to make a special mailing in order to comply with the timing requirement of this paragraph. Accordingly, the regulation now provides that the disclosures may be made at any time "on or before" June 9, 1980. Thus, an institution could choose to make the necessary disclosures in a periodic statement scheduled for a date earlier than May 10, 1980, and still be in compliance.

Section 205.8—Change in Terms; Error Resolution Notice. Section 205.8 corresponds to section 205.7 in the proposed draft, and, with the exception of the deletion of paragraph (b)(2)(ii), it remains substantially the same. Paragraphs (a) (1) and (2) have been merged; similarly, paragraphs (b) (1) and (2) have been combined. Comment was solicited on whether additional types of unfavorable changes in terms or conditions of an account should be added to the list set forth in paragraph (a). Commenters did not generally favor additions to this provision and no change has been made.

Several commenters requested clarification of the relationship of paragraph (a)(2) of section 205.8 (limitations on the obligation to give prior notice of an adverse change in terms) to section 205.7(a)(4) (disclosure of frequency and amount limitations on the use of an access device). Concern was expressed that if a dollar or use limitation that was not previously disclosed for security reasons was made stricter, the institution would have to either explain the change, and thereby jeopardize the security of the system, or merely indicate that some unexplained change had been made to a previously undisclosed limitation. Neither choice would be in the best interest of the consumer or the institution, however, and neither result is contemplated. Section 205.8 does not require subsequent disclosures to be given in any case where a term not required to be disclosed under section 205.7(a) is changed. Where the details of a dollar or frequency limitation are withheld on security grounds under section 205.7(a)(4), a change in that limitation is not required to be disclosed later under section 205.8(a). If no such limitation existed when the section 205.7(a) disclosures were given, but one was subsequently added to a system or an account, the institution could withhold those details "essential to maintain the security of the system," but it would be required to indicate that some limitation had been imposed.

A number of comments were also received regarding the requirement that notice be given within 30 days after a change believed necessary to maintain or restore the security of a system or account. The Board recognizes the fact that the 30-day requirement would force institutions using a quarterly periodic statement schedule, as well as any institution forced to institute such a change immediately before its scheduled statements are to be sent out, to make a special mailing to comply with this paragraph. In order to avoid this result, the Board has amended this provision to permit disclosure of such changes either within 30 days or on the next regularly scheduled periodic statement.

No substantive changes were made in paragraph (b)(1). Paragraph (b)(2) has been amended by eliminating proposed paragraph (b)(2)(ii), which would have required institutions using the "short-form" error resolution notice to send the longer notice to consumers who assert errors. Commenters pointed out that in most cases the investigation and correction of the alleged error will have already been completed by the time the long notice arrives, or will be completed shortly thereafter, and that the notice would then come too late to be of any practical use to the consumer. Such a notice might also be confusing, since a consumer receiving it might feel obliged to notify the institution again.

Section 205.10—Preauthorized Transfers. Section 205.10(a) appears in the proposed rules document on Regulation E in this issue.

Sections 205.10 (b), (c), and (d) were previously designated sections 205.9 (a), (b), and (c) respectively. Under the proposal, the responsibility for providing a copy of an authorization for preauthorized transfers from an account lay with either the financial institution or the designated payee. Many financial institutions explained that frequently they do not participate in, or have knowledge of, the consumer's authorization of preauthorized transfers. Section 205.10(b) has been modified, as suggested by commenters, to specify that the obligation to provide the consumer with a copy of the authorization form rests with the party that actually obtains the authorization.

The Board has added a sentence to section 205.10(c) to explain the consequences of a consumer's failure to provide timely written confirmation of an oral stop-payment order. Such failure results in a lifting of the order and a release of the financial institution from any obligation to continue to refuse to pay an item. The rest of the section is substantially unchanged.

The Board has also changed the first sentence of section 205.10(d) to insure that notice will be provided when a preauthorized transfer varies from the previous transfer under the same authorization. The proposal would have required notice only when a transfer differed from a "preauthorized amount." Commenters pointed out that in many cases a consumer will not specify an amount when authorizing varying transfers.

Financial institutions argued that they are not in the best position to provide notice of varying transfers and asked that the regulation place this responsibility on the designated payee. The Board does not believe it appropriate to vary by regulation express language on this point in section 907(b). The Act does not prohibit financial institutions from contracting with the designated payee for compliance with the notice requirement and obtaining indemnity for non-compliance.

