

FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 9148]
September 24, 1981]

REGULATION E — ELECTRONIC FUND TRANSFERS

Official Staff Commentary

*To All Depository Institutions
in the Second Federal Reserve District:*

Following is the text of a statement issued September 17 by the Board of Governors of the Federal Reserve System:

The Federal Reserve Board today made available an official staff commentary on Regulation E, which implements the Electronic Fund Transfer Act.

As directed by the Act, the Board adopted implementing regulatory rules in 1979 and 1980. The commentary, in the form of questions and answers, deals with all sections of Regulation E. The commentary was adopted after consideration of comment received on a proposed commentary.

The attached summary of the commentary notes three points on which the staff will seek interpretations by the Board in the near future, and describes some of the principal positions taken by the staff interpretation.

The questions and answers are intended to minimize compliance burdens and set objective standards for both compliance and enforcement.

Providers of electronic transfer services that conform to the staff interpretation are protected from civil liability.

The EFT Act protects consumers in their use of electronic transfer of funds. Electronic transfer services permit consumers to transfer funds without the use of checks. Such services, which may involve the use of an EFT card, permit consumers to withdraw cash from their accounts at automated teller machines, and to debit their accounts at the point of sale for purchases of goods and services.

The text of the commentary may be obtained from the Federal Reserve Board or the Federal Reserve Banks.

Enclosed is a copy of a summary of the official staff commentary. The full text will be published in the *Federal Register* and will be sent to depository institutions when printed copies become available.

ANTHONY M. SOLOMON,
President.

FEDERAL RESERVE SYSTEM

12 CFR Part 205

Reg. E; EFT-2

ELECTRONIC FUND TRANSFERS

Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Official staff interpretation.

SUMMARY: In accordance with 12 CFR 205.13(b), the Board staff is publishing, in final form, the official staff commentary on Regulation E, Electronic Fund Transfers. This interpretation takes the form of questions and answers about the regulatory requirements applicable to electronic fund transfers to or from consumer asset accounts. It is designed to facilitate compliance and, because it is an official staff interpretation, provides protection for financial institutions that offer EFT services and that act in conformity with it.

EFFECTIVE DATE: September 24, 1981.

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

SUPPLEMENTARY INFORMATION: (1) General. Regulation E (12 CFR Part 205) implements the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*). The regulation was published in stages. Rules governing unsolicited issuance and liability were published in March 1979 (44 FR 18468) and became effective on March 30, 1979. Sections dealing with disclosures about account terms and certain other matters were published in October 1979 (44 FR 59464) and became effective on May 10, 1980. The final portions -- on documentation of transfers, error resolution, and other subjects -- were published in February 1980 (45 FR 8248); they too became effective in May 1980.

The Board staff's commentary addresses the regulation's various requirements, and is designed to make compliance easier by providing specific answers, in nontechnical language, to commonly asked questions. It finalizes a proposal published in October 1980 (45 FR 66349).

The staff has sought to provide interpretations that minimize compliance burdens, to the extent permitted by the act and regulation, without giving up important consumer protections. Where possible, the commentary also sets objective standards so that both financial institutions and their enforcement agencies can more easily determine whether, and how, the regulation applies to certain transfers. It takes the place of individual responses to inquiries. Because it is an official staff interpretation, it provides protection under § 915(d) of the act from civil liability for institutions that act in conformity with it.

The commentary covers all sections of the regulation except § 205.1, which is self-explanatory. The questions are identified by hyphenated numbers: the first part indicates the regulatory section; the second part, the order of sequence for a particular question in that section. For example, 9-10 indicates the tenth question in § 205.9. Catchlines have been added to make it easier for users to locate relevant questions. References to the specific sections of Regulation E (and, in some cases, the Electronic Fund Transfer Act) are included at the end of each answer.

There has been considerable rearranging of the sequence of the questions (particularly in § 205.9 on documentation of transfers). As a consequence, the numbers in the final version do not necessarily conform to the numbers used in the proposal. The index at the end should enable users of the commentary to locate specific interpretations.

A number of the questions and answers in the commentary have been modified in light of the comments on the proposed version. Some of the questions that were set forth in the proposal have been deleted as self-evident or moot; and some new questions have been added.

(2) Items for Board consideration. To the extent that particular questions could be dealt with at the staff level, the staff has disposed of them in the commentary. At least three areas, however, require Board action and will be presented for its consideration in the next six weeks or so. They relate to (1) the application of the regulation to certain small institutions that participate in the federal government's direct deposit program but do not offer other EFT services covered by the regulation, (2) modification of certain requirements for institutions that offer EFT services internationally, and (3) a partial exemption from the periodic statement requirements for savings accounts that are accessible by intra-institutional telephone transfers. These are summarized below.

Federal recurring transfers completed by paper. Payments under the federal government's recurring payment program are generally sent via the automated clearing house system (ACH). In some cases, these transfers are sent via the ACH to an institution's correspondent bank, which then sends a paper listing of recipients and payment amounts to the account-holding institution. It is argued that institutions which receive these transfers in paper form should not be subject to the regulation. This result cannot be accomplished by interpretation, however, because of the definition of electronic fund transfer, which focuses on how the transfer is initiated.

