FEDERAL RESERVE BANK OF NEW YORK

[Circular No. 8748
February 5, 1980]

REGULATION E — ELECTRONIC FUND TRANSFERS

— Amendments Implementing Provisions of the Electronic Fund Transfer Act

— Comments Invited on Additional Proposals

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

The Board of Governors of the Federal Reserve System has adopted additional amendments, effective May 10, 1980, to its Regulation E, "Electronic Fund Transfers," to implement provisions of the Electronic Fund Transfer Act. In addition, the Board of Governors is requesting comment by March 7 on two proposals relating to the regulation.

The following is quoted from the text of the statement issued by the Board in this matter:

> The Board previously adopted regulatory rules to carry out sections of the Act that became effective last February and for some of the sections of the Act that will become effective May 10, 1980. The rules adopted today [January 23], as well as the proposals on which the Board seeks further public comment, concern other provisions of the Act becoming effective in May.
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> The additional final rules adopted as part of the Board's Regulation E are revisions of proposals published by the Board in October.
>
> In general, they deal with:
>
> — Requirements for documentation of electronic fund transfers by financial institutions;
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> — Notification requirements in connection with preauthorized electronic receipt of funds;
>
> — Requirements for prompt crediting of funds received electronically;
>
> — Procedures for resolving errors;
>
> — Responsibility for compliance when an EFT card or similar device is issued to a consumer by an EFT service provider who does not hold the consumer's account.
>
> The Board decided to take no action at this time on a proposal made in October concerning charges made by financial institutions in connection with error resolution. The Board said it will monitor industry practice regarding such charges and will take action if it becomes evident that consumers need protection in this area.
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> The Electronic Fund Transfer Act[1] protects consumers in their use of EFT services. EFT services permit consumers and others to transfer funds without the use of checks. One means by which funds can be transferred is the use of an EFT card. Consumers can use EFT cards to make payments — for example, by use of the card at the point of sale to authorize a debit of the consumer's account at a financial institution, in payment for the purchase of goods or services. This differs from the use of a credit card in that such use of the EFT card authorizes funds to be *taken directly out of* the consumer's account while use of the credit card *creates a debt* that the consumer pays at a later time. The EFT card may also be used at automated tellers to withdraw cash from the consumer's account.
>
> Consumers may use other EFT services to authorize the electronic deposit of payments due to them (such as electronic deposit of wages, Social Security benefits, dividends and similar repetitive deposits) or for payment of their bills.

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[1] Title XX of the Financial Institutions Regulatory and Interest Rate Control Act of 1978.

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The new rules adopted as part of Regulation E include these details:

1. *Documentation of transfers* — The Act requires that financial institutions document electronic transfers by making receipts available at automated teller machines or point of sale terminals, and by sending consumers of EFT services periodic statements. Regulation E includes the following requirements:

— Financial institutions must show on periodic statements the date a transfer was debited or credited to the consumer's account. (An earlier proposal to require the date the transfer was initiated was not adopted.)

— A financial institution may show the location of an automated teller terminal in any of three ways: street address; name of an organization (such as the name of a store); or, name of a readily identifiable location (such as O'Hare Airport), where the terminal is located.

In order to facilitate compliance with the documentation provisions of the Act and Regulation E, the Board proposed delayed effective dates for the following requirements. Comment on the proposals was requested through March 7.

— In the case of institutions using cash dispensing equipment unable to provide receipts, the Board proposed a delay until January 1, 1981, in the effective date of the requirement for receipts. Such institutions would, however, be obliged to mail receipts to consumers using the cash dispensers not later than the business day after the terminal is used.

— In response to the Board's October proposals, some financial institutions said their equipment would have to be modified in order to provide on periodic statements the address, or other description of a terminal's location, and name of the third parties to or from whom transfers were made. The Board proposed a three-month delay for these two requirements, until August 10, 1980.

2. *Preauthorized credits* — The Act requires that financial institutions give either positive notice of receipt of preauthorized deposits to a consumer's account (such as sending the consumer notice of receipt of a deposit, for instance, of a direct electronic deposit of Social Security benefits) or negative notice (sending a notice that a scheduled deposit had not been received), unless the payor has given the consumer notice that the transfer has been started (such as notice that an employer has initiated a payroll deposit).

The Board adopted provisions in Regulation E to implement these requirements. As an alternative, the Board provided, as it had suggested in a proposal made in April, that institutions may provide consumers with a telephone number to be used to verify whether a transfer has or has not been made. Institutions that adopt this alternative are required to provide readily available telephone service, and to inform the consumer of the telephone number as an initial disclosure of terms of the institution's EFT service, and on periodic statements.

3. *Availability of funds* — Financial institutions must make electronically deposited funds available to consumers promptly.

4. *Procedures for processing errors* — The Act — and Regulation E as adopted — require generally that financial institutions resolve asserted errors in electronic fund transfers within 10 business days of notification by the consumer, given orally or in writing. Alternatively, institutions may take up to 45 calendar days to resolve a complaint, if the account is provisionally recredited within 10 business days for the amount in dispute. Recrediting need not take place unless written confirmation of an oral report of error is received within 10 business days of the oral report, by an institution that has advised the consumer that it requires a written report and has provided an address.

Where an institution determines that no error was committed, it must notify the consumer that the account is being debited again for the amount that was credited. It must honor, for the period of investigation and for five business days after mailing of a redebiting notice, checks that are payable to third parties up to the amount in dispute.

The institution may limit its investigation to the "four walls" of the institution, when a third party — with which the institution has no agreement — is involved (including the Social Security Administration).

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5. *EFT card issued by a financial institution not holding the consumer's account.*

The institution offering the services would be responsible for compliance, with limited exceptions, for disclosures having to do with the relationship of the institution holding the consumer's account to that consumer.

The Board's rules for consumer protection under the Act and Regulation E, previously adopted, include the following, effective May 10, 1980:

— Requirements for disclosures to consumers who use EFT services;

— Exemptions for transfers of funds within an institution;

— Record retention;

— The relation of the Federal Electronic Fund Transfer Act to State law.

The following previously adopted final rules are already in effect:

— Limitations on a consumer's liability for unauthorized use of an EFT card, including:

— Provision that consumers cannot be held liable for unauthorized use of EFT cards if the card issuer has not disclosed what liability the consumer will have for unauthorized use of the card, the telephone number and address for reporting a lost or stolen card and the institution's business days, and

— Provision that written notice of loss or theft of an EFT card is effective when the consumer mails or otherwise transmits the notice to the card issuer.

— Conditions under which EFT cards may be issued.

Enclosed — for commercial banks, mutual savings banks, savings and loan associations, and credit unions in this District — is a copy of the complete text of the newly adopted amendments to Regulation E. Copies will be made available to others upon request to our Circulars Division. The amendments also will be incorporated in a revised pamphlet containing Regulation E. The revised pamphlet is expected to be printed about mid-March and will be sent to you as soon as available.

Printed on the following pages is the text of the Board's notice regarding the Regulation E proposals. Comments on the proposals may be sent to our Regulations Division and should be submitted by March 7. Questions regarding the proposals or the newly adopted Regulation E amendments may also be directed to the Regulations Division (Tel No. 212-791-5919)

THOMAS M. TIMLEN,
First Vice President.

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FEDERAL RESERVE SYSTEM

[12 CFR Part 205]

[Reg. E., Docket No. R-0272]

ELECTRONIC FUND TRANSFERS

Documentation of Transfers

AGENCY:

Board of Governors of the Federal Reserve System.

ACTION:

Proposed rule.

SUMMARY:

The Board is publishing for comment a proposal to delay the effective date of certain portions of the documentation requirements (§ 205.9) of Regulation E beyond May 10, 1980, the effective date of the Electronic Fund Transfer Act. The Board is publishing separately the final provisions of the regulation, including those sections that would be affected by this proposal.

DATE:

Comments must be received on or before March 7, 1980.

ADDRESS:

Comments may be mailed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to Room B2223, 20th and Constitution Avenue, N.W., Washington, D.C. between 8:45 a.m. and 5:15 p.m. Comments may also be inspected at Room B1122 between 8:45 a.m. and 5:15 p.m. All material submitted should refer to docket number R-0272.

FOR FURTHER INFORMATION CONTACT:

Regarding the regulation: Dolores S. Smith, Section Chief, or Lynne B. Barr, Senior Attorney (202-452-2412), Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. 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.* The Board has adopted in final form the provisions of Regulation E to implement the Electronic Fund Transfer Act (15 U.S.C.A. 1693b). Portions of the regulation were published earlier at 44 FR 18468 (March 28, 1979) and 44 FR 59464 (October 15, 1979). The remaining portions are being published today. (See the final rules document on Regulation E in this issue.) The regulation will become effective May 10, 1980.

The Board is proposing to delay beyond May 10 the effective date of certain portions of § 205.9 regarding documentation requirements. There are two proposals. The first proposal would permit financial institutions operating cash dispensers that do not generate terminal receipts to mail or deliver receipts to consumers on the business day following the transfer.

As proposed, this provision would remain in effect until January 1, 1981. The second proposal relates to periodic statements, and would provide that the failure of a financial institution to disclose the terminal location and name of any third party to or from whom funds were transferred would constitute a violation of the Act or regulation only after August 10, 1980. The specific proposals are discussed in greater detail in section (2) below.

Section 904(a)(2) of the Act requires the Board to prepare an analysis of the economic impact of the regulation that considers, among other things, the 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. Although this proposal does not contain a separate economic impact analysis, these issues are discussed below. This statement and the proposed amendments have been transmitted to Congress, as required by § 904(a)(4).

Because a prompt resolution of the issues addressed in the proposed amendments is necessary in view of the time remaining until May 10, the

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Board believes that an expedited rulemaking procedure is in the public interest. Accordingly, the expanded procedures set forth in the Board's policy statement of January 15, 1979 (44 FR 3957), will not be followed in connection with this proceeding.

(2) **Regulatory Provisions.** *Section 205.9(f)—Transitional terminal receipt requirements.* Section 205.9(a) requires that a financial institution make a receipt available to the consumer at the time an electronic fund transfer is initiated at an electronic terminal. It has come to the Board's attention that some terminals do not have the capability to comply with this requirement. It is the Board's understanding that these terminals, which are cash dispensers and do not perform any other transfer functions, cannot be modified to provide the consumer with a receipt at time of initiation. The Board is concerned that financial institutions may be unable to procure replacements for the number of machines currently in operation by May 10, and that a useful service to consumers may be eliminated if the machines are withdrawn from use on that date.

Commenters on the proposed regulation suggested that the Board provide a complete exception, for financial institutions operating such terminals, from the requirement that the receipt be made available at the time of initiation. The Board believes that a complete exception from this requirement is not justified, and proposes instead to set a new compliance deadline. The Board is proposing to delay the effective date of this requirement until January 1, 1981, for institutions operating such machines, provided that in the interim the institutions mail or deliver a written receipt to the consumer on the next business day after the transfer was initiated. That receipt must comply with the other requirements of § 205.9(a).

The Board solicits comment on the intention of institutions operating such cash dispensers regarding the continuation of this service, if the effective date remains May 10. Comment is solicited on the costs that would be incurred by financial institutions if these machines must be replaced by May 10. What losses would be incurred by institutions and consumers if such services were discontinued?

The Board also solicits comment on the costs of such replacement by the January 1 date, as well as on the costs that will be associated with the transmittal of the receipt to the consumer on the next business day. In addition, the Board solicits comment on any adverse impact the proposed amendment would have on consumers.

Section 205.9(g)—Delayed effective date for periodic statement requirements. Sections 205.9(b)(1)(iv) and (v) require, respectively, that the terminal location for terminal transfers and the name of any third party to or from whom funds were transferred be reproduced on or with the periodic statement. Comments on the Board's October proposal indicated that some financial institutions would find it difficult and perhaps impossible to comply with these periodic statement requirements by May 10. The Board is concerned that rushed compliance efforts to meet the May 10 effective date and substantial noncompliance with the regulatory requirements after that date would impose significant costs on financial institutions in the form of increased expenses and exposure to civil liability for violations. Section 904(c) of the Act permits the Board to provide in the regulation "for such classifications, differentiations, and other provisions . . . as in the judgment of the Board are necessary or proper to effectuate the purposes of this title . . . or to facilitate compliance therewith." The Board is proposing to amend the regulation to provide that a failure to comply with the requirements of §§ 205.9(b)(1)(iv) and (v) shall not constitute a violation of the Act or the regulation until August 10, 1980, three months after the effective date of the Act and the other provisions of Regulation E.

Information is requested on the costs and specific operational problems that would be faced by financial institutions if compliance had to be achieved by May 10, including costs to modify current equipment, statement formats, and other system components to bring them into compliance. By how much could costs be reduced if the compliance deadline were extended for the proposed three-month period? Commenters should be as specific as possible. The Board also solicits comment on any adverse effects for consumers that would be occasioned by adoption of the amendment.

Section 906(f) of the Act, which provides that any documentation provided to the consumer shall constitute *prima facie* proof of payment to another person, becomes effective May 10. The Board intends that, if the proposed amendment is adopted, financial institutions would be required to supply the consumer with the necessary identification of the third party transferee during the interim period, should the consumer request it for use as proof of payment.

Further, any request by the consumer for additional information concerning a transfer incompletely identified on the periodic statement would constitute an error under § 205.11(a)(7) of the regulation. The financial institution would have to comply with the procedures for resolving errors set forth in § 205.11, if the request is made by the consumer in accordance with that section.

(3) Pursuant to the authority granted in 15 U.S.C.A. 1693b, the Board proposes to amend Reg-

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ulation E (12 CFR Part 205), by adding two paragraphs at the end of § 205.9, to read as follows:

Section 205.9 — Documentation of Transfers

* * *

(f) **Transitional terminal receipt requirements.** The failure of a financial institution to comply with the requirement of paragraph (a) of this section that a receipt be made available to the consumer at the time an electronic fund transfer is initiated at an electronic terminal shall not constitute a violation of the Act or this regulation unless the failure to comply occurs on or after January 1, 1981, provided

1) The transfer occurs at an electronic terminal that

(i) Does not permit transfers other than cash withdrawals by the consumer, and

(ii) Cannot make a receipt available to the consumer at the time the transfer is initiated; and

(2) The financial institution mails or delivers a written receipt to the consumer that complies with the other requirements of paragraph (a) of this section on the next business day following the transfer.

(g) **Delayed effective date for periodic statement requirements.** The failure of a financial institution to comply with the requirements of paragraphs (b)(1)(iv) and (v) of this section shall not constitute a violation of the Act or this regulation unless the failure to comply occurs on or after August 10, 1980.

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FEDERAL RESERVE SYSTEM

[12 CFR Part 205]

[Reg. E; Docket No. R-0251]

ELECTRONIC FUND TRANSFERS

Definitions
Special Requirements
Issuance of Access Devices
Initial Disclosure of Terms and Conditions
Change in Terms; Error Resolution Notice
Documentation of Transfers
Preauthorized Transfers
Procedures for Resolving Errors
Administrative Enforcement
Services Offered by Financial Institutions Not Holding Consumer's Account
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 proposals were published for comment at 44 FR 25850 (May 3, 1979) and 44 FR 59464 (October 15, 1979). The Board is separately publishing today a proposal to delay the effective date of certain provisions of § 205.9. The Board is also issuing an analysis of the economic impact of the portions of the regulation adopted at this time.

EFFECTIVE DATE: May 10, 1980.

FOR FURTHER INFORMATION CONTACT: Regarding the regulation: Dolores S. Smith, Section Chief, or Lynne B. Barr, Senior Attorney (202-452-2412), Division of Consumer and Community 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 are §§ 205.9, 205.10(a), 205.11, and 205.14.

