FEDERAL RESERVE BANK OF NEW YORK

[Circular No. 8928
October 6, 1980]

ELECTRONIC FUND TRANSFERS

Regulation E Amendments and 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 a series of amendments, effective October 6, to its Regulation E, "Electronic Fund Transfers," and has invited comment, by November 5, on a proposal regarding overdraft checking plans.

The following is quoted from the Board's announcement:

The Board's proposal concerns required use of automatic means for repayment of credit extended under a check overdraft protection plan. An official staff interpretation in the form of questions and answers intended to facilitate compliance with Regulation E is also being proposed.

The Electronic Fund Transfer Act prohibits creditors from making an agreement to repay by automatic means a condition of extending credit. Automatic debiting of a minimum monthly payment has in the past been a feature of overdraft checking plans. The Board has been asked to exempt such automatic payments of check overdraft programs from the ban on compulsory use on the grounds that other means would be unduly complex, automatic collection has not been a subject of consumer complaint and that automatic overdraft protection plans benefit consumers by reducing the number of checks that are not honored.

The Board consequently proposed for public comment that an exemption be granted for overdraft checking plans that require automatic debiting of the customer's account for minimum payments.

A staff commentary in the form of questions and answers is also being published for comment. It covers the regulation's various requirements, and is intended to facilitate compliance by financial institutions that provide electronic fund transfer services. Institutions acting in conformity with the interpretation will be protected when it is issued in final form. Comment is requested on the interpretation until November 14. The text of the proposed staff interpretation may be obtained from the Federal Reserve Board, or from the Federal Reserve Banks.

In addition to its proposal, the Board adopted the following amendments to Regulation E:

1. The Board extended the exemption in Regulation E for intra-institutional transfers of funds to transfers within the same institution from a consumer's account to that of another member of the consumer's family.

2. Some automated teller machines permit consumers access to more than one account of the same type with a single debit card (for example, to withdraw cash from two checking accounts). The Board has been informed that some 35 financial institutions have ATMs that are unable to indicate on the terminal receipt—as required by Regulation E—which of the two accounts is affected by a transfer of funds. The Board exempted from this requirement ATMs without this capability that were ordered or purchased before February 6, 1980, the date Regulation E was issued in final form.

3. The Board adopted two technical amendments, one to permit financial institutions to omit the State in which a terminal transfer took place when the transfer occurs within 50 miles of the institution's main office and the other to delete from the regulation a requirement that a certain receipt code be printed on the periodic statement of the customer's account. These amendments affect a small number of financial institutions.

Enclosed is a copy of the amendments. The text of the proposed staff interpretation will be furnished upon request.

The Board's proposal regarding overdraft checking plans is printed on the following pages. Comments thereon should be submitted by November 5 and may be sent to our Regulations Division.

ANTHONY M. SOLOMON,
President.

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FEDERAL RESERVE SYSTEM

[12 CFR Part 205]

[Reg. E; Docket No. R-0326]

ELECTRONIC FUND TRANSFERS

Exemptions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment a proposed amendment to Regulation E to exempt overdraft checking plans from the compulsory use provision of the Electronic Fund Transfer Act. The amendment is being proposed to address an issue not covered when the regulation was promulgated. The Board is also publishing for comment an economic impact analysis, as required by § 904 of the act.

DATE: Comments must be received on or before November 5, 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 B-2223, 20th & Constitution Avenue, N.W., Washington, D.C. between 8:45 a.m. and 5:15 p.m. Comments may also be inspected at Room B-1122 between 8:45 a.m. and 5:15 p.m. All material submitted should refer to Docket No. R-0326.

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

SUPPLEMENTARY INFORMATION: (1) General. The major portion of the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) and Regulation E went into effect on May 10, 1980. The Board, in response to inquiries concerning the issue of compulsory use, is proposing an amendment to the exemption section of the regulation. The amendment would, if adopted as proposed, exempt certain overdraft checking plans from the compulsory use prohibition of the act. The Board has also adopted a number of technical amendments to the exemption and documentation sections; see the separate final rule document in this edition.

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. A proposed economic impact statement relating to the proposal appears in section (3) below. The statement and the proposed amendment have been transmitted to Congress, as required by § 904(a)(4).

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Section 904(c) permits the Board to modify the requirements of the act as they affect small financial institutions if the Board determines that modifications are necessary to alleviate any undue compliance burden. The Board solicits comment on whether the proposed amendment should be modified in any way to address the compliance burdens of small financial institutions.

Because a prompt resolution of the issues addressed in the proposed amendment is desirable in view of the compliance effort already undertaken by financial institutions, the 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 provision. Section 913 of the act prohibits the conditioning of an extension of credit upon the consumer agreeing to repay by means of preauthorized transfers. Under § 205.3(d)(3) of the regulation, preauthorized loan payments from a consumer's account to the financial institution are exempt from all the requirements of the act and regulation except this ban on compulsory use.

In response to requests from a number of financial institutions, the Board is proposing to amend § 205.3(d)(3). The amendment would, if adopted as proposed, allow financial institutions to require preauthorized transfers from consumers' accounts at the same institution when credit is extended pursuant to a plan under which advances are made when the consumer's account is overdrawn or to maintain a specified minimum balance.

The Board solicits comment on the consumer harm or benefit that could result from adoption of the proposal. It appears that financial institutions in the past have generally required such automatic debiting of payments without serious consumer problems. Consumers may benefit from the proposal by a reduction in charges for returned items or finance charges.

In addition, the Board requests comment on what costs will be saved by financial institutions if the proposal is adopted as proposed, from avoidance of reprogramming, collection efforts, or processing of paper payments.

The overdraft plans that are the subject of this proposal generally require an agreement to debit a minimum payment each monthly or other payment period from available or advanced funds. Other plans have automatic debiting whenever funds are deposited into the consumer's account, and do not have a fixed periodic or recurring payment schedule. It is the Board's opinion that these latter plans are already in compliance with § 913, because they do not require the consumer to agree to repayment by preauthorized transfers, which are defined in the act and regulation as transfers "authorized in advance to recur at substantially regular intervals."

(3) Economic impact analysis. It is proposed that § 205.3(d)(3) be amended to exempt extensions of credit to cover overdrafts or maintain specified minimum balances from the act's provision prohibiting compulsory use of EFT. Overdraft credit plans appear to be a well-established and well-accepted consumer service. Automatic transfers provide the simplest and least costly method for repayment of these credit extensions. Providing nonautomatic repayment alternatives would require reorganization and expense on the part of financial institutions and could lead to higher prices or reduced service levels for consumers.

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No significant loss of consumer protection is expected to follow from this exemption.

The proposed amendment is unlikely to place small financial institutions at a competitive disadvantage, increase reporting or recordkeeping burdens, or adversely affect the availability of EFT services to low-income consumers.

(4) Pursuant to the authority granted in 15 U.S.C. 1693b, the Board proposes to amend Regulation E, 12 CFR Part 205, by revising § 205.3(d), to read as follows:

§ 205.3 Exemptions

* * * * *

(d) Certain automatic transfers.***

(3) From a consumer's account to an account of the financial institution, such as a loan payment (except that the financial institution is subject to §§ 913(1), 915, and 916 of the Act for extensions of credit other than those made when the consumer's account is overdrawn or to maintain a specified minimum balance in the account).

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Ref. Circ. No. 8928

FEDERAL RESERVE SYSTEM

[12 CFR Part 205]

[Reg. E; Docket No. R-0325]

ELECTRONIC FUND TRANSFERS

Exemptions
Documentation of Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting in final form a series of technical amendments to Regulation E, which implements the Electronic Fund Transfer Act. The amendments will (1) exempt family transfer plans from the act and regulation, (2) permit institutions that ordered or purchased certain automated teller machines (ATMs) before February 6, 1980, to omit a unique account identifier from the terminal receipt, and (3) modify two periodic statement requirements. These actions are being taken to ease financial institutions' compliance burden and forestall the loss of what appear to be valuable consumer services. The Board is also publishing an economic impact analysis of the amendments. The amendments are being adopted without an opportunity for public comment because they appear technical in nature and relieve regulatory burdens.

EFFECTIVE DATE: October 6, 1980.

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

SUPPLEMENTARY INFORMATION: (1) Regulatory provisions. The major portion of the Electronic Fund Transfer Act and Regulation E went into effect on May 10, 1980. Since the regulation was issued in final form, the Board has received a number of inquiries concerning issues that were not addressed in the regulatory proposals. In response to these inquiries and after its own analysis, the Board is adopting a series of amendments to the regulation in final form, effective immediately. The Board is also proposing a separate amendment to address compulsory use of EFT; see the proposed rule document elsewhere in this edition.

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. An economic impact statement appears in section (2) below. The statement and the amendments have been transmitted to Congress.

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Section 205.3(d)(4) - Family transfer plans. Most automatic intra-institutional transfers are exempt from the requirements of the act and regulation under § 205.3(d). Certain financial institutions (primarily credit unions) offer plans under which funds can be transferred automatically from one consumer's account to an account belonging to a member of the consumer's family within the same financial institution. These transfers are not presently exempt from the regulation unless at least one of the accounts involved is held jointly by the family member and the consumer.

The Board is amending the regulation to exempt automatic intra-institutional transfers from a consumer's account to an account held by a member of the transferor's family. It does not appear that consumers will be harmed by adoption of this amendment and the Board is concerned that financial institutions have discontinued this service as a result of Regulation E.

Section 205.9(a)(3), footnote 3 - Exemption from requirement that unique account identification be provided on the terminal receipt. The regulation requires that the terminal receipt made available to the consumer at the time a transfer is initiated at an electronic terminal uniquely identify the account accessed, if the debit card used for the transfer can access multiple accounts of the same type. It has come to the Board's attention that a small number of ATMs that permit access to multiple accounts of the same type (for example, by permitting withdrawals from two checking accounts) cannot, as is required by footnote 3, uniquely identify each account on the terminal receipt. This problem appears to affect one brand of ATM currently in use by approximately 35 institutions. The estimated cost of modification to bring the ATMs into compliance appears to the Board to be significant. The Board is concerned that financial institutions have discontinued what appears to be a valuable service to consumers as a result of this requirement of the regulation.

The Board is amending the regulation to limit the requirement that accounts be uniquely identified on terminal receipts (if the access device used for the transfer can access multiple accounts of the same type) to machines that were ordered or purchased after February 6, 1980, the date on which this portion of the regulation was issued in final form.

The Board believes that continuation of this EFT service to consumers will offset any loss in protection that the amendment entails. Avoidance of the costs associated with ATM modifications should be beneficial both to financial institutions and their customers.

The Board is limiting the amendment to those ATMs that are incapable of the unique identification and that were ordered or purchased before February 6, 1980. Both conditions must be met before compliance with the requirement is excused. It appears that most ATMs currently being manufactured that permit access to multiple accounts of the same type can uniquely identify the account.

Section 205.9(b)(1)(iv)(A) footnote 5 - Omission of state name from periodic statements in certain limited instances. Footnote 5 to the regulation provides that the city and state name may be omitted from the periodic statement in certain instances. The Board is expanding the circumstances under which a financial institution may omit the state name in which a terminal is located. Under the amendment, the state name could also be omitted if the transfer occurred at a terminal located within 50 miles of the financial institution's main office.

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The Board believes that the purpose of the requirement (providing consumers with enough data to recognize the transfers) will be adequately served under this exception, without detriment to consumers.

Section 205.9(b)(1)(v) - Deletion of requirement that third-party code be reproduced on the periodic statement. The Board is deleting from the regulation the requirement that a code placed on a terminal receipt naming a third party to or from whom funds are transferred be reproduced on the periodic statement. It appears that this requirement is redundant, because the name of the third party has appeared on the terminal receipt and must appear on the periodic statement.

These amendments will become effective on October 6, 1980. This action is taken in order to avoid unnecessary compliance efforts by financial institutions and harm to consumers who might be deprived of beneficial services if financial institutions ceased providing these services. The Board finds that the notice and deferral of effective date provisions of 5 U.S.C. 553(b) and (d) would be impracticable and contrary to the public interest. For the same reasons, the expanded rulemaking 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) Economic impact analysis. Section 205.3(d)(4) is added to exempt intra-institutional automatic transfers between accounts held by consumers who are members of the same family. This provision would affect a large number of predominantly small financial institutions, primarily credit unions, that offer family transfer plans to their customers or members. Institutions that offer these plans and that have no other significant compliance responsibilities under the act would be relieved of a potential compliance cost burden. Without the exemption, it is likely that some family transfer plans would have to be terminated. Consumers using the plans will continue to receive traditional documentation. Suspension of the act's protections for this class of transfers is not expected to result in costs or hardships to consumers.