Section 205.12—Relation to State Law. The provisions relating to preemption of State law have been rearranged and rewritten. Proposed sections 205.11 (a) and (b) would have constituted a

regulatory determination of inconsistency since the provisions of State law described in proposed sections 205.11(b)(1)(i)–(iv) would have been automatically preempted. Comments on the proposal and further analysis of section 919 and its legislative history have led the Board to conclude that the question of preemption should be decided upon application. Consequently, paragraphs (1) through (4) of section 205.12(b) now set forth the standards that the Board will apply in determining inconsistency, rather than final determinations of inconsistency. The regulation provides that any State, financial institution, or other interested party may apply to the Board for a determination whether a State law is preempted.

The provisions relating to exemption of State-regulated transactions have not been changed.

Section 205.13—Administrative Enforcement. The proposal would have required financial institutions to retain records of compliance for two years. Many industry commenters urged the Board to shorten the record retention period to conform to the Act's one-year statute of limitations. Enforcement agencies, however, stressed the importance of records in carrying out their responsibilities under section 917 of the Act. For this reason, and to conform with record retention requirements under the Truth in Lending and Equal Credit Opportunity regulations, the Board has adopted a two-year record retention requirement.

Language has been added to section 205.13(c)(1) specifying acceptable methods for retaining records of compliance, and section 205.13(c)(2) has been changed to indicate that only the records actually involved in an ongoing lawsuit or administrative proceeding must be retained beyond the two-year period. Financial institutions should note that they need not retain multiple copies of identical disclosures.

(3) *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 sections of the regulation that are being issued in final form.[1]

The analysis must consider the costs and benefits of the regulation to suppliers and users of electronic fund transfer (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.*

Analysis of Regulatory and Statutory Provisions. Section 205.3 is amended by the expansion of two exemptions. First, electronic fund transfers primarily for the purchase or sale of regulated securities are to be exempted from coverage by the regulation even if such transfers are not made through a registered broker/dealer, as is the case in many mutual fund transfers. This provision eliminates the costs of duplicating consumer protections already guaranteed by other federal laws.

Second, the regulation exempts preauthorized automatic transfers between a consumer's accounts at a financial institution and between the institution and a consumer's account. Subjecting such intra-institutional transfers to the Act's requirements would disrupt efficiently functioning internal transfer systems and increase their costs. The exemption assures that financial institutions may continue to offer to consumers such cost-saving, convenient services as automatic crediting of interest, automatic debiting of loan payments, and transfer of funds from checking to savings accounts.

Section 205.4 permits financial institutions to contract among themselves to avoid duplicate compliance efforts for jointly-offered services.[2] It also provides that an institution need issue only one set of disclosures per consumer and per joint account, and that disclosures required by other laws may be combined with disclosures required by this regulation.

These measures reduce the amount of disclosures and mailings needed to comply with the Act, while obviating the duplication of some services. Some compliance costs can therefore be avoided through this provision of the regulation. A financial institution is specifically exempted from having to make disclosures that go beyond its knowledge and the purview of its relationship with consumer account holders. This regulatory provision relieves institutions of the need to list such details as business days and telephone numbers for all institutions in a shared EFT system.

Section 205.7 modifies the Act's requirement that initial disclosures must be made at the time a consumer contracts with a financial institution for EFT services. The regulation provides that institutions can comply by giving the initial disclosures before the first electronic transfer occurs. This provision assures that consumers receive timely disclosures while, at the same time, it obviates the need to determine 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, may 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 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 and 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

[1] The analysis presented here is to be read in conjunction with the economic impact analysis that accompanies the Board's final rules at 44 FR 18474, (March 28, 1979). The sections of the regulation have been redesignated.

[2] Section 205.4(b) has been issued in proposed form for comment and is not considered here.

realizing cost savings by routinizing notification procedures and by establishing shared or centralized reporting channels.

Several costs will be imposed on financial institutions by the initial disclosure requirement. Institutions will incur drafting, legal, printing, distribution, and administrative costs in complying with disclosure requirements of the Act. Although the regulation sets forth a mandatory notice of error resolution procedures and provides model disclosure clauses for several subsections, disclosure documents must be drafted by the institution to reflect its unique terms and conditions. Four institutional commenters estimated initial disclosure costs; their estimates averaged $0.34 per disclosure. Actual aggregate costs will depend on the use of special provisions of section 205.4 and on the degree to which institutions avoid postage costs by sending disclosures in already-scheduled mailings.

