At Cir. No 9197

November 30, 1981

To the Addressee:

Enclosed is a copy of the Official Staff Commentary on Regulation E, "Electronic Fund Transfers", referred to in Circular No. 9148, dated September 24, 1981. Additonal copies of the enclosure are available upon request.

Circulars Division
FEDERAL RESERVE BANK OF NEW YORK

Board of Governors of the Federal Reserve System

Official Staff Commentary on Regulation E Electronic Fund Transfers

Any inquiry relating to Regulation E should be addressed to the Federal Reserve Bank of the Federal Reserve District in which the inquiry arises.

October 1981

Contents

Official Staff Commentary on Regulation E

Following is an official staff interpretation of Regulation E issued pursuant to section 205.13(b). References are to sections of the regulation or the Electronic Fund Transfer Act (15 USC 1693 et seq.).

The commentary covers all sections of the regulation except section 205.1, which is self-explanatory. The questions are identified by hyphenated numbers. The first part of the number indicates the regulatory section; the second part, the sequential order of a particular question within that section. For example, 9-10 indicates the tenth question in section 205.9. Catchlines have been added to make it easier for users to locate questions.

SECTION 205.2—Definitions and Rules of Construction

Q2–1: *Access devices.* What are some examples of access devices?

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

Q2–2: *Profit-sharing and pension accounts.* Are profit-sharing and pension accounts covered by the definition of "account"?

A: When such accounts are established under a trust agreement, as is generally the case, they are exempt from coverage by section 205.3(f). (§ 205.2(b))

Q2–3: *Escrow accounts.* Escrow accounts are frequently established to ensure 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 the regulation. 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. (§ 205.2(b))

Q2–4: *U.S. savings bond accounts.* Is an account that is established to accumulate funds for the purchase of U.S. savings bonds subject to the regulation?

A: No. Such accounts generally are not established by or in the control of 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))

Q2–5: *Christmas or vacation club accounts.* Are Christmas club or vacation club accounts subject to the regulation?

A: Christmas club and vacation club accounts are consumer asset accounts. In a great many cases, however, they are not subject to the regulation, because all *electronic* transfers to and from the account have been authorized in advance by the consumer and are to or from another account of the consumer at the same institution. (§§ 205.2(b) and (g) and 205.3(d))

Q2–6: *Business day—substantially all business functions.* In the definition of "business day," what does "substantially all business functions" include?

A: The phrase includes both the public and the back-office operations of the institution. For example, if the offices of an institution are open on Saturdays for handling some consumer transactions (such as deposits, withdrawals, and other teller transactions) but not for performing internal functions (such as investigating account errors), then Saturday is not a business day for that institution. In this case, Saturday does not count toward the various business-day standards set by the regulation for reporting lost or stolen access devices, resolving errors, etc. (§ 205.2(d))

Q2–7: *Business day—telephone line.* If an institution makes a telephone line available on Sundays for reporting the loss or theft of an access device but performs no other business functions, is Sunday a business day?

A: No. Mere availability of a telephone line does not satisfy the "substantially all business functions" standard. (§ 205.2(d))

Q2–8: *Business day—duration.* Does "business day" refer only to the hours during which the financial institution carries on substantially all business functions?

A: For purposes of the various business-day standards set by the regulation, a business day includes the entire 24-hour period ending at midnight. This means that a notice satisfies the time limits even if given outside business hours. The regulation does not, however, require that telephone lines be available on a 24-hour basis. (§ 205.2(d))

Q2–9: *Business day—short hours.* If a financial institution engages in substantially all business functions until 12 noon on Saturdays instead of its normal 3 p.m. closing, are Saturdays business days?

A: The financial institution may determine, at its election, whether an abbreviated day is a business day. The regulation does not specify the number of hours that an institution must be open in order to have a business day. (§ 205.2(d))

Q2–10: *Fund transfer—payments in currency.* The term "electronic fund transfer" excludes payments made by check, draft, or similar paper instrument at an electronic terminal. What about payments made in currency at an electronic terminal?

A: Payments in currency are not electronic fund transfers, because they do not debit or credit a consumer's account. (§ 205.2(g))

Q2–11: *Fund transfer—deposits of currency, checks.* Does the term "electronic fund transfer" include deposits of currency and checks at an automated teller machine (ATM)?

A: A deposit made at an ATM or other electronic terminal is an electronic fund transfer for purposes of the regulation if there is a specific agreement between the financial institution and the consumer for the provision of EFT services to or from the particular account to which the deposit is made. (§ 205.2(g); see § 205.9(b)(1)(iv), footnote 4a)

Q2–12: *Fund transfer—payroll allotments to repay credit.* Does the term "electronic fund transfer" include preauthorized payroll allotments that are made directly to a creditor to repay a credit extension?

A: No, because these payments to a creditor do not debit or credit a consumer asset account. (§ 205.2(g))

Q2–13: *Fund transfer—withdrawal at another institution.* A financial institution issues an identification card to its customer for use at other financial institutions. To obtain funds, the consumer presents the card and signs a withdrawal authorization at the remote financial institution, which obtains approval by telephone from the account-holding institution before disbursing the funds to the consumer. The consumer's account is memo-posted for the designated amount, but debiting of the consumer's account does not occur until the account-holding institution receives the signed withdrawal authorization. Is this an electronic fund transfer?

A: No, because the fund transfer is initiated by the consumer by paper means. (§ 205.2(g))

Q2–14: *Fund transfer—check truncation.* Are check truncation systems covered?

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

Q2–15: *Fund transfer—payee information, nonelectronic form.* If the payor provides the payee information (names, account numbers, and amount of individual credits) to the financial institution holding the payees' accounts by means of a paper listing and the institution then prepares MICR-encoded de-

posit slips, are these transfers subject to the regulation?

A: These transfers are not electronic fund transfers for purposes of the regulation. (§ 205.2(g))

Q2–16: *Fund transfer—composite checks.* An employer or other payor delivers a composite check made payable to a financial institution for crediting to consumers' accounts at the institution. The payee information is contained on magnetic tape. Are these transfers subject to the regulation?

A: No, these transfers are not electronic fund transfers. (§ 205.2(g))

Q2–17: *Fund transfer—ACH.* If the financial institution in question 2–16 holds only some of the consumers' accounts and forwards the remaining credits to other institutions 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. (§ 205.2(g))

Q2–18: *Fund transfer—Social Security deposits, correspondent bank.* 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 printout listing the payees and the payment amounts, together with a composite check payable to the financial institution. Are these transfers subject to the regulation?

A: Yes. Transfers made via the ACH are electronic fund transfers. (§ 205.2(g))

Q2–19: *Fund transfer—preauthorized debits by magnetic tape/composite check.* A company obtains authorization from consumers to debit their accounts periodically. The financial institution debits the consumers' accounts in accordance with billing information contained on magnetic tape provided by the payee and sends the payee a composite check. Are these transfers subject to the regulation?

A: Yes, they are electronic fund transfers. (§ 205.2(g))

Q2–20: *Fund transfer—preauthorized debits by paper drafts, ACH.* A consumer authorizes a company to debit an account automatically for a payment. The company presents a paper draft that ultimately is debited against the consumer's account at the financial institution. Is the transfer subject to the regulation? What if the transfer is instead initiated through an ACH?

A: A transfer initiated by a draft drawn against the consumer's account is not an electronic fund transfer. Transfers via the ACH, on the other hand, are subject to the regulation. (§ 205.2(g))

Q2–21: *Fund transfer—preauthorized debits by individual checks.* A consumer signs an agreement authorizing the financial institution to make recurring payments to another party from the consumer's account or to make recurring interest payments to the consumer. The institution periodically generates an individual check to the payee by computer. Are these transfers subject to the regulation?

A: No. The transfers are initiated by check (even though the check is computer-generated) and are exempt. (§ 205.2(g))

Q2–22: *Electronic terminal—telephone bill payment.* If a consumer uses a pay-by-phone plan to initiate a payment, must the financial institution provide a terminal receipt?

A: No. A telephone is not an electronic terminal for purposes of the receipt requirement, although the transfer itself is subject to the regulation. (§ 205.2(h))

Q2–23: *Home terminals.* Some financial institutions offer home banking services to their customers. The service will typically involve the use, for example, of a home computer terminal or a television set that is linked to the financial institution's computer by means of telephone or cable-television lines. Does the in-home equipment used by the consumer to initiate fund transfers qualify as an electronic terminal, and are the transfers subject to the terminal receipt requirement?