The Board is also adopting amendments to §§ 205.2, 205.5, 205.7, 205.8, and 205.13, and to the model disclosures in Appendix A. They are discussed in greater detail in section (2) below. A number of questions have arisen with respect to the portions of the regulation already adopted in final form. Those questions are discussed in section (4) below.

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The Board is also publishing for comment proposed amendments to § 205.9 that would delay the effective date of portions of that section. (See the proposed rules document affecting Regulation E in this issue.)

The Board received 142 written comments on the October proposal (44 FR 59464). Based on the comments and its own analysis, the Board has revised the proposed sections and adopted them in final form. The amendments are effective May 10, 1980.

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.

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 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.

(2) Regulatory Provisions. Section 205.2 -- Definitions. The definition of "electronic fund transfer" (§ 205.2(g)) has been amended to exclude payments made by check, draft, or similar paper instrument at electronic terminals. The Board believes that such payments are not covered by the Act and regulation, and is specifically excluding them in response to comments. Payments made at electronic terminals by other than paper means (e.g., a direct debit of an account by a consumer at an automated teller machine (ATM) to pay a utility bill) are covered by the Act, and are subject to the relevant requirements of the regulation.

The Board wishes to point out that deposits of cash, checks, drafts, or similar paper instruments at electronic terminals are, in its opinion, encompassed within the definition of "electronic fund transfer" and the requirements of the Act and regulation apply to such transfers.

Section 205.4 -- Special Requirements. The Board has redesignated § 205.4(c), Multiple accounts and account holders, as § 205.4(b), and

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§ 205.4(d), Additional information; disclosures required by other laws, as § 205.4(c). This change has been made because the paragraph proposed as § 205.4(b), Services offered by financial institutions not holding a consumer's account, has been moved to a separate section of the regulation, § 205.14.

Section 205.5 -- Issuance of Access Devices. The Board has adopted a technical amendment to § 205.5(a)(3). References to §§ 205.5(d)(1), (2), and (3) in that paragraph have been deleted and replaced by references to §§ 205.7(a)(1), (2), and (3), because paragraph (d) sets forth transitional disclosures and will be deleted effective May 10, 1980.

Section 205.7 -- Initial Disclosure of Terms and Conditions. The Board has adopted an amendment to this section to make clear that the initial disclosures given to the consumer should be in a form that the consumer may retain. It has come to the Board's attention that some financial institutions now provide disclosure statements to consumers on the reverse side of the agreement for electronic fund transfer services that the consumer signs and returns to the institution. The Board believes that it is essential for consumers to be able to retain the information contained in the disclosures, particularly the telephone numbers and addresses for notice of loss or theft of an access device and error resolution.

Section 205.8 -- Change in Terms; Error Resolution Notice. A technical amendment has been made to § 205.8(a) by deleting the reference in the last sentence to "a change required to be disclosed under this paragraph," and replacing it with "such a change." The time periods for notifying consumers of an adverse change in terms under this sentence only apply to those changes that were immediately necessary to protect the security of the system or an account.

Section 205.9 -- Documentation of Transfers. Section 205.9(a), implementing § 906(a) of the Act, requires financial institutions to make a receipt available to the consumer at the time of any electronic fund transfer at an electronic terminal. The receipt must include six items of information, to the extent they are applicable to the transfer. An "s" in parentheses has been added to the word "transfer" in the introductory sentence to clarify that multiple electronic fund transfers may be shown on a single receipt. The Board wishes to emphasize that the written receipt should be in a form that the consumer may retain. A financial institution will not comply with the requirements of the regulation if it simply prints the receipt information on a display screen and does not make a "hard copy" receipt available to the consumer.

Financial institutions raised two related concerns with the introductory portion of this paragraph, regarding the requirement that a receipt be made available at the time the transfer is initiated. Commenters asked the Board to provide specific exceptions from the regulatory requirements (a) when a transfer is initiated but not completed for any reason, e.g., when an ATM is out of cash, and (b) when the terminal runs out of paper and a receipt is not made available. As to the first, it is the Board's understanding that most

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terminals do in fact generate a receipt when a transfer is initiated but not completed, because of terminal malfunction or because the consumer has decided not to complete the transfer. The Board believes that the provision of receipts in these instances protects consumers and should be encouraged, although it is not necessarily required by the regulation.

As to a machine's running out of paper, the Board believes that the failure of the terminal to provide a receipt is not a violation of the regulation if the financial institution maintains procedures reasonably adapted to provide receipts. See § 915(c) of the Act for the exception from liability for _bona fide_ and unintentional errors.

Section 205.9(a)(1) requires institutions to disclose the amount of the transfer. In response to comments on the proposals, the final regulation provides that a charge imposed by an owner or operator of an electronic terminal (other than the financial institution providing the statement) may be included in the amount of the transfer shown on the terminal receipt. The amount of the transfer and the charge for the transfer may be combined, however, only if the amount of the charge is disclosed separately on the terminal receipt (by preprinting it on the receipts, for example) and on a sign posted on or near the terminal. The Board is requiring separate disclosure of the amount of the charge because of concern that consumers would not otherwise know that a charge is being imposed by the owner or operator of the terminal.

Section 205.9(a)(2) requires disclosure of the calendar date on which the transfer was initiated. The Board has added the word "calendar" to indicate that the date that must be printed on the terminal receipt is the date on which the consumer uses the electronic terminal to order an electronic fund transfer and not the date on which the transfer is debited or credited to the account nor an accounting or business day. The Board believes that the actual calendar date is necessary in order to give consumers an easy means of reconciling the terminal receipt with their activities on a given day, particularly since the disclosure of the initiation date of terminal transfers has been deleted from the periodic statement requirements under § 205.9(b). A financial institution may disclose either calendar date on the terminal receipt for those transfers that are initiated very late in one day (e.g., at 11:59 p.m.) and completed on the next calendar day (at 12:01 a.m.).

Section 205.9(a)(3) requires disclosure of the type of transfer and the type of the consumer's account(s) to or from which funds are transferred. A footnote makes clear that if more than one account of the same type may be accessed by a single access device, each account must be uniquely identified. If a financial institution has issued an access device that permits a consumer to make transfers to or from two checking accounts, the disclosure of the consumer's account on the terminal receipt must indicate which of the two checking accounts has been accessed. For example, a financial institution could disclose a cash withdrawal from an ATM with a device that accesses two accounts of the same type as "withdrawal from checking I," "withdrawal from checking II," or, if only one other account of any type can be accessed by the same device, "withdrawal from other account." These descriptions may be encoded on the face of the receipt if the code is explained elsewhere on the receipt itself.

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Some institutions, particularly those operating in shared and interchange environments, asked how they could adequately describe transfers made at one type of financial institution to or from consumers' accounts at other types of institutions. For example, a member of a credit union whose access device permits EFT transfers to or from a share draft account may be able, in a shared system, to use that access device at a terminal owned or operated by a bank. That bank's terminals may describe accounts only as "checking" or "savings" accounts, and may not have the capability of generating a receipt that describes a transfer as "withdrawal from share draft." These commenters asked the Board to delete the requirement that the type of account be identified, or exempt transfers made at terminals not owned or operated by the account-holding institution from this requirement. The Board believes that an exemption would not be justified. It has, however, added a provision to this paragraph permitting generic description of accounts. Thus, the consumer whose share draft account at a credit union is being accessed by an access device used at a bank's ATM may be given a receipt that identifies the transfer as a withdrawal from checking rather than as a withdrawal from share draft.

Section 205.9(a)(4) in the October proposal required disclosure of the number or other identification of the access device used to initiate the transfer. Comments expressed concern that compliance with this requirement would be difficult, particularly for systems that do not have the capability to print an access device number on the terminal receipt.

The regulation as adopted provides that the financial institution must disclose a number or other code on the terminal receipt that uniquely identifies one of the following: the consumer initiating the transfer, the consumer's account(s), or the access device used to initiate the transfer. It is the Board's opinion that any unique identification that can tie the consumer to the particular transfer will be sufficient to comply with the requirement and will permit the consumer to use that terminal receipt for error resolution or as proof to a third party. Any identification of the access device should, of course, exclude the personal identification number (PIN).

Section 205.9(a)(5) requires a disclosure of the location of the terminal at which the transfer was initiated. This provision remains basically unchanged from the October proposal. The institution may, at its option, provide the terminal location in one of two ways. First, it may put the actual description of the location of the terminal on the receipt, in one of the forms prescribed by § 205.9(b)(1)(iv). Abbreviations may be used. Or, the financial institution may use an identification (such as a code or terminal number) without explaining that identification on the receipt. The statement which reflects that transfer, however, must disclose both the identification and the location to which it relates.

Section 205.9(a)(6) requires an institution to identify any third party to or from whom funds are transferred by means of an electronic terminal. Only the ultimate transferee or transferor need be identified. An entity such as a merchant or another financial institution that is processing a transfer to or from another entity does not have to be identified either on the receipt or the periodic statement.

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The information required by paragraphs (a)(5) and (6) of this section may be combined. Thus, if a consumer is using an access device to purchase goods from a merchant, both the name of the third party to whom funds are being transferred (the merchant) and the location of the terminal at which the transfer is initiated will be satisfied by a disclosure such as "XYZ Store, Anytown, Ohio."

Institutions may use a code to name the third party to or from whom funds are tranferred, but only if the name of the third party is explained elsewhere on the receipt. Thus, if payments to certain utilities can be made at an ATM, preprinting a series of codes and the specific utilities to which they relate on the back of the terminal receipt, and disclosing the correct code on the face of the receipt, would comply with the regulation. The Board again emphasizes, however, that the periodic statement reflecting this transfer will have to include the name of the third party. The Board also envisions that most transfers to or from third parties at point-of-sale (POS) terminals would comply with this requirement by actually naming the third party (normally a merchant) to or from whom funds are tranferred.

The Board has revised the language to clarify that paragraph (a)(6) does not apply at all if the name of the third-party transferor or transferee is provided by the consumer in a form that the electronic terminal cannot reproduce on the receipt. For example, if a consumer makes a utility payment at an ATM and provides the name of the third-party payee by inserting a payment stub into the ATM, the ATM need not generate a terminal receipt that names the utility company. A disclosure under § 205.9(a)(3) that a "payment from checking" has been made is all that would be required in this instance.

It should be noted that third-party payments made by check, draft, or similar paper means have been excluded from the definition of "electronic fund transfer" under § 205.2(g) and compliance with these requirements for those types of transactions is not required.

Section 205.9(b), which implements § 906(c) of the Act, requires institutions to provide periodic statements summarizing the electronic fund transfer activity occurring in the consumer's account during the statement cycle. A written statement must be provided to the consumer for any account capable of transfers other than preauthorized credits, for each month in which there is electronic activity in the account. Where no activity occurs in such an account, the statement must be provided on at least a quarterly basis. Some commenters again requested the Board to permit longer statement cycles for certain types of EFT-accessible accounts. The Board believes that the language of § 906(c) of the Act is clear in requiring monthly statements for any active account from which electronic debits can be made.

A great many commenters asked for clarification of what is meant by the phrase "for any account to or from which electronic fund transfers can be made" in § 205.9(b). These commenters were concerned that accounts for which there is no specific electronic fund transfer agreement are in fact accessible to electronic fund transfers, since membership in an automated clearing house (ACH) association requires participating financial institutions to accept

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electronic fund transfers to the account. The Board interprets the language of the regulation quoted above to apply only to those accounts for which (1) an agreement has been entered into between the consumer and the financial institution to provide electronic fund transfer services to or from the account (including accounts for which an access device has been issued to the consumer), or (2) an agreement has been entered into between the consumer and a third party (such as for preauthorized debits or credits) and for which the financial institution has received notice of the agreement.

Some financial institutions asked whether they could continue the practice of permitting consumers to "call for" their statements rather than having to mail out a statement to all consumers. The Board believes that the language of the regulation saying that institutions must "mail or deliver" the statement permits continuance of this practice.

Finally, the regulation has been amended to provide that a statement must be mailed or delivered "for each monthly or shorter cycle" (emphasis added) in which an EFT has occurred. This change was made to comport with the statutory language and in response to comments of financial institutions which asked that they be permitted to have a shorter than monthly cycle. Some financial institutions asked whether they could send a "periodic statement" each time an electronic fund transfer occurred for certain types of accounts, and not have an actual periodic cycle under which statements would be sent. The Board believes that such a procedure would not comply with the statute or regulation. The Board believes that Congress intended periodic statements to be sent to consumers on regular cycles so that consumers would have an orderly means of reconciling their accounts.

The regulation (in footnote 4) provides that the detailed information about each transfer, required by paragraph (1), may be given on accompanying documents, and that codes may be used on the periodic statements, as long as the codes are explained on accompanying documents or elsewhere on the statement. This provision comports with the statutory language specifically authorizing the use of accompanying documents. For example, an institution may include copies of terminal receipts to reflect transfers initiated by the consumer through electronic terminals, so long as those terminal receipts and other documents together comply with the requirements of § 205.9(b). This would be analogous to the "country club" billing procedures used by certain card issuers under Regulation Z and the Truth in Lending Act.

Set forth below is an example of a periodic statement illustrating the requirements of § 205.9(b). The Board again emphasizes that, while information complying with § 205.9(b) must be provided for each account from or to which electronic fund transfers can be made, § 205.4(c) expressly permits a financial institution to furnish a single periodic statement combining information on more than one account. When a financial institution provides a combined periodic statement (for example, for a demand deposit account and a savings account, both of which can be accessed electronically), all the relevant electronic fund transfers affecting these accounts must be shown on that portion of the periodic statement reflecting the transfers. If a consumer has

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transferred money from a checking to a savings account at an ATM, the periodic statement must reflect the transfer from checking on the checking account portion of the statement and the transfer to savings on the savings account portion.

Several commenters asked whether the requirements of § 205.9(b) had to be met for all transfers reflected on periodic statements issued after May 10, 1980, or whether the requirements apply only to transfers occurring after the effective date of the Act. The Board believes that only transfers occurring after May 10 must be reflected on periodic statements in accordance with the requirements of the Act and regulation.

Section 205.9(b)(1)(i) requires disclosure on the periodic statement of the amount of each transfer. The amount of a transfer charge may be included in the amount of the transfer on the periodic statement if the requirements of § 205.9(a)(1) have been met by the owner or operator of the terminal at which the transfer took place.

Section 205.9(b)(1)(ii) requires disclosure on the periodic statement of the day each transfer was debited or credited to the account. The October proposal would have required both the initiation date and the posting date for terminal transfers to be disclosed on the periodic statement, if they differed. Financial institution commenters raised a number of concerns with this proposal. It was brought to the Board's attention that a great many terminals do not capture the initiation date for each transfer, and that significant redesign and reprogramming costs would be incurred if both dates were required on the periodic statement for terminal transfers. It was also noted that consumers are generally aware that terminal transfers made on a certain date may not in fact be posted until a later date, and that the date the transfer is debited or credited to the account is of paramount importance to the consumer.

While this change in the requirement results in less information being transmitted on the periodic statement, the Board believes that the periodic statement requirements generally will give the consumer sufficient information to reconcile the terminal receipt with the statement and to recollect those transfers made at terminals. The Board has attempted to balance the needs of the consumer for information to reconcile and remember transfers with the inherent space limitations in statement formats and the costs associated with redesigning periodic statements and reprogramming terminals to comply with the Act. (See the accompanying economic impact analysis for further discussion of those costs.)

Section 205.9(b)(1)(iii) requires the institution to indicate the type of transfer and the type of account affected by the transfers. This requirement will be satisfied by the same type of information provided under § 205.9(a)(3), such as "withdrawal from checking" or "payment from savings." While there may be certain operational problems associated with describing the types of transfer, particularly in a shared or interchange system, the Board feels that financial institutions can adjust their systems to provide for the transmittal of such data. This information may be provided by a code that is explained elsewhere on the periodic statement or in accompanying material.