It is expected that adoption at this time of the disclosure requirements in final form will allow an adequate period for most institutions to draft and print disclosure statements for distribution by the June 9, 1980, absolute deadline.[3] The many institutions with a quarterly statement period ending June 30, 1980, will be unable to use July 1980 statement mailings for initial disclosures. The Act's deadline will therefore force those institutions to include disclosures in April statement mailings. The additional costs of meeting this operational compliance deadline are not likely to be great, however.

The initial disclosure requirements may place small financial institutions at a competitive disadvantage relative to larger institutions because the latter are able to spread fixed legal, administrative, and other costs over larger account bases. However, third-party vendors of EFT service packages to financial institutions may incur lower average costs by pooling orders, so that small institutions might enjoy some scale economies. The net effect of the initial disclosure requirements by size of institution cannot be assessed in advance.

Initial disclosure requirements are unlikely to have significant effects on the availability of EFT services to low-income consumers. Availability by income class is mainly dependent on the Act's issuance and liability provisions, which are implemented by sections 205.5 and 205.6 of the regulation.

Section 205.8 of the regulation repeats the Act's requirements that financial institutions make (1) subsequent disclosures of the error resolution procedures at least once each year and (2) prompt disclosure of any change in terms or conditions that restricts services or increases costs for consumers. Like the initial disclosures, the subsequent disclosures will benefit both consumers and financial institutions by making relevant payment system information more readily available to consumers. Institutions will incur the costs of disclosure statement drafting, printing, and distribution. Distribution costs can be reduced by sending disclosures with periodic statements.

The Act requires that financial institutions disclose certain changes in the terms or conditions of an EFT account; this requirement is reflected in section 205.8(a) of the regulation. Such changes might be motivated by marketing or security considerations or changes in the costs of maintaining accounts. In particular, an institution must disclose any increase in a fee or charge for electronic transfers. Because cost inflation can be expected to drive up nominal account maintenance charges and trigger additional disclosures, this provision of the Act will place on institutions and consumers a regulatory cost burden associated with increases in the general price level. This disclosure rule thus places a regulatory "tax" on certain market price adjustments.

Regarding the error resolution procedure notice of section 205.8(b), the regulation permits institutions to choose either to send the full error resolution procedure disclosure once every year or to send an abridged disclosure with every periodic statement. Disclosure cost could be minimized by printing the abridged notice on the periodic statement forms. The alternatives allow institutions some flexibility to choose the most economically efficient compliance method for each account. Consumers benefit from adequate disclosure in either case.

Sections 205.10 (b), (c), and (d) establish rules regarding preauthorized transfers from a consumer's account. The regulation, like the Act, requires that preauthorized debits may be made only if the consumer has authorized them in writing and received a copy of the agreement. As a result of this provision, consumers are likely to be better informed about their payment schedules. Institutions face a compliance cost only if they obtain the authorization, and such costs may be passed on to the payee. The regulation reiterates the Act's provision that consumers may stop payment of a preauthorized debit up to 3 business days before it is scheduled to occur. This measure provides benefits by ensuring a degree of protection and flexibility for the consumer, while allowing institutions sufficient time to accomplish stop-payment orders. Finally, the regulation restates the Act's requirement that advance notice must be given to a consumer whenever a preauthorized payment differs in amount from the previous transfer to the same payee. The regulation allows, however, that an institution may, if it informs a consumer of this right to notice, offer the consumer a plan whereby notice is sent only if the transfer goes beyond amount limits that the consumer may set. In this way the regulation allows for the reduction of notice volume and related costs.

Sections 205.12 and 205.13 reflect statutory provisions for administrative enforcement and for the relationship to state laws affecting EFT. The regulation requires that records containing evidence of compliance must be kept by financial institutions for at least two years. One commenter estimated that yearly record retention costs would average $0.89 per file in 1980, implying a nationwide annual cost of $19 million in 1980.[4] Record retention activity is, however, partially motivated by other regulations and business considerations, so that costs due solely to the Act and regulation cannot be determined.

Uncertainty about whether state laws are consistent with provisions of the Act and regulation will lead financial institutions to seek determinations from the Board under section 205.12. Preparation of the required applications will impose costs on applicants and may deter some institutions from applying. Uncertainties about the relationship between state and federal law may result in a temporary restriction of the availability of EFT services to some classes of consumers.

* * *

[3] For accounts in existence on May 10, 1980. The regulation is expected to reduce compliance costs substantially by exempting closed accounts that otherwise would be subject to the Act's disclosure requirements.

[4] This assumes that files are kept for each of 22 million consumer EFT accounts.