A: Any transfer, to or from the consumer's asset account, that is initiated by means of the home banking equipment is an electronic fund transfer and is subject to the regulation. However, although not expressly excluded from the definition of "electronic terminal," the home banking equipment used by the consumer for initiating fund transfers is analogous to a telephone in function. The home banking terminal is therefore similarly excepted from the electronic terminal definition and is not subject to the terminal receipt requirement. (§ 205.2(h))

Q2–24: *Point-of-sale terminals.* Does the regulation cover POS transfers in which the consumer presents an access device, and does the terminal receipt requirement apply?

A: The regulation applies to transfers initiated at point-of-sale terminals if they capture data electronically, for debiting or crediting to the consumer's asset account, using the consumer's access device—for example, when the consumer's personal identification number is required, in part, to activate the terminal. Terminal receipts would be required in such cases. (§ 205.2(h))

Q2–25: *Teller-operated terminals.* Does "electronic terminal" include a computer terminal operated by a teller or other employee of a financial institution, for purposes of the terminal receipt requirement?

A: "Electronic terminal" does not generally include computer equipment operated by a financial institution's employees or used internally by the financial institution to process transfers. However, transfers initiated at such terminals by means of the consumer's access device (using the consumer's personal identification number, for example) are electronic fund transfers and are subject to other requirements of the regulation. If the access device is used only for identification purposes or for determining the account balance, on the other hand, the transfers are not electronic fund transfers for purposes of the regulation. (§ 205.2(h))

Q2–26: *Unauthorized transfer by institution's employee.* 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. Unauthorized electronic fund transfers exclude any transfer initiated by the financial institution or its employees. The regulation's liability provisions do not apply and the consumer has no liability for such transfers. (§§ 205.2(*l*) and 205.6)

SECTION 205.3—Exemptions

Q3–1: *Check guarantee/authorization—memo posting.* A consumer's account is memo-posted electronically 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. 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))

Q3–2: *Wire transfer—instructions on magnetic tape.* If a transfer of funds to a financial institution is sent by Fedwire or a similar network and the instructions for crediting individual consumers' accounts are transmitted on magnetic tape, are the transfers exempt?

A: Yes. A Fedwire or similar transfer of funds is exempt. (§ 205.3(b))

Q3–3: *Wire transfer—followed by ACH transfers.* A company sends 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. Are the subsequent transfers exempt?

A: No. Although the Fedwire transfer is exempt, the ACH transfers to employees' accounts are subject to the regulation. (§§ 205.3(b) and 205.2(g))

Q3–4: *Telephone transfer plans—applicability of intrainstitutional exemption.* 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 exemption for automatic intrainstitutional transfers apply?

A: No, because even though the transfer is between the consumer's accounts at the same institution, it occurs under a telephone transfer plan. (See question 3–17.) (§ 205.3(d))

Q3–5: *Compulsory use—preauthorized loan payments.* Preauthorized loan payments to the institution in which the consumer holds an account are exempt from the act and regulation 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 offer those consumers an alternative means of repayment?

A: No, it is not necessary to do so. However, if a consumer who entered into such an agreement now asks to repay by other than electronic means, the financial institution should honor the request. (§ 205.3(d)(3), § 913)

Q3–6: *Compulsory use—salary payments.* Preauthorized transfers from a financial institution to a consumer's account at the same institution are exempt from the act and regulation generally but are subject to 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?

A: Yes. The prohibition applies to all employers, including financial institutions. To comply with the law, an employer could, for example, give its employees a choice of the method of receiving payment—such as having their pay deposited at a particular institution, or receiving payment by check or cash.

As in the case of preauthorized loan payments, the compulsory-use prohibition does not require an employer to offer alternative means of payment to employees who agreed to electronic deposits at a particular financial institution before May 10, 1980. However, if an employee asks to terminate this arrangement, the employer should honor the request. (§ 205.3(d)(2), § 913)

Q3–7: *Compulsory use—payments from pledged savings.* Under certain types of graduated-payment mortgages, a pledged savings account 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 bar this type of program?

A: No. The legislative history of the prohibition against compulsory use makes clear that it is permissible to offer a reduced annual percentage rate or some other cost-related incentive for an automatic repayment feature. The special terms of the pledged-account mortgage appear to be such an incentive. (§ 205.3(d)(3), § 913)

Q3–8: *Automatic transfers—to joint account holder; to family member.* A consumer authorizes a financial institution to make periodic 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. Intrafamily transfers that occur automatically within a financial institution are also exempt. (§ 205.3(d)(1) and (4))

Q3–9: *Automatic transfers—stop-payment charges; other items.* A financial institution electronically debits or credits consumer accounts for stop-payment charges, NSF charges, overdraft charges, provisional recredits, error adjustments, and similar items. Are these transfers exempt?

A: Yes. These are intrainstitutional transfers that are initiated by the financial institution automatically, on the occurrence of certain events. (§ 205.3(d))

Q3–10: *Automatic transfers—group life insurance.* 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 be paid only 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 account holders for the total premium due under the group policy. Are these transfers exempt?

A: Yes. The debit to an individual consumer's account is an automatic transfer to an account of the financial institution. Because the group insurance can be obtained only through the institution, the transfer can be regarded as a bona fide intrainstitutional transfer, even though the funds are ultimately transferred to a third party. (§ 205.3(d)(3))

Q3–11: *Automatic transfers—check order charges.* 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. Are these transfers exempt?

A: Yes. (§ 205.3(d)(3))

Q3–12: *Automatic transfers—paired institutions in Rhode Island.* 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 intrainstitutional transfers for purposes of the exemption for automatic transfers?

A: Yes. Under the unique circumstances that exist in Rhode Island, transfers within the paired institutions qualify for intrainstitutional status. (§ 205.3(d))

Q3–13: *Automatic transfers—affiliated institutions.* Does a transfer to or from an account of the consumer at a subsidiary institution (or within the same holding company) qualify as an intrainstitutional transfer?

A: No. (§ 205.3(d))

Q3–14: *Telephone transfer plan—existence of plan.* A financial institution transfers funds in response to a consumer's telephone request. Is the transfer subject to the regulation?

A: The transfer is an electronic fund transfer for purposes of the regulation if it occurs under a written plan or agreement between the consumer and the financial institution. In the absence of a written plan or agreement, telephone transfers that are made as an accommodation to the consumer are not covered. (§ 205.3(e))

Q3–15: *Telephone transfers—existence of plan; signature card.* A signature card signed by the consumer when the account was established contains a clause authorizing the financial institution to honor the consumer's telephone request for fund transfers. It is basically a hold-harmless agreement for the institution's behalf in the event the consumer requests and the institution agrees, at the time of the request, to make the transfer. Does the signature card constitute a written agreement?

A: A hold-harmless authorization on a signature card does not, by itself, constitute a written plan or agreement for purposes of the regulation. (§ 205.3(e))

Q3–16: *Telephone transfers—existence of plan; limits for Regulation D purposes.* In order to comply with Regulation D (Reserve Requirements of Depository Institutions), an institution prints a legend on a signature card or periodic statement or in a passbook, limiting the number of telephone transfers that the consumer can make from a savings account. Is this deemed to constitute a written plan?

A: No. The legend serves as a limitation on the account and does not, by itself, constitute a written plan or agreement. (§ 205.3(e))

Q3–17: *Telephone transfer plan—manual completion.* A consumer signs a telephone transfer agreement 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?

A: No. The transfer is initiated by telephone under a telephone transfer plan and is therefore covered. The fact that the transfer is completed manually does not change this result. (See question 3–4.) (§§ 205.3(e) and 205.2(g))

Q3–18: *Telephone transfer plan—individual transfers.* 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 successive periodic payments to the designated payee by means of a single telephone call. Is this plan exempt?

A: No. The plan is covered. Even though the consumer cannot authorize recurring payments by means of one telephone request, there is an agreement that permits the consumer to initiate transfers from time to time. (§ 205.3(e))

Q3–19: *Telephone transfer plans—frequency of use.* Many consumers who sign up for a telephone transfer plan use it only occasionally, others not at all. Are transfers under the plan exempt, since the institution does not know when (or whether) a telephone transfer will be made?

A: No. Transfers under the plan are not exempt, because any transfer that does occur will be occurring under the prearranged plan. (§ 205.3(e))

Q3–20: *Trust accounts—IRAs under custodial agreements.* 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's exemption for trust accounts?