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In the illustration below, the transfer codes are preprinted on the periodic statement. Because the statement reflects only checking account transfers, a generic identification of the account is unnecessary in the list of transfer codes. The sole exception is transfer code 61, which affects the consumer's savings account as well as the checking account for which the statement is issued.

Section 205.9(b)(1)(iv) sets forth the disclosure requirements for terminal location. This requirement is limited to those tranfers initiated at an electronic terminal. In the statement below, transfer types 01, 03, 05, 21, and 61 represent terminal transfers that are subject to this requirement. The final regulation also requires disclosure of an identification (such as a terminal number or code) if one was used on the receipt. Although financial institution commenters were generally opposed to reprinting the code from the receipt on the periodic statement, the Board feels it is necessary (particularly given the deletion of the initiation date from the periodic statement) to include the code so that consumers can reconcile the terminal receipt with the periodic statement. The terminal number or other code will be particularly significant for consumers where more than one terminal is located at a single location, such as in a department store or ATM facility with more than one terminal.

Institutions operating in a shared or interchange environment were concerned that certain codes may be the same for different terminals and that it would be a source of confusion to the consumer if identical terminal numbers appeared on the periodic statement. The Board does not interpret the regulation to require that all numbers be unique, particularly since the descriptions of the terminal location will be different in every case.

Paragraphs (b)(1)(iv)(A), (B), and (C) provide three different methods for describing the terminal location. The institution need not adopt a single method consistently for all terminal locations. For example, an institution may describe a terminal located at one branch by its address under paragraph (A), and an ATM located at another branch of the institution by the branch name under paragraph (B). If the financial institution actually described the terminal location on the receipt, the description on the periodic statement must be disclosed under the same method. Note that the institution may abbreviate the descriptions.

Under paragraph (A), the requirement that the number and street or intersection always be given has been modified to permit financial institutions to omit the number portion of the address if the street name alone uniquely identifies the terminal location. For example, if a transfer takes place at an ATM located on Main Street, the financial institution may omit the street number if it has only one terminal on Main Street. Thus, financial institutions using paragraph A to describe the terminal location could use "500 Main Street," or "Main Street," or "Main/Oak Streets."

Paragraph (B) permits an institution to describe the location with a term, such as "LaGuardia Airport, NY, NY," which has public recognition and conveys a particular location to the consumer. The Board has made clear in the regulation that the financial institution may use a branch name as a generally accepted name referring to a specific location under paragraph (B). For

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example, a financial institution might describe its ATM location as "Main Street Branch."

Paragraph (C) permits disclosure of the name of a merchant or financial institution on whose premises a terminal is placed or that owns or operates the terminal. Footnote 7 to this paragraph is intended to prevent a statement-providing institution from describing the location of its own terminal simply by the name of the institution, rather than the more specific geographic location. This footnote has been revised, however, to permit financial institutions that own or operate terminals at only one location to describe that terminal by using its name under paragraph (C) of this provision.

Footnote 5 and references to it in footnotes 6 and 8 have been provided to permit financial institutions to drop the city and/or the state designation when all the terminals owned or operated by the financial institution providing the statement, or by the system in which it participates, are located in that city or in that state. The Board believes that no reduction in consumer protection results from this exception, as the consumer will be aware that all the transfers reflected on the periodic statement which occurred within the system took place in the city or state in which the financial institution is operating. If, however, the consumer made transfers at terminals located outside the city or state in which the system is located, the periodic statement would have to reflect the city and state in which those transfers took place.

The institution may describe the location of the terminals on material accompanying the periodic statement, such as a master list of terminal numbers and the locations to which they relate.

Section 205.9(b)(1)(v) requires the institution to disclose the name of any third party to or from whom funds were transferred. Footnote 9 provides an exemption from this provision for checks or similar negotiable instruments deposited in an electronic terminal for later manual processing. In such cases, the institution is not required to capture the names of third parties on the instruments for disclosure on the periodic statement. Institutions should note that payments made by check, draft, or similar paper instrument at electronic terminals have been excluded from the definition of electronic fund transfer and that no disclosure will be required on the periodic statement under Regulation E for those payments. Although comments from financial institutions suggested that significant costs will be incurred in printing the names of third parties on the periodic statements, the Board believes that the statutory language is clear and that the intent of Congress was that the name of the third party to or from whom funds were transferred be given on the periodic statement for purposes of account reconciliation and for proof of payment under § 906(f) of the Act. This requirement applies to all types of transfers, not just to those made at a terminal.

A financial institution constitutes a third party to or from whom funds were transferred for purposes of this requirement, so that a payment made at an ATM to the financial institution holding the consumer's account would have to reflect the name of the institution as the third-party payee.

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The second sentence of § 205.9(b)(1)(v) sets forth special requirements regarding disclosure of the name of any third party for transfers initiated by a consumer at an electronic terminal. If the institution has used a name or code to identify the third party, that name or code must be repeated on the periodic statement. The example given in the October proposal was a merchant's name appearing on a terminal receipt for a POS transfer. The Board reiterates its position that if the merchant's "doing business" name was used on the terminal receipt, the periodic statement must reflect that name and not the name of any parent corporation. If the institution used a code on the terminal documentation, the periodic statement or accompanying material must also provide the name of the third party to which the code relates.

The location and third-party requirements on periodic statements may in some cases be satisfied by a single disclosure. For example, for purchases (transfers labeled "21" below), the information contained in the column headed "Description of Transfer" represents both the third-party merchants to whom funds were tranferred and the locations of the POS terminals involved.

Section 205.9(b)(2) requires an institution to disclose the number of the consumer's account(s) to which the periodic statement relates. As illustrated in the statement below, the account number need be shown only once on the periodic statement, rather than repeated with each description of a transfer.

Section 205.9(b)(3) requires disclosure of the total amount of any fees or charges assessed for electronic fund transfers or services. Only those charges that are specifically related to electronic fund transfer services should be disclosed, and they should be disclosed as an aggregate amount. The institution need not itemize the various types of charges it imposes. For example, if the institution imposes a fixed fee for use of an account whether or not the consumer utilizes the electronic transfer services associated with the account, no disclosure need be made under this paragraph.

Financial institution commenters asked that they be permitted to total all fees and charges, whether for electronic fund transfer services or for other services provided under the account (such as check charges). The Board is of the opinion that the Act envisions a discrete disclosure of the charges for electronic fund transfer services. It should be noted that if a transfer charge was added to the amount of the transfer under §§ 205.9(a)(1) and 205.9(b)(1)(i), the institution providing the periodic statement does not have to include the amount of that charge in its disclosure of EFT charges under paragraph (b)(3).

Sections 205.9(b)(4) and (5), which require the statement to show the beginning and ending account balances and the address and telephone number to be used for inquiries or error notification, are unchanged from the October proposal. With respect to § 205.9(b)(5), a number of commenters asked that the Board provide a separate notice to be placed on combined Truth in Lending/EFT account statements to alert consumers to the fact that they must write to preserve their rights under the Fair Credit Billing Act. Although the Board recognizes that consumers may be confused by the conflicting requirements of the Fair Credit Billing and Electronic Fund Transfer Acts, it feels that adding such a legend to the requirements of the regulation would simply cause greater

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confusion on the part of consumers. Many consumers would be unable to tell, merely by looking at a statement, whether Regulation E or Z applies to a particular alleged error.

Section 205.9(b)(6) applies to institutions that utilize the telephone notice alternative set forth in § 205.10(a)(1)(iii). Under paragraph (b)(6), the institution must inform consumers, on each periodic statement, of the telephone number to be used for that purpose.

A number of financial institutions wanted the Board to provide in the regulation that when a financial institution sends a consumer a periodic statement containing data transmitted to it by another financial institution or third party (such as a merchant), it may rely on that data without verifying its accuracy and without violating the regulation. The Board believes that such an exception is not warranted. Financial institutions must generally maintain reasonable procedures to avoid violations of the regulation, whether as a result of faulty data transmittal or errors of third parties. Again, the exception to liability under § 915(c) of the Act protects financial institutions that maintain such procedures if an unintentional error occurs.

Sections 205.9(c) and (d) provide limited exceptions to the general periodic statement requirements set forth in § 205.9(b). Under § 205.9(c), a financial institution need not provide a periodic statement for passbook accounts which cannot be accessed electronically except by preauthorized credits. Instead, the institution may simply update the passbook whenever it is presented by the consumer by entering, in the passbook or on a separate document, the amount and date of each electronic fund transfer since the passbook was last presented. A number of financial institution commenters asked that the Board provide a reasonable cut-off period beyond which a financial institution would not have to update the passbook information upon presentation. The Board believes that under the provisions of the Act and regulation, the financial institution does not have to update the passbook immediately upon presentation and can provide the information later, by mailing or otherwise returning the passbook or separate documentation to the consumer.

Section 205.9(d) permits institutions to send periodic statements on a quarterly rather than a monthly basis for non-passbook accounts which cannot be accessed electronically except by preauthorized credits. The Board wishes to emphasize that the format and content of the quarterly statement must comply with § 205.9(b).

In connection with these two paragraphs, the Board was asked by a number of financial institution commenters to provide further exceptions from the periodic statement requirements for low-activity accounts, other types of passbook accounts with access device capability, and for dormant accounts. The Board believes that the exceptions would not comport with the statute.

A new section, 205.9(e), has been added to the regulation. It permits the use of commonly accepted or readily understandable abbreviations on terminal receipts, periodic statements, or other documentation. The Board emphasizes that these abbreviations must still permit the consumer to readily understand the content of the documentation.

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XYZ BANK

Statement of Account

Mary and John Doe
421 Elm Street
Anytown, OH 44000

Direct Inquiries to:

(216) 111-1111
P. O. Box 1234
Anytown, OH 44000

CHECKING ACCOUNT 44-66-8800

Beginning Balance 794.65

Posting Date	Credits	Debits	Type of Transfer	Terminal Number	Description of Transfer
08 07		50.00	01	#985	1000 S. Elm St.
08 07		25.00	01	#876	Main St.
08 13	114.13		03	#568	Chestnut/Oak St.
08 13		72.34	21		ABC Dept. Store
08 15		278.49	51		Anytown Savings & Loan
08 17	438.73		31		ACME Steel Corp.
08 20		23.86	41		1st Bk. of Anytown
08 22		52.50	41		ABC Dept. St.
08 22		100.25	01	#24A	LaGuardia Airport, NY NY
08 23		88.00	21		Metropolis Dept. St., NY NY
08 24	704.65		31		Anytown Hospital
08 27		59.64	05	#456	E-Z Mall-OH Elec. Pr. Co.
08 27	65.00		03	#456	E-Z Mall
08 29		43.42	21		A-1 Food Store
08 29		300.00	61	#123	S. Anytown Br.

Ending Balance 1023.66

Transfers

01 - Withdrawal
03 - Deposit
05 - Payment
21 - Purchase
31 - Direct deposit
41 - Telephone bill payment
51 - Preauthorized debit
61 - Transfer to savings

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Section 205.10(a) -- Preauthorized Transfers to a Consumer's Account. Section 205.10(a)(1), which implements § 906(b) of the Act, requires that 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, some form of notice must be provided to the consumer so that the consumer can ascertain whether or not the transfer occurred.

The introductory language provides that notification by the payor to the consumer that the transfer has been initiated satisfies this requirement. This notification can be made, for example, by providing payroll data to the consumer, and need not take the form of a separate notice. If the payor does not provide this notice, the institution holding the consumer's account must adopt one of three alternative procedures for furnishing notice. The Board notes that the institution need not use the same procedure for all accounts receiving preauthorized electronic transfers or for all types or series of transfers.

Paragraphs (a)(1)(i) and (ii) set forth two of the alternative notice procedures, and are virtually unchanged from the October proposal. These two procedures are oral or written notice every time a preauthorized transfer occurs, and oral or written notice every time a transfer fails to occur. Notice must be given within 2 business days after the transfer occurs, or if the institution has chosen to give negative notice, within 2 business days after the transfer was scheduled to occur.

Commenters on the October proposal suggested that the 2-business-day period in paragraph (a)(1)(ii) be expanded, perhaps to 5 business days. It was argued that a preauthorized transfer often fails to arrive when scheduled or even within 2 business days of that time, but does arrive within a slightly longer period. Changing the time period in this provision would allow an institution using the paragraph (a)(1)(ii) procedure to avoid sending a notice on such occasions. The Board believes that it is important for the notice to the consumer to be given as soon as reasonably possible after the scheduled date, so that the consumer will know that the funds have not been received as expected. For this reason, the Board has not changed the time period.

On the other hand, the Board believes that if an institution is using this procedure, and a transfer arrives late but within the 2-business-day period, then no notice need be sent.

Paragraph (a)(1)(iii) provides a third alternative, and permits an institution to establish a telephone line that a consumer may call to find out whether a preauthorized electronic fund transfer to the account has occurred. The telephone number to be used must be disclosed in the initial disclosures and on each periodic statement. In addition, the final rule requires that the telephone line be "readily available." The Board intends that institutions using this alternative establish systems with sufficient lines, equipment, and personnel so that consumers calling to inquire about transfers are able to have calls answered with little difficulty. A 24-hour line is not required, but the lines should be available at least during normal business hours.

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Another aspect of availability is cost. Consumers should not have to make long-distance calls to inquire about their transfers. The Board expects telephone notice systems to be designed so as to avoid such a result. An institution with branches and customers located throughout a particular state could designate a telephone number that consumers could call free of charge from anywhere in the state. Alternatively, the institution could designate local numbers for the different communities in the state.

Section 205.10(a)(1)(iii) of the October proposal would have given the consumer the option to accept or reject use of this alternative procedure. The final version leaves the choice of whether to use this procedure up to the institution.

As the costs of developing and operating a system of notification are significant, many commenters indicated that a financial institution would want to develop only one system of notice for its customers. A large number of financial institutions pointed out that under the October proposal, even if only a few consumers elected notice under paragraphs (a)(1)(i) or (ii), an institution that adopted the paragraph (a)(1)(iii) procedure would also have to develop and operate a system to provide one of the other forms of notice. As discussed in the Board's economic impact statement in section (3) below, the costs associated with either of these alternatives are expected to be considerable. Although some costs would be saved because certain consumers would elect notice under paragraph (a)(1)(iii), the institution would still incur the entire cost of developing the alternative notice system. The paragraph (a)(1)(i) alternative would involve, in addition to system development costs, costs for generating notices and for postage. These latter costs would be less under paragraph (a)(1)(ii), but system development and maintenance costs would be greater, due to the need to continually update what would likely be a very complex schedule of expected preauthorized credits. In addition, the Board has determined that from an operational standpoint notice is not feasible under paragraph (a)(1)(ii) as preauthorized credits do not occur on identical schedules, and therefore many financial institutions would not be able to provide notice in this manner.

Because of the costs of providing notice under paragraphs (a)(1)(i) or (ii), it was claimed that many institutions would not find it economically feasible to continue accepting electronic deposits to consumers' accounts. This might be particularly true with respect to preauthorized credits for which no payor notice is provided, principally Social Security and other government benefit payments. The Board believes that the federal recurring payments program (31 CFR 210) is beneficial both to the government and to consumers, and is concerned about the viability of the program in the event many institutions elect to withdraw from participation.

Commenters also pointed out that the paragraph (a)(1)(iii) procedure has benefits for consumers, in that consumers can find out whether a particular transfer occurred much more quickly than when written notice is mailed by the institution. Other benefits to consumers are discussed in the economic impact statement below.

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Some commenters suggested requiring institutions that use the paragraph (a)(1)(iii) alternative to establish systems whereby the information available by telephone would also be available at teller windows or electronic terminals, or both. The Board decided not to include these requirements, since most consumers would probably use the telephone rather than these other means.