Footnote 3 is amended to exempt certain ATMs from the requirement that terminal receipts uniquely identify the account accessed. A problem arises when more than one account of a given type -- for example, two checking accounts -- can be accessed electronically by one access device, and the ATM is incapable of distinguishing between them for purposes of the terminal receipt. Approximately 200 ATMs operated by about 35 financial institutions cannot uniquely identify different accounts of the same type. The number of consumers served by those ATMs who might consequently be affected by the exemption is unknown. In any case, the number of exempted transactions would be very small relative to total EFT transaction volume covered by the regulation. Modifications to bring the machines into compliance with the existing regulation are estimated by the vendor of the affected ATMs to average $8,000 per institution. The exemption therefore may save the institutions up to $280,000 or forestall their abandonment of some consumer services. No significant loss of consumer protection is expected to follow from the exemption.

Section 205.9(b)(1) is amended to allow financial institutions to omit a code from the periodic statement and to omit the state name for transfers made at terminals within 50 miles of the institution's main office. This exemption benefits those institutions that have interstate terminal networks falling within

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the 50-mile limitation and that would otherwise have to incur expense to redesign computer software and statement forms. Consumers are not expected to be deprived of any significant informational benefit, since it is assumed that terminal location descriptions will be meaningful in a local transaction area even when they lack state names.

The amendments are not expected to place smaller financial institutions at a competitive disadvantage, increase reporting or recordkeeping burdens, or adversely affect the availability of EFT services to low-income consumers.

(3) Pursuant to the authority granted in 15 U.S.C. 1693b, the Board amends Regulation E, 12 CFR Part 205, effective October 6, 1980, to read as follows:

1. Section 205.3 is amended by adding paragraph (d)(4), to read as follows:

§ 205.3 Exemptions

* * * * *

(d) Certain automatic transfers.***

(4) From a consumer's account to an account of another consumer, within the financial institution, who is a member of the transferor's family.

* * * * *

2. Section 205.9 is amended by revising footnote 3 to paragraph (a)(3) and footnote 5 to paragraph (b)(1)(iv)(A) and by deleting the last sentence of paragraph (b)(1)(v), to read as follows:

§ 205.9 Documentation of Transfers

(a) Receipts at electronic terminals.***

(3) The type of transfer and the type of the consumer's account(s)[3]***

3/ If more than one account of the same type may be accessed by a single access device, the accounts must be uniquely identified unless the terminal is incapable of such identification and was purchased or ordered by the financial institution prior to February 6, 1980. In a point-of-sale transfer, the type of account need not be identified if the access device used may access only one account at point of sale.

* * * * *

(b) Periodic statements.***

(1) ***

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(iv) ***

(A) ***.[5]

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. The state may also be omitted for transfers occurring at terminals within 50 miles of the financial institution's main office.

* * * * *

(v) The name of any third party to or from whom funds are transferred.[9]

* * * * *

By order of the Board of Governors of the Federal Reserve System, September 30, 1980.

[SEAL]

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

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Ref. Circ. No. 8928

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Reg. E; EFT-2]

ELECTRONIC FUND TRANSFERS

Proposed Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: In accordance with 12 CFR 205.13(b)(2), the Board staff is publishing for comment a proposed official staff commentary on Regulation E, Electronic Fund Transfers. This proposed interpretation takes the form of questions and answers about the regulatory requirements applicable to electronic fund transfers to or from consumer asset accounts.

DATE: Comments must be received on or before November 14, 1980.

ADDRESS: Comments should include a reference to EFT-2 and should be mailed to Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, or delivered to Room B-2223, 20th and Constitution Avenue, N.W., Washington, D.C., between 8:45 a.m. and 5:15 p.m. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m.

FOR FURTHER INFORMATION CONTACT: John C. Wood (202-452-2412), Jesse B. Filkins (202-452-3867), Lynn Goldfaden (202-452-3867), Gerald Hurst (202-452-3667), or Gena Silver (202-452-2412), Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

SUPPLEMENTARY INFORMATION: (1) Introduction. Regulation E (12 CFR Part 205) implements the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq*.). Certain portions of the regulation were published on March 28, 1979 (44 FR 18468), and October 15, 1979 (44 FR 59464). The final portions were issued on February 6, 1980 (45 FR 8248).

The Board staff has prepared a commentary addressing the regulation's various requirements in order to facilitate compliance by financial institutions that provide electronic fund transfer services. The commentary is in the form of questions and answers, and responds to questions raised in letters and telephone calls, and at meetings and workshops on Regulation E.

Some of the positions in the commentary are being formalized in writing for the first time. A significant number, on the other hand, appeared in the Board's *Federal Register* notices when various provisions of the regulation were proposed or adopted; these are being repeated here for the sake of completeness and to present them in a more permanent format. Other portions of the commentary merely restate the regulatory provisions in nontechnical language or provide examples to aid interested parties in understanding the regulation.

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The commentary is being published as an official staff interpretation so that financial institutions acting in conformity with the interpretation will have the protection provided by § 915(d)(1) of the Electronic Fund Transfer Act. While it incorporates material that may not warrant inclusion in an official staff interpretation, the staff believes that publishing some portions of the commentary in the Federal Register (as required for an official staff interpretation), and not others, might have created confusion.

Commenters should not feel compelled to comment on each of the items presented. They are invited to focus on material not published previously -- in particular, on positions that need to be broadened, narrowed, or clarified, and on areas in which modification would ease operational and other compliance burdens without diminishing consumer protections.

The questions in the commentary are identified by hyphenated numbers, the first part of the number indicating the regulatory section and the second part the particular question concerning that section. For example, 9-1 indicates the first question on § 205.9.

The commentary covers all sections of the regulation except § 205.1. To keep its length manageable, detailed explanations of the regulatory provisions have been omitted. References to the specific sections of Regulation E (and, in some cases, of the Electronic Fund Transfer Act) are included at the end of each answer.

A subject index accompanies the commentary and should prove useful in locating related questions.

Comments will be made available for inspection and copying upon request, except as provided in § 261.6(a) of the Board's Rules Regarding Availabilty of Information (12 CFR 261.6(a)). After comments are considered, this official staff interpretation may be amended. Final action will be reported in the Federal Register.

(2) Authority: 15 U.S.C. 1693m(d).

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12 CFR Part 205, EFT-2

OFFICIAL STAFF COMMENTARY (PROPOSED)

ON REGULATION E

The following is a proposed official staff interpretation of Regulation E (12 CFR Part 205) issued pursuant to § 205.13(b)(2). It is limited to the facts and issues discussed. Sectional references are to the regulation or the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.).

Section 205.2 -- Definitions and Rules of Construction

2-1 Q: What are some examples of access devices?

A: Access devices include debit cards, personal identification numbers (PINs), telephone bill payment codes, and other mechanisms that may be used by a consumer to initiate an electronic fund transfer. They do not include magnetic tapes or other devices used solely by a financial institution to initiate electronic fund transfers. [§ 205.2(a)(1)]

2-2 Q: Are profit-sharing and pension accounts covered by the definition of "account"?

A: Yes. They are consumer asset accounts. [§ 205.2(b)]

2-3 Q: Escrow accounts are frequently established to assure payment of items such as real estate taxes, insurance premiums, and completion of repairs or improvements; are they considered asset accounts?

A: No. These funds are not consumer asset accounts for purposes of Regulation E. In an arrangement of this type, the funds are not solely in the consumer's control; control is shared with a financial institution, escrow agent, or other party. Disbursement occurs upon the happening of an agreed upon event. [§ 205.2(b)]

2-4 Q: Is an account that is established to accumulate funds for U.S. Savings Bond purchases a Regulation E account?

A: No. Such accounts generally are not established by the consumer, who has merely authorized the purchase of bonds in a given denomination and has set the periodic amount to be withheld or transferred for this purpose. [§ 205.2(b)]

2-5 Q: Are Christmas club or vacation club accounts subject to Regulation E?

A: Yes. Christmas club and vacation club accounts are consumer asset accounts. Whether they are subject to Regulation E, however, will depend on how fund transfers are made. If all transfers into and out of the account have been authorized in advance by the consumer and

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are to or from another account of the consumer at the same institution, then the transfers are exempt. If a transfer out of the account is by check (including a computer-generated check), Regulation E does not apply because that transfer is paper-initiated. [§§ 205.2(b), 205.2(g), 205.3(d)]

2-6 Q: In the definition of business day, what does the phrase "substantially all business functions" include?

A: The phrase includes the back-office operations of the institution. For example, if the offices of an institution are open on Saturdays for handling common transactions with consumers (such as deposits, withdrawals, loan applications), but not for processing claims of account errors or performing other internal functions, then Saturday is not a business day for that institution. [§ 205.2(d)]

2-7 Q: Suppose the telephone line for reporting loss or theft of an access device or unauthorized transfers is available on Sunday, but no other business functions are performed. Is Sunday a business day?

A: No. Financial institutions are encouraged to make telephone lines available on weekends. Mere telephone line availability, however, does not satisfy the "substantially all business functions" standard. [§ 205.2(d)]

2-8 Q: For purposes of the various time limits set by the regulation (for correcting errors and reporting loss of an access device, for example), does business day refer only to that portion of the day that the financial institution carries on substantially all business functions?

A: No. A business day includes the entire 24-hour period ending at midnight. [§ 205.2(d)]

2-9 Q: If a financial institution engages in substantially all business functions until 12 noon on Saturdays instead of its normal 3 p.m. closing, is the day a business day?

A: The regulation does not specify the number of hours that an institution must be open in order to have a business day. The financial institution may determine, at its election, whether an abbreviated day is a business day. If a day is a business day for purposes of the consumer's reporting a lost or stolen access device, however, it will also count as a business day for the institution's resolving errors. [§§ 205.2(d), 205.6, and 205.11]

2-10 Q: The term electronic fund transfer excludes payments made by check, draft, or similar paper instrument at an electronic terminal. Does it also exclude payments made by cash at an electronic terminal?

A: Yes. Cash payments are not electronic fund transfers because they do not debit or credit a consumer's account. [§ 205.2(b) and (g)]

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2-11 Q: Does the term electronic fund transfer include deposits of cash, checks, drafts, or similar paper instruments at automated teller machines (ATMs) to an account with this service?

A: Yes. Deposits made at ATMs and other electronic terminals are electronic fund transfers. However, these deposits are exempt from the requirement that the terminal location be disclosed on the periodic statement. [§ 205.9(b)(1)(iv), footnote 4a]

2-12 Q: Does the term electronic fund transfer include deposits that are made by a consumer at an ATM to an account that is not accessible by electronic fund transfer?

A: No. An account does not become subject to the regulation by virtue of the consumer's making a deposit to that account. (See question 9-23.) [§ 205.2(g)]

2-13 Q: Does the term electronic fund transfer include preauthorized payroll allotments that are made directly to a creditor to repay a credit extension?

A: No. These transfers do not debit or credit a consumer asset account. The allotments withheld from the consumer's payroll go into a loan account, which is not a consumer asset account. [§ 205.2(b) and (g)]

2-14 Q: In the definition of electronic fund transfer, does the phrase "check, draft, or similar paper instrument" apply to items such as deposit slips and paper listings that accompany magnetic tapes?

A: No. The phrase also does not include key-punched cards, MICR-encoded paper slips, or non-machine readable paper tape. [§ 205.2(g)]

2-15 Q: A financial institution issues an identification card to a consumer for use at other financial institutions. To obtain funds, the consumer presents the card and signs a withdrawal authorization at the remote financial institution; an institution employee then telephones the account-holding institution to obtain approval. If approval is given, the funds are paid to the consumer and the consumer's account is memo posted for the designated amount. Settlement between the institutions, however, is not made until the account-holding institution receives the signed withdrawal authorization. Is this an electronic fund transfer?

A: No, because the actual transfer of funds is initiated and carried out by paper means. [§ 205.2(g)]

2-16 Q: Are check truncation systems covered?

A: No, because the fund transfer is initiated by "check, draft, or similar paper instrument." [§ 205.2(g)]

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2-17 Q: An employer or other payor transmits a composite check made payable to a financial institution to make payroll deposits or other credits to consumers' accounts at the institution. The payee information (names, account numbers, and amount of individual credits) is contained on magnetic tape, computer print-out, or paper listing. Are these transfers subject to the regulation?

A: No. The transfer of funds originates by check. It is excluded from the definition of electronic fund transfer, and thus from Regulation E coverage provided the transfer is not being carried out in this manner to circumvent or evade Regulation E requirements. [§ 205.2(g)]

2-18 Q: Suppose the financial institution in question 2-17 holds only some of the employees' accounts, and that it forwards the remaining credits via an automated clearing house (ACH). Are the subsequent transfers subject to the regulation?