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

Q3–21: *Trust accounts—bona fide trust agreement.* 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. The Board and the staff will not make determinations in individual cases. (§ 205.3(f))

SECTION 205.4—Special Requirements

Q4–1: *Shared system—scope of disclosures.* 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 the institution 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))

Q4–2: *Shared system—disclosures on behalf of another institution.* 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 own 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) must include information within A's knowledge and the purview of A's relationship with A's customers. For example, B would disclose any electronic fund transfer charges imposed by A. (§ 205.4(a))

Q4–3: *Multiple accounts and account holders.* 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 terms and condi-

tions on both accounts. The disclosure can be given to either X or Y. (§ 205.4(b))

SECTION 205.5—Issuance of Access Devices

Q5–1: *Renewal or substitution—one-for-one rule.* When an institution issues a renewal or substitute device, may it send more than one in place of the existing device?

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

Q5–2: *Renewal or substitution—change in services.* Must a renewal or substitute access device permit exactly the same types of electronic fund transfers as the original?

A: No. The renewal or substitute device may permit the same, additional, or fewer types. If a new type is added, new disclosures may be required. (See question 7–6.) If fewer types of transfers are possible, a change-in-terms notice is required. (§§ 205.5(a)(2), 205.7(a), and 205.8(a))

Q5–3: *Renewal or substitution—successor institution.* 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 that acquires accounts or takes over the operation of an EFT system. (§ 205.5(a)(2))

Q5–4: *Renewal or substitution—pre-February 8, 1979 device.* If an institution issued an access device on an unsolicited basis before February 8, 1979 (the effective date of the act's restrictions on unsolicited issuance), may the institution now issue a validated renewal or substitute device, or may it do so only after receiving a request from the consumer?

A: If an institution does not know whether the unsolicited device became "accepted," it may issue a validated renewal or substitute device for a pre-February 2, 1979 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. (§ 205.5(a)(3))

Q5–5: *Unsolicited issuance—functions of PIN.* If an institution issues a personal identification number at the consumer's request, could this issuance constitute both (1) a way of validating the debit card and (2) the means to identify the consumer (required as a condition of imposing liability for unauthorized transfers)?

A: Yes. (§§ 205.5(b), 205.6(a)(2))

Q5–6: *Unsolicited issuance—example of noncomplying method.* An institution issues an unsolicited debit card and PIN to a consumer, thus enabling the consumer to initiate electronic fund transfers. 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 the consumer's identity. Does this procedure comply with the regulation?

A: No. In this case, the consumer could in fact use the card and PIN to initiate transfers (even though instructed not to do so); thus, the institution has not met the requirement that an unsolicited access device be unvalidated when issued. (§ 205.5(b)(1))

Q5–7: *Unsolicited issuance—example of complying method.* Same facts as in question 5–6, except that the institution's ATM system is initially programmed not to accept the consumer's card and PIN. After the consumer has requested 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 the regulation?

A: Yes, provided the institution verifies the consumer's identity by some reasonable means before reprogramming. (§ 205.5(b)(4))

Q5–8: *Unsolicited issuance—verification of*

identity. 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 consumer is not liable for any unauthorized transfers from the consumer's account. (§§ 205.5(b)(4), 205.2(a)(2), and 205.6(a)(1))

Q5–9: *Unsolicited issuance—access device with overdraft feature.* The regulation permits the unsolicited issuance of an access device. Under this provision, may an institution issue a combined credit card/access device to a consumer, without a request or application for the card?

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 the regulation's procedures for an unsolicited issuance. (§ 205.5(c)(1)(iii))

Q5–10: *Unsolicited issuance—other combined credit card/access devices.* Does the answer to question 5–9 mean that an institution is prohibited from issuing, on an unsolicited basis, any other type of combined credit card/access device?

A: No. Section 226.12(a)(1) of Regulation Z (Truth in Lending) permits creditors to issue, on an unsolicited basis, a card that may become a credit card provided that (1) the card at the time of issuance has a substantive purpose other than obtaining credit and cannot be used as a credit card and (2) any credit privilege that subsequently attaches is attached only upon the consumer's request. (The substantive purpose could be to initiate electronic fund transfers.) The rules of Regulation E on unsolicited issuance of access devices will, of course, continue to apply. (§§ 205.5(c)(2)(iii) and (b))

SECTION 205.6—Liability of Consumer for Unauthorized Transfers

Q6–1: *Unauthorized transfers—access device not involved.* If unauthorized transfers do not involve the use of an access device such as a debit card, may any liability be imposed on the consumer?

A: If the consumer fails to report an unauthorized electronic fund transfer within 60 days of transmittal of the periodic statement reflecting the transfer, the consumer could be subject to liability. (See questions 2–26 and 7–7.) (§ 205.6(a) and (b))

Q6–2: *Failure to disclose business days.* If a financial institution meets other conditions (including disclosure of liability) but fails to disclose its business days, can it hold the consumer liable for unauthorized transfers involving a lost or stolen access device?

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))

Q6–3: *Means of identification—multiple users.* 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))

Q6–4: *Means of identification—use of PIN.* Does the use of a personal identification number (PIN) or other alphabetical or numerical code 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))

Q6–5: *Application of liability provisions—examples.* What are some examples of when and how the following would apply: (1) the $500 liability limit provision, (2) both the $500

limit and the unlimited liability provisions, and (3) only the $50/unlimited liability provisions? (§ 205.6(b)(1), (2) and (3))

A: Situation 1—$500 Limit Applies

Date	*Event*
June 1	C's card is stolen.
June 2	$100 unauthorized transfer.
June 3	C learns of theft.
June 4	$25 unauthorized transfer.
June 5	Close of two 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.

Computation of C's liability:

Paragraph (b)(1) will apply to determine C's liability for any unauthorized transfers that occur before notice is given.

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

Situation 2—Both $500 and Unlimited Liability Provisions Apply

Date	*Event*
June 1	C's card is stolen.
June 3	C learns of theft.
June 5	Close of two 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 May 10 to June 9).
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 June 10 to July 9).
August 4	$300 unauthorized transfer that 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 July 10 to August 9).
August 15	$100 unauthorized transfer that 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 C's liability for unauthorized transfers that appear on the periodic statement and unauthorized 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 two business days: $0	$ 0
Amount of transfers, after close of two business days and before close of 60-day period, that would not have occurred but for C's failure to notify within two business days: $700	$500 (maximum liability)

Paragraph (b)(2)(ii) will apply to determine C'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, that would not have occurred but for C's failure to notify within 60 days: $100	$100
C's total liability:	$600

Situation 3—$50/Unlimited Liability Provisions Apply

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.

Computation of C's liability
In this situation only paragraph (b)(2) applies.

	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, that would not have occurred but for C's failure to notify within 60 days: $100	$100	
C's total liability:	$150	

Q6–6: *Knowledge of loss or theft of access device.* May a financial institution treat the consumer's receipt of a periodic statement that reflects unauthorized transfers as establishing that the consumer had knowledge of loss or theft of the access device?

A: Receipt of the periodic statement reflecting unauthorized transfers may be considered a factor in determining whether the consumer had knowledge of the loss or theft, but cannot be deemed to represent conclusive evidence that the consumer had such knowledge. (§ 205.6(b))

Q6–7: *Notice of loss or theft.* 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 the consumer's liability?

A: Yes. The institution has received notice for purposes of limiting the consumer's liability if notice is given in a reasonable manner at some other address or telephone number of the institution. (§ 205.6(c))

Q6–8: *Notice of loss or theft—content of notice.* The regulation refers to the consumer's taking such steps as are reasonably necessary to provide the financial institution with the pertinent information about the loss or theft of an access device. If a consumer is unable to furnish the institution with an account number or card number when reporting a lost or stolen access device, has the consumer given adequate notice?

A: Yes. In instances where the consumer is unable to provide the number, the notice is still valid for purposes of limiting the consumer's liability if the notification otherwise sufficiently identifies the account in question. Such a situation could arise, for example, if the consumer's wallet is stolen and the consumer is away from home. (§ 205.6(c))

Q6–9: *Applicable liability provisions—cash advances from credit line.* A credit card that 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?

A: Regulation Z applies. Since the unauthorized cash advances do not involve a consumer asset account, an electronic fund transfer has not occurred that would make the transaction subject to Regulation E. (§ 205.6(d)(2))

Q6–10: *Applicable liability provisions—checking account with overdraft feature.* If the unauthorized transfers in question 6–9 were instead withdrawals from a checking account and they resulted in cash advances from an overdraft line of credit, which liability provisions apply?