Section 205.10(a)(2) applies to the same types of preauthorized transfers as § 205.10(a)(1). It requires a financial institution that receives such a transfer to credit the amount of the transfer to the consumer's account as of the day funds for the transfer are received. As noted in the October proposal, final action on this provision was postponed until Board consideration of Subpart C of Regulation J. Subpart C was issued in proposed form (44 FR 67995, November 28, 1979); therefore, final action on § 205.10(a)(2) is appropriate.

The October proposal would have required an institution to credit the amount of a transfer "no later than the business day on which the financial institution receives the funds from the payor." The provision as adopted requires crediting "as of the day the funds for the transfer are received."

The substitution of the phrase "as of the day" for "no later than the business day" addresses an operational problem. While in many instances financial institutions receive automated clearing house tapes in advance of the settlement date for items contained on the tapes, in other instances the tapes are received on the settlement date. Since the date funds are received is the settlement date, the October proposal would have required institutions in these circumstances to post transfers to consumers' accounts on the same day the tapes are received. Yet some institutions follow procedures under which items received on a given day are not posted until the next day, and these procedures may be very difficult to change. The change in regulatory language mentioned above permits institutions to follow their usual posting schedules, provided that consumers' accounts are credited as of the day funds are received.

Finally, although an institution must credit the consumer's account as of the date specified, it need not make the funds available for withdrawal or other use by the consumer by the same deadline. Thus, while an institution receiving a transfer on a particular day may honor checks presented that day drawing on the funds so transferred, it can refuse to allow cash withdrawals against those funds (via teller windows or ATMs) until the opening of business the following day.

<u>Section 205.11 -- Procedures for Resolving Errors</u>. Section 205.11 implements § 908 of the Act. The section sets forth the definition of "error," the steps the consumer must take to allege an error in order to receive the protection of the Act and regulation, and the procedures that an institution must follow to resolve the alleged error. It also includes a provision on the relationship of this section to the billing error procedures of Truth in Lending (12 CFR Part 226).

Section 205.11(a), implementing § 908(f) of the Act, defines an "error" for purposes of the regulation. Except as noted below, it is substantially unchanged from the October proposal. In the previous proposal,

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paragraph (a)(6) defined as an error any transfer not identified in accordance with the requirements of § 205.9 or "not recognized" by the consumer from the identification given on documentation required by §§ 205.9 or 205.10(a). A number of commenters objected to the latter provision. Some commenters stated that a consumer who indicates that a particular transfer is not recognizable is in fact saying the transfer is unauthorized, incorrect, or that additional information is needed. These types of errors are already covered under other paragraphs of the definition.

The Board agrees that where a consumer does not recognize a particular transfer, the consumer is likely to allege an error under one of the other paragraphs. Therefore, to eliminate confusion, the non-recognition language has been deleted from paragraph (a)(6).

Section 205.11(a)(7) defines as an error a consumer's request for required documentation, additional information, or clarification. Many commenters objected to defining such requests as errors. Financial institutions had two major concerns: (1) that every request about the consumer's account would activate the error resolution procedures, and (2) that it is unclear what steps would be necessary to investigate and correct this type of error. The Board believes that the statute requires treatment of these consumer requests as errors. The final rule contains two provisions, the last sentence of § 205.11(a)(7) and § 205.11(d)(1), intended to alleviate financial institutions' concerns.

Section 205.11(a)(7) also provides that routine balance inquiries and requests for documentation or information for tax or other record-keeping purposes are not errors. The October proposal used the term "business" rather than "record-keeping" purposes. Some commenters believed that use of the term "business" might be inappropriate, as the regulation deals only with transfers to and from consumers' accounts. Also, the term may be too narrow, as the documents could be requested for other purposes clearly unrelated to verifying the transfer, such as furnishing evidence in a domestic dispute. Other commenters were concerned that financial institutions would use this exception to avoid compliance with the error resolution procedures any time a consumer requested documentation or information. The Board intends this exception to apply only when there is a clear indication that the request is for purposes unrelated to determining whether an error has occurred.

Section 205.11(b)(1) contains the requirements for a notice of an error. The principal change from the October proposal is in format. The provisions on proper notice reflect two time periods. The first runs from the time that a financial institution transmits a periodic statement or updates a passbook. The second is available after an institution transmits additional information, clarification, or documentation in response to the type of error defined in § 205.11(a)(7). Some commenters were concerned that the October proposal did not make sufficiently clear that the consumer is entitled to a second 60-day period only where the documentation or information was requested in a timely manner. The final rule clarifies this point.

The October proposal required that the consumer provide "the type, the date, and the amount of the error, to the extent possible." Some comment-

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ers were concerned that a consumer who is unable to state the type or the date of an error would lose important rights under the Act and regulation. To make clear that all such identifying information need be provided by the consumer only to the extent possible, the modifying phrase now precedes the listing of the type, the date, and the amount.

A number of financial institutions asked whether they might require that, to be effective, notice be directed only to the disclosed telephone number or address. Footnote 10 states that a financial institution may impose such a requirement, provided the institution maintains reasonable procedures to refer the consumer to the proper number or address if the consumer uses other means. For example, if the consumer calls another number of the institution or contacts a teller with an error allegation, the person answering the phone or the teller must give the consumer the correct number and address.

The substance of § 205.11(b)(2), regarding the written confirmation requirement, remains unchanged.

In the October proposal, § 205.11(c)(1) required that the financial institution investigate the allegation, determine whether an error occurred, and transmit the results of the investigation to the consumer within 10 business days after receiving notice of an error, or within 45 days after receipt if the institution followed the recrediting procedures. Some commenters argued that § 908(c) of the Act allows an institution proceeding under that section 45 days to investigate without specifically addressing when the results must be transmitted, whereas § 908(a) requires both investigation and transmittal within 10 business days. Therefore, the commenters argued, under the 45-day alternative a financial institution that determines no error occurred has an additional 3 business days, under § 908(d), to transmit an explanation to the consumer.

After reconsideration, the Board agrees with this statutory interpretation. The regulation delineates the time limits in two separate paragraphs. Section 205.11(c)(1) contains the requirement that the institution investigate, determine whether an error occurred, and transmit the results to the consumer within 10 business days to avoid provisional recrediting. Section 205.11(c)(2) now provides that, as an alternative, the financial institution may take up to 45 calendar days after receipt of a notice of error to investigate and determine whether an error occurred, provided the financial institution recredits the amount, notifies the consumer of the recrediting, and gives the consumer full use of the provisionally recredited funds. This alternative does not grant the institution an absolute right to take 45 days in every case; the institution must investigate and make its determination promptly, but has an outside limit of 45 days in which to finish these steps.

Section 205.11(c)(2)(i) corresponds to § 205.11(c)(1)(ii)(A) of the October proposal. This section requires the institution to provisionally recredit the consumer's account in the amount of the alleged error. Some commenters requested clarification of the amount that should be recredited if only part of the transfer is questioned. If the statement reflects a $100 transfer

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and the consumer claims to have made a $10 transfer, for example, the institution would have to recredit $90, not $100.

The proposal also provided that the amount recredited would be subject to the $50 liability provisions of § 205.6(b), when an unauthorized electronic fund transfer may have occurred. A number of consumer representatives objected on the grounds that, in order to withhold any amount, the institution should meet the requirements for imposing such liability--that it had provided a means to identify the consumer to whom the device was issued, made the required disclosures, and established that the access device was accepted. The Board agrees that the financial institution must have a reasonable basis for believing both that an unauthorized electronic fund transfer may have been involved and that the requirements of § 205.6(a) have been satisfied. The final rule reflects this interpretation.

Section 205.11(c)(2)(ii) corresponds to § 205.11(c)(1)(i)(C) of the October proposal; §§ 205.11(c)(2)(iii) and (iv) replace § 205.11(c)(1)(ii)(B). The proposal required the institution to give the consumer full use of the provisionally recredited funds, including honoring any items drawn on those funds prior to the time that the consumer received the notice of debiting or could be expected to have received the notice, whichever was earlier. Since the treatment of items after debiting a provisionally recredited amount only arises where the institution determines that no error occurred, the provision requiring the honoring of certain items after debiting has been moved to paragraph (f)(2) of this section, and is discussed below. Section 205.11(c)(2)(iii) requires the institution to give the consumer full use of provisionally recredited funds during the investigation, and § 205.11(c)(2)(iv) incorporates the notice and other requirements of § 205.11(f)(2).

Section 205.11(c)(3) corresponds to § 205.11(c)(2) of the October proposal; the substance of this provision is unchanged.

Section 205.11(d)(1), regarding a financial institution's duties when a consumer requests documentation, information, or clarification, is a new provision. As previously discussed, a number of financial institutions requested guidance on how to deal with errors of the type described in § 205.11(a)(7). The Board believes that the financial institution may comply with its duty to investigate, correct, and report by transmitting the requested documentation, information, or clarification. The institution must transmit this information or documentation in accordance with the 10-business-day or 45-calender-day time limits of § 205.11(c). The Board contemplates that in most cases the institution will be able to comply within 10 business days from receipt of the notice. An institution could, for example, print a facsimile draft of a receipt; it need not provide an actual copy of the documentation. If the institution needs more than 10 business days to resolve the error, it would have to provisionally recredit the amount of the transfer about which documentation or information is requested. This provision specifically allows the institution to debit the provisionally recredited amount upon transmittal of the requested documentation or information, provided it complies with the requirements of § 205.11(f).

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Proposed § 205.11(d)(2) would have allowed a financial institution to limit its investigation to a review of its own records regarding a transfer to or from a third party with whom the institution does not have an agreement. A number of commenters wanted clarification of the types of agreements covered by this paragraph. A footnote to the final rule makes clear that participation in transactions under the federal recurring payments program (31 CFR 210), common membership in an ACH, or an agreement to be bound by the rules of an ACH or similar arrangement, is not an agreement within the meaning of this paragraph. This means, for example, that an institution receiving preauthorized transfers to a consumer's account over the ACH need not go beyond its "four walls" to determine whether the credit was in the proper amount. An agreement that a third party will honor an access device, on the other hand, would preclude a financial institution from limiting its investigation to its "four walls." If a merchant honors an access device in a shared system and a consumer asserts an error involving that transfer, for example, the financial institution must check with the merchant.

The provision also makes clear that the agreement with the third party must relate to the type of electronic fund transfer service in question to preclude the institution from using the exception. For example, two institutions may have an agreement to honor each other's access devices, but one may also be the originating financial institution for a payroll payment, while the other is the account-holding institution for a particular consumer. If the consumer alleges an error regarding the payroll (as opposed to a transfer using the access device, for example), the account-holding institution need not go back to the originating financial institution to investigate the error. The provision also makes clear that an institution that issues an access device to a consumer whose account is held by another financial institution, for making transfers to or from that account, may not use this limited exception.

Some commenters were concerned that consumers would be left with no means to resolve certain errors if the "four walls" rule were adopted, since institutions would not have to go back to the ACH or to the third party to investigate an alleged error. They felt that a financial institution would be in a better position than a consumer to deal with these organizations, and should be required to do so.

It appears that most errors occur either with the consumer's financial institution or with the originator of the transfer, so that in these cases it may be more efficient for the consumer to go from the financial institution to the originating party if the financial institution's in-house investigation reveals no error. The Board will monitor any problems that occur for consumers where errors take place between the originating third party and the account-holding institution if the consumer is unable to have the error promptly resolved, and it will consider further action to remedy any problems should they arise.

Section 205.11(d)(3) of the October proposal would have permitted the financial institution to rely upon information supplied by third parties, without having to conduct an independent investigation to verify its accuracy. After considering the comments on this proposal, the Board has decided to omit it from the final regulation. Where there is no agreement with the

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third parties as to the type of electronic fund transfer service alleged in the error, the financial institution need only review the information in its own records in any case. Where there is an agreement between the financial institution and the third party, the Board contemplates that the financial institution will contact the third party and conduct a reasonable investigation with that third party. The Board does not, however, intend for the financial institution to undertake an independent investigation external to its own records and third parties. For example, if a consumer has purchased a coat using a POS terminal, the financial institution need not send an employee to the store to ascertain the correct cost of the coat.

Section 205.11(d)(3) corresponds to § 205.11(d)(1) of the October proposal; the substance is unchanged.

Sections 205.11(e)(1) and (2) are substantially unchanged from the October proposal, except for one clarification. The proposal provided that the financial institution must transmit notice of the correction or, if applicable, notice that a provisional credit has been made final. The final rule has been clarified to show that the institution must transmit notice of the correction and, if applicable, notice that a provisional credit has been made final. This change has been made to indicate that a notice saying that a credit was made final, without saying that the account was corrected, would be insufficient.

Section 205.11(f)(1) sets forth the time limit within which a financial institution must send a written explanation after determining that no error occurred, or that an error occurred in a different manner from that described by the consumer. The general rule is that the explanation must be sent within 3 business days after the investigation is concluded. If the investigation is concluded on day 4, the explanation must be sent within 3 business days from day 4. An institution does not get 3 business days in which to send an explanation, however, in cases where it concludes the investigation on the tenth business day and has not provisionally recredited the consumer's account. The explanation must be sent that same day. The institution may take an additional 3 business days in which to transmit the explanation if it uses the 45-day alternative.

Section 205.11(f)(2)(i) requires the institution to give notice to the consumer upon debiting a provisionally recredited amount. The notice must contain the date and amount of debiting and the fact that the consumer will have use of the funds prior to being informed of debiting. As discussed below, the final rule modifies the use the consumer will have of the funds after debiting, and the notice provision in the final rules reflects that substantive change.

Section 205.11(f)(2)(ii) sets forth the institution's duty after debiting to honor certain items that overdraw the account, up to the amount of the debit. As previously noted, the comparable proposed provision was § 205.11(c)(1)(ii)(B), which required institutions to honor any items using the debited funds drawn prior to the time that the consumer received or was presumed to have received the debiting notice. A number of financial institutions were concerned with the fraud potential where, for example, the consumer

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learns that the funds have been debited and withdraws cash at a teller or an ATM. To help alleviate concerns about fraud, while still assuring the consumer full use of the funds, particularly with third parties, the final rule imposes the duty to honor only with respect to third-party items, such as checks drawn to third parties and preauthorized debits, excluding items such as cash withdrawals.

Some commenters also asked that the Board specify a cut-off period for an institution's honoring items that were drawn using provisionally recredited funds that were later debited. Without a cut-off of some kind, an institution would have to monitor the consumer's account indefinitely. The final rule provides that an institution must honor the items for at least 5 business days after transmittal of the debiting notice. This provision enables an institution to avoid indefinite monitoring, while permitting consumers to have both full use of provisionally recredited funds until notice and a reasonable time period for replacing funds in the account, if necessary, to protect their position with third parties.

The final rule also makes clear that an institution may not impose charges for the overdraft. The institution could not, for example, impose any overdraft fee in connection with items honored under this provision. Similarly, an institution may not impose a finance charge on the amount of the overdraft until after 5 business days have elapsed. The rule would not preclude an institution from imposing any transaction or item charge (such as $.25 per check) that would be made if no overdraft had occurred.

Section 205.11(f)(3) of the final rule corresponds to § 205.11(f)(3) of the October proposal. That proposal provided for the consumer's right to receive copies of documents, if possible, or a report containing the data upon which the financial institution relied in reaching its conclusion. Many commenters were confused about the type of report they would have to give the consumer. As this option caused concern, and as Congress had evidenced a preference for the actual documentation upon which the institution relied, the Board has returned to the statutory language. The Board contemplates that the documentation will be in a readily understandable form. For example, an institution that relies on magnetic tape in making its determination should translate and reproduce the data in a readable form.