A: Yes. The transfers made via the ACH are electronic fund transfers and are covered, even though the fund transfer by composite check from the employer to the financial institution is not. [§ 205.2(g)]

2-19 Q: Under the U.S. Treasury's direct deposit program, Social Security benefits are sent via the ACH to the consumer's financial institution. Some institutions receive fund transfers through a correspondent bank, which sends a computer print-out listing the recipients, together with a composite check payable to the financial institution. If the institution writes individual deposit slips for posting to consumers' accounts, are these transfers subject to the regulation?

A: Yes. The transactions originated as electronic fund transfers through the ACH; the later introduction of a composite check, with either computer print-out or teller created deposit slips, is immaterial. [§ 205.2(g)]

2-20 Q: A utility company obtains authorizations from consumers to debit their accounts periodically for utility charges. The financial institution debits the consumers' accounts in accordance with billing information contained on a magnetic tape provided by the utility, and sends the utility a composite check. Are these transfers subject to the regulation?

A: Yes, because the fund transfers originate by electronic means. [§ 205.2(g)]

2-21 Q: A consumer authorizes a company to debit a checking account automatically for a payment. The company presents a paper draft that ultimately debits the consumer's account at the financial institution. Is the transfer subject to the regulation? What if the debit is initiated through an ACH?

A: Transfers initiated by paper drafts are excluded from the definition of electronic fund transfer. Transfers via the ACH are subject to the regulation. [§ 205.2(g)]

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2-22 Q: A consumer has an agreement authorizing the account-holding financial institution to debit a savings account to make recurring payments to another party, or to make recurring interest payments to the consumer. The bank's computer periodically generates an individual check to the payee. Is the transfer subject to the regulation?

A: No. The transfer is exempt because it originates by paper check (even though that check is computer-generated), provided the transfer is not carried out in this manner in order to circumvent or evade the regulation. [§ 205.2(g)]

2-23 Q: If a check or draft is sent in response to a consumer's telephone authorization, is the transfer subject to the regulation?

A: The transfer is covered because it is initiated by telephone, unless it qualifies for the specific exemption provided in the regulation for certain telephone-initiated transfers. [§§ 205.2(g), 205.3(e)]

2-24 Q: If a consumer uses a pay-by-phone plan to initiate a payment, must the financial institution provide a terminal receipt?

A: No. A receipt is required only when the consumer initiates an electronic fund transfer at an electronic terminal. A telephone is not an "electronic terminal." [§ 205.2(h)]

2-25 Q: Is a POS terminal an electronic terminal requiring a receipt?

A: Yes, if it captures data in electronic form at the time the transfer is initiated and this data is used to effectuate the transfer. [§ 205.2(h)]

2-26 Q: Does "electronic terminal" include a computer terminal operated by someone other than the consumer — such as a teller or a sales clerk?

A: "Electronic terminal" includes only terminals that are operated by a consumer or a consumer's access device. It does not include computer equipment used internally by a financial institution's employees to process a transfer. For example, a POS terminal operated by a sales clerk would qualify as an electronic terminal if the consumer's access device is used in initiating a transaction (and if there is electronic data capture; see question 2-25). A terminal operated by a teller but not requiring the consumer's access device is not an electronic terminal. [§ 205.2(h)]

2-27 Q: Does the regulation apply to foreign bank branches in the United States? Does it apply to foreign branches of domestic banks?

A: The term "financial institution" covers any person (including a foreign bank) offering EFT services, if the consumer asset account is situated in a state, territory, or possession of the United States, or in Puerto Rico or the District of Columbia. The regulation applies to any electronic fund transfer to or from such an account, regardless of the residential status of the consumer holding the account. [§ 205.2(i)]

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2-28 Q: A financial institution's employee fraudulently takes money from a consumer's account by electronic means. Is the consumer liable for these transfers?

A: No. The term "unauthorized electronic fund transfer" excludes any transfer initiated by the financial institution or its employees. The Regulation E liability provisions do not apply and the consumer has no liability for any such transfers. [§§ 205.2(l), 205.6]

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Section 205.3 -- Exemptions

3-1 Q: A consumer's account is "memo posted" at the time a payment to a third party is guaranteed or authorized under a check guarantee or authorization service, but the financial institution does not pay out the funds until the check is received. Is the service exempt?

A: Yes, because although a temporary hold is placed on the funds in the consumer's account, the guarantee does not result in a direct debit to the account. Debiting occurs when the check or draft is presented for collection. [§ 205.3(a)]

3-2 Q: If a transfer of funds to a financial institution is made by Fedwire or a similar network, and the instructions for crediting individual consumers' accounts are transmitted on magnetic tape, has an electronic fund transfer taken place?

A: No. A Fedwire or similar transfer of funds is exempt. [§ 205.3(b)]

3-3 Q: Suppose a company transfers funds by Fedwire or a similar network from one financial institution to another, and transfers via ACH are then made from the second institution to the accounts of company employees at still other institutions. Has an electronic fund transfer taken place?

A Yes. Although the initial transfer was not covered, the ACH transfers to employees' accounts are distinct from the initial transfer and are subject to the regulation. [§§ 205.3(b), 205.2(g)]

3-4 Q: A consumer calls a financial institution, under a telephone transfer plan, to request a transfer of funds from a savings to a checking account. Does the automatic-transfer exemption apply to this transaction?

A: No, because even though the transfer is between the consumer's accounts at the same institution, it occurs only after a specific request has been made by the consumer. [§ 205.3(d)]

3-5 Q: Preauthorized transfers from a financial institution to a consumer's account at the same institution are exempt from the act and regulation generally, but not from the statutory prohibition against requiring an employee (as a condition of employment) to receive payroll deposits by electronic means at a particular institution. Does this prohibition apply to a financial institution as an employer? If so, would it suffice to give the employees the choice of two institutions?

A: Yes. The prohibition applies to all employers, including financial institutions. To comply with the law, an employer should give its employees a reasonable choice among a range of institutions. Or, it may give employees the option of receiving payment by check or cash. [§ 205.3(d)(2), § 913]

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3-6 Q: Preauthorized loan payments to the institution in which the consumer holds an account are exempt generally, but are subject to the statutory prohibition against requiring repayment by means of preauthorized electronic fund transfers. If an institution required automatic payment by electronic means on credit agreements made before May 10, 1980, must the institution now go back and offer those consumers an alternate means of repayment?

A: No, it is not necessary to do so. However, if a consumer who entered into such an agreement before May 10, 1980, now asks to repay by other than electronic means, the financial institution should honor the request. (See proposed exemption for overdraft checking plans in the proposed rules section of this edition.)

Similarly, an employer should grant all its employees a choice of institutions for receipt of electronic payroll deposits, but may continue to rely on preexisting agreements in the absence of a request from the employee. [§ 205.3(d), § 913]

3-7 Q: Under certain types of graduated payment mortgages, the borrower establishes a pledged savings account that is used to supplement the monthly payments made by the borrower during an initial term -- for example, in the first five years of the loan. The lender debits the pledged account automatically for the prescribed sum each month. That automatic transfer of funds is an integral feature of this type of alternative mortgage. Does the prohibition against compulsory use of electronic fund transfers apply to this type of program?

A: No. The legislative history of the prohibition against compulsory use makes clear that it is permissible to offer a borrower a reduced annual percentage rate or some other cost-related incentive to elect an automatic repayment feature. In the case of pledged-account mortgages, the special terms for lower monthly payments in the first five years of the amortization period appear to be such an incentive. [§ 205.3(d)(3), § 913]

3-8 Q: A consumer authorizes a financial institution to make periodic fund transfers from the consumer's account to an account held jointly with another consumer at the same institution. Are these transfers exempt? What about transfers to a family member's account?

A: Automatic transfers between a consumer's accounts within a financial institution are exempt; there need not be complete identity of account holders on the two accounts. Intra-family transfers that occur automatically within a financial institution are also exempted. [§ 205.3(d)(1) and (4)]

3-9 Q: A financial institution electronically debits or credits consumer accounts for such items as stop-payment charges, NSF charges, overdraft charges, provisional recredits, and error adjustments. Are these types of transfers exempt?

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A: These are intra-institutional transfers that are initiated by the financial institution automatically, on the occurrence of certain events. They are exempt. [§ 205.3(d)]

3-10 Q: A financial institution offers group life insurance coverage to its account holders. The insurance can be obtained only through the financial institution, and the premiums can only be paid by means of an aggregate payment from the financial institution. Consumers' accounts are debited for their share of the premiums, and the financial institution makes payment on behalf of participating consumers for the total premium due under the group policy. Are these transfers subject to the regulation?

A: No. The debit to an individual consumer's account is an automatic transfer to an account of the financial institution. Although the funds are ultimately transferred to a third party, the group insurance can only be obtained through the institution, and the transfer can therefore be regarded as a bona fide intra-institutional transfer. [§ 205.3(d)(3)]

3-11 Q: Check order charges are electronically debited to an account at the consumer's request. Checks can only be obtained and paid for through the financial institution. Is this transfer subject to the regulation?

A: No. Although a third party is involved, the check printing is a service that is ancillary to the institution-customer relationship. [§ 205.3(d)(3)]

3-12 Q: Rhode Island has a banking system that sanctions the pairing of a thrift institution with a commercial bank. The paired institutions frequently share quarters and have common tellers and teller stations. Customers receive a unified statement that distinguishes the two accounts by number and type, but not by institution. Are transfers that occur within the thrift-commercial pair intra-institutional transfers for purposes of the automatic-transfer exemptions?

A: Under the unique circumstances that exist in Rhode Island, transfers within the paired institutions qualify for intra-institutional status. [§ 205.3(d)]

3-13 Q: Does a transfer to or from an account of the consumer at a subsidiary institution (or within the same bank holding company) qualify as an intra-institutional transfer?

A: No. Such a transfer does not qualify. [§ 205.3(d)]

3-14 Q: A consumer signs a telephone transfer agreement form, authorizing the financial institution to transfer funds between accounts within the institution. To initiate a transfer, the consumer telephones an employee of the institution, who then completes the transfer manually by means of debit memos, deposit slips, etc. Is the transfer exempt?

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A: No. The transfer is initiated by telephone under a prearranged plan, and is therefore covered. The fact that the transaction is intra-institutional and is completed manually does not change this result. [§§ 205.3(d) and (e), 205.2(g)]

3-15 Q: A financial institution's telephone transfer plan requires the consumer to make a separate request for each transfer from the consumer's account. That is, the consumer cannot authorize succeeding periodic payments to the designated payee by means of a single telephone call. Is this service exempt?

A: No. The service is covered. Even though the consumer cannot authorize recurring payments by means of one telephone request, the parties do have an agreement that the consumer can initiate transfers from time to time. [§ 205.3(e)]

3-16 Q: A consumer calls the financial institution and requests a transfer of funds from a savings to a checking account to cover a potential overdraft. A signature card signed by the consumer gives the financial institution authority to transfer funds upon the consumer's request. However, there is no agreement or plan stated, on the signature card or elsewhere, that specifically mentions transfers initiated by telephone. Is this type of transfer exempt?

A: Yes, because there is no prearranged plan. [§ 205.3(e)]

3-17 Q: Many consumers who sign up for a telephone transfer service use it only occasionally, others not at all. Is the service exempt, since the institution does not know when (or whether) a telephone transfer will be made?

A: No. The service is not exempt, because any transfer that does occur will be occurring under a prearranged plan. [§ 205.3(e)]

3-18 Q: A financial institution holds certain Individual Retirement Accounts (IRAs) under custodial agreements. The custodial agreement is identical to a trust agreement, except that the parties are identified as depositor and custodian, rather than as grantor and trustee. Under the Internal Revenue Code, these accounts qualify as trusts so long as they otherwise meet the requirements for an IRA. Do these custodial accounts qualify for the Regulation E exemption for trusts?

A: Yes. So long as the custodial agreements are the functional equivalent of trust agreements, they are exempt. [§ 205.3(f)]

3-19 Q: What is a bona fide trust agreement?

A: The term is not defined by the act or regulation. Financial institutions must therefore look to state or other law (as in question 3-18). The Board and the staff will not make determinations in individual cases. [§ 205.3(f)]

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Section 205.4 -- Special Requirements

4-1 Q: In a shared system, must an institution's initial disclosures include EFT charges and frequency or dollar limitations imposed by other institutions in the system, to the extent that it knows what these are?

A: No, because this information is not within the purview of the institution's relationship with its customer. [§§ 205.4(a), 205.7(a)]

4-2 Q: If institution B is making disclosures on behalf of institution A, which holds a consumer's account, may B limit the disclosures to those within its knowledge?

A No. The responsibility for making disclosures rests with the account-holding institution. The disclosures B makes for A (if A's responsibility is to be met) have to include information within A's knowledge and the purview of A's relationship with A's customers. For example, B would have to disclose electronic fund transfer charges imposed by A. [§ 205.4(a)]

4-3 Q: If X and Y open a joint checking account and a joint savings account at institution A, how many disclosure statements must A provide?