A: Regulation E applies, because the transfer

was an electronic fund transfer; there was an extension of credit only as a consequence of the overdraft protection feature on the checking account. (§ 205.6(d)(1))

Q6–11: *Applicable liability provisions—withdrawals from checking account/credit line.* If a consumer's access device is also a credit card and the device is used to make unauthorized 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 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))

SECTION 205.7—Initial Disclosure of Terms and Conditions

Q7–1: *Timing of disclosures—early disclosure.* An institution is required to give initial disclosures either (1) when the consumer contracts for an EFT service or (2) before the first electronic fund transfer to or from the consumer's account. If an institution provides initial disclosures when a consumer opens a checking account and the consumer does not sign up for an EFT service until 11 months later, has the institution satisfied the disclosure requirements?

A: Yes, if the EFT contract is between the consumer and a third party for preauthorized electronic transfers to be initiated by the third party to or from the consumer's account. In this case, the financial institution need not repeat disclosures previously given unless the terms and conditions required to be disclosed are different from those that were given.

If, on the other hand, the EFT contract is directly between the consumer and the financial institution—for the issuance of an access device, or for a telephone bill-payment plan, for example—the institution should provide the disclosures at the time of contracting. Disclosures given before the time of contracting will satisfy the regulation only if they occurred in close proximity thereto. (§ 205.7(a))

Q7–2: *Timing of disclosures—Social Security direct deposits.* In the case of Social Security direct deposits, the financial institution receives no prenotification. How can the institution comply with the disclosure requirements?

A: Before direct deposit of Social Security payments can occur, both the consumer and the institution must complete a Form 1199. The institution can make disclosures at that time. (§ 205.7(a))

Q7–3: *Form of disclosures.* 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))

Q7–4: *Spanish language disclosures.* In Puerto Rico, where communications normally are in Spanish, may a financial institution provide the required disclosures in Spanish?

A: Yes, disclosures in Spanish will satisfy the readily understandable requirement, provided that disclosures in English are given to consumers who request them. (§ 205.7(a))

Q7–5: *Disclosures covering all EFT services offered.* Must the disclosure statement given to a consumer relate only to the particular EFT services that the consumer will receive?

A: An institution may provide a disclosure statement covering all the EFT services that the institution offers, even if some consumers receiving the disclosures have not arranged to use all the services. (§ 205.7(a))

Q7–6: *Addition of new EFT services.* A consumer signs up for an EFT service and receives disclosures. If the consumer later arranges for other EFT services from the same

institution, must additional disclosures be given?

A: Yes, if the new service is subject to terms and conditions different from those given in the initial disclosures. Only the disclosures for the additional service need be given. This is also the case if the institution begins to furnish a new service upon renewal of an access device. (See question 5–2.) (§ 205.7(a))

Q7–7: *Disclosures about unauthorized transfers—preauthorized transfers.* If the only electronic fund transfers 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 possible unauthorized transfers?

A: Yes, unless the institution chooses not to impose any liability. The disclosure of liability should reflect that liability could exist if the consumer fails to report unauthorized transfers that are reflected on a periodic statement. (See question 6–1.) (§ 205.7(a)(1) and (2))

Q7–8: *Disclosures about unauthorized transfers—no liability imposed.* If an institution chooses not to impose any liability for unauthorized electronic fund transfers, must it make any liability disclosure?

A: No; the disclosure is inapplicable. If the institution later decides to impose liability, however, it must make the liability disclosure before it can do so. (§ 205.7(a)(1) and (2))

Q7–9: *Summary disclosure of rights.* Several required disclosures relate to a consumer's rights under the act and regulation. Must the disclosures spell out these rights in full, as they are set forth in the act and regulation?

A: No. These matters can 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))

Q7–10: *Type of transfer—preauthorized transfers.* Must preauthorized transfers be disclosed as a type of electronic fund transfer that the consumer may make?

A: No. An institution need not list preauthorized transfers as one of the types of transfers that a consumer can make, although it is permissible to do so. (§ 205.7(a)(4))

Q7–11: *Limitations on transfers.* 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 regulation provides, however, that to the extent confidentiality of certain details is determined by the institution to be *essential* to the security of the account or the system, the details may be withheld—but the fact that there are limitations must be disclosed. (§ 205.7(a)(4))

Q7–12: *Disclosure of charges—same per-item charge for EFT/non-EFT.* 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 nonelectronic transfers, must the EFT charge be disclosed?

A: Yes, such charges must be disclosed. If an institution does not wish to itemize the various charges on the disclosure statement, it may disclose them in an accompanying document given along with the principal disclosure statement. If an insert is used, the disclosure statement must refer to the accompanying document. (§ 205.7(a)(5))

Q7–13: *Disclosure of charges—charge imposed under certain conditions.* If an institution imposes per-item charges only under certain conditions (when the transactions for the cycle exceed a certain number, for example), must the institution disclose what those conditions are?

A: Yes. Again, this information may be provided in a separate document enclosed with and referenced by the EFT disclosures. (§ 205.7(a)(5))

Q7–14: *Disclosure of charges—fixed service charge.* If a fixed service charge is assessed only when the balance in the account falls below a certain minimum, must it be disclosed?

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

Q7–15: *Disclosure of charges—stop-payment/dishonor/overdraft.* Does the regulation require disclosure of charges for stop-payment orders, dishonor, or overdrafts?

A: No. These are not charges for electronic fund transfers or for the right to make such transfers. Disclosure is permissible, however. (See model disclosure clause A(9) in appendix A.) (§ 205.7(a)(5))

Q7–16: *Disclosure about privacy of account information.* 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. If 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: The required disclosure relates only to account #1, which has an EFT service. 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))

Q7–17: *Disclosure about privacy—meaning of third parties.* 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))

Q7–18: *Error-resolution disclosure.* The regulation contains an error-resolution notice. Is this notice a model disclosure clause that the institution may use at its option?

A: The error-resolution notice is a required disclosure and must be given in a form substantially similar to that appearing in the regulation. An institution may, however, delete inapplicable provisions (e.g., the requirement of written confirmation of an oral notification), substitute trade names, substitute substantive state law requirements that afford greater consumer protection than the regulation, or even use different wording—so long as the substance of the notice remains substantially the same. (§ 205.7(a)(10))

Q7–19: *Disclosures involving telephone numbers.* 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 use different telephone numbers for one or more of these purposes. (§ 205.7(a)(2), (6), (7), and (10))

Q7–20: *Disclosures involving telephone numbers.* Must the telephone number (or list of numbers) referred to in question 7-19 be incorporated into the text of the disclosure to which it relates?

A: No. The institution may instead insert a reference to a telephone number that is readily available to the consumer (for example, "Call your branch office. The number is shown on your periodic statement."), except for the telephone number to be used for reporting a lost or stolen access device. In the latter case, the institution must disclose a specific telephone number on or with the disclosure statement. (§ 205.7(a)(2), (6), (7) and (10))

SECTION 205.8—Change in Terms; Error-Resolution Notice

Q8–1: *Terms requiring change-in-terms notice.* What categories of initial disclosures are subject to the change-in-terms notice requirement?

A: Examples of changes that must be disclosed are: an increase in the consumer's liability for unauthorized electronic fund transfers; a decrease in available types of electronic

fund transfers; an increased strictness in limitations on frequency or dollar amount of transfers (with certain exceptions; see question 8-4); an increase in charges for electronic fund transfers or the right to make transfers, or the imposition of such charges for the first time. (§ 205.8(a))

Q8–2: *Change in telephone number or address.* 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. (§§ 205.8(a) and 205.6(a)(3))

Q8–3: *Closing down of ATMs.* If an institution closes down some of its automated teller machines, must it disclose this change?

A: No; such a change does not relate to an item required to be given in the initial disclosures. (§§ 205.8(a) and 205.7(a))

Q8–4: *Changes in limitations on transfers.* An institution limits the amount of money that consumers can withdraw daily from its ATMs. Because 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 certain 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 dollar 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) and 205.7(a)(4))

Q8–5: *Termination of EFT service.* If an institution terminates a consumer's ATM or POS service by cancelling the access device, must it provide a disclosure?