Section 205.11(g) has been rewritten to clarify that an institution is relieved from further error resolution responsibility as to a particular assertion of error only if the consumer, after concluding that no error actually occurred, voluntarily withdraws the notice. A number of institutions objected to the limited nature of this provision, because they wanted to give oral explanations to consumers after determining that no error occurred. They wanted to be able to use this section to avoid a written explanation if the consumer agreed with the institution's conclusion. The Board believes that such an interpretation would undermine the statutory intent that consumers receive a written explanation when the institution determines that no error occurred.

Section 205.11(h), regarding reassertion of an error, is substantially unchanged. The first sentence has been modified to make clear that an institution must have fully complied with the requirements of the error resolution

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procedures with respect to that error to avoid further responsibilities as to the same error. A sentence has been added to avoid any implication that a consumer is precluded from asserting an error as defined in §§ 205.11(a)(1) through (6) after having asserted an error as defined in § 205.11(a)(7) regarding the same electronic fund transfer.

Section 205.11(i) sets forth the relation of this section to the billing error resolution procedures of 12 CFR Part 226 where a transfer also involves a credit extension under an overdraft agreement. The proposal provided that, as to the credit extension portion, Regulation E would supersede the Regulation Z error definition (§ 226.2(j)), notice requirements (§ 226.2(cc)), and general resolution section (§ 226.14(a)).

Commenters asked for clarification as to the proper adaptation of certain Regulation E provisions (such as provisional recrediting) to the credit extension, and as to which provisions of § 226.14 would still apply. Where a consumer alleges an error regarding a transfer that also involves a credit extension under an overdraft agreement, the type of error alleged, the notice from the consumer, and the investigation by the institution would be difficult to separate into the respective debit and credit components. So that a consumer need not provide separate notices and so that an institution may consolidate its error resolution procedures for this type of account, a notice that is sufficient under Regulation E will activate all billing error protections, and the time frames of Regulation E will apply. If the institution follows the 45-day alternative, it need not send the consumer an acknowledgment within 30 days as otherwise required by § 226.14(a). Furthermore, provisional recrediting has no applicability to the credit extension portion of the transaction. Other provisions of § 226.14 still apply to the credit extension portion, such as the temporary prohibition on action to collect the disputed amount; the consumer's right to withhold that portion of the minimum payment related to the amount in dispute; the limitation on adverse credit reports; and the right to reverse an automatic debit of disputed amounts.

In the supplementary information to the October proposal, the Board solicited comment regarding charges to the consumer for an institution's complying with the error resolution procedures. After due consideration of the comments, as well as the recommendation of its Consumer Advisory Council, the Board has decided not to address the question in the regulation for the present.

While the Board is refraining from action at this time, the Board is concerned with any chilling effect on the good faith assertion of errors (particularly errors involving small amounts) that might result from the imposition of charges. Furthermore, a charge for compliance may also violate § 914 of the Act by constituting a waiver of a consumer's rights conferred by the Act. For these reasons, the Board will carefully monitor the situation to ascertain whether and in what circumstances charges are imposed, and will reexamine the issue if it becomes aware of abuses or of a chilling effect on the exercise of rights.

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Section 205.13 -- Administrative Enforcement. Technical changes have been made to §§ 205.13(b) and (c). In paragraphs (b)(2)(i) and (b)(4), references to the Division of Consumer Affairs have been changed to the Division of Consumer and Community Affairs.

Paragraph (c)(2) has been amended to require that any person that has been served with notice of an action filed under §§ 910, 915, or 916(a) of the Act must retain records of compliance with the Act and regulation for the prescribed time period. The regulation previously referred only to actions under §§ 915 and 916(a) of the Act and had omitted reference to actions under § 910, which may be brought separately.

Section 205.14 -- Services Offered by Financial Institutions Not Holding Consumer's Account. This section corresponds to § 205.4(b) of the October proposal. It has been redesignated as a separate section to emphasize that it has limited and narrowly defined applicability, unlike the remainder of § 205.4 which may affect many financial institutions.

The subject matter is the same as that of § 205.4(b) of the October proposal, namely, certain situations where one institution provides an EFT service and issues an access device to a consumer whose account is held at a second institution, and where no agreement exists between the institutions concerning the service. For example, Bank A issues an access device to a consumer with whom it does not have an account relationship, and makes terminals available through which the consumer can initiate electronic fund transfers. The consumer's account is held at Bank B. Bank A has no agreement with Bank B concerning this service. Transfers initiated via Bank A will be cleared through the ACH or by other means.

As noted in the October proposal, the Act and the regulation would impose various requirements on Bank B in the described situation absent a provision to the contrary. This is so despite the fact that Bank B has no control over or knowledge of many facets of the relationship between the consumer and Bank A. In addition, Bank B may not offer any EFT services of its own, and thus would have few or no Regulation E compliance responsibilities except for those arising from transfers made under Bank A's service.

In these circumstances, it appears both impracticable and inequitable to impose responsibility on Bank B for complying with Regulation E regarding transfers initiated through Bank A's service. For these reasons, the October proposal would have placed all compliance duties on Bank A and would have exempted Bank B entirely. The provision adopted by the Board retains the same general approach and places the major responsibility on Bank A, but does not completely eliminate compliance duties for Bank B. Before discussing this allocation, however, the Board wishes to clarify what the section applies to, since the comments on the October proposal indicated some misunderstanding on this point.

First, the only type of electronic fund transfer service covered by § 205.14 is one in which an institution issues an access device to a consumer (a debit card or a code to be used for accessing bill-payment services, for example). This is made clear by the addition of appropriate language to the

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introductory portion of § 205.14(a). The section does not deal, for example, with an institution whose "service" to a consumer consists of initiating preauthorized electronic payroll deposits on behalf of the consumer's employer, to the consumer's account at another financial institution. The same is true of an institution initiating preauthorized transfers out of an account, for example, to pay insurance premiums. In such cases compliance responsibilities would lie with the account-holding institution.

Second, many commenters were uncertain about what would constitute an agreement between the account-holding institution and the service-providing institution for purposes of this section. The Board intends an agreement for these purposes to mean a specific agreement in which two or more institutions agree to provide customers of some or all of them with an EFT service involving an access device, and agree as to their rights and obligations with respect to this service. A definition of "agreement," as used in § 205.14(a), has been added as § 205.14(c) to clarify this matter. The fact that two institutions both participate in ACH transactions, or have agreed to be bound by ACH rules, does not constitute an agreement within the meaning of this section. Similarly, any implied agreement that may arise from the fact that one institution accepts a series of electronic fund transfers originated by another institution is not an agreement for § 205.14 purposes.

On the other hand, note that if an ACH establishes arrangements in which ACH members agree to honor each other's EFT cards, for example, an agreement as defined by § 205.14(b) does exist. In that instance, the participating institutions may not rely on § 205.14 to allocate compliance duties, and would instead have to make that allocation part of their agreement concerning the EFT card service.

Note also that, as stated in § 205.14(c), an agreement need not run directly between financial institutions. It may consist of a set of individual agreements between each of a number of institutions and a corporation that participates in the operation of the service.

Details of compliance responsibilities are set forth in § 205.14(a) as to the service-providing institution and in § 205.14(b) as to the account-holding institution. The general rule on compliance by the service-providing institution in § 205.14(a) makes clear that the service-providing institution must comply with all requirements not only of the regulation but also of the Act, to the extent they relate to the service or transfers made via the service.

Sections 205.14(a)(1) through (6) set forth particular rules applicable to the obligations of the service-providing institution. Section 205.14(a)(1) deals with the situation in which unauthorized electronic fund transfers are made from a consumer's account. Since the account-holding institution is not, in general, required to comply with Regulation E, that institution may seek to hold the consumer responsible for the full amount of the unauthorized transfers. If this occurs, the service-providing institution must, under § 205.14(a)(1), reimburse the consumer for any amount in excess of the amount for which the consumer can be held liable under § 205.6.

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Section 205.14(a)(2) permits the service-providing institution to limit information furnished in the initial disclosures under § 205.7, the subsequent disclosures under § 205.8, and documentation under § 205.9 to that within its knowledge and the purview of its relationship with the consumer. For example, the service-providing institution would not have to include in documentation under § 205.9 any charges imposed by the account-holding institution or account balances in the account at that institution.

The remaining portions of § 205.14(a) deal with the error resolution requirements. Section 205.14(a)(3) provides that if the consumer initially seeks to have an error resolved by the account-holding institution, any resulting delay in notifying the service-providing institution will not nullify the consumer's right to trigger the error resolution process. This protection is necessary since the consumer may not realize that notification to the service-providing institution is required to start the error resolution process, and may believe that notification to the account-holding institution is another means or the only means.

Section 205.14(a)(4) requires that, if provisional recrediting of the consumer's account is necessary because an alleged error cannot be resolved within 10 business days, the service-providing institution shall comply by effectuating a provisional recredit to the consumer's account at the account-holding institution. As adopted, this provision makes clear that the service-providing institution must do this by transferring funds to the consumer's account, and that the time limit and amount specified in § 205.11(c)(2)(i) are applicable. Section 205.14(a)(4) also requires that the service-providing institution comply with § 205.11(e)(1), final correction of an account, in the same manner--that is, by transferring funds to the consumer's account.

Section 205.14(a)(5) provides that the service-providing institution shall comply with the requirement to disclose the "date of the recrediting" under § 205.11(c)(2)(ii) by disclosing the date it initiated the transfer to the consumer's account.

Section 205.14(a)(6) is new. It is necessitated by the requirement, to be discussed further below, that the account-holding institution honor certain debits to the consumer's account after debiting provisionally recredited funds. Since the account-holding institution needs to know the relevant date regarding this requirement, the service-providing institution must notify the account-holding institution of that date. This provision requires the service-providing institution to reimburse the account-holding institution promptly for any overdrafts that may occur. The service-providing institution is the one that will have to arrange for appropriate reimbursement from the consumer.

Section 205.14(b) deals with the duties of the account-holding institution. The introductory language provides that, in general, the account-holding institution need not comply with the requirements of the Act or regulation. Exceptions to this general rule appear in § 205.14(b)(1) and (2). Many of the comments on the October proposal urged that the account-holding institution have fairly extensive duties under Regulation E. The

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Board believes that imposing substantial compliance responsibilities on the account-holding institution would be impracticable and inequitable. However, the Board also believes that it is important to assure that consumers will be able to have account errors completely investigated and resolved, and that participation in the process by both institutions is necessary. Therefore, § 205.14(b)(1) and (2) impose limited error resolution duties on the account-holding institution.

Section 205.14(b)(1) requires the account-holding institution to provide promptly, upon request of the service-providing institution, information or copies of documents needed in the investigation process or that the consumer is entitled to receive. This provision enables the investigation to encompass anything that might have occurred at either institution.

Section 205.14(b)(2) requires the account-holding institution to honor debits to the account as specified in § 205.11(f)(2). This obligation must be imposed on that institution since, when a provisional recredit has occurred and then it is determined that there was no error, the regulation allows the consumer's account to be debited and yet requires that certain items be honored even after the consumer has received the notice of debiting. Since these items will be presented for payment at the account-holding institution, that institution must honor them as required by § 205.11(f)(2). However, to lessen the burden this requirement imposes on the account-holding institution, § 205.14(a)(6) requires the service-providing institution to reimburse the account-holding institution promptly in the amount of any such overdraft.

Appendix A -- Model Disclosure Clauses. The Board is adopting technical amendments to the headings of the sections and is issuing an additional model disclosure clause, § A(8)(b), that institutions may use in complying with the disclosure requirements of §§ 205.5(b)(2) and 205.7(a)(6) as to documentation of preauthorized transfers to a consumer's account. In addition, the Board is adopting technical amendments to § A(10)(a), previously issued in final form.

(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 reissued 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 extent

1/ The analysis presented here is to be read in conjunction with the economic impact analyses that accompany the Board's final rules at 44 FR 18474 (March 28, 1979), at 44 FR 33838 (June 13, 1979), at 44 FR 46433 (August 8, 1979), and at 44 FR 59468 (October 15, 1979).

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to which additional documentation, reports, records, or other paperwork would be required, 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. 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.

Section 205.2(g) redefines the term "electronic fund transfer" specifically to exclude payments to third parties made at an automated teller machine (ATM) or other electronic terminal by check, draft, or similar instrument. Deposits to accounts at financial institutions, when made by check, draft, or similar instrument at an electronic terminal, are not excluded by the regulation, however. The exclusion allows ATMs to be used like traditional depositories for payments but not for deposits. Therefore, deposits will be subject to all the documentation and error resolution provisions of the Act. Probably the greatest cost implication arises in that financial institutions will be subject to the Act's error resolution requirements for deposits made at ATMs.

Financial institutions could realize cost economies by offering a depository service at ATMs; institutions would not have to install and maintain separate depository facilities. Consumers would be able to enjoy the benefits of greater convenience and security for their deposits. An additional benefit would be that consumers would obtain deposit receipts from ATMs; receipts are not available from other depositories. But because the regulation does not exempt institutions from compliance responsibilities for non-electronic deposits at ATMs, the associated costs may deter institutions from offering deposit service at terminals.

The regulatory coverage of non-electronic deposits at terminals is likely to confer greater relative cost on small financial institutions than on larger institutions to the extent that deposits make up a greater share of ATM activity at small institutions. One survey of 177 commercial banks with ATMs revealed that the ratio of dollars deposited to dollars withdrawn was 2.5 for the 52 banks with deposits of less than $100 million and was 2.0 for the 125 banks with deposits of $100 million or more. 2/ Financial institutions seek-

2/ Linda Fenner Zimmer, Cash Dispensers and Automated Tellers, Fourth Status Report. Park Ridge, N.J.: August 1977, p. 105.

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ing to enter the market for EFT services might be deterred from offering ATM services because deposits at ATMs are subject to the Act's provisions and, therefore, more costly to provide. Small institutions would be more likely to be deterred than large institutions.

The regulatory coverage of non-electronic deposits at terminals is not expected to affect low-income consumers differently from other consumers.

Section 205.7(a) is amended to make clear that consumers must be able to retain the written initial disclosure statement. Some institutions currently make required disclosures on account agreement forms that consumers sign and return to the institutions. Costs of creating and distributing disclosure statements in a form that consumers may retain will be passed on to consumers to some degree. This amendment is not expected to affect small financial institutions differently from larger institutions or low-income consumers differently from other consumers.

Section 205.9 implements the statutory requirements for EFT documentation. The Act requires that a written receipt be made available for every transfer at every electronic terminal. Since almost all existing terminals are equipped with printing devices, the Act's receipt requirement will impose little cost burden in rendering terminals obsolete. Institutions with printerless terminals can be expected to withdraw those terminals from service; however, this could result in a substantial cost burden for the institutions and a loss of service to consumers.

Because most existing devices can print only numerals, any requirement to print information in alphabetic characters would force financial institutions to replace existing devices and incur substantial costs for new printers and related software. These costs would be reflected in higher costs or reduced availability of EFT to consumers.

To avoid these costs, the regulation specifically allows terminal transfers to be documented by numeric characters. Codes may be used, although in some cases use of codes is conditioned on their being explained on the receipt. These regulatory provisions are expected to assure that all required information is disclosed to the consumer at the terminal, without imposing unnecessary compliance costs on financial institutions.

The Act requires financial institutions to deliver periodic statements to the holders of most accounts accessible by EFT. Statements must be delivered at least monthly for each monthly or shorter cycle in which an EFT has occurred, or every three months if no electronic transfer has occurred. 3/ This timing requirement will impose considerable cost burdens on many institutions that would otherwise issue periodic statements less frequently. The costs of increased statement frequency will be passed on to consumers to some degree in the form of higher EFT prices or reduced availability of EFT services. These costs cannot be avoided because the Act sets the frequency for sending the statements.

3/ Statutory exceptions to the monthly statement requirement are reiterated in §§ 205.9(c) and (d).