A: One, provided it covers both accounts. The disclosure can be given to either X or Y. [§ 205.4(b)]

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Section 205.5 -- Issuance of Access Devices

5-1 Q: When a renewal or substitution is made, may more than one access device be sent in place of the existing device?

A: No. For example, only one new card and PIN may be issued to replace a card and PIN previously issued. [§ 205.5(a)(2)]

5-2 Q: Must a renewal or substitute access device permit exactly the same types of electronic fund transfers as the original?

A: The renewal or substitute device may permit the same types, more types, or fewer types. If a type is added, new disclosures may be required. (Refer to question 7-8.) If fewer types of transfers are possible, a change-in-terms notice is required. [§§ 205.5(a)(2), 205.7(a), 205.8(a)]

5-3 Q: Must a successor financial institution be an entity that replaced the original financial institution (for example, through a corporate merger or acquisition)?

A: No. A successor could also include, for example, a party who acquires accounts or takes over the operation of an EFT system. [§ 205.5(a)(2)]

5-4 Q: Suppose an institution issued an access device on an unsolicited basis before February 8, 1979 (the effective date of the EFT Act's restrictions on unsolicited issuance). May the institution now issue a validated renewal or substitute device, or must it do so only after receiving a request from a consumer?

A: If the institution does not know whether the device was "accepted," it may issue a validated renewal or substitute device for a pre-2/8/79 device, provided certain disclosures accompany the renewal or substitute device. The renewal or substitute device does not become "accepted" -- and the consumer can incur no liability for unauthorized use -- until the consumer uses or signs it, or authorizes someone else to use it.

The financial institution may not, however, make a further renewal or substitution (absent a request from the consumer) unless the consumer has signed or used, or authorized another to use, the first renewal or substitute device. [§§ 205.2(a)(2), 205.5(a)(2) and (3), 205.6(a)(1)]

5-5 Q: Could issuance to the consumer of a personal identification number (PIN) -- a secret code needed to initiate an electronic fund transfer -- constitute both (1) a way of validating the debit card and (2) a way to identify the consumer (required as a condition of imposing liability for unauthorized transfers)?

A: Yes. [§§ 205.5(b), 205.6(a)(2)]

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5-6 Q: Suppose an institution issues an unsolicited debit card and the necessary PIN to a consumer, enabling the consumer to initiate electronic fund transfers. Suppose further that the institution instructs the consumer not to use the card and PIN until the consumer has come to an office of the institution for verification of identity. Does this procedure comply with Regulation E?

A: No. Because the consumer could use the card and PIN to initiate transfers (even though instructed not to do so), the institution has not met the requirement that unsolicited access devices be unvalidated when issued. [§ 205.5(b)(1)]

5-7 Q: Same facts as in question 5-6, except that the institution's ATM system is programmed not to accept the consumer's card and PIN. After the consumer requests validation of the card, the institution reprograms its computer so that the card and PIN now work in the system. Does this validation procedure comply with Regulation E?

A: Yes, provided the institution verifies the consumer's identity by some reasonable means before reprogramming. [§ 205.5(b)]

5-8 Q: Must an institution verify identity by one of the methods listed in the regulation?

A: No. They are merely examples; any reasonable means of verifying identity will comply. Even if an institution uses reasonable means, however, if it fails to verify identity correctly -- so that an imposter succeeds in having a device validated -- the institution is liable for any unauthorized transfers from the consumer's account. [§§ 205.5(b)(4), 205.2(a)(2), 205.6(a)(1)]

5-9 Q: Regulation E permits the unsolicited issuance of an access device. May an institution issue a combined credit card/access device to a consumer, without a request or application for the card, under this provision?

A: Yes, provided that (1) the only credit feature is a preexisting overdraft credit line attached to the consumer asset account (or a similar line of credit that maintains a specified minimum balance in the account) and (2) the institution complies with Regulation E procedures. [§§ 205.5(c)(1)(iii), 205.5(b)]

5-10 Q: Does the answer to question 5-9 mean that the unsolicited issuance of any other type of combined credit card/access device is prohibited?

A: No. Official staff interpretations FC-0041 and FC-0072 of Regulation Z also permit the issuance, on an unsolicited basis, of a card that may become a credit card provided that (1) the card has a substantive purpose other than obtaining credit, and (2) any credit privilege is attached only upon the consumer's request. (The other purpose could be to initiate electronic fund transfers.) The rules on unsolicited issuance of access devices would continue to apply. [§§ 205.5 (c)(2)(iii), 205.5(b), 226.13(a)(1)]

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Section 205.6 -- Liability of Consumer for Unauthorized Transfers

6-1 Q: If an unauthorized transfer does not involve an access device (for example, when the unauthorized transfer is made through an automated clearing house), may any liability be imposed on the consumer?

A: No. In order for the consumer to have any liability three conditions must be met:

(1) The unauthorized transfer involves an accepted access device,

(2) The financial institution has provided a means to identify the consumer to whom the access device was issued, and

(3) The financial institution has provided the consumer with certain information in writing.

When there is no access device involved the first two conditions cannot be met; as a result the consumer has no liability. [§ 205.6(a)]

6-2 Q: If a financial institution fails to disclose its business days, does a consumer have any liability for unauthorized transfers?

A: No, unless applicable state law or an agreement between the consumer and the financial institution sets a liability limit of $50 or less. [§ 205.6(a)(3)(iii)]

6-3 Q: If more than one access device is issued to access a particular consumer account, must the financial institution provide a means to identify each separate user in order to impose liability for unauthorized transfers?

A: No. The financial institution may provide means to identify the separate users, but is not required to do so. [§ 205.6(a)(2)]

6-4 Q: Does the use of personal identification numbers (PINs) or other alphabetical or numerical codes satisfy the requirement of "electronic or mechanical confirmation" for identifying the consumer to whom an access device was issued?

A: Yes. [§ 205.6(a)(2)]

6-5 Q: Give some examples of when and how the following would apply: (1) the $500 liability limit provision, (2) the unlimited liability provision, and (3) both provisions.

A: SITUATION 1 -- $500 LIMIT APPLIES

DATE	EVENT
June 1	C's card is stolen.

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DATE	EVENT
June 2	$100 unauthorized transfer.
June 3	C learns of theft.
June 4	$25 unauthorized transfer.
June 5	Close of 2 business days.
June 7 - 8	$600 in unauthorized transfers that could have been prevented had notice been given by June 5.
June 9	C notifies bank.

	C's liability:	
Amount of transfers before close of 2 business days: $125	$ 50	(maximum liability for this period)
Amount of transfers after close of 2 business days and before notice to institution which would not have occurred but for C's failure to notify within 2 business days: $600	$450	(because maximum over-all liability is $500)
C's total liability	$500	

SITUATION 2 -- BOTH $500 PROVISION AND UNLIMITED LIABILITY PROVISION APPLY

DATE	EVENT
June 1	C's card is stolen.
June 3	C learns of theft.
June 5	Close of 2 business days.
June 7	$200 unauthorized transfer that could have been prevented had notice been given by June 5.
June 10	Periodic statement is transmitted to C (for period from 5/10 to 6/9).

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DATE	EVENT
June 15	$200 unauthorized transfer that could have been prevented had notice been given by June 5.
July 10	Periodic statement of C's account is transmitted to C (for period from 6/10 to 7/9).
August 4	$300 unauthorized transfer. Transfer could have been prevented had notice been given by June 5.
August 9	Close of 60 days after transmittal of statement showing unauthorized transfer.
August 10	Periodic statement of C's account is transmitted to C (for period from 7/10 to 8/9).
August 15	$100 unauthorized transfer. Transfer could have been prevented had notice been given by August 9.
August 20	C notifies bank.

Computation of C's liability:

Paragraph (b)(1) will apply to determine the consumer's liability for any unauthorized transfers that appear on the periodic statement and transfers that occur before the close of the 60-day period. (The transfers need not both appear on the periodic statement *and* occur before the close of the 60-day period.) The maximum liability under (b)(1) is $500.

	C's liability:
Amount of transfers before close of 2 business days: $ 0	$ 0
Amount of transfers after close of 2 business days and before close of 60-day period which would not have occurred but for C's failure to notify: $700	$500 (maximum liability)
C's liability under (b)(1):	$500

Paragraph (b)(2)(ii) will apply to determine the consumer's liability for transfers occurring after the close of the 60-day period. There is no dollar ceiling on liability under paragraph (b)(2)(ii).

Amount of transfers after close of 60 days and before notice, which would not have occurred but for C's

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failure to notify within 60 days:
$100 on August 15 — $100

C's total liability: $600

SITUATION 3 -- ONLY UNLIMITED LIABILITY PROVISION APPLIES

Facts same as in Situation 2, except that C does not learn of the card theft, but questions the account balance and notifies bank on August 20 of possible unauthorized transfers.

In this situation only paragraph (b)(2) applies, and C's liability is computed as follows:

	C's liability:
Amount of transfers appearing on the periodic statement or occurring during the 60-day period: $700	$ 50 (maximum liability for this period)
Amount of transfers after close of 60-day period and before notice, which would not have occurred but for C's failure to notify within 60 days: $100	$100
C's total liability:	$150

6-6 Q: May a financial institution treat the consumer's receipt of a periodic statement that reflects unauthorized transfers as establishing that the consumer had actual knowledge of loss or theft of an access device?

A: No. [§ 205.6(b)]

6-7 Q: Suppose the consumer gives notice at an address or telephone number other than that specified by the financial institution. Is the notice valid for purposes of limiting liability?

A: Yes. Although a financial institution must disclose a specific telephone number and address, the institution has received notice for purposes of limiting the consumer's liability even if that notice is given at some other address or phone number of the institution. [§ 205.6(c)]

6-8 Q: Suppose that a credit card which is also an access device is used to obtain unauthorized cash advances from a line of credit at an automated teller machine. Do the consumer liability provisions of Regulation E, or those of Regulation Z, apply?

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A: Regulation Z applies. Since a consumer asset account is not involved, an electronic fund transfer has not occurred that would make the transaction subject to Regulation E [§ 205.6(d)(2)]

6-9 Q: If the unauthorized transfers in question 6-8 were instead withdrawals from a checking account, and they triggered a cash advance under an overdraft line of credit, which liability provisions would apply?

A: Regulation E would apply because the transfer involved an extension of credit only as a consequence of the overdraft protection feature tied to the checking account. [§ 205.6(d)(1)]

6-10 Q: If a consumer's access device is also a credit card and the device is used to make withdrawals from the checking account and, separately, to obtain cash advances directly from the line of credit, which liability provisions apply?

A: Both Regulation E and Regulation Z would apply. Regulation E would apply to the unauthorized transfers involving the checking account, while Regulation Z would apply to the transfers involving the credit line. As a result, a consumer might be liable for up to $50 under Regulation Z and, in addition, for $50, $500 or an unlimited amount under Regulation E. [§ 205.6(d)]

6-11 Q: The regulation mentions the need for the consumer to "take such steps as are reasonably necessary to provide the financial institution with the pertinent information" about the loss or theft of an access device. Suppose a consumer is unable to furnish the institution with an account number or card number; has the consumer given adequate notice?

A: Yes. In instances where the consumer is unable (due to the circumstances involved) to provide the number, the notice is still valid for purposes of limiting the consumer's liability. [§ 205.6(c)]

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Section 205.7 -- Initial Disclosure of Terms and Conditions

7-1 Q: An institution is required to give initial disclosures either (1) at the time the consumer contracts for an EFT service or (2) before the first electronic fund transfer to or from the consumer's account. Suppose an institution provides initial disclosures when a consumer opens a checking account, and that the consumer does not sign up for an EFT service on that account until 11 months later. Has the institution satisfied the disclosure requirements?

A: No. Ideally, disclosures should be given at the time of contracting for the EFT service. The alternate timing provision is intended to facilitate compliance when the institution learns, after the contract has already been entered into, that a consumer has contracted for an EFT service. For example, when a contract for preauthorized debits or credits is made with a third party rather than directly with the institution, the alternate provision would allow disclosure after contracting but before the first electronic fund transfer. [§ 205.7(a)]

7-2 Q: Does this mean that disclosures given earlier than the time of contracting do not comply with the regulation?

A: Advance disclosures will comply if they are given within a reasonably short period of time before the consumer contracts for the EFT service, so that the consumer is likely to have retained the disclosures that were given. Six months in advance would be too long for this purpose. Two months would probably be reasonable.