A: No. But if the service involves credit (because the device is a combined credit card/access device, for example), notification under section 202.9(a) of Regulation B (Equal Credit Opportunity) may be required. If a credit report was involved in the decision to cancel the combined card, notification under section 615(a) of the Fair Credit Reporting Act also may be required. (§ 205.8(a))

Q8–6: *Form of change-in-terms notice.* 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). No specific form or wording is required. The notice may appear on a periodic statement. (§ 205.8(a))

Q8–7: *Error-resolution notice—no periodic statements sent.* 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. If 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))

Q8–8: *Error-resolution notice—changeover from one form to other.* 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 the long form, the first long-form notice should be sent no later than 12 months after the last short-form notice. (§ 205.8(b))

SECTION 205.9—Documentation of Transfers

Q9–1: *Receipts—furnished only on request.* An institution's electronic terminals are programmed to provide a receipt only if the consumer elects to receive one by pressing a key at the time of the transfer. Does this comply with the regulation?

A: Yes; the regulation merely requires that a

receipt be made available to the consumer at the time of the transfer. (There is a limited exception to the receipt requirement under section 205.9(f) for certain cash-dispensing machines, but only if the machines were purchased or ordered before February 6, 1980.) (§ 205.9(a))

Q9–2: *Receipts—available through third parties.* 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 (merchants or other financial institutions, for example) to make the receipt available. However, the financial institution holding the consumer's account or providing the EFT service to the consumer remains responsible for the availability of the receipt. (§ 205.9(a), footnote 2)

Q9–3: *Receipts—information displayed on screen.* Does a financial institution comply with the receipt requirement if it simply prints the receipt information on a display screen?

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

Q9–4: *Receipts—form.* Are there special rules regarding type size, length of receipt, and so forth?

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. The institution may document individual transfers on separate receipts, even though the consumer makes multiple transfers at the same time, or it may document them on a single receipt. (§ 205.9(a))

Q9–5: *Receipts—transfer not completed.* Does the terminal receipt requirement apply if a transfer is initiated but not completed (because the ATM is out of currency, for example)?

A: No; however, most terminals generate a receipt even if a transfer is not completed because of a terminal malfunction or because the consumer decided not to complete the transfer. (§ 205.9(a))

Q9–6: *Receipts—not furnished; inadvertent error.* Does a violation result if a terminal runs out of paper and a receipt is not made available to the consumer?

A: No, so long as it is a bona fide unintentional error and the financial institution maintains procedures reasonably adapted to avoid such an error. (§ 205.9(a), § 915(c))

Q9–7: *Receipts—date.* May a financial institution disclose an accounting or business date on the terminal receipt?

A: The calendar date on which the consumer uses the electronic terminal must be disclosed; an accounting or business date may be disclosed in addition, so long as the dates are clearly distinguished. If a transfer is initiated late one day and completed on the next day, the financial institution may disclose either calendar date on the receipt. (§ 205.9(a)(2))

Q9–8: *Receipts—access to multiple accounts of same type.* 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: Some examples: If an access device can be used by the consumer to make transfers to or from two checking accounts, the terminal receipt must specify which of the two has been accessed; a financial institution could disclose a cash withdrawal as "withdrawal from checking I" or "withdrawal from checking II." If only one account besides the primary checking account can be debited by the access device, it could be identified as "withdrawal from other account." The number of the account being accessed could be used both to identify the type of account and to serve as the unique identifier of the account. (§ 205.9(a)(3) and (4))

Q9–9: *Receipts—type of account in POS transfer.* A footnote states that the type of account

need not be identified if the access device used to initiate the transfer can 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?

A: The exception is generally not available for ATM transfers, even if the access device is capable of accessing only one account at an ATM. (There is a limited exception for certain cash-dispensing machines under section 205.9(f), but only if the machines were purchased or ordered before February 6, 1980.)

The exception for POS transfers is available even if the access device can access more than one account when used at a different type of facility, such as an ATM. Moreover, account refers only to asset accounts. If a consumer can use an access device at a POS terminal to debit an asset account and also to access a credit line, for example, the exemption is still available. (§ 205.9(a)(3), footnote 3)

Q9–10: *Receipts—type of account, off-line ATMs.* 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 permitted only to a primary account designated by the consumer in advance. The consumer is informed at the ATM that only the primary account can be accessed at that time. May the receipt describe the transfer as a "withdrawal from checking," for example, without a unique identification of the account?

A: Yes. Because the consumer can access only the primary account at the time of the off-line transfer, unique identification of the account is not required. (§ 205.9(a)(3), footnote 3)

Q9–11: *Receipts—unique identifier.* Does the financial institution have flexibility in providing a number or code that uniquely identifies the consumer, the consumer's account, or the access device used to initiate a transfer?

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

Q9–12: *Receipts—terminal location.* A financial institution wants to disclose the location of the terminal on the terminal receipt by giving a description in one of the three forms prescribed in the regulation. How may it satisfy the requirement?

A: The institution may, for example, preprint the terminal locations on its receipts. An institution that owns or operates terminals at only one location may use its name (such as "First Nat'l"). An institution with terminals in several locations must use a street address or a generally accepted name for a specific location. (§ 205.9(a)(5) and (b)(1)(iv))

Q9–13: *Receipts—omission of third-party name.* 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 if the consumer provides the name in a form that the electronic terminal cannot duplicate on the receipt. For example, if a consumer initiates 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, of course.) On the other hand, if the consumer keys in the identity of the payee (by means of a code number, for example) the receipt must name the payee or use a code that is explained elsewhere on the receipt. The institution may, for example, preprint a series of codes and the specific payees to which they relate on the form, and print the correct code at the time of the transfer. (§ 205.9(a)(6))

(The regulation does not apply to bill payments made at an ATM by check or currency. See question 2–10.)

Q9–14: *Receipts—deposit receipt as proof of payment.* Section 906(f) of the act provides that required documentation constitutes prima facie proof of payment to another person; does this provision apply to a terminal receipt documenting a deposit?

A: No, because there is no payment to another person. (§ 205.9(a)(6))

Q9–15: *Periodic statements—when required.* The regulation requires periodic statements to be sent for any account to or from which electronic fund transfers can be made. What does this mean?

A: The requirement applies only to those accounts for which an agreement has been entered into (1) between the consumer and the financial institution for EFT services to or from the account (including accounts for which an access device has been issued to the consumer) or (2) 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 documentation requirements under the regulation.)

If there is no specific agreement for EFT services, the periodic statement and other 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))

Q9–16: *Periodic statements—frequency.* How often must periodic statements be sent for accounts that are subject to the regulation?

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 the account can be *credited* electronically by other than preauthorized deposits. If no transfers occur during some months, the statement must be provided at least quarterly.

There are special exceptions for accounts on which the only EFT service relates to preauthorized credits. The institution may send quarterly statements or, if the account is a passbook account, the institution may simply update the passbook when it is presented for updating (with the amount and date of each EFT since the last update). (§ 205.9(b), (c), and (d))

Q9–17: *Periodic statements—inactive accounts.* Must quarterly statements 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 inactive. The determination that certain accounts are inactive must be made by the institution. (§ 205.9(b) and (d))

Q9–18: *Periodic statements—customer pick-up.* May a financial institution permit consumers to call for their periodic statements?

A: Yes, but the institution may not require it. (§ 205.9(b) and (d))

Q9–19: *Periodic statements—periodic cycles.* May financial institutions send out a periodic statement each time an electronic fund transfer occurs?

A: No. Although statements may be sent on a cycle that is shorter than monthly, the statements must correspond to an actual periodic cycle. (§ 205.9(b))

Q9–20: *Periodic statements—variance in cycle.* Must a cycle for a periodic statement be exactly a month, quarter, or other regular period?

A: No. Cycles will be considered equal if the number of days in the cycle does not vary by more than four days from the regular day or date of the periodic statement. It is also permissible to stagger the statement cycle for different accounts for operational or other reasons. (§ 205.9(b) and (d))

Q9–21: *Periodic statements—summary limited to EFT activity.* Certain consumer passbook accounts can be debited electronically and thus do not qualify for the exception from the periodic statement requirement. The financial institution continues to use the passbook as the primary means for displaying all transfers (electronic and nonelectronic) on the account. May the institution comply with the

regulation by providing a summary periodic statement covering only the electronic activity?

A: Yes. Other required disclosures (such as charges, account balances, and address and telephone number for inquiries) must, of course, also be included. (§ 205.9(b))

Q9–22: *Periodic statements—transfers between consumer's accounts.* A consumer transfers funds between two accounts at the same financial institution. Must the institution repeat information describing the transfer on each statement?