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Some small-balance account holders, including many low-income consumers, will be adversely affected by the Act's documentation requirements if, because their accounts will cost more to service, their accounts are closed or higher maintenance fees are charged. Some financial institutions have recently offered semi-annual or annual statement accounts as a lower-cost alternative to closing many low-balance accounts. Some of these accounts may be affected.

Another substantial cost burden may arise because the Act does not exempt inactive accounts from the periodic statement requirements. A financial institution would have to provide at least quarterly statements for nonpassbook inactive accounts that can be accessed electronically. A recent survey of a sample of Federal Reserve System member banks found the average cost of maintaining personal checking accounts to be $2.71 per account per month in 1978. 4/ The cost of producing periodic statements for inactive accounts is embedded in this estimate and cannot be disaggregated. One commenter estimated an average cost of $0.25 for sending a statement to an inactive account, implying an approximate aggregate cost of $2.2 million in 1980. 5/ Another commenter estimated that each statement would cost $0.52 to prepare and deliver. Lack of an exemption may encourage financial institutions to close inactive accounts, bar them from electronic access, or increase maintenance charges, thereby restricting the availability of electronic transfer accounts to consumers and increasing the cost of such accounts.

By requiring disclosure of the kinds of information categorized in § 205.9(b), the Act will impose data collection and handling costs on financial institutions. Institutions will be forced to employ additional resources for computer services. Periodic statement formats will have to be changed to accommodate the required disclosures of transfer data. Automated clearing houses and shared EFT systems will have to alter their data collection and transmission methods; more data will have to be interchanged to document transfers adequately. These factors will increase the cost of EFT services to consumers. The Act's requirement for descriptive periodic statements may, however, confer benefits indirectly by promoting the adoption of check truncation. Truncation, which reduces the volume and cost of paper check handling, is likely to be more readily accepted by consumers when descriptive periodic statements are available.

Periodic statements must disclose any fees or charges assessed by the financial institution for EFT services rendered during the statement period. The regulation reiterates this statutory requirement. The regulation adds the following provision. If a transfer is made at an electronic terminal, and if the terminal owner or operator is not providing the statement, then the transfer amount documented on the terminal receipt may include any fees

4/ Federal Reserve Bank of New York, Functional Cost Analysis. New York: Federal Reserve Bank of New York, 1979, p. 7.7.

5/ This assumes that 10 percent of an estimated 22 million consumer EFT accounts are inactive in any quarter and that the statements required by the Act would not otherwise be sent.

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or charges assessed for the transfer, provided the amount of the charge is disclosed either on the receipt itself or on a sign posted on or near the terminal. Furthermore, the aggregate amount documented on the receipt may be reproduced on the consumer's periodic statement by the account-holding institution.

While this regulatory provision may reduce the amount of record keeping and paperwork necessary to comply with the Act, it may give rise to three kinds of cost burden. First, consumers may find the aggregation of transfer amounts with transfer fees confusing, particularly if different terminal operators charge different fees. Second, the aggregation of transfer amounts with transfer fees may make terminal receipts and periodic statements more difficult to use as proof of payment because the exact amounts of transfers may be disguised. Third, financial institutions may experience an increase in error claims or requests for further information as consumers write or call to have aggregated amounts explained. Institutions can be expected to weigh this cost against the costs of additional data capture and handling necessary for reporting terminal usage fees separately on periodic statements.

The Act requires financial institutions to identify on periodic statements the location of any terminal used to transfer funds and to identify all third parties to or from whom funds are transferred. Three alternative methods for identifying terminal location are provided by the regulation. Furthermore, the regulation specifies that third parties must be identified by name. Names are likely to be among the most costly information to provide on the periodic statement because they are non-numeric, in some cases must be entered into the data stream manually, and must be linked with the numeric data associated with electronic transfers. The ultimate cost of documenting third-party names will depend on how electronic transfers are made. Recurring payments, especially for large-volume payors or payees, are likely to be less costly to document because names can be kept on file, readily transmitted with other payment data, and readily reproduced on periodic statements. Non-recurring payments will require that third-party names be added manually to the data stream.

The statute requires that initiation dates for all transfers be set forth on terminal receipts and on periodic statements. The regulation modifies this requirement for periodic statements by providing that they need set forth only the date each transfer was debited or credited to the consumer's account. This provision will spare institutions from capturing and reporting the initiation date, thereby reducing recordkeeping and the costs of compliance. Dates of value transfer, however, are necessary information for the consumer to determine when payments actually occurred.

The Act's requirement for descriptive periodic statements after May 10, 1980, will probably have a relatively greater adverse cost effect on small institutions than on larger institutions. Timely statement redesign and changes in computer hardware and software will lead to fixed costs that larger institutions can spread over larger account bases. The effective date of the final rule allows relatively little time for institutions to make necessary changes to comply, and many institutions are likely to incur adjustment costs because of rushed compliance efforts.

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Documentation requirements of the Act and regulation are not expected to confer extraordinary costs or benefits on low-income consumers, except for the potential impact on small-balance account holders noted above.

Section 205.10(a) regulates the documentation of preauthorized credits to consumer accounts. The Act requires that financial institutions provide notice that preauthorized credits have or have not been made. An exception exists only for cases in which the payor provides positive notice that the transfer has been initiated. This statutory notice requirement is intended to assure that consumers have current information regarding the availability of funds scheduled to be received. 6/

The regulation specifies alternative means by which institutions may provide notice. First, the regulation provides that notice may be transmitted orally or in writing. Institutions can choose the telephone system, the mails, or other means of communication, so that compliance can be achieved at least cost. Notice must be transmitted within 2 business days after the electronic transfer or, in the case of negative notice, within 2 business days after the scheduled transfer date. Under the positive and negative notice alternatives, consumers are ensured that notification will occur promptly.

The cost to a financial institution of generating a positive notice can be assumed to be at least $0.17, which is the Treasury Department's estimated cost of producing and mailing a paper check. This estimate assumes a cost of $0.04 to generate a written notice using a highly automated high-volume information handling system and a cost of $0.13 for pre-sorted first-class postage. Only the largest institutions could attain processing volumes high enough to realize the scale economies inherent in the Treasury estimate of $0.17 per item. A cost of $0.20 per item is therefore considered to be a more representative minimum estimate for financial institutions.

Direct payments of Social Security and federal employee pension benefits comprise the largest class of preauthorized electronic credits subject to the Act. The Treasury Department, as payor, does not currently provide any form of notice to payees. At the present rate of approximately 12 million electronic transfers per month, assuming no further expansion in the direct deposit program, and using the estimated cost of $0.17 per notice, the Treasury would incur costs of about $25 million annually by sending positive notices. Financial institutions, assuming a cost of $0.20 per notice, would incur an annual cost of about $29 million if they had to provide positive notice to recipients of Treasury electronic transfers. They might reduce these costs by including notices with periodic statements and by cycling statements for some consumers to fall within the 2-day notice limit.

6/ A further provision of § 205.10(a) requires financial institutions to credit preauthorized transfers to consumer accounts no later than the day the transfers are received. This ensures the consumer benefit of prompt availability of preauthorized credits.

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The cost of providing negative notices is likely to exceed positive notice costs because financial institutions would have to maintain and update a schedule for all expected preauthorized credits. It would be difficult and costly for institutions to monitor the payment schedules set by numerous payors. Moreover, mailed negative notices would likely take at least 2 days, on average, to reach consumers, so that their information value would be diminished.

The cost of providing positive or negative notice would substantially eliminate the benefits of automatic direct deposit systems because the cost of the notices would exceed the savings from not producing and mailing paper checks. Together with the following regulatory alternative, however, the positive and negative notice provisions confer the benefit of offering a choice of compliance methods.

The regulation further specifies that an institution may furnish notice by responding to consumer-initiated telephone inquiries about particular preauthorized credits. If an institution chooses this method, it must make a telephone line readily available for these consumer inquiries. The telephone alternative is likely to be the least-cost method of compliance for most financial institutions. It will cause the least increase in record keeping and paperwork of the alternatives available. Consumers as a group would receive less information from financial institutions regarding preauthorized credits, but, on request, the same information would be available that would be automatically provided under the positive or negative notice alternatives. Therefore, consumers as a group are unlikely to be disadvantaged by receiving less information, while they may benefit from reduced notice costs, more rapidly available notice than with the positive or negative notice alternatives, and a reduction in unwanted information.

Finally, to implement the Act's exception for cases in which the payor gives notice of preauthorized credits, the regulation provides that payors may inform consumers that credits have been initiated. That is, the notices from payors do not have to guarantee that electronic transfers have actually been completed, only that they have been initiated. The Act and regulation therefore eliminate the need for costly duplication of the notices that are provided by payors. Many employees receive payroll slips that indicate the dates and amounts of preauthorized electronic credits. The benefit to these employees of receiving additional notice is likely to be outweighed by the cost to financial institutions and ultimately to consumers of providing the additional notice. The Board will continue to assess costs and benefits associated with the notice provisions for preauthorized credits.

Small financial institutions are expected to benefit from the greater flexibility of the regulatory provisions relative to the statutory provisions. Under the regulation, all institutions have a wider range of compliance methods from which to choose. Small institutions will be less constrained by the regulation than by the Act and therefore more likely to be able to offer EFT services to consumers. Low-income consumers are not expected to experience extraordinary costs or benefits relative to other consumers as a result of the regulatory provisions for preauthorized credits.

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Section 205.11 of the regulation reiterates the Act's error resolution provisions, adding specific deadlines in some cases, increasing the number of procedural options, and clarifying the definition of error for purposes of resolution. The Act and regulation are designed to encourage prompt resolution of alleged EFT errors. Prompt resolution benefits both consumers and financial institutions by reducing payment delays, lessening uncertainty, and increasing the effectiveness of the EFT payments mechanism.

Consumers receive a number of specific protections from the error resolution procedure. Consumers are entitled to prompt investigation of their error claims, prompt correction of errors, provisional recrediting of disputed amounts should the financial institution take longer than 10 business days to investigate, copies of documents upon which the institution relied, and prompt notice from the institution of various procedural steps it has taken. It is not possible to predict the magnitude of financial benefits consumers will enjoy from these protections. The provisional recrediting rule is a consumer protection that will benefit low-income consumers relatively more by protecting them from "catastrophic" loss of the use of their funds.

These consumer protections are not guaranteed, however, if the consumer, in alleging an error, fails to comply with a number of provisions of the Act and the regulation. First, the consumer must act in a timely manner to allege that an error has occurred--that is, within 60 days after the financial institution has transmitted documentation reflecting the alleged error. Second, the consumer must provide information that enables the institution to identify the consumer's account and the nature of the problem. Third, if the consumer fails to comply with the financial institution's request for a written confirmation of error within 10 business days after an oral assertion, the consumer loses the right to provisional recrediting of disputed amounts; while the aggregate economic impact of this provision is not likely to be significantly large, some consumers may suffer from the unavailability of disputed amounts during more prolonged error investigations.

The Act will impose substantial compliance costs on financial institutions for error resolution. Potentially one of the largest costs of the Act could result from forced recrediting of disputed amounts. Institutions that recredit disputed amounts expose themselves to the possible withdrawal and loss of those funds to persons acting fraudulently or in a financially irresponsible manner. The provisional recrediting rule will serve as an incentive for financial institutions to resolve errors speedily so that provisional recrediting will not be necessary.

Allocating staff and other resources to error investigation and providing the required notices, explanations, and documents will prove costly to financial institutions. The Act and regulation require an institution to deliver written explanations of findings in cases where it determines that no error occurred or that an error occurred in a different manner or amount from that alleged by the consumer. One institution with relatively extensive EFT experience commented that 96 percent of alleged errors turn out not to be errors; under the Act, written explanations will be required for all such allegations.

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Because of the broad definition of error and of notice of error in the Act and regulation, financial institutions may have to regard a large proportion of consumer inquiries and questions as error allegations. The legal, clerical, and administrative costs of furnishing written explanations for cases in which no error occurred are likely to be great. Substantial costs may result because institutions may feel safer formally investigating inquiries they are not certain are error claims. The liability provisions of § 915 and the treble damages provision of § 908 of the Act give institutions an incentive to conduct investigations for a larger class of consumer inquiries and allegations in order to reduce liability exposure.

Commenters made estimates of average error resolution costs that ranged from $3.50 to $12.00 per error allegation. One commenter estimated an aggregate national cost of more than $75 million to resolve errors in 1980 were the statute to apply for the full year. 7/ Commenters' estimates of the average cost of providing documentation pursuant to § 205.11(f)(3) ranged from $3 to $12 per request. One commenter, estimating an average cost of $12 per request, predicted a nationwide cost of $26 million in 1980 for providing requested error resolution documentation alone. 8/

On the other hand, the regulation will limit costs by specifically excluding certain inquiries from the error resolution procedure, freeing institutions from compliance responsibility if a consumer withdraws an error claim, and freeing institutions from the responsibility to investigate reasserted errors. In addition, the regulation provides that an institution need not investigate error allegations beyond using the information available to it directly, except where the institution has an agreement with a third party, as in the case of point-of-sale terminals operated under agreement with a merchant. This provision will limit the costs of investigation.

Uncertainties and possible costs associated with error resolution may give financial institutions an incentive to restrict EFT services to consumers who have demonstrated a high degree of financial responsibility. This may result in higher costs for all EFT users if system costs must be spread over fewer users, and it may lead to reduced availability of EFT services to low-income consumers, to the extent that low-income consumers are less likely to have had accounts at institutions and therefore to have established records of financial responsibility.

Small financial institutions may find the costs of error investigation to be proportionately greater drains on EFT profitability than larger institutions. Small institutions may also find error resolution aids such as

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7/ This assumes 1.5 billion consumer EFT transactions in 1980, of which 1 percent result in some kind of error allegation as defined by the Act and regulation. It further assumes an average cost per resolution of $5.00.

8/ This assumes that 2.2 million requests for such documentation are made in 1980, or an average of one request per year for every 10 consumer EFT accounts.

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terminal surveillance cameras to be relatively too costly. The error resolution rules thus appear to place small financial institutions at some competitive disadvantage in the provision of EFT services.

Section 205.14 allocates statutory compliance responsibilities for cases in which a consumer accesses an account at one financial institution ("account-holding institution") using an access device issued by another financial institution ("service-providing institution") at which the consumer has no account. This provision applies only when there is no agreement, direct or indirect, between the institutions regarding the service.

In the absence of any regulatory provision to the contrary, account-holding institutions would be forced into a duplication of disclosures, documentation, notices, and error resolution efforts that would greatly increase the compliance costs for transfers of this type. Consumers may be confused or misled by the duplications. Moreover, account-holding institutions would be forced to bear a heavy compliance burden for services they do not directly offer to their customers and over which they have little or no control.

The regulation explicitly exempts account-holding institutions from all compliance responsibilities for such transfers, except for two provisions. First, account-holding institutions must cooperate with service-providing institutions by promptly furnishing them with any relevant information or documentation they request. Second, account-holding institutions must give consumers full use of funds provisionally recredited by the service provider pursuant to § 205.11(c)(2)(iii). These requirements further assure the protection of consumers and are not likely to impose significant compliance cost burdens on account-holding institutions. The regulatory provision as a whole will greatly reduce the documentation, record keeping, and paperwork necessary for compliance with the Act.

Consumers may be subject to less protection and greater potential economic losses under this regulatory provision than under the Act, however. If a consumer alleges an error to the account-holding institution, the institution has no duty under the regulation to comply with the statutory error resolution procedures. While § 205.14 allows a "reasonable" extension of the § 205.11(b)(1)(i) notice deadline if a delay in notifying the service-providing institution occurred because a consumer first notified the account-holding institution, the consumer has no other recourse under the regulation. Even though it is unlikely, it is possible that the consumer could suffer illiquidity, inconvenience, or embarrassment from dishonored items because the account-holding institution is excluded from coverage by the regulation.