Suppose, for example, that an institution gives Regulation E disclosures to a consumer who opens an account, even though the consumer has not signed up for an EFT service. A month or two later, the consumer requests direct deposit of salary, and the direct deposits begin via an ACH. In this case, the institution need not redisclose when it receives the prenotification. The same would be true if, a month or two after opening the account, the consumer requests and receives a debit card. [§ 205.7(a)]

7-3 Q: In the case of Social Security direct deposits, the financial institution receives no prenotification. How can an institution comply?

A: In order to authorize direct deposit of Social Security payments, both the consumer and the institution must complete a Form 1199. The institution can make disclosures at that time. [§ 205.7(a)]

7-4 Q: Are there special rules for disclosure statements concerning such matters as type size, number of pages, or the relative conspicuousness of various terms?

A: No. The regulation imposes no requirements concerning matters of form, although it does specify that the disclosures must be given in a readily understandable written statement that the consumer may retain. [§ 205.7(a)]

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7-5 Q: If the only electronic fund transfers to or from an account are preauthorized transfers, must the institution make a liability disclosure regarding unauthorized transfers, and provide a telephone number and address for reporting loss or theft of an access device?

A: No. Regulation E only requires disclosures to be made as applicable. Since no liability may be imposed on a consumer for unauthorized transfers not involving an access device, the disclosures relating to consumer liability are inapplicable. [§§ 205.7(a)(1) and (2), 205.6(a)(1)]

7-6 Q: Suppose an institution chooses not to impose any liability on consumers for unauthorized electronic fund transfers involving access devices. Must it make any liability disclosure?

A: No. Again, the disclosures are inapplicable. [§ 205.7(a)(1) and (2)]

7-7 Q: Must the disclosure statement given to a consumer relate only to the particular EFT services that the consumer will receive?

A: It is permissible to provide a disclosure statement that covers all the types of EFT services the institution offers, even if an individual consumer receiving the disclosures will not be able to use all of the different types of services. [§ 205.7(a)]

7-8 Q: Suppose a consumer signs up for an EFT service and receives disclosures. If the consumer later arranges for an additional EFT service from the same institution, must additional disclosures be given?

A: Yes, to the extent that the new service is subject to terms and conditions different from those for the existing service. This is also the case, for example, when the institution begins to furnish a new service upon renewal of an access device. (Refer also to question 5-2.) [§ 205.7(a)]

7-9 Q: Several required disclosures relate to a consumer's rights under Regulation E or the act. Must the disclosures spell out these rights in full, as they are set forth in the regulation and the act?

A: No. These matters can and should be disclosed by means of summary descriptions. For examples showing the amount of detail that needs to be provided, see the model disclosure clauses in Appendix A. [§ 205.7 (a)(1), (6), (7) and (8)]

7-10 Q: Should preauthorized transfers be disclosed as a "type" of electronic fund transfer that the consumer may make?

A: No. Preauthorized transfers need not be listed as one of the types of transfer that a consumer can make, although an institution may wish to do so as a matter of customer relations. [§ 205.7(a)(4)]

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7-11 Q: How much must the consumer be told about limitations on frequency and dollar amount of transfers?

A: The general rule is that information on these limitations must be disclosed in detail to consumers. This is so even if the limitations are related to the security aspects of the electronic fund transfer system. The only exception is that, to the extent confidentiality of details is determined -- by the institution -- to be essential to the security of an account or the system, those details may be withheld. In any case, at least the fact that there are limitations must be disclosed. [§ 205.7(a)(4)]

7-12 Q: The regulation requires disclosure of charges for electronic fund transfers or for the right to make transfers. If a per-transfer charge for electronic fund transfers is the same as the per-item charge for non-electronic transactions, must it be disclosed?

A: Yes. Such charges must be disclosed. If an institution does not wish to detail the various charges on the disclosure statement, however, it may disclose them on a separate document provided to the consumer along with the principal disclosure statement. [§ 205.7(a)(5)]

7-13 Q: If an institution imposes per-item charges only under certain conditions (such as when the transactions for the cycle exceed a certain number) must the institution disclose what those conditions are?

A: Yes. Again, this information may be provided in a separate document enclosed with the Regulation E disclosures. [§ 205.7(a)(5)]

7-14 Q: What if there is only a fixed service charge that is assessed when the balance in the account falls below a certain minimum?

A: No disclosure is required, since there is no charge attributable to an EFT service. [§ 205.7(a)(5)]

7-15 Q: Are charges for stop-payment orders, dishonor, or overdrafts required to be disclosed?

A: No. These are not charges for electronic fund transfers or for the right to make such transfers. [§ 205.7(a)(5)]

7-16 Q: The regulation requires an institution to list the circumstances under which, in the ordinary course of business, it will disclose information to third parties about an account. Suppose a consumer holds two accounts in an institution. Account #1 has EFT service, but account #2 does not. Does the requirement apply to both accounts?

A: No. The required disclosure relates only to account #1. However, the institution must describe the circumstances under which any information relating to that account (not just information concerning electronic fund transfers) will be made available to third parties. [§ 205.7(a)(9)]

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7-17 Q: For purposes of this disclosure requirement, does the term "third parties" include other subsidiaries of the same holding company?

A: Yes. [§ 205.7(a)(9)]

7-18 Q: The regulation contains an error resolution notice. Is this notice a model clause that the institution may use at its option?

A: No. Although use of the model clauses contained in Appendix A is optional, the error resolution notice falls in a different category. It is a required disclosure and must be given in a form substantially similar to that which appears in the regulation. The institution may, however, delete inapplicable provisions (e.g., the requirement of written confirmation of an oral notification), substitute trade names, or use different language -- so long as the substance of the notice remains substantially the same. [§ 205.7(a)(10)]

7-19 Q: Several disclosures involve telephone numbers: numbers for reporting loss or theft of an access device or possible unauthorized transfers, for inquiring about receipt of a preauthorized credit, for stopping payment of a preauthorized debit, and for giving notice of error. May an institution use a single telephone number for all these purposes?

A: Yes. Conversely, an institution could also use different telephone numbers for one or more of these purposes. For example, an institution may use regional telephone numbers (or the phone numbers of branches) and provide an appropriately identified list in place of a single number for any given disclosure.

Moreover, a telephone number (or list of numbers) need not be incorporated into the text of the disclosure to which it relates. The institution may instead insert a reference to a number or list of numbers to be found elsewhere on or with the disclosures. [§ 205.7(a)(2), (6), (7) and (10)]

7-20 Q: Suppose that prior to May 10, 1980, a consumer had EFT service on an account, but that service has terminated (for example, the consumer returned the access device, or no preauthorized transfers had occurred for more than a year). The account itself, however, was still open on May 10. Was the institution required to provide the consumer with initial Regulation E disclosures by June 9, 1980?

A: No. However, if the EFT service is reactivated, the institution will have to provide initial disclosures at the time of contracting or before the first transfer. [§ 205.7(a) and (b)]

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Section 205.8 -- Change in Terms; Error Resolution Notice

8-1 Q: What categories of initial disclosures are affected by the change-in-terms notice requirement?

A: Changes to be disclosed include (but are not necessarily limited to): an increase in the consumer's liability for unauthorized electronic fund transfers; a change in the days considered to be business days; a decrease in available types of electronic fund transfers, or an increased strictness in limitations on frequency or dollar amounts of transfers; an increase in charges for electronic fund transfers or the right to make transfers, or the imposition of such charges for the first time; and a decrease in the institution's liability to the consumer for failure to make or to stop certain transfers. [§§ 205.8(a), 205.7(a)(1), (3), (4), (5) and (8)]

8-2 Q: Is an institution required to disclose a change in the telephone number or address for reporting possible unauthorized transfers?

A: No, but it must do so if it wishes to impose any liability on the consumer for such transfers. [§§ 205.6(a), 205.8(a)]

8-3 Q: Suppose an institution closes down some of its automated teller machines. Must the institution disclose this change?

A: No, because the change does not relate to an item required to be given in the initial disclosures. [§ 205.8(a)]

8-4 Q: Suppose an institution limits the amount of money that consumers can withdraw daily from its ATMs. Because the secrecy of the limits is essential to maintaining the security of the accounts or the system against theft, the details of the limits were not stated in the initial disclosures. The institution disclosed only that limits exist. If the limits are now made stricter, what must the institution disclose to its customers?

A: No disclosure is required, provided secrecy is still essential. In contrast, if the institution had no security limits when it made the initial disclosures, and is now imposing limits for the first time, it must disclose at least the fact that limits have been adopted. [§§ 205.8(a), 205.7(a)]

8-5 Q: If an institution terminates a consumer's ATM or POS service by cancelling the access device, must it provide a disclosure?

A: No. However, if the service involves credit (because the device is a combined credit card/access device, for example), notification under Regulation B (Equal Credit Opportunity) may be required. [§§ 205.8(a), 202.9(a)]

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8-6 Q: May an institution give notice of a change in terms by sending copies of its revised disclosure statement?

A: Yes, provided attention is directed to the change (for example, in a cover letter referencing the changed term). [§ 205.8(a)]

8-7 Q: In general, an institution must either provide its customers with the full error resolution notice annually, or include a short-form notice on or with each periodic statement. Suppose an institution does not send periodic statements to certain EFT customers. How should it comply with this requirement?

A: It must send the full error resolution notice annually. [§ 205.8(b)]

8-8 Q: An institution sends annual long-form error resolution notices. If it wishes to adopt the short-form alternative, when must the first short-form notice be sent?

A: No later than 12 months after the last long-form notice was sent. Conversely, if an institution wants to switch to long-form, the first long-form notice should be sent no later than 12 months after the last short-form notice. [§ 205.8(b)]

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Section 205.9 -- Documentation of Transfers

9-1 Q: An institution's electronic terminals are programmed to provide a receipt only if the consumer who wants documentation presses a particular key at the time of the transfer. Does this comply with the regulation?

A: Yes, the regulation merely requires that the documentation be made "available" to the consumer at the time of the transfer. (See § 205.9(f) for the exemption from this requirement for certain cash-dispensing terminals.) [§ 205.9(a) and (f)]

9-2 Q: What is the purpose of the footnote in the regulation that permits financial institutions to make terminal receipts available through third parties?

A: It permits institutions to arrange for operators of terminals in an EFT system (e.g., merchants or other financial institutions) to make the receipt available. The financial institution holding the consumer's account or providing the EFT services to consumers remains responsible for the availability of the receipts. [§ 205.9(a), footnote 2]

9-3 Q: Does a financial institution comply with the receipt requirement if it simply prints the receipt information on a display screen?

A: No. The written receipt must be in a form that the consumer may retain. [§ 205.9(a)]

9-4 Q: Are there special requirements regarding type size, length of receipt, or other factors?

A: No. The regulation does require, however, that the information on the receipt be set forth "clearly." A series of unlabelled numbers or codes for various types of information, if not readily understandable on their face, would not be clearly set forth within the meaning of the regulation.

Multiple electronic fund transfers may be shown on a single receipt. The institution may also document individual transfers on separate receipts, even though the consumer makes multiple transfers at the same time. [§ 205.9(a)]

9-5 Q: Does the terminal receipt requirement apply if a transfer is initiated but not completed (because the ATM is out of cash, for example)?

A: Most terminals generate a receipt even when a transfer is not completed because of a terminal malfunction or because the consumer decided not to complete the transfer. Institutions are encouraged, but not required, to provide receipts in these instances. [§ 205.9(a)]

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9-6 Q: Does a violation result if a terminal runs out of paper and a receipt is not made available to the consumer?

A: A failure to provide a terminal receipt is not a violation if the financial institution maintains procedures reasonably adapted to assure compliance with the receipt requirement. (See § 915(c) of the act for exemption from liability for bona fide unintentional errors.) [§ 205.9(a)]

9-7 Q: May a financial institution disclose only an accounting or business date on the terminal receipt?

A: No. The date on which the consumer uses the electronic terminal must be disclosed on the receipt, although an accounting or business date may also be disclosed if clearly labelled. [§ 205.9(a)(2)]

9-8 Q: What if a transfer is initiated very late one day (for example, at 11:59 p.m.) and completed on the next day (for example, at 12:01 a.m.)?

A: The financial institution may disclose either calendar date on the receipt in that instance. [§ 205.9(a)(2)]

9-9 Q: What degree of specificity is required on terminal receipts and periodic statements for the type of transfer?

A: Common descriptions that adequately identify the type of transfer to the consumer are sufficient. There is no prescribed list of terms, although three examples are contained in the regulation. On periodic statements, it may be sufficient simply to show the amount of the transfer in either the debit or the credit column if other information on the statement enables the consumer to identify the type of transfer (for example, a terminal location or third-party name). [§ 205.9(a)(3) and (b)(1)(iii)]

9-10 Q: How should the type of account be disclosed on the terminal receipt when more than one account of the same type can be accessed by the consumer's access device?