A: If the institution sends the two statements to the consumer within a few days of each other (or if a combined statement is used), descriptive information need not be duplicated. In this case, descriptive information on one of the statements meets the regulation's requirements concerning both accounts so long as the information on the second statement is sufficient to allow the consumer to identify the transfer. (§ 205.9(b))

Q9–23: *Periodic statements—accompanying documents.* A footnote in the regulation permits details about each transfer to be given on documents accompanying the periodic statement; it also permits codes to be used, so long as they are explained on the statement or accompanying documents. How can a financial institution take advantage of this provision?

A: This provision gives financial institutions that do not use descriptive statements an alternative means for meeting the documentation requirements. Some examples: An institution could include copies of terminal receipts to reflect transfers initiated by the consumer at electronic terminals. It could enclose posting memos, deposit slips, and other documents that, together with the statement, disclose all the required information. It could use codes (for names of third parties, terminal locations, etc.) and explain the information to which they relate on an accompanying document. (§ 205.9(b)(1), footnote 4)

Q9–24: *Periodic statements—accompanying documents.* May required information other than information about each electronic transfer appear on accompanying documents?

A: Yes. The regulation imposes no page requirements for periodic statements; thus, the required information need not all appear on a single page. (See question 9–34.) (§ 205.9(b))

Q9–25: *Periodic statements—information obtained from others.* For purposes of periodic statement disclosures, may a financial institution unconditionally rely on data transmitted to it by another financial institution or other party (such as a merchant)?

A: Independent verification of the data for each transfer is not required. Financial institutions must, however, 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 section 915 of the act for bona fide unintentional errors.) (§ 205.9(b)(1))

Q9–26: *Periodic statements—terminal location omitted; error.* When a consumer makes a deposit at an ATM, the institution need not identify the ATM location on the periodic statement. Does the consumer's request for the terminal location (or any other information about the deposit) constitute notification of an error under the regulation?

A: Yes, if the request for the location is made in accordance with the requirements of the error-resolution section. On the other hand, if the consumer merely calls to ascertain whether or not a deposit (ATM, preauthorized, or any other type of electronic transfer) was credited to the account, the error-resolution procedures do not apply. (§§ 205.9 (b)(1)(iv), footnote 4a, and 205.11 (a)(7))

Q9–27: *Periodic statements—type of POS transfer.* How should the periodic statement identify a transfer that takes place at a merchant's POS terminal—as a purchase or sale of goods or services, or as a payment to a third party?

A: There is no prescribed terminology. (§ 205.9(b)(1)(iii))

Q9–28: *Periodic statements—transferor/federal recurring payments.* How should the name of the third party be disclosed on the periodic statement for federal recurring payments?

A: For any federal recurring payment (such as Social Security, military or civil service pensions/payrolls) the third-party name may be disclosed as "U.S. gov't," "fed sal," or any other designation indicating that the payor is the United States government. (§ 205.9(b)(1)(v) and (e))

Q9–29: *Periodic statements—multiple transferees.* 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))

Q9–30: *Periodic statements—consumer as third-party payee.* If a consumer makes an electronic fund transfer to another consumer, may the financial institution identify 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))

Q9–31: *Periodic statements—charges.* What charges must be disclosed on the periodic statement?

A: Financial institutions should disclose either (1) the total charges assessed against the account during the statement period for electronic fund transfers or the right to make transfers or (2) the total charges assessed during the period for account maintenance. (§ 205.9(b)(3))

Q9–32: *Periodic statements—opening and closing balances.* The financial institution is required to disclose an opening and a closing balance in the consumer's account. May these balances be based solely on the electronic activity?

A: No. The balances must take into account both electronic and nonelectronic activity. (§ 205.9(b)(4))

Q9–33: *Periodic statements—telephone numbers.* A financial institution is required to disclose a telephone number for error resolution and (if it is using the telephone alternative for preauthorized credits) a number for the consumer to call to ascertain whether a preauthorized credit has occurred. Would disclosure of a single telephone number for both purposes, preceded by the "direct inquiries to" language, satisfy both requirements?

A: Yes. (§ 205.9(b)(5) and (6))

Q9–34: *Periodic statements—telephone numbers.* May the institution disclose the telephone number for inquiring about preauthorized transfers to the consumer's account on a credit advice or other document enclosed with the periodic statement?

A: Yes. (See question 9–24.) (§ 205.9(b)(6))

Q9–35: *Receipts/periodic statements—incorrect deposit amount.* What does the regulation require if the amount of a deposit, as verified by the institution, turns out to be different from the amount entered by the consumer into the terminal?

A: An institution need not notify the consumer about the discrepancy per se. The next periodic statement should reflect the proper amount of the deposit or, depending on the institution's bookkeeping 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(a)(1) and (b)(1)(i))

Q9–36: *Receipts/periodic statements—type of transfer.* What degree of specificity is required on terminal receipts and periodic statements for the type of transfer?

A: Common descriptions are sufficient. There is no prescribed terminology, although some

examples are contained in the regulation. On periodic statements, for example, it is enough simply to show the amount of the transfer in the debit or the credit column if other information on the statement (for example, a terminal location or third-party name) enables the consumer to identify the type of transfer. (§ 205.9(a)(3) and (b)(1)(iii))

Q9–37: *Receipts/periodic statements—type of account; generic descriptions.* The regulation permits a withdrawal from a consumer's share draft account at a credit union to be identified as a "withdrawal from checking." What is this provision intended to accomplish?

A: The regulation permits generic descriptions of the type of account to facilitate operations in a shared EFT network. For example, in a shared system, a credit union member may be able to initiate transfers to or from a share draft account at a terminal owned or operated by a bank, which may describe accounts only as "checking" or "savings" accounts (and be unable to generate a receipt describing the transfers as to or from a "share draft" account). (§ 205.9(a)(3) and (b)(1)(iii))

Q9–38: *Receipts/periodic statements—location code.* May a transaction code be used to 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))

Q9–39: *Receipts/periodic statements—shared system; unique codes.* In a shared or interchange environment, must the various codes used on terminal receipts and periodic statements be unique?

A: In shared or interchange systems, identical numbers may well appear on the consumer's periodic statement for terminals operated by different institutions or merchants; this is permissible. (§ 205.9(a) and (b))

Q9–40: *Receipts/periodic statements—omission of city name.* In disclosing the terminal location on a terminal receipt and on the periodic statement, a financial institution uses a generally accepted name (such as a branch name) for a specific location. May the city be omitted when the branch name and the city are the same?

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

Q9–41: *Receipts/periodic statements—terminal location/third party.* May a single listing be used to identify both 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 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))

Q9–42: *Receipts/periodic statements—intermediate party.* If a party (a merchant or another financial institution, for example) processes an electronic fund transfer but 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))

Q9–43: *Receipts/periodic statements—account-holding institution as third party.* The regulation requires identification of the third party to or from whom a transfer is made, on the terminal receipt and periodic statement. Is an account-holding financial institution considered a third party for purposes of this requirement?

A: Yes. A third party is generally someone other than the consumer and the financial institution. However, section 906(f) of the act requires that any documentation provided to the consumer shall constitute prima facie proof of a transfer to another person, and applies to documentation of payments made to the account-holding institution.

The institution need not be named on the

receipt and periodic statement as the payee if the fact that payment was made to the institution is sufficiently indicated by other information (for example, "loan payment from checking," if this can be taken to mean that the payment was to the account-holding institution). (§ 205.9(a)(6) and (b)(1)(v))

Q9–44: *Receipts/periodic statements—consistency in third-party identity.* 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 d.b.a. (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(a)(6) and (b)(1)(v))

Q9–45: *Passbook updates—when required.* 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 since the preceding update) when the consumer presents it for updating. (§ 205.9(c))

Q9–46: *Passbook accounts—telephone notice alternative.* May an institution utilize the telephone notice alternative for passbook accounts that do not receive periodic statements?

A: Yes. (See question 10–12.) (§§ 205.9(c) and 205.10(a)(1)(iii))

Q9–47: *Passbook updates—discarding of data.* May a financial institution set a cut-off period for retention of information awaiting entry in the consumer's passbook?

A: No. However, the financial institution need not update a passbook immediately upon presentation if the information is not readily available. It may 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))

Q9–48: *Passbook updates—periodic transmittals.* 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: Yes. (§ 205.9(c))

Q9–49: *Quarterly statements—compliance with regular requirements.* The regulation requires quarterly periodic statements for non-passbook accounts that cannot be accessed electronically except by preauthorized credits. Must these statements meet the periodic statement requirements of the regulation?