It is expected that the benefits will outweigh the costs of this allocation scheme and that no significant loss of consumer protection will result. The Board, in carrying out its monitoring and reporting obligations under the Act, will continue to assess the effects of this provision. Modifying amendments can be made as appropriate and necessary.

This regulatory provision is likely to benefit small financial institutions more because they are more likely to be account holders than service

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providers. 9/ This provision is not expected to affect low-income consumers differently from other consumers.

(4) Comments on Previously Adopted Sections. Section 205.7(b). A number of inquiries have been received regarding delivery of disclosures required under § 205.7(b) for accounts in existence on May 10, 1980. The Board notes that a financial institution may comply by enclosing disclosures with a statement mailing that goes to all its customers. Distribution need not be restricted to those customers who have contracted for EFT services (or for a specific EFT service). It is permissible, for example, to send disclosures about an ATM service to all account-holders and not just to those who have received an access device.

Section 205.10(b). Sections 205.10(b), (c), and (d) were adopted in final form in October. A number of comments were received concerning § 205.10(b), which provides that preauthorized electronic fund transfers from an account may be authorized by the consumer only in writing, and that a copy of the authorization must be given to the consumer.

Commenters asked whether § 205.10(b) applies to authorization agreements entered into before May 10, the effective date of this section. The Board interprets § 205.10(b) as applying only prospectively. Thus, no new authorization need to be obtained as to preexisting agreements.

Commenters also asked whether it is necessary to obtain new authorizations from consumers expressly authorizing electronic debits, if the existing authorizations merely authorize the payee (or the financial institution) to debit the consumer's account, without specifying whether the debiting is to occur electronically or by paper means. It is the Board's position that if the authorization from the consumer is broad enough to encompass electronic transfers, the regulation does not require that a new form be obtained.

(5) Pursuant to the authority granted in 15 U.S.C.A. 1693b, the Board hereby amends Regulation E, 12 CFR Part 205, effective May 10, 1980, as follows:

1. Section 205.2 is amended by revising the heading, adding a sentence at the end of paragraph (g), and by adding paragraph (m), to read as follows:

9/ A recent survey of all U.S. commercial banks showed that 12 percent of banks with assets of less than $100 million had retail banking machines, while 54 percent of banks with assets of $100 million or more had retail banking machines. See David A. Walker, "An Analysis of Financial and Structural Characteristics of Banks with Retail EFT Machines," Working Paper No. 79-1. Washington, D.C.: Federal Deposit Insurance Corporation, 1979, p. 5a.

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SECTION 205.2 -- DEFINITIONS AND RULES OF CONSTRUCTION

* * * * *

(g) "Electronic fund transfer" *** The term does not include payments made by check, draft, or similar paper instrument at an electronic terminal.

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(m) Footnotes have the same legal effect as the text of the regulation.

2. Section 205.4 is amended by redesignating paragraph (c) as paragraph (b) and paragraph (d) as paragraph (c).

3. Section 205.5(a) is amended, to read as follows:

SECTION 205.5 -- ISSUANCE OF ACCESS DEVICES

(a) <u>General rule.</u> *** (3) As a renewal of, or in substitution for, an access device issued before February 8, 1979 (other than an accepted access device, which can be renewed or substituted under paragraph (a)(2) of this section), provided that the disclosures set forth in §§ 205.7(a)(1), (2), and (3) accompany the renewal or substitute device; except that for a renewal or substitution that occurs before July 1, 1979, the disclosures may be sent within a reasonable time after the renewal or substitute device is issued.

* * * * *

4. Section 205.7(a) is amended, to read as follows:

SECTION 205.7 -- INITIAL DISCLOSURE OF TERMS AND CONDITIONS

(a) <u>Content of disclosures.</u> 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:

* * * * *

5. The final sentence of § 205.8(a) is amended, to read as follows:

SECTION 205.8 -- CHANGE IN TERMS; ERROR RESOLUTION NOTICE

(a) <u>Change in terms.</u> *** However, if such a change 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 peri-

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odic statement or within 30 days, unless disclosure would jeopardize the security of the system or account.

* * * * *

6. Sections 205.9, 205.10(a), and 205.11 are added, to read as follows:

SECTION 205.9 -- DOCUMENTATION OF TRANSFERS

(a) Receipts at electronic terminals. At the time an electronic fund transfer is initiated at an electronic terminal by a consumer, the financial institution shall make available 2/ to the consumer a written receipt of the transfer(s) that clearly sets forth the following information, as applicable:

(1) The amount of the transfer. A charge for the transfer may be included in this amount if the terminal is owned or operated by a person other than the financial institution holding the consumer's account, provided the amount of the charge is disclosed on the receipt and on a sign posted on or at the terminal.

(2) The calendar date the consumer initiated the transfer.

(3) The type of transfer and the type of the consumer's account(s) 3/ to or from which funds are transferred, such as "withdrawal from checking," "transfer from savings to checking," or "payment from savings." These descriptions may be used for transfers to or from accounts that are similar in function to checking accounts (such as share draft or negotiable order of withdrawal accounts) or to savings accounts (such as share accounts). Codes may be used only if they are explained elsewhere on the receipt.

(4) A number or code that uniquely identifies the consumer initiating the transfer, the consumer's account(s), or the access device used to initiate the transfer.

(5) The location (in a form prescribed by paragraph (b)(1)(iv) of this section) of the terminal at which the transfer was initiated or an identification (such as a code or terminal number).

(6) The name of any third party to or from whom funds are transferred; a code may be used only if it is explained elsewhere on the receipt. This requirement does not apply if the name is provided by the consumer in a form that the electronic terminal cannot duplicate on the receipt.

2/ A financial institution may arrange for a third party, such as a merchant, to make the receipt available.

3/ If more than one account of the same type may be accessed by a single access device, the accounts must be uniquely identified.

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(b) Periodic statements. For any account to or from which electronic fund transfers can be made, the financial institution shall mail or deliver a statement for each monthly or shorter cycle in which an electronic fund transfer has occurred, but at least a quarterly statement if no transfer has occurred. The statement shall include the following, as applicable:

(1) For each electronic fund transfer occurring during the cycle, 4/

(i) The amount of the transfer. If a transfer charge was added at the time of initiation by the owner or operator of an electronic terminal in accordance with paragraph (a)(1) of this section, that charge may be included in the amount of the transfer.

(ii) The date the transfer was credited or debited to the consumer's account.

(iii) The type of transfer and the type of the consumer's account(s) to or from which funds were transferred.

(iv) For each transfer initiated by the consumer at an electronic terminal, the location that appeared on the receipt or, if an identification (such as a code or terminal number) was used, that identification and one of the following descriptions of the terminal's location:

(A) The address, including number and street (the number may be omitted if the street alone uniquely identifies the terminal location) or intersection, city, and state or foreign country; 5/

(B) A generally accepted name for a specific location (such as a branch of the financial institution, a shopping center, or an airport), city, and state or foreign country; 6/ or

(C) The name of the entity at whose place of business the terminal is located or which owns or operates the terminal (such as the financial

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4/ The information required by paragraph (b)(1) of this section may be provided on accompanying documents. Codes explained on the statement or on accompanying documents are acceptable.

5/ The city and state may be omitted if all the terminals owned or operated by the financial institution providing the statement (or by the system in which it participates) are located in the same city. The state may be omitted if all the terminals owned or operated by the financial institution providing the statement (or by the system in which it participates) are located in that state.

6/ See footnote 5.

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institution 7/ or the seller of goods or services), city, and state or foreign country. 8/

(v) The name of any third party to or from whom funds were transferred. 9/ If the transfer was initiated by the consumer at an electronic terminal and a code was used on the receipt to identify the third party, the statement shall include the code and the name of the third party.

(2) The number(s) of the consumer's account(s) for which the statement is issued.

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

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

(5) The address and telephone number to be used for inquiry or notice of errors, preceded by "Direct Inquiries To:" or similar language. Alternatively, the address and telephone number may be provided on the notice of error resolution procedures set forth in § 205.8(b).

(6) If the financial institution uses the notice procedure set forth in § 205.10(a)(1)(iii), the telephone number the consumer may call to ascertain whether a preauthorized transfer to the consumer's account has occurred.

(c) Documentation for certain passbook accounts. In the case of a consumer's passbook account which may not be accessed by any electronic fund transfers other than preauthorized transfers to the account, the financial institution may, in lieu of complying with paragraph (b) of this section, upon presentation of the consumer's passbook, provide the consumer with documentation by entering in the passbook or on a separate document the amount and date of each electronic fund transfer made since the passbook was last presented.

7/ If the financial institution providing the statement owns or operates terminals at more than one location, it shall describe the location of its electronic terminals by use of paragraphs (b)(1)(iv)(A) or (B) of this section.

8/ See footnote 5.

9/ A financial institution need not identify third parties whose names appear on checks, drafts, or similar paper instruments deposited to the consumer's account at an electronic terminal.

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(d) Periodic statements for certain non-passbook accounts. If a consumer's account other than a passbook account may not be accessed by any electronic fund transfers other than preauthorized transfers to the account, the financial institution need provide the periodic statement required by paragraph (b) of this section only quarterly.

(e) Use of abbreviations. A financial institution may use commonly accepted or readily understandable abbreviations in complying with the documentation requirements of this section.

SECTION 205.10 -- PREAUTHORIZED TRANSFERS

(a) 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 to the consumer that the transfer has been initiated, the financial institution shall provide notice by one of the following means:

(i) The institution shall transmit oral or written notice to the consumer, within 2 business days after the transfer, that the transfer occurred;

(ii) The institution shall transmit 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; or

(iii) The institution shall provide a readily available telephone line that the consumer may call to ascertain whether or not the transfer occurred, and shall disclose the telephone number on the initial disclosures required by § 205.7 and on each periodic statement.

(2) A financial institution that receives a preauthorized transfer of the type described in paragraph (a)(1) of this section shall credit the amount of the transfer as of the day the funds for the transfer are received.

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SECTION 205.11 -- PROCEDURES FOR RESOLVING ERRORS

(a) Definition of error. For purposes of this section, the term "error" means:

(1) An unauthorized electronic fund transfer;

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

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

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(4) A computational or bookkeeping error made by the financial institution relating to an electronic fund transfer;

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

(6) An electronic fund transfer not identified in accordance with the requirements of §§ 205.9 or 205.10(a); or

(7) A consumer's request for any documentation required by §§ 205.9 or 205.10(a), or for additional information or clarification concerning an electronic fund transfer. This includes any request for documentation, information, or clarification in order to assert an error within the meaning of paragraphs (a)(1) through (6) of this section. It does not include a routine inquiry about the balance in the consumer's account or a request for duplicate copies of documentation or other information that is made only for tax or other record-keeping purposes.

(b) Notice of error from consumer. (1) A notice of an error is an oral or written notice from the consumer that

(i) Is received by the financial institution 10/ no later than 60 days after the institution

(A) Transmitted a periodic statement or provided documentation under § 205.9(c) on which the alleged error is first reflected; or

(B) Transmitted additional information, clarification, or documentation described in paragraph (a)(7) of this section that was initially requested in accordance with paragraph (b)(1)(i)(A) of this section;

(ii) Enables the financial institution to identify the consumer's name and account number; and

(iii) Except for errors described in paragraph (a)(7) of this section, indicates the consumer's belief, and the reasons for that belief, that an error exists in the consumer's account or is reflected on documentation required by §§ 205.9 or 205.10(a), and indicates to the extent possible the type, the date, and the amount of the error.

(2) A financial institution may require a written confirmation to be received within 10 business days of an oral notice if, when the oral notice is given, the consumer is advised of the requirement and of the address to which confirmation must be sent.

10/ A financial institution may require the consumer to give notice only at the telephone number or address disclosed by the institution, provided the institution maintains reasonable procedures to refer the consumer to the specified telephone number or address if the consumer attempts to give notice to the institution in a different manner.

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(c) Investigation of errors. (1) After receiving a notice of an error, the financial institution shall promptly investigate the alleged error, determine whether an error occurred, and transmit the results of its investigation and determination to the consumer within 10 business days.

(2) As an alternative to the 10-business-day requirement of paragraph (c)(1) of this section, the financial institution shall investigate the alleged error and determine whether an error occurred, promptly but in no event later than 45 calendar days after receiving a notice of an error, and shall transmit the results of its investigation and determination to the consumer, provided

(i) The financial institution provisionally recredits the consumer's account in the amount of the alleged error (including interest where applicable) within 10 business days after receiving the notice of error. If the financial institution has a reasonable basis for believing that an unauthorized electronic fund transfer may have occurred and that it has satisfied the requirements of § 205.6(a), it may withhold a maximum of $50 from the amount recredited;

(ii) The financial institution, promptly but no later than 2 business days after the provisional recrediting, orally reports or mails or delivers notice to the consumer of the amount and date of the recrediting and of the fact that the consumer will have full use of the funds pending the determination of whether an error occurred;

(iii) The financial institution gives the consumer full use of the funds provisionally recredited during the investigation; and

(iv) If the financial institution determines that no error occurred and debits the account, the institution gives notice of the debiting and continues to honor certain items as required by paragraph (f)(2) of this section.

(3) A financial institution that requires but does not receive timely written confirmation of oral notice of an error shall comply with all requirements of this section except that it need not provisionally recredit the consumer's account.

(d) Extent of required investigation. (1) A financial institution complies with its duty to investigate, correct, and report its determination regarding an error described in paragraph (a)(7) of this section by transmitting the requested information, clarification, or documentation within the time limits set forth in paragraph (c) of this section. If the institution has provisionally recredited the consumer's account in accordance with paragraph (c)(2) of this section, it may debit the amount upon transmitting the requested information, clarification, or documentation.

(2) Except in the case of services covered by § 205.14, a financial institution's review of its own records regarding an alleged error will satisfy its investigation responsibilities under paragraph (c) of this sec-

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tion if the alleged error concerns a transfer to or from a third party and there is no agreement between the financial institution and the third party 11/ regarding the type of electronic fund transfer alleged in the error.

(3) A financial institution may make, without investigation, a final correction to a consumer's account in the amount or manner alleged by the consumer to be in error, but must comply with all other applicable requirements of this section.

(e) Procedures after financial institution determines that error occurred. If the financial institution determines that an error occurred, it shall

(1) Promptly, but no later than 1 business day after its determination, correct the error (subject to the liability provisions of §§ 205.6(a) and (b)), including, where applicable, the crediting of interest and the refunding of any fees or charges imposed, and

(2) Promptly, but in any event within the 10-business-day or 45-day time limits, orally report or mail or deliver to the consumer notice of the correction and, if applicable, notice that a provisional credit has been made final. 12/

(f) Procedures after financial institution determines that no error occurred. If the financial institution determines that no error occurred or that an error occurred in a different manner or amount from that described by the consumer,

(1) The financial institution shall mail or deliver to the consumer a written explanation of its findings within 3 business days after concluding its investigation, but in no event later than 10 business days after receiving notice of the error if the institution is proceeding under paragraph (c)(1) of this section. The explanation shall include notice of the consumer's right to request the documents upon which the institution relied in making its determination.

11/ Institutions do not have an agreement for purposes of paragraph (d)(2) of this section solely because they participate in transactions under the federal recurring payments program, or that are cleared through an automated or other clearing house or similar arrangement for the clearing and settlement of fund transfers generally, or because they agree to be bound by the rules of such arrangements. An agreement that a third party will honor an access device is an agreement for purposes of this paragraph.

12/ This notice requirement may be satisfied by a notice on a periodic statement that is mailed or delivered within the 10-business-day or 45-day time limits and that clearly identifies the correction to the consumer's account.