A: If an access device can be used by the consumer to make transfers -- for example, to or from two checking accounts -- the terminal receipt must specify which of the two checking accounts has been accessed. A financial institution could disclose a cash withdrawal as "withdrawal from checking I" or "withdrawal from checking II" or, if only one other account of any type can be accessed by the same access device, "withdrawal from other account." The number of the account being accessed could be used to identify the type of account and also serve as the unique identifier of the account. [§ 205.9(a)(3) and (4)]

9-11 Q: A footnote states that the type of account need not be identified if the access device used to initiate the transfer may access only one account of any type in a point-of-sale transfer. Does this exception apply when that device is used at an ATM?

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A: No. Except as noted below, it is not available for ATM transfers, even if the access device is capable of accessing only one account at an ATM.

The exemption for POS transfers is available even if the access device can access more than one account when used at a different type of facility. Also, the word "account" refers only to accounts as defined in Regulation E -- that is, consumer asset accounts. Thus, if a consumer can use an access device at a POS terminal either to debit an asset account or to obtain credit, the exemption is still available.

There is a limited exception for certain ATMs, but only if they were purchased or ordered before February 6, 1980. [Note: See the final rule document elsewhere in this edition.] [§ 205.9(a)(3), footnote 3]

9-12 Q: A financial institution's ATMs permit access to multiple accounts of the same type when the ATM is on-line, and receipts uniquely identify the accounts by use of account numbers. When the ATM is off-line, however, access is only permitted to a "primary" account of each type, designated by the consumer in advance. The consumer is informed at the ATM that only access to the primary account is permitted at that time (and can decline to complete the transaction). Is it permissible for the receipt to describe the transfer as a "withdrawal from checking," for example, without a unique identification of the account?

A: Yes. Because the consumer can only access one account of each type at the time of the off-line transfer, no unique identification is necessary. [§ 205.9(a)(3), footnote 3]

9-13 Q: Why does the regulation permit a withdrawal from a consumer's share draft account at a credit union to be identified as a "withdrawal from checking"?

A: The regulation permits generic descriptions of the type of account to facilitate operations in a shared EFT network. For example, a member of a credit union whose access device permits electronic 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. The bank's terminals may describe accounts only as "checking" or "savings" accounts, and may not have the capability to generate a receipt that describes the transfer as a "withdrawal from share draft account." [§ 205.9(a)(3) and (b)(1)(iii)]

9-14 Q: Does this provision permitting generic descriptions extend to periodic statement requirements?

A: Yes. [§ 205.9(a)(3) and (b)(1)(iii)]

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9-15 Q: May the 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 be chosen at the financial institution's option?

A: Yes. Any unique identification that will tie the consumer to the particular transfer will be sufficient to comply with this requirement. [§ 205.9(a)(4)]

9-16 Q: The location of the terminal must be disclosed on the terminal receipt (1) by using the actual description of the location of the terminal, in one of three prescribed forms, or (2) by using an identification such as a code or terminal number. If a financial institution chooses the first option, how may it satisfy the requirement?

A: Financial institutions may, for example, preprint the terminal locaations on its receipts. Institutions with terminals in several locations must use a street address or a generally accepted name for a specific location. A financial institution that owns or operates terminals at only one location may use its name (such as "First Nat'l") to designate the terminal location, even though more than one terminal is located there. [§ 205.9(a)(5) and (b)(1)(iv)(C), footnote 7]

9-17 Q: Would use of a transaction code comply with the terminal location requirement?

A: Yes, if the transaction code (or the portion that relates to the terminal location) is clearly set forth on the receipt. It must, of course, be reproduced on the periodic statement. [§ 205.9(a)(5) and (b)(1)(iv)]

9-18 Q: May a single listing be used to identify the terminal location and the name of the third party to or from whom funds are transferred?

A: Yes. For example, if a consumer purchases goods from a merchant, the name of the third party to whom funds are transferred (the merchant) and the location of the terminal where the transfer is initiated will be satisfied by a disclosure such as "XYZ Store, Anytown, Ohio." [§ 205.9(a)(5) and (6), and (b)(1)(iv) and (v)]

9-19 Q: If a party that processes an electronic fund transfer (a merchant or another financial institution, for example) is not the ultimate transferee or transferor, must it be identified on terminal receipts or periodic statements?

A: No. Such parties need not be named either on the receipt or on the periodic statement. [§ 205.9(a)(6) and (b)(1)(v)]

9-20 Q: Under what circumstances may the name of a third party (to or from whom funds are transferred) be omitted from the terminal receipt?

A: The name may be omitted when the consumer provides the name in a form that the electronic terminal cannot duplicate on the receipt. For

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example, if a consumer makes a utility payment at an ATM and provides the name of the payee by inserting a payment stub into the ATM, the terminal receipt need not name the utility company. The name would have to appear on the periodic statement, however.

On the other hand, if a financial institution's terminals are programmed so that the name of the third party can be keyed into the terminal by the consumer (by means of a code number, for example) the financial institution must name the third party or use a code that 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 form (and printing the correct code at the time of the transfer) would comply with the regulation. [§ 205.9(a)(6) and (b)(1)(v)]

9-21 Q: The regulation requires identification of the third party to or from whom a transfer is made, on the terminal receipt and periodic statement. Is the account-holding financial institution a "third party" for purposes of this requirement?

A: Yes. Section 906 of the act requires that any documentation provided to the consumer constitute prima facie proof of payment to another person, and applies to documentation of payments made to the financial institution. The form in which the financial institution is designated as the third-party payee is not critical, however, as long as the financial institution and interested party can treat that terminal receipt or periodic statement as prima facie proof of payment.

It is permissible, of course, for financial institutions to provide that any payment made at an ATM or other electronic terminal is subject to verification by the institution. [§ 205.9(a)(6) and (b)(1)(v)]

9-22 Q: How often must periodic statements be sent under Regulation E?

A: A monthly statement is required for any account to or from which an EFT has occurred during the month, if the account is one that can be debited electronically -- by use of an access device, telephone bill payment service, or preauthorized transfers from the consumer's account, for example -- or if it can be credited electronically by other than preauthorized deposits. If no transfer has occurred during some months, the statement must be provided on at least a quarterly basis.

For an account whose only EFT capability is preauthorized credits, the institution may send quarterly statements. Or, if the account is a passbook account with no electronic capability other than preauthorized credits, the institution may simply update the passbook (with the amount and date of each electronic fund transfer since the last update) when it is presented for updating. [§ 205.9(b), (c), and (d)]

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9-23 Q: The regulation requires periodic statements to be sent "for any account to or from which electronic fund transfers can be made." What does this phrase mean?

A: The requirement applies only to those accounts for which (1) an agreement has been entered into between the consumer and the financial institution to provide EFT 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 (for preauthorized debits or credits, for example), when the institution has received notice of the agreement and the fund transfers have begun.

Passbook and statement accounts should be judged by these same criteria in determining whether the account is subject to the documentation requirements.

If there is no specific EFT agreement, the periodic statement requirements of the regulation do not apply to the account. The fact that membership in an ACH requires a participating financial institution to accept electronic fund transfers to accounts at the institution does not make every account of that institution subject to the regulation. [§ 205.9(b), (c), and (d)]

9-24 Q: Do quarterly statements have to be sent to all accounts that have had an EFT service associated with them, even though the accounts are considered inactive by the financial institution?

A: An institution need not send statements to accounts it considers to be inactive. The determination that certain accounts are "inactive" is one that must be made by the individual institution, but it should not be used as a means of circumventing or evading the regulation's requirements. [§ 205.9(b) and (d)]

9-25 Q: May financial institutions continue the practice of permitting consumers to "call for" their statements, rather than mailing out statements to all consumers?

A: Yes. An institution may not, however, require consumers to call for their statements. [§ 205.9(b) and (d)]

9-26 Q: May statements be sent on a shorter than monthly cycle?

A: Yes. [§ 205.9(b)]

9-27 Q: May financial institutions send out a "periodic statement" each time an electronic fund transfer occurs, for certain types of accounts?

A: No. Statements must correspond to an actual periodic cycle. [§ 205.9(b)

9-28 Q: Must a cycle for a periodic statement be exactly a month or a quarter?

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A: No. It is permissible to deliver periodic statements, for example, on the second Tuesday of the month or to stagger the statement cycles for different consumers, for operational or other reasons. [§ 205.9(b) and (d)]

9-29 Q: A footnote in the regulation provides that detailed information about each transfer may be given on documents accompanying the periodic statement and that codes may be used, as long as they are explained on the statement or accompanying documents. What are some examples of how a financial institution can take advantage of this provision?

A: This provision gives financial institutions that do not use descriptive statements an alternate method for complying with the documentation requirements. An institution may include copies of terminal receipts to reflect transfers originated by the consumer through electronic terminals, for example. It may also use posting memos, deposit slips, and other documents that, when taken together, disclose all the required information. Codes (for names of third parties, terminal locations, etc.) may be explained, for example, by preprinting a list of codes and the information to which they relate, either on the statement itself or on an accompanying document. [§ 205.9(b)(1), footnote 4]

9-30 Q: Must all information other than the items relating to each electronic fund transfer be placed on the statement?

A: No. Since Regulation E imposes no page requirements for periodic statements, all the required information need not appear on a single page. [§ 205.9(b)(1), footnote 4]

9-31 Q: Must the various codes used on terminal receipts and periodic statements be unique?

A: Codes, such as for transfer type and terminal location, should generally be unique for a single financial institution. However, in a shared or interchange environment identical numbers may appear on the consumer's periodic statement for terminals operated by different institutions or merchants. [§ 205.9(a) and (b)]

9-32 Q: If there is a transfer of funds between two of the consumer's accounts at a financial institution, must the information describing the transfer be repeated on both statements?

A: If the two statements are sent to the consumer together (or if a combined statement is used), required information need not be duplicated. The institution complies if the information on one of the statements (or portion of the combined statement) meets the regulation's requirements and if the information on the other statement (or portion) is sufficient to allow the consumer to identify the transfer. [§ 205.9(b)]

9-33 Q: Must a financial institution comply with the periodic statement requirements for transfers that occurred before May 10, 1980?

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A: Only transfers occurring after May 10, 1980, must be reflected on periodic statements in accordance with the requirements of the act and regulation. Only transfers occurring on or after August 10, 1980, must comply with the requirement that the terminal location and third party to or from whom funds are transferred be shown on the periodic statement. [§ 205.9(b) and (g)]

9-34 Q: Is a consumer's request for additional information about a deposit an error under the regulation?

A: Yes, if the request is made in accordance with the requirements of the error resolution section. [§§ 205.9(b)(1)(iv), footnote 4a, and 205.11(a)(7)]

9-35 Q: Section 906(f) of the act provides that required documentation constitutes prima facie proof of payment to another person; does this provision apply to terminal receipts of deposits?

A: No, since no payment is being made to another person. [§ 205.9(b)(1)(iv)]

9-36 Q: What responsibility does a financial institution have under the regulation when the amount of a deposit, as verified by the institution, is different from the amount entered by the consumer into the terminal?

A: An institution need not notify the consumer immediately of the discrepancy, although it may do so if it wishes. It may instead wait until the next periodic statement is sent. The statement should reflect the proper amount of the deposit or, depending on the institution's system, a correction of the erroneous amount. The institution must of course comply with the error resolution procedures if the consumer alleges an error in the deposit. [§ 205.9(b)(1)(iv)]

9-37 Q: Should the periodic statement reflect a transfer that takes place at a merchant's POS terminal as a purchase of goods or services or as a payment to a third party?

A: Since there is no prescribed terminology, either term may be used on the statement. [§ 205.9(b)(1)(v)]

9-38 Q: Suppose that in disclosing the terminal location on a terminal receipt and on the periodic statement, a financial institution is using a generally accepted name (such as a branch name) for a specific location. May the city be omitted when the branch name includes the city?

A: Yes. [§ 205.9(a)(5) and (b)(1)(iv)]

9-39 Q: Is it permissible to disclose as "U.S. Treasury" the name of the third party for all federal recurring payments?

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A: "U.S. Treasury" is not sufficient. Generally, the specific agency on whose behalf the payment is made (e.g., "Social Security" or "Soc Sec") should be designated. The one exception is for federal salaries, which may be designated as "Fed Sal," since that is the only information transmitted by the federal government via the ACH. [§ 205.9(b)(1)(v)]

9-40 Q: Suppose a financial institution permits consumers to make multiple payments at an ATM by keying in a composite dollar amount and inserting payment stubs into the ATM to indicate who the individual payees are. If a consumer keys in an amount and directs the institution to pay three utility bills from that sum, must the three companies be named on the periodic statement?