A: Yes. The statements must comply with all requirements for periodic statements. The only difference is that they may be sent quarterly. (§ 205.9(d))

SECTION 205.10—Preauthorized Transfers

Q10–1: *Notice of credit—choice of type.* Must consumers be given 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 notice the institution wants to use. The institution may use different methods for different types or series of preauthorized transfers. (§ 205.10(a)(1))

Q10–2: *Notice of credit—when receipt guaranteed.* A financial institution guarantees its customers that scheduled Social Security transfers will be credited to their accounts whether or not the institution actually receives the funds on time. Does the notice requirement apply?

A: Yes, unless the institution has adopted the negative-notice option, in which case sending the notice might confuse the consumer. (§ 205.10(a)(1))

Q10–3: *Notice provided by payor.* Are there in-

stances 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 of receipt. (§ 205.10(a)(1))

Q10–4: *Notice provided by payor—form.* If the payor-employer provides notice to a consumer that a transfer has been initiated, what type of notice must it give?

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

Q10–5: *Content of notice.* Is there suggested language for the notice regarding receipt of a preauthorized transfer?

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

Q10–6: *Current account balance.* May an institution give notice by informing the consumer of the current balance in the account?

A: Such a notice will not satisfy the notice requirement. (§ 205.10(a)(1))

Q10–7: *Periodic statement as notice.* If a periodic statement sent within two business days reflects the transfer, can it serve as positive notice of receipt?

A: Yes. Similarly, the absence of the deposit entry (on a periodic statement sent within two business days of the scheduled transfer date) will serve as negative notice. (§ 205.10(a)(1))

Q10–8: *Negative notice—timing.* If 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. If the deposit did not arrive by the close of the second business day, however, a notice would have to be sent at that time. (§ 205.10(a)(1)(ii))

Q10–9: *Negative notice—cessation of transfers.* 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: No. In the absence of information from the consumer or the payor that the transfers have been terminated, the institution should send the notices at least three times; or, it may notify the consumer that the institution believes the transfers have stopped and that therefore no further negative notices will be sent. (§ 205.10(a)(1)(ii))

Q10–10: *Telephone notice—timing.* 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 information is not immediately available—because of a time lapse between the scheduled transfer date and the consumer's call, for example—the institution should respond within two business days. (§ 205.10(a)(1)(iii))

Q10–11: *Telephone notice—availability.* The regulation requires that the telephone line for inquiries about preauthorized credits be readily available. What does this mean? Also, must the institution provide a toll-free number or accept collect calls?

A: To satisfy the readily-available standard, the financial institution should provide enough lines so that consumers get a reasonably prompt answer, using any answering system it wants.

As to toll-free calls, an institution should provide—within its primary service area—a telephone number to which calls can be made without charge to the customer. In some cases, a financial institution will have customers who reside away from the city or state where the financial institution normally conducts business; the financial institution need not provide a toll-free number or accept collect long-distance calls from these customers.

The financial institution need not provide 24-hour telephone lines to respond to consumers' inquiries. Telephone service during normal business hours will suffice. (§ 205.10(a)(1)(iii))

Q10–12: *Telephone notice—passbook accounts.* An institution that uses the telephone alternative for preauthorized credits is required to give the telephone number 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 might the financial institution comply with the second condition?

A: The institution may take any reasonable measure to provide the number to consumers. It may stamp the telephone number in the passbook, for example, or include the telephone number with the annual error resolution notice. (§ 205.10(a)(1)(iii))

Q10–13: *Preauthorized credits—availability of funds.* When must funds deposited to an account via preauthorized transfers be available to the consumer?

A: The regulation requires that preauthorized transfers be credited as of the day the funds for the transfer are received. The determination of when these funds are available to the consumer for withdrawal will depend on applicable state law, if any, and on other federal regulations, if any. (§ 205.10(a)(2))

Q10–14: *Preauthorized credits—posting schedule.* If a financial institution normally posts credits to customers' accounts in the morning and it receives an ACH tape in the afternoon, may the institution delay the posting until the next morning?

A: Yes. An institution need not 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))

Q10–15: *Preauthorized credits—funds received prior to agreed crediting date.* Is a financial institution ever permitted to credit a consumer's account later than the date the funds are received from the payor?

A: Yes. If the financial institution and the payor have agreed that the payor will transmit funds to the institution in advance of the date on which the institution is to credit consumers' accounts (for example, two days in advance of pay day), the institution may credit the accounts as of the date agreed upon with the payor (that is, pay day). (§ 205.10(a)(2))

Q10–16: *Preauthorized debits—preexisting authorizations.* 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))

Q10–17: *Preauthorized debits—preexisting authorizations.* If a consumer's existing authorization, which authorizes the institution or the designated payee to debit the consumer's account, does not specify that the debiting is to occur electronically (or specifies that debiting is to occur by paper means), must a new authorization be obtained in order to debit the account electronically?

A: The regulation does not require that new authorizations be obtained. (§ 205.10(b))

Q10–18: *Preauthorized debits—authorization obtained by third party.* 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 obtain the authorization in writing or to give a copy to the consumer, is the account-holding financial institution in violation of the regulation?

A: No. The party that obtains the authorization—in this instance, the third party—is the person that is subject to these requirements. (§ 205.10(b))

Q10–19: *Preauthorized debits—stop-payment order.* On October 10, a consumer orally orders the financial institution to stop payment on a $30 utility bill 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 company resubmits the $30 debit. Must the financial institution stop payment on the resubmitted item?

A: Yes. The institution may accomplish this, for example, by suspending all subsequent payments to the designated payee until the consumer notifies the institution that payments should resume. (§ 205.10(c))

Q10–20: *Ten-day notice of varying debits—preexisting authorizations.* If 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 consumer has been informed of the right to receive notice of such varying payments and the consumer has authorized payment within a specified range of amounts. (§ 205.10(d))

Q10–21: *Ten-day notice—payee's failure to provide.* Does the financial institution holding the consumer's account have any liability for the designated payee's failure to provide notice of varying amounts?

A: No. (§ 205.10(d))

SECTION 205.11—Procedures for Resolving Errors

Q11–1: *Transfers—initiated by institution.* If a transfer is initiated by a financial institution or its employee without the consumer's authorization, does it constitute an error?

A: Yes. It constitutes an incorrect electronic fund transfer unless the transfer was authorized, for example, by a court order. (§ 205.11(a))

Q11–2: *Loss or theft of access device.* If a consumer reports the loss or theft of an access device, is the institution required to comply 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))

Q11–3: *Error asserted after account closed.* Must an institution comply with the error-resolution procedures if 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)

Q11–4: *Request for documentation or information.* May a financial institution assume, absent a statement to the contrary by the consumer, that a request for duplicate copies of documentation or other information is for tax or other record-keeping purposes and therefore not an alleged 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))

Q11–5: *Statement held for consumer—timing of error rights.* A consumer has arranged for periodic statements to be made available at the financial institution and held until called for. For purposes of the 60-day time limits for alleging an error, when is the statement for a particular cycle deemed to have been transmitted?

A: When it is first made available to the consumer. (See question 9–18.) (§ 205.11 (b)(1)(i)(A))

Q11–6: *Failure to provide statement—timing of error rights.* How quickly must a consumer give notice that the financial institution failed to provide a periodic statement?

A: The notice of error must be received by the institution within 60 days from the date on which the statement should have been transmitted. (§ 205.11(a)(7) and (b)(1)(i))

Q11–7: *Discovery of error by institution.* Does discovery of an error by the financial institution require that the institution comply with the error-resolution procedures?

A: No. The procedures need be followed only when a notice of error is received from the consumer or an agent of the consumer. (§ 205.11(b)(1))

Q11–8: *Content of error notice.* Must the notice of error given to the financial institution contain the consumer account number?

A: No, so long as the notice enables the institution to identify the account in question. (§ 205.11(b)(1)(ii))

Q11–9: *Written confirmation of error notice.* Must a financial institution have referral procedures for forwarding a written confirmation of error that is sent to the wrong address?

A: No. The referral requirement does not apply to a written confirmation that is sent to an address other than the one specified to the consumer at the time oral notice was given. (§ 205.11(b)(1)(i), footnote 10, and (b)(2))

Q11–10: *Written confirmation—timing of investigation.* May a financial institution delay its investigation until it has received a written confirmation?

A: No. The investigation must begin promptly upon receipt of the oral notice. This requirement is not affected by the institution's request for written confirmation. (§ 205.11(c)(1), (2), and (3))

Q11–11: *Deadlines for investigation of error.* May a financial institution take the full 10 business days or 45 days to investigate?