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(2) Upon debiting a provisionally recredited amount, the financial institution

(i) Shall orally report or mail or deliver notice to the consumer of the date and amount of the debiting and the fact that the financial institution will honor checks, drafts, or similar paper instruments payable to third parties and preauthorized transfers from the consumer's account (using the provisionally recredited funds) for 5 business days after transmittal of the notice.

(ii) Shall honor checks, drafts, or similar paper instruments payable to third parties and preauthorized transfers from the consumer's account (without charge to the consumer as a result of an overdraft) for 5 business days after transmittal of the notice. The institution need only honor items that it would have paid if the provisionally recredited funds had not been debited.

(3) Upon the consumer's request, the financial institution shall promptly mail or deliver to the consumer copies of the documents on which it relied in making its determination.

(g) Withdrawal of notice of error. The financial institution has no further error resolution responsibilities as to a consumer's assertion of an error if the consumer concludes that no error did in fact occur and voluntarily withdraws the notice.

(h) Reassertion of error. A financial institution that has fully complied with the requirements of this section with respect to an error has no further responsibilities under this section if the consumer subsequently reasserts the same error, regardless of the manner in which it is reasserted. This paragraph does not preclude the assertion of an error defined in paragraphs (a)(1) through (6) of this section following the assertion of an error described in paragraph (a)(7) of this section regarding the same electronic fund transfer.

(i) Relation to Truth in Lending. Where an electronic fund transfer also involves an extension 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, the financial institution shall comply with the requirements of this section rather than those of 12 CFR 226.2(j), 226.2(cc), and 226.14(a) governing error resolution.

7. Section 205.13 is amended, to read as follows:

SECTION 205.13 -- ADMINISTRATIVE ENFORCEMENT

* * * * *

(b) Issuance of staff interpretations.

* * * * *

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(2)(i) *** 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 and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

* * * * *

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

(c) <u>Record retention.</u>

* * * * *

(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 §§ 910, 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. Section 205.14 is added, to read as follows:

SECTION 205.14 -- SERVICES OFFERED BY FINANCIAL INSTITUTIONS NOT HOLDING CONSUMER'S ACCOUNT

(a) <u>Compliance by service-providing institution</u>. Except as provided in this section, where a financial institution issues an access device to a consumer to be used for initiating electronic fund transfers to or from the consumer's account held by another financial institution, and the service-providing institution does not have an agreement with the account-holding institution regarding the service, the service-providing institution shall comply with all requirements of the Act and this regulation that relate to the service or the electronic fund transfers made by the consumer under the service. For this purpose, the following special rules shall apply:

(1) Section 205.6 shall require the service-providing institution to reimburse the consumer for unauthorized electronic fund transfers in excess of the limits set by that section.

(2) Sections 205.7, 205.8, and 205.9 shall require the service-providing institution to provide those disclosures and documentation that are within its knowledge and the purview of its relationship with the consumer.

(3) Section 205.11(b)(1)(i) shall require the service-providing institution to extend by a reasonable time the time periods within which notice of an error must be received if a delay in notifying the service-providing institution was due to the fact that the consumer initially notified or attempted to notify the account-holding institution.

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(4) Sections 205.11(c)(2)(i) and (e)(1) shall require the service-providing institution to transfer funds, in the appropriate amount and within the applicable time period, to the consumer's account at the account-holding institution.

(5) Section 205.11(c)(2)(ii) shall require the service-providing institution to disclose the date on which it initiates a transfer to effect the provisional recredit.

(6) Section 205.11(f)(2) shall require the service-providing institution to notify the account-holding institution of the date until which the account-holding institution must honor any debit to the account as required by § 205.11(f)(2). If an overdraft results, the service-providing institution shall promptly reimburse the account-holding institution in the amount of the overdraft.

(b) Compliance by account-holding institution. An account-holding institution described in paragraph (a) of this section need not comply with the requirements of the Act and this regulation with respect to electronic fund transfers to or from the consumer's account made by the service-providing institution, except that the account-holding institution shall comply with § 205.11 by

(1) Promptly providing, upon the request of the service-providing institution, information or copies of documents required for the purpose of investigating alleged errors or furnishing copies of documents to the consumer; and

(2) Honoring debits to the account in accordance with § 205.11(f)(2).

(c) Definition of agreement. For purposes of this section, an agreement between the service-providing and the account-holding institutions regarding the electronic fund transfer service refers to a specific agreement(s) among institutions (or among institutions and another person that participates in the operation of the service) which sets forth the rights and obligations of the institutions with respect to a service involving the issuance of an access device to the consumer. Institutions do not have such an agreement solely because they participate in transactions that are cleared through an automated or other clearing house or similar arrangement for the clearing and settlement of fund transfers generally, or because they agree to be bound by the rules of such an arrangement.

9. Appendix A is amended by deleting the material enclosed in parentheses in each section caption, and substituting therefor the following: in § A(1), "§ 205.5(b)(3)"; in § A(2), "§ 205.7(a)(1)"; in § A(3), "§ 205.7(a)(2)"; in § A(4), "§ 205.7(a)(3)"; in § A(5), "§ 205.7(a)(4)"; in § A(6), "§ 205.7(a)(5)"; in § A(7), § 205.7(a)(9)"; in § A(8), "§ 205.7(a)(6)"; in § A(9), "§ 205.7(a)(6),(7), and (8)"; and in § A(10), "§ 205.7(a)(8)".

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10. Appendix A is further amended by adding § A(8)(b) and by revising § A(10)(a), to read as follows:

APPENDIX A -- MODEL DISCLOSURE CLAUSES

* * * * *

SECTION A(8) -- DISCLOSURE OF RIGHT TO RECEIVE DOCUMENTATION OF TRANSFERS (§ 205.7(a)(6))

* * * * *

(b) Preauthorized credits. If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company,

(we will let you know if the deposit is (not) made.)

(the person or company making the deposit will tell you every time they send us the money.)

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

* * * * *

SECTION A(10) -- DISCLOSURE OF FINANCIAL INSTITUTION'S LIABILITY FOR FAILURE TO MAKE TRANSFERS (§ 205.7(a)(8))

(a) Liability for failure to make transfers. If we do not complete a transfer to or from your account on time or in the correct amount 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, you do not have enough money in your account 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, despite reasonable precautions that we have taken.

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- There may be other exceptions stated in our agreement with you.

* * * * *

By order of the Board of Governors, January 30, 1980.

(signed) Theodore E. Allison
Theodore E. Allison
Secretary of the Board

[SEAL]

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FEDERAL RESERVE BANK OF NEW YORK
Fiscal Agent of the United States

[Circular No. 8758
February 20, 1980]

OFFERING OF TWO SERIES OF TREASURY BILLS

$3,300,000,000 of 91-Day Bills, Additional Amount, Series Dated November 29, 1979, Due May 29, 1980 (To Be Issued February 28, 1980)

$3,300,000,000 of 182-Day Bills, Dated February 28, 1980, Due August 28, 1980

To All Incorporated Banks and Trust Companies, and Others Concerned, in the Second Federal Reserve District:

Following is the text of a notice issued by the Treasury Department:

The Department of the Treasury, by this public notice, invites tenders for two series of Treasury bills totaling approximately $6,600 million, to be issued February 28, 1980. This offering will provide $400 million new cash for the Treasury as the maturing bills are outstanding in the amount of $6,226 million, including $1,212 million currently held by Federal Reserve Banks as agents for foreign and international monetary authorities and $1,697 million currently held by Federal Reserve Banks for their own account. The two series offered are as follows:

91-day bills (to maturity date) for approximately $3,300 million, representing an additional amount of bills dated November 29, 1979, and to mature May 29, 1980 (CUSIP No. 912793 4G8), originally issued in the amount of $3,225 million, the additional and original bills to be freely interchangeable.

182-day bills for approximately $3,300 million to be dated February 28, 1980, and to mature August 28, 1980 (CUSIP No. 912793 5C6).

Both series of bills will be issued for cash and in exchange for Treasury bills maturing February 28, 1980. Tenders from Federal Reserve Banks for themselves and as agents of foreign and international monetary authorities will be accepted at the weighted average prices of accepted competitive tenders. Additional amounts of the bills may be issued to Federal Reserve Banks, as agents of foreign and international monetary authorities, to the extent that the aggregate amount of tenders for such accounts exceeds the aggregate amount of maturing bills held by them.

The bills will be issued on a discount basis under competitive and noncompetitive bidding, and at maturity their par amount will be payable without interest. Both series of bills will be issued entirely in book-entry form in a minimum amount of $10,000 and in any higher $5,000 multiple, on the records either of the Federal Reserve Banks and Branches, or of the Department of the Treasury.

Tenders will be received at Federal Reserve Banks and Branches and at the Bureau of the Public Debt, Washington, D.C. 20226, up to 1:30 p.m., Eastern Standard time, Monday, February 25, 1980. Form PD 4632-2 (for 26-week series) or Form PD 4632-3 (for 13-week series) should be used to submit tenders for bills to be maintained on the book-entry records of the Department of the Treasury.

Each tender must be for a minimum of $10,000. Tenders over $10,000 must be in multiples of $5,000. In the case of competitive tenders the price offered must be expressed on the basis of 100, with not more than three decimals, e.g., 99.925. Fractions may not be used.

Banking institutions and dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities may submit tenders for account of customers, if the names of the customers and the amount for each customer are furnished. Others are only permitted to submit tenders for their own account. Each tender must state the amount of any net long position in the bills being offered if such position is in excess of $200 million. This information should reflect positions held at the close of business on the day prior to the auction. Such positions would include bills acquired through "when issued" trading, and futures and forward transactions as well as holdings of outstanding bills with the same maturity date as the new offering, e.g., bills with three months to maturity previously offered as six month bills. Dealers who make primary markets in Government securities and report daily to the Federal Reserve Bank of New York their positions in and borrowings on such securities, when submitting tenders for customers, must submit a separate tender for each customer whose net long position in the bill being offered exceeds $200 million.

Payment for the full par amount of the bills applied for must accompany all tenders submitted for bills to be maintained on the book-entry records of the Department of the Treasury. A cash adjustment will be made on all accepted tenders for the difference between the par payment submitted and the actual issue price as determined in the auction.

No deposit need accompany tenders from incorporated banks and trust companies and from responsible and recognized dealers in investment securities for bills to be maintained on the book-entry records of Federal Reserve Banks and Branches. A deposit of 2 percent of the par amount of the bills applied for must accompany tenders for such bills from others, unless an express guaranty of payment by an incorporated bank or trust company accompanies the tenders.

Public announcement will be made by the Department of the Treasury of the amount and price range of accepted bids. Competitive bidders will be advised of the acceptance or rejection of their tenders. The Secretary of the Treasury expressly reserves the right to accept or reject any or all tenders, in whole or in part, and the Secretary's action shall be final. Subject to these reservations, noncompetitive tenders for each issue for $500,000 or less without stated price from any one bidder will be accepted in full at the weighted average price (in three decimals) of accepted competitive bids for the respective issues.

Settlement for accepted tenders for bills to be maintained on the book-entry records of Federal Reserve Banks and Branches must be made or completed at the Federal Reserve Bank or Branch on February 28, 1980, in cash or other immediately available funds or in Treasury bills maturing February 28, 1980. Cash adjustments will be made for differences between the par value of the maturing bills accepted in exchange and the issue price of the new bills.

Under Sections 454(b) and 1221(5) of the Internal Revenue Code of 1954 the amount of discount at which these bills are sold is considered to accrue when the bills are sold, redeemed or otherwise disposed of, and the bills are excluded from consideration as capital assets. Accordingly, the owner of these bills (other than life insurance companies) must include in his or her Federal income tax return, as ordinary gain or loss, the difference between the price paid for the bills, whether on original issue or on subsequent purchase, and the amount actually received either upon sale or redemption at maturity during the taxable year for which the return is made.

Department of the Treasury Circulars, Public Debt Series—Nos. 26-76 and 27-76, and this notice, prescribe the terms of these Treasury bills and govern the conditions of their issue. Copies of the circulars and tender forms may be obtained from any Federal Reserve Bank or Branch, or from the Bureau of the Public Debt.

This Bank will receive tenders for both series up to 1:30 p.m., Eastern Standard time, Monday, February 25, 1980, at the Securities Department of its Head Office and at its Buffalo Branch. Tender forms for the respective series are enclosed. Please use the appropriate forms to submit tenders and return them in the enclosed envelope marked "Tender for Treasury Bills." Forms for submitting tenders directly to the Treasury are available from the Government Bond Division of this Bank. Tenders not requiring a deposit may be submitted by telegraph, subject to written confirmation; no tenders may be submitted by telephone. *Payment for Treasury bills cannot be made by credit through the Treasury Tax and Loan Account. Settlement must be made in cash or other immediately available funds or in maturing Treasury bills.*

Results of the last weekly offering of Treasury bills are shown on the reverse side of this circular.

THOMAS M. TIMLEN,
First Vice President.

(OVER)

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RESULTS OF LAST WEEKLY OFFERING OF TREASURY BILLS
(TWO SERIES TO BE ISSUED FEBRUARY 21, 1980)

Range of Accepted Competitive Bids

	91-Day Treasury Bills Maturing May 22, 1980			*182-Day Treasury Bills Maturing August 21, 1980*		
	Price	*Discount Rate*	*Investment Rate* [1]	*Price*	*Discount Rate*	*Investment Rate* [1]
High	96.689[a]	13.098%	13.77%	93.453	12.950%	14.09%
Low	96.651	13.249%	13.94%	93.403	13.049%	14.20%
Average	96.673	13.162%	13.84%	93.421	13.013%	14.16%

[1] Equivalent coupon-issue yield.
[a] Excepting two tenders totaling $1,600,000.

(20 percent of the amount of 91-day bills bid for at the low price was accepted.)

(74 percent of the amount of 182-day bills bid for at the low price was accepted.)

Total Tenders Received and Accepted

	91-Day Treasury Bills Maturing May 22, 1980		*182-Day Treasury Bills Maturing August 21, 1980*	
By F.R. District (and U.S. Treasury)	*Received*	*Accepted*	*Received*	*Accepted*
Boston	$ 57,075,000	$ 37,075,000	$ 42,895,000	$ 22,895,000
New York	4,423,785,000	2,729,785,000	5,030,105,000	2,776,545,000
Philadelphia	22,155,000	22,155,000	12,840,000	12,775,000
Cleveland	31,010,000	31,010,000	36,115,000	23,515,000
Richmond	34,920,000	32,920,000	27,400,000	22,400,000
Atlanta	38,580,000	38,580,000	22,570,000	22,570,000
Chicago	289,520,000	51,375,000	338,530,000	120,330,000
St. Louis	21,090,000	21,090,000	23,390,000	19,390,000
Minneapolis	12,590,000	12,590,000	13,925,000	13,925,000
Kansas City	30,525,000	30,525,000	23,495,000	21,495,000
Dallas	27,635,000	22,635,000	14,205,000	14,205,000
San Francisco	339,655,000	116,655,000	292,515,000	57,515,000
U.S. Treasury	55,490,000	55,490,000	72,800,000	72,800,000
TOTALS	$5,384,030,000	$3,201,885,000	$5,950,785,000	$3,200,360,000
By class of bidder				
Public				
Competitive	$3,613,050,000	$1,530,905,000	4,210,995,000	$1,560,570,000
Noncompetitive	544,285,000	544,285,000	370,590,000	370,590,000
SUBTOTALS	$4,157,335,000	$2,075,190,000	$4,581,585,000	$1,931,160,000
Federal Reserve	966,745,000	866,745,000	960,000,000	860,000,000
Foreign Official Institutions	259,950,000	259,950,000	409,200,000	409,200,000
TOTALS	$5,384,030,000	$3,201,885,000	$5,950,785,000	$3,200,360,000

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