A. Yes. The names of all three utilities must be provided on the periodic statement so that the documentation can serve as proof of payment for the consumer. [§ 205.9(b)(1)(v)]

9-41 Q: May a financial institution disclose, on the periodic statement, a third-party name other than the one that appeared on the receipt?

A: No. If the "doing business as" name of the third party appeared on a terminal receipt, that name must also appear on the periodic statement. Similarly, if a parent corporation's name appeared on the terminal receipt, it must also be used on the periodic statement. [§ 205.9(b)(1)(v)]

9-42 Q: For purposes of periodic statement disclosures, may a financial institution rely on data transmitted to it by another financial institution or third party (such as a merchant) without verifying its accuracy?

A: Financial institutions must generally maintain reasonable procedures to avoid violations of the regulation, whether as a result of faulty data transmission or errors of third parties. (See the exception to liability under § 915 of the act for bona fide unintentional errors.) [§ 205.9(b)(1)(v)]

9-43 Q: Suppose a consumer makes an electronic fund transfer to another consumer. May the financial institution disclose the identity of the recipient on the periodic statement by giving the person's account number?

A: No. The institution must disclose the recipient by name. [§ 205.9(b)(1)(v)]

9-44 Q: The regulation requires disclosure of the number of the account for which the statement is issued (or accounts, in the case of a combined statement). Must the number be shown more than once on the statement?

A: No. [§ 205.9(b)(2)]

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9-45 Q: What charges must be disclosed on the periodic statement?

A: Financial institutions should disclose the total charges assessed against the account during the statement period either (1) for electronic fund transfers or the right to make transfers, or (2) for account maintenance. There is no requirement to disclose EFT and non-EFT transaction charges separately to include overdraft or stop payment charges as EFT charges, or to explain charge methods on the periodic statement. [§ 205.9(b)(3)]

9-46 Q: Suppose certain consumer passbook accounts have electronic debit capability, and the financial institution continues to use the passbook as the primary means for displaying all transactions on the account. To comply with the periodic statement requirement, may the institution provide a consumer with a summary statement covering only electronic activity to or from the account?

A: Yes. [§ 205.9(b)]

9-47 Q: The financial institution is required to disclose an opening and a closing balance in the consumer's account. Is it sufficient for these balances to be based on electronic activity during the statement period?

A: No. The balances disclosed must be derived from both electronic and non-electronic activity. [§ 205.9(b)(4)]

9-48 Q: A financial institution is required to disclose a telephone number for error resolution and for the consumer to call to ascertain whether a preauthorized credit has occurred. Is it permissible for the institution to disclose a single telephone number, preceded by the "direct inquiries to" language?

A: Yes. [§ 205.9(b)(5) and (6)]

9-49 Q: May the telephone number used for telephone notice whether a preauthorized transfer to the consumer's account has occurred be disclosed on a credit advice or other document enclosed with the periodic statement?

A: Yes. [§ 205.9(b)(6)]

9-50 Q: Is a financial institution required to update a passbook every time the consumer presents it (for example, when the consumer uses the passbook to make a deposit or withdrawal)?

A: No. The institution need only update the passbook (by entering the amount and date of preauthorized credits) when the consumer presenting it requests updating. [§ 205.9(c)]

9-51 Q: If an institution holds passbook accounts that qualify for the exception from the periodic statement requirement, may it still utilize the telephone notice alternative for preauthorized credits?

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A: Yes, if it meets the conditions described in question 10-15. [§§ 205.9(c), 205.10(a)(1)(iii)]

9-52 Q: May a financial institution set a reasonable cut-off period for updating passbook information?

A: No. However, the financial institution need not update a passbook immediately upon presentation if the information is not readily available. It can retain the passbook, add the information, and return the updated passbook promptly to the consumer. Or, it can mail separate documentation to the consumer. [§ 205.9(c)]

9-53 Q: May a financial institution, in lieu of retaining the information between presentations of the passbook, send a consumer updates of preauthorized credits on a periodic basis?

A: Such a procedure would not comply with the regulation, unless the financial institution is prepared to switch to a statement savings format for those accounts. [§ 205.9(c)]

9-54 Q: Must the periodic statements for non-passbook accounts which cannot be accessed electronically except by preauthorized credits comply with the periodic statement requirements of the regulation?

A. Yes. These statements must comply with all the requirements for periodic statements, except that they may be sent quarterly. [§ 205.9(d)]

9-55 Q: Is there a date by which a financial institution must replace cash-dispensing terminals that are subject to the special receipt requirement?

A: No. [§ 205.9(f)]

9-56 Q: If a financial institution that owns or operates one of these cash dispensers reinstalls it in a new location, does the special receipt requirement continue to apply?

A: Yes. [§ 205.9(f)]

9-57 Q: Suppose a financial institution has taken advantage of the delayed effective date for the periodic statement requirement concerning the name of the third party to whom a transfer was made. Must the financial institution, upon a consumer's request, provide evidence of proof of payment to another person for transfers initiated between May 10 and August 10, 1980?

A: Yes. The financial institution must treat a consumer's request for additional information about such incompletely identified transfers as an error and comply with the error resolution procedures. In addition, the financial institution must provide proof of payment to another person upon the consumer's request and without cost. [§§ 205.9(g), 205.11(a), 906]

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Section 205.10 -- Preauthorized Transfers

10-1 Q: Must the financial institution give the consumer a choice of the type of notice to be provided regarding receipt of preauthorized credits?

A: No. It is up to the financial institution to decide which method of providing notice the institution wants to use. [§ 205.10(a)(1)]

10-2 Q: Must the method of notice be the same for all types of preauthorized credits?

A: No. The institution may use different methods for different series of transfers. [§ 205.10(a)(1)]

10-3 Q: Suppose a financial institution guarantees to the consumer that the amount of scheduled transfers (Social Security benefits, for example) will be credited to the consumer's account whether or not the institution actually receives the funds. Does the notice requirement apply?

A: Yes. Notice is still required. [§ 205.10(a)(1)]

10-4 Q: Is there any instance in which the financial institution does not have to provide notice?

A Yes. If the payor provides notice to the consumer that a transfer has been initiated, the financial institution is not required to provide notice. [§ 205.10(a)(1)]

10-5 Q: If the payor-employer provides notice to a consumer that a transfer has been initiated, what type of notice should be given?

A: There is no required terminology. A pay stub that shows the net deposit is sufficient. [§ 205.10(a)(1)]

10-6 Q: Is there a model clause or suggested language available for the notice whether a preauthorized transfer has occurred?

A: No. Identification of the deposit is sufficient. [§ 205.10(a)(1)]

10-7 Q: Will an institution comply if it simply informs the consumer of the current balance in the account?

A: No. [§ 205.10(a)(1)]

10-8 Q: May a periodic statement sent within two business days of the transfer (or of the scheduled transfer date) serve as either the positive or negative notice?

A: Yes. [§ 205.10(a)(1)]

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10-9 Q: Suppose that an institution uses a negative notice system and a preauthorized credit fails to arrive on the scheduled date, but does arrive within two business days. Must a notice be sent?

A: No. However, if the deposit did not arrive by the close of the second business day following the scheduled date, a notice would have to be sent at that time. [§ 205.10(a)(1)(ii)]

10-10 Q: An institution uses a negative notice system. If preauthorized transfers to a consumer's account cease to occur, must the institution send notices of nonreceipt indefinitely?

A: In the absence of information from the consumer or the payor that the transfers have stopped, the institution should send the notices for a reasonable number of times. Or, it may notify the consumer of the institution's belief that the transfers have stopped and that no further notices will be sent.

10-11 Q: How quickly must a financial institution respond to a consumer's telephone inquiry about whether a preauthorized transfer has been received?

A: In most instances, an institution should be able to provide verification during the same telephone call. However, if the institution has to investigate (because the time lapse between the scheduled transfer date and the consumer's call is so great that information is not immediately available, for example), the institution should respond by the next business day. [§ 205.10 (a)(1)(iii)]

10-12 Q: The regulation requires that the telephone line be "readily available." What does this mean?

A: The financial institution should provide enough lines so that consumers get a reasonably prompt answer. [§ 205.10(a)(1)(iii)]

10-13 Q: Must a financial institution provide a toll-free telephone number, or accept collect calls from its customers?

A: Consumers within a financial institution's service area should not have to pay long-distance charges to inquire about transfers to their accounts. However, the financial institution is not obligated to provide a toll-free telephone number or accept collect phone calls from consumers who are outside the institution's service area. [§ 205.10 (a)(1)(iii)]

10-14 Q: Must the financial institution provide a 24-hour telephone line to respond to consumers' inquiries?

A: No. Telephone service during normal business hours will suffice. [§ 205.10(a)(1)(iii)]

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10-15 Q: The telephone number is required to be given in the initial disclosures and on each periodic statement. Customers whose passbook accounts can only be accessed by preauthorized credits do not receive periodic statements. How can the financial institution comply with the second condition?

A: The institution may stamp the telephone number in the passbook when it is issued or when it is presented for updating, include the telephone number with the annual error resolution notice, or take other reasonable measures to provide the number. (See question 9-51.) [§ 205.10(a)(1)(iii)]

10-16 Q: When must funds deposited to an account via preauthorized transfers be available to the consumer?

A: The regulation requires that the preauthorized transfers be credited promptly. The determination of when these funds are available to the consumer for withdrawal will depend on applicable state law and other federal regulations. [§ 205.10(a)(2)]

10-17 Q: If a financial institution normally posts customers' accounts in the morning, and it receives an ACH tape in the afternoon, may the institution wait until the next morning to post the accounts?

A: Yes. An institution is not required to alter its established posting schedule. However, the funds must be credited to the consumers' accounts as of the date the funds are received. [§ 205.10(a)(2)]

10-18 Q: May a financial institution ever credit a consumer's account later than the date the funds are received from the payor?

A: Yes. If a financial institution and a payor have an agreement that the payor will transmit funds to the institution in advance of the date on which consumers' accounts are to be credited (for example, two days in advance of payday), the institution may credit the accounts as of the agreed date. [§ 205.10(a)(2)]

10-19 Q: If an agreement for preauthorized electronic fund transfers from an account was entered into before May 10, 1980, must a new authorization be obtained by the designated payee or by the financial institution?

A: No. [§ 205.10(b)]

10-20 Q: If an existing authorization merely authorized the institution or the designated payee to debit the consumer's account -- without specifying whether the debiting is to occur electronically or by paper means — must a new authorization be obtained?

A: No, so long as the existing authorization is broad enough to include debiting by electronic means. Whether the existing agreement is broad enough to authorize electronic debits is a matter that must be determined under state law, not by Regulation E. [§ 205.10(b)]

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10-21 Q: If a consumer authorizes a third party (for example, an insurance company) to initiate preauthorized electronic fund transfers from the consumer's account, and the third party fails to get the authorization in writing or to give a copy to the consumer, is the consumer's financial institution in violation of the regulation?

A: No. Only the third party has violated the regulation. [§ 205.10(b)]

10-22 Q: On October 10, a consumer orally orders the financial institution to stop payment on a utility bill ($30) that is scheduled to be paid on October 15. The payment is stopped. The consumer properly confirms the order in writing on October 17. On October 30 the utility resubmits the $30 debit. Assuming that the financial institution does not have a reasonable means to identify a stopped-payment debit that is resubmitted, how may the institution comply with the consumer's order?

A: It may offer the consumer the option of (1) suspending all payments to the designated payee until the consumer notifies the institution that payments should resume, or (2) stopping only the one specific payment about which the order was received. If the consumer has elected the second option, the institution could debit the consumer's account for the October 30 item and for subsequent debits submitted by the payee. [§ 205.10(c)]

10-23 Q: Suppose the consumer agreed to varying preauthorized transfers from the consumer's account prior to May 10, 1980. Must the financial institution (or the designated payee) give the consumer the 10-day advance notice of transfers that vary in amount?

A: Yes, unless the institution or the designated payee has informed the consumer of the right to receive notice of such varying payments and the consumer has elected to authorize payment within a specified range of amounts. [§ 205.10(d)]

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Section 205.11 -- Procedures for Resolving Errors

11-1 Q: Suppose a transfer is initiated by a financial institution or its employee without the consumer's authorization; does it constitute an error?

A: Yes. It is an incorrect electronic fund transfer. [§ 205.11(a)]

11-2 Q: Does a report of the loss or theft of an access device constitute an allegation of error, requiring compliance with the error resolution procedures?

A: No, unless the consumer also alleges possible unauthorized use as a consequence of the loss or theft. [§ 205.11(a)]

11-3 Q: When must the alleged error have occurred for the error resolution procedures to apply?

A: After May 10, 1980. [§ 205.11]

11-4 Q: Must a financial institution comply with the error resolution procedures when a consumer asserts an error after closing the account relationship with the institution?