A: The requirement is to investigate promptly; the stated time periods are maximums. (§ 205.11(c)(1) and (2))

Q11–12: *Request for documentation—facsimile or photocopy.* When a consumer requests documentation, may the institution provide a facsimile or a photocopy?

A: Yes, so long as the photocopy or facsimile is legible. (§ 205.11(d)(1) and (f)(3))

Q11–13: *Request for documentation—third parties.* 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 error-resolution requirements?

A: By a timely response to the effect that the institution does not have the requested material. (§ 205.11(d)(2))

Q11–14: *Scope of investigation—bill payment to third party.* 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?

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

Q11–15: *Scope of investigation—preauthorized credits.* A consumer alleges an error regarding an EFT direct deposit of payroll. The financial institution and the payor have an agreement with respect to honoring an access device at point-of-sale terminals, but there is no agreement with the payor regarding the direct deposit of payroll. May the financial institution limit its investigation of the direct-deposit error to a review of its own records?

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

Q11–16: *Scope of investigation—POS transfers.* A merchant agrees to honor a financial institution's access devices at the merchant's POS terminals. What is the institution's duty to investigate when a consumer alleges an error involving a transfer to the merchant via the POS terminal?

A: The financial institution must contact the merchant directly or, in systems like the national credit card networks, indirectly by contacting the merchant's bank. 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 transfer corresponds to the amount of the consumer's purchase. A financial institution is not re-

quired, however, to take such steps as sending an employee to the merchant's place of business to ascertain the correct cost of the merchandise purchased in the transaction. (§ 205.11(d)(2))

Q11–17: *Error found—different from that alleged.* When a financial institution determines that an error occurred in a manner or amount different from that described by the consumer, must the institution comply with both (1) the procedures applicable when the institution determines that no error occurred and (2) the procedures applicable when it determines that an error did occur?

A: Yes, to the extent that the procedures are relevant. In such a case, the institution may give notice of correction and the explanation either separately or in a combined form. (§ 205.11(e) and (f))

Q11–18: *Crediting of interest.* Does the requirement to credit interest apply to all error corrections?

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

Q11–19: *Refunding of fees and charges.* Is the financial institution required, when it corrects an error, to refund all fees or charges imposed on the account?

A: The financial institution is required to refund those fees or charges that were imposed as a consequence of the error. In a combined credit/EFT transaction, for example, the financial institution must refund any finance charges incurred as a result 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))

Q11–20: *Notice of correction—timing.* The regulation requires notice of a correction to be given promptly. Is this requirement satisfied if the institution includes the notice on a periodic statement mailed within the 10 business days or 45 calendar days?

A: Whether such a mailing will be prompt enough to satisfy the requirement must be determined by the financial institution, taking into account the specific facts involved. (§ 205.11(e), footnote 12)

Q11–21: *Written explanation—timing.* If an institution completes its investigation on day 45 and determines that no error occurred, must it send the written explanation that same day?

A: Under the 45-day limit, the financial institution has an additional 3 business days to send the explanation. If, however, the financial institution is proceeding under the 10-business-day provision and determines on day 10 that no error occurred, the institution does not have an additional 3 business days; it must send the explanation on day 10. (§ 205.11(f)(1))

Q11–22: *Debiting of recredited funds—items to be honored.* If a financial institution debits a consumer's account for provisionally recredited funds, must it honor all items presented during the succeeding five business days?

A: No. The financial institution need honor only those items that would have been paid, under the bank's normal operating procedures, if the account had not been debited. For example: if an account with a balance of $155 is debited in the amount of $100 for provisionally recredited funds (leaving a balance of $55) and checks for $150 and $200 are presented by third parties, the financial institution need honor only the $150 item. Moreover, the institution need honor only items (including preauthorized transfers) payable to third parties. It need not permit ATM or other cash withdrawals by the consumer. (§ 205.11(f)(2)(ii))

Q11–23: *Debiting of recredited funds—an alternative procedure.* If 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))

Q11–24: *Debiting of recredited funds—charges for overdrafts.* May a financial institution charge the consumer for overdrafts which occur as a consequence of the facts described in question 11–22?

A: The financial institution may not charge the consumer for overdraft items that are honored as a consequence of the five-business-day requirement. It may, however, impose any normal transaction or item charges that are unrelated to an overdraft resulting from the debiting. The institution may, for example, impose a return-item charge relative to the $200 returned item referred to in question 11–22.

After the five business days, if the account is still overdrawn the institution may impose finance charges to which it is entitled (if any) under an overdraft credit plan. (§ 205.11(f)(2)(ii))

Q11–25: *Documents relied on—request from consumer.* When a consumer requests copies of documents that the financial institution relied on in determining that no error occurred, what is required?

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 readable form, by printing out the applicable data and explaining the codes, for example. (§ 205.11(f)(3))

Q11–26: *Documents relied on—privacy issue.* If a document contains information on several consumers, should a copy of the entire document be given to the consumer?

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

Q11–27: *Documents relied on—no information on relevant tapes.* 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, what does the institution have to provide?

A: The financial institution may comply with the requirement to provide copies of documentation by informing the consumer that the relevant documents were searched and were found to contain no information about transfers relating to the consumer. (§ 205.11(f)(1) and (3))

Q11–28: *Withdrawal of error notice.* A consumer withdraws an allegation of error after the institution has investigated and has determined that no error occurred but before the institution provided the written explanation. May the institution treat the error as voluntarily withdrawn?

A: Yes. (§ 205.11(g))

Q11–29: *Withdrawal of error notice.* A consumer calls the financial institution to question the amount of a Social Security deposit, and the institution suggests the difference may be due to a general decrease in benefits. Is the consumer's acceptance of the explanation a voluntary withdrawal of an error allegation?

A: Yes. (§ 205.11(g))

Q11–30: *Reassertion of error.* Does a consumer who has withdrawn an allegation of error have the right to reassert the allegation?

A: Yes, unless the financial institution had complied with all of the error-resolution requirements before the allegation was withdrawn. The consumer must, however, reassert the error by giving proper notice within the original 60-day period. (§ 205.11(b) and (h))

Q11–31: *Charges for error resolution.* 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. Financial institutions should be aware of the prohibition against agreements that constitute a waiver of rights conferred by the act. (§ 205.11, § 914)

Q11–32: *Applicable error resolution provisions—overdraft credit line.* A consumer withdraws funds from a checking account by use of an ATM and the withdrawal overdraws the account, thereby resulting in a transfer of funds from the credit line to the checking account. If an error is alleged, which error resolution procedures apply to the overdraft portion, Regulation E or Regulation Z?

A: Regulation E applies because there has been 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 errors.

Sections 226.13(d) and (g) of Regulation Z continue to apply to the credit extension portion. These include the temporary prohibition on collection actions, the consumer's right to withhold disputed amounts, the limitation on adverse credit reports, and the right to prevent an automatic debit of disputed amounts. (§ 205.11(i))

Q11–33: *Applicable error resolution procedures—credit card/access device.* If a consumer uses a combined credit card/access device to withdraw funds at an ATM directly from a non-overdraft credit line and later alleges an error, which error resolution procedures apply, Regulation E or Regulation Z?

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

SECTION 205.12—Relation to State Law

Q12–1: *Preemption of state EFT laws—specific determinations.* The regulation prescribes standards for determining whether state laws that govern electronic fund transfers are preempted by the act and the regulation. 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

Q13–1: *Disclosure forms—compliance.* Will the Board or its staff review or approve disclosure forms or statements for 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, the financial institution is protected from liability for failure to make disclosures in proper form. (Appendix A, § 915(d))

Q13–2: *Record retention—evidence of compliance.* Must a financial institution retain records that it has given disclosures and documentation to *each* consumer?

A: No, it need only retain evidence demonstrating that its procedures reasonably ensure the consumer's receipt of the required disclosures and documentation. (§ 205.13(c)(1))

SECTION 205.14—Services Offered by Financial Institutions Not Holding Consumer's Account

Q14–1: *Applicability to preauthorized credits.* 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 institu-

tion 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))

Q14–2: *Applicability of account at both institutions.* Does the fact that the consumer holds an account at both financial institutions involved in the transfer negate the application of this section?

A: No, assuming the institutions have no agreements with each other concerning the EFT service. (§ 205.14(a))

Q14–3: *Agreement.* 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))

Q14–4: *Periodic statement—service-providing institution.* 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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* References are to question numbers.