The Board does have the authority, however, to create exceptions that alleviate burdens for small institutions. It could, for example, create a narrow exemption for institutions that receive recurring transfers in paper form through correspondent banks. The proposal that is being developed for the Board's consideration would be available only to an institution that does not offer other electronic transfer services -- automated tellers or telephone bill payment, for example -- since institutions that offer such services are subject to the regulation in any case. There also is likely to be an asset size limitation for any exemption proposed, similar to the limitation in Regulation D with respect to reserve requirements.

Specific data that would support an exemption for small institutions can be submitted if and when the Board issues a proposal for public comment.

International transfers. Providers of electronic fund transfer services who function in an international environment encounter certain difficulties in complying with the regulation. In particular, the requirements regarding terminal receipts and the time limits for error resolution present serious problems. Modification of these and other requirements may be possible which would facilitate compliance, while retaining basic protections for consumers.

Telephone transfers between savings and transaction accounts. A large number of mutual savings banks offer telephone bill payment services through a transaction account. They also permit the consumer to initiate transfers by telephone, between that transaction account and a savings account at the same institution. Under the regulation, both accounts are currently subject to the periodic statement requirements. An association for mutual savings banks has petitioned the Board for an exception from the periodic statement requirements, so that the financial institution might satisfy the requirements by providing a statement that complies with the regulation for the transaction, but not the savings, account in such an arrangement. Savings accounts would continue to receive the traditional periodic statements or passbook updates. This issue will also be presented to the Board.

(3) Positions taken in the commentary. A number of issues in the commentary warrant mention. They are discussed below, in sequence.

Home-banking terminals. (Q. 2-23) A number of financial institutions are offering home-banking services -- under experimental pilot programs, in many cases -- by means of television sets and home computers that are linked to the institution's own computer system. The systems currently in operation do not provide printers that can generate terminal receipts, and the cost of doing so apparently would be prohibitive.

The commentary takes the position that the home banking equipment, like telephones (which are expressly excluded by the regulation), is not an electronic terminal for purposes of the regulation, and thus is not subject to the receipt requirement. The transfers initiated by means of home banking equipment, however, are subject to all the other regulatory provisions.

Telephone transfer plans. (Q. 3-17) The commentary limits the application of the regulation to telephone transfer plans or agreements that are in writing. This rule is analogous to the rule which limits Regulation Z coverage to written credit agreements.

Telephone transfers under informal arrangements have represented a major source of uncertainty for institutions that do not offer telephone transfer plans but that do, from time to time, allow customers to initiate transfers by telephone. The staff interpretation sets a clear rule that should eliminate confusion about what transfers are covered by excluding such situations from the regulation.

Advance disclosures. (Q. 7-1) The regulation requires that disclosures be given at the time the consumer contracts for an electronic fund transfer service or before the first electronic transfer is made to or from the consumer's account. Some institutions give blanket disclosures to all their customers whether or not they have contracted for an EFT service -- when accounts are established, for example. There has been uncertainty about whether these disclosures satisfy the disclosure requirements with respect to non-EFT customers who, months later, sign up for an EFT service either directly with the financial institution that gave the disclosures or with a third party (for example, an employer for the direct deposit of payroll, or an insurance company for the automatic debiting of premiums).

The staff commentary seeks to minimize the paperwork burden by providing that advance disclosures satisfy the disclosure requirements with regard to preauthorized third-party transfers. Thus, the institution need not give disclosures anew when a consumer, who has not previously been receiving EFT service, contracts for these transfers. Without this interpretation, the institution would have to monitor ACH transfers closely to make sure that disclosures are given if and when consumers enter into contracts with third parties.

Under the staff interpretation, the financial institution generally remains subject to giving disclosures close to the time of contract for EFT services that it provides directly -- such as telephone bill payment or automated teller services.

Disclosure of telephone numbers. (Q. 7-20) Certain required disclosures involve telephone numbers. The commentary facilitates compliance by providing that instead of listing a specific telephone number, a financial institution may refer the consumer to a telephone number that is readily available to the consumer -- such as a number that is given on the institution's periodic statements. This provision will benefit institutions that have multiple branch offices and that prefer to maintain decentralized operations for error resolution, verification of deposit, etc. This interpretation does not apply to the telephone number for reporting lost or stolen access devices; in this case, the institution must continue to give a specific telephone number on or with the disclosures.

Pre-existing authorization. (Q. 10-17) Regulation E requires a written authorization for electronic fund transfers from a consumer's account, with a copy given to the consumer. Many existing authorizations for the debiting of consumers' accounts do not specify that debiting is to occur by electronic means. Still others may specify that debiting will occur by means of paper drafts to be initiated by the payee. The commentary takes the position that Regulation E does not require new authorizations to be obtained in these cases.

This interpretation will benefit insurance companies, and more importantly their policy-holders, in avoiding unnecessary paperwork and unintended lapses in insurance coverage. The transfers that occur electronically will, of course, be subject to the regulation.

* * * * *

[NOTE: The complete text of the commentary can be obtained from any Federal Reserve Bank or from the Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D. C. 20551.]