A: Yes, assuming that the error allegation is properly made. [§ 205.11]

11-5 Q: May a financial institution assume, absent a statement to the contrary by a consumer, that a request for duplicate copies of documentation or other information is for tax or other record-keeping purposes and therefore not an "error"?

A: No. Requests for duplicate copies of documentation or other information should be treated as errors unless it is clear that the request by the consumer is only for tax or other record-keeping purposes. [§ 205.11(a)(7)]

11-6 Q: Suppose a consumer has arranged for periodic statements to be held at the financial institution until called for by the consumer. For purposes of the 60-day time limits, when is a statement for a particular cycle deemed to have been "transmitted"?

A: The statement is transmitted when it is first made available to the consumer. (Also see question 9-27.) [§ 205.11(b)(1)(i)(A)]

11-7 Q: How quickly must a consumer give notice that a periodic statement was not provided by the financial institution?

A: The notice of error must be received by the institution no later than 60 days from the date on which the statement should have been sent. [§ 205.11(b)(1)(i)]

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11-8 Q: Does discovery of an error by the financial institution trigger the error resolution procedures?

A: No. The procedures are triggered only when a notice of error is received from the consumer or an agent of the consumer. [§ 205.11(b)(1)]

11-9 Q: Must the notice given by the consumer to the financial institution contain both the consumer's name and account number?

A: No, so long as the notice enables the financial institution to determine the name and account number. [§ 205.11(b)(1)(ii)]

11-10 Q: Must a financial institution maintain reasonable referral procedures for forwarding written confirmation of error allegations to the specified address when the customer mails the confirmation to the wrong address?

A: No. The requirement regarding referrals applies only to the original notification of error, although the institution may wish to follow the same procedures for confirmations. [§ 205.11(b)(1)(i), footnote 10, and (b)(2)]

11-11 Q: May a financial institution delay the beginning of its investigation until it receives a written confirmation?

A: No. The investigation must begin promptly upon receipt of the oral notice. This duty is not affected by the institution's request for written confirmation. [§ 205.11(c)(1) and (3)]

11-12 Q: May a financial institution always take advantage of the 10-business-day or 45-day time limits to investigate?

A: No. The requirement is to investigate promptly; the stated time periods are maximums. [§ 205.11(c)(1) and (2)]

11-13 Q: When a consumer requests documentation, may a financial institution provide a facsimile?

A: Yes, so long as the facsimile is legible. [§ 205.11(d)(1)]

11-14 Q: Suppose a consumer requests information or documentation that is not in the institution's possession, but in the possession of a third party with whom the financial institution has no agreement. How does an institution comply with the regulation for this type of error?

A: Compliance would consist of a timely response by the financial institution that the institution does not have the requested material. [§ 205.11(d)(2)]

11-15 Q: Suppose a consumer alleges an error involving a payment to a third party via a financial institution's telephone bill payment plan. Is a review of the institution's own records a sufficient investigation?

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A: Yes, assuming there is no agreement between the financial institution and the third party concerning the telephone bill payment system. [§ 205.11(d)(2)]

11-16 Q: A consumer alleges an error regarding a direct deposit of payroll by a third party via an ACH. The financial institution has an agreement with the third party to honor an access device at a point-of-sale terminal, but there is no agreement with the third party regarding the direct deposit of payroll. May the financial institution limit its investigation of the error to a review of its own records?

A: Yes. The institution would be required to investigate beyond its own records only if the error involved a POS transfer or if the financial institution and the third party did have an agreement regarding the direct deposit of payroll. [§ 205.11(d)(2)]

11-17 Q: There are agreements between a financial institution and certain merchants to honor an access device at POS terminals. What is the institution's duty to investigate when a consumer alleges an error involving a transfer to a merchant via the merchant's POS terminal?

A: The financial institution must contact the merchant; it may not rely on information previously transmitted by the merchant without verifying it. For example, the financial institution may have to request a copy of the sales slip signed by the consumer in order to verify that the amount of the consumer's purchase and the amount of the transfer are the same. A financial institution is not required, however, to take such steps as sending an employee to the merchant's place of business to ascertain the correct cost of merchandise involved in a transaction. [§ 205.11(d)(2)]

11-18 Q: When a financial institution determines that an error occurred in a different manner or amount from that described by the consumer, must the institution comply with both the procedures (1) applicable when the institution determines that no error occurred and (2) applicable when it is determined that an error did occur?

A: Yes, to the extent they are relevant. [§ 205.11(e) and (f)]

11-19 Q: In the case described in question 11-18, may the institution give the notice of correction and the written explanation separately?

A: Yes. Or, the notice of correction and explanation could be given in a combined form. [§ 205.11(e) and (f)]

11-20 Q: Does the requirement to credit interest apply to all error corrections?

A: No, only to those involving interest-bearing accounts. [§ 205.11(e)(1)]

11-21 Q: Is the financial institution required, when it corrects an error, to refund all fees or charges imposed on the account?

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A: No. The financial institution is required to refund only those fees or charges that were imposed as a consequence of the error. Fees or charges that would have been imposed even if the error had not occurred need not be refunded. [§ 205.11(e)(1)]

<u>11-22</u> Q: The regulation requires that notice of a correction be given "promptly." Will this requirement be satisfied if a financial institution includes the notice on a periodic statement mailed within the 10-business-day or 45-calendar-day limits?

A: The determination as to whether such a mailing would be prompt enough to satisfy the requirement will have to be made by the financial institution, taking into account the specific facts involved. [§ 205.11(e), footnote 12]

<u>11-23</u> Q: Suppose a financial institution completes its investigation on day 45, and determines that no error occurred. Must it send the written explanation that same day?

A: No. The financial institution has 3 additional business days to send it. However, if the financial institution is proceeding under the 10-business-day provisions and determines on day 10 that no error occurred, the institution does not have 3 additional business days. It must send the explanation that day. [§ 205.11(f)(1)]

<u>11-24</u> Q: The regulation requires that when a financial institution debits a consumer's account for provisionally recredited funds, it must honor certain items for a 5-business-day period. Suppose the institution instead establishes a procedure under which it notifies the consumer that the consumer's account will be debited 5 business days from the transmittal of the notification, and specifies the calendar date on which this debiting will occur. Does this procedure satisfy the requirement?

A: Yes. [§ 205.11(f)(2)(ii)]

<u>11-25</u> Q: Suppose a financial institution debits a consumer's account for provisionally recredited funds. Must it honor all items presented during the succeeding 5-business-day period?

A: The financial institution need only honor items that would have been paid if the account had not been debited. For example, if an account is debited for provisionally recredited funds of $100, leaving a balance of $55, and checks for $150 and $200 are presented by third parties, the financial institution need only honor the $150 item. In addition, the institution need only honor items (including preauthorized transfers) payable to third parties. It need not permit ATM withdrawals by the consumer, for example. [§ 205.11(f)(2)(ii)]

<u>11-26</u> Q: May a financial institution charge the consumer for overdrafts which occur as a consequence of the facts described in question 11-25?

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A: No. The financial institution may not charge the consumer for overdraft items that are honored because of the 5-business-day requirement. It may, however, impose any normal transaction or item charges that are unrelated to the fact that an overdraft occurred.

After the 5-business-day period, if the account is still overdrawn, the institution may impose a finance charge to which it is otherwise entitled under an overdraft credit plan. [§ 205.11(f)(2)(ii)]

11-27 Q: When a consumer requests copies of documents on which the financial institution relied in determining that no error occurred, what is required of the institution?

A: The institution should provide copies of the documentation in a readily understandable form. An institution that relies on magnetic tape in making its determination should translate the data into a readable form — by printing out the applicable data and explaining the codes, for example. [§ 205.11(f)(3)]

11-28 Q: Suppose a document contains information on several consumers. Should a copy of the entire document be given to the consumer?

A: No. To protect the confidentiality of the other consumers' transactions, the institution should provide only the information or documentation relating to the consumer alleging the error. [§ 205.11(f)(3)]

11-29 Q: What if a financial institution's investigation shows that there is no information relating to the consumer on the magnetic tape or other documentation in question?

A: The financial institution complies by describing the document or documents searched and stating that they contained no information relating to the consumer. [§ 205.11(f)(1) and (3)]

11-30 Q: Suppose a consumer withdraws an allegation of error after the institution has completed its investigation and determined that no error occurred, but before the written explanation is given. May the institution treat the error as voluntarily withdrawn?

A: Yes. [§ 205.11(g)]

11-31 Q: Suppose a consumer calls the financial institution to question the amount of a Social Security deposit and the institution suggests the difference is due to a general increase in benefits. Is the consumer's acceptance of the explanation a voluntary withdrawal of an error allegation?

A: Yes. [§ 205.11(g)]

11-32 Q: If a consumer has withdrawn an allegation of error, does the consumer have the right to reassert the allegation?

A: Yes, if the consumer gives proper notice -- unless the financial institution had complied with all the error resolution requirements before the allegation was withdrawn. [§ 205.11(h)]

11-33 Q: May a financial institution charge consumers for the institution's compliance with the error resolution procedures?

A: Although the regulation is silent on this point, the Board has expressed concern about any chilling effect on the good faith assertion of errors that might result from the imposition of charges. Further, a charge for investigating errors could also violate § 914 of the act (which prohibits the waiver of rights), if as a consequence consumers are induced to waive rights conferred by the act. [§ 205.11, § 914]

11-34 Q: Suppose a consumer withdraws funds from a checking account by use of an ATM and the withdrawal overdraws the account, triggering a transfer of funds from the credit line to the checking account. If an error occurs, which error resolution procedures apply, Regulation E or Regulation Z?

A: Regulation E applies because there is an electronic fund transfer. The financial institution must follow the requirements of the error resolution provisions of Regulation E that deal with the definition of error, requirements for notice, and procedures for correction of billing errors. Other provisions of Regulation Z continue to apply to the credit extension portion, however. These include 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. [§ 205.11(i) and § 226.14(b)-(g) of Regulation Z, 12 CFR Part 226]

11-35 Q: Suppose a consumer uses an ATM to withdraw funds directly from a non-overdraft credit line (using a combined credit card/access device) and later alleges an error. Do the error resolution procedures of Regulation E or Regulation Z apply?

A: Regulation Z applies. The transaction does not involve an electronic fund transfer under Regulation E, since the credit line is not a consumer asset account. [§ 205.11(i)]

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Section 205.12 -- Relation to State Law

12-1 Q: The regulation prescribes standards for determining whether state laws that govern electronic fund transfers are preempted by the EFT Act and Regulation E. If, under these standards, state law is inconsistent with the federal law, is the state law automatically preempted?

A: No. A specific determination of preemption will be made by the Board. Interested parties seeking a determination should follow the procedures set forth in the regulation. [§ 205.12(a) and (b)]

Section 205.13 -- Administrative Enforcement

13-1 Q: Will the Board or its staff review or approve disclosure forms or statements submitted by financial institutions?

A: No. However, the Board has issued model clauses that financial institutions may use, if they wish, when designing their forms or statements. If a financial institution uses these clauses accurately to reflect its services and complies with other requirements of the regulation, the financial institution is protected from liability under §§ 915 and 916 of the act. [§ 205.13(b)(2), App. A]

13-2 Q: Must a financial institution retain records that it has given disclosures and documentation to each consumer?

A: No. The financial institution need only retain evidence demonstrating that its procedures reasonably insure the consumer's receipt of the required disclosures and documentation. [§ 205.13(c)(1)]

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Section 205.14 -- Services Offered by Financial Institutions Not Holding Consumer's Account

14-1 Q: Does this section apply to an institution which initiates preauthorized electronic payroll deposits on behalf of the consumer's employer to the consumer's account at another financial institution?

A: No. This section applies only when the service-providing institution issues an access device to a consumer (a debit card or a code, for example) with which the consumer can initiate transfers to or from the consumer's account at another institution, and the two institutions have no agreement with regard to this service. Because a code used to initiate telephone transfers is an access device, the section applies, for example, when a financial institution which holds a consumer's account periodically transfers funds to or from the consumer's account at another financial institution upon receiving instructions from the consumer on the telephone. [§ 205.14(a) and (c)]

14-2 Q: Does the fact that the consumer holds an account at both financial institutions involved in the transaction negate the application of this section?

A: No, assuming the institutions have no agreements with each other as to the service. [§ 205.14(a)]

14-3 Q: If an ACH establishes arrangements in which its members agree to honor each other's EFT cards, is there an "agreement" for purposes of this section?

A: Yes. [§ 205.14(c)]

14-4 Q: Does the service-providing institution have to provide to the consumer a periodic statement showing transfers other than electronic fund transfers made with the service provider's access device?

A: No. [§ 205.14(a)(2)]

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Board of Governors of the Federal Reserve System, September 30, 1980.

[SEAL]

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

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