

FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 9265]
[March 25, 1982]

REGULATION E — ELECTRONIC FUND TRANSFERS

Proposed Amendments

To All Depository Institutions
in the Second Federal Reserve District:

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

The Federal Reserve Board has proposed for public comment four amendments to its Regulation E — Electronic Fund Transfers — to assist small financial institutions subject to the Electronic Fund Transfer Act and otherwise reduce the burden of compliance.

By the use of electronic transfer services, payments may be made for goods or services and withdrawals and deposits may be initiated electronically rather than by check.

The proposed amendments would:

1. Exempt from requirements of Regulation E transactions involving direct deposits made by the Federal Government into accounts at financial institutions with \$15 million or less in assets.

This exemption would cover only direct Federal deposits to individual accounts in such institutions, such as deposits of interest, wage and salary and benefit payments to individuals. The proposed exemption would make no change in the requirements for financial institutions to make direct Federal deposits promptly available to the consumer.

2. Make an exception in certain cases from the Regulation E requirement that a financial institution must identify, on the receipt provided by an EFT terminal, the type of account (such as savings or checking account) from which the funds were transferred. The exemption would apply to transfers made through an automated teller machine (ATM) that is part of a nationwide cash dispensing service.

The Board was asked to make this exception on the grounds that the consumer can make use of only one type of account in such a transaction and that when the transaction is made through an ATM used by many financial institutions the ATM is not capable of providing the information on the receipt. The Board has previously made a similar exception applicable to point of sale transactions.

3. Allow an institution that permits customers to make transfers by telephone between savings and checking accounts to produce a monthly record of the transaction only on the customer's checking account statement.

At present the record of such a transaction must be provided on monthly statements of the customer's savings and check accounts. The customer would continue to get a report of such transactions on the monthly checking account statement while savings account passbooks or statements would continue to be updated in keeping with the institution's normal practice.

4. Allow banks participating in programs in which fund transfers are initiated by debit cards used in ATMs in foreign countries to comply with requirements for recording the transaction and for error resolution different from those applying to transactions in the United States.

This would take account of differing operational capabilities of ATMs in use in the United States and other countries and of the time required to obtain from abroad information necessary to settle error allegations.

The Board's proposals are stated in detail in the attached notice.

Enclosed — for depository institutions in this District — is the text of the proposed amendments. It will be published in the *Federal Register*, and will also be furnished upon request directed to our Circulars Division (Tel. No. 212-791-5216).

Comments on the proposed amendments should be submitted by May 7, 1982 and may be sent to our Consumer Affairs and Bank Regulations Department.

ANTHONY M. SOLOMON,
President.

FEDERAL RESERVE SYSTEM

[12 CFR Part 205]

[Reg. E; Docket No. R-0388]

ELECTRONIC FUND TRANSFERS

Exemptions

Documentation of Transfers

Procedures for Resolving Errors

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment four proposed amendments to Regulation E. The amendments would (1) exempt from the regulation preauthorized electronic fund transfers initiated by the federal government to accounts at small financial institutions; (2) provide that in a regional or nationwide ATM interchange system, the terminal receipt need not disclose the type of account affected; (3) partially exempt from the periodic statement requirements certain telephone transfers between a consumer's accounts held at the same institution; and (4) modify the documentation and error resolution requirements for transfers initiated outside the United States. The Board is also publishing for comment an economic impact analysis, as required by § 904(a) of the act. These proposals are in response to requests from financial institutions, and are designed to reduce regulatory burdens without giving up significant consumer protection.

DATE: Comments must be received on or before May 7, 1982.

ADDRESS: Comments may be mailed to the Secretary, Board of Governors of the Federal Reserve System, Washington, D. C. 20551, or delivered to Room B-2223, 20th & Constitution Avenue, N. W., Washington, D. C., between 8:45 a.m. and 5:15 p.m. weekdays. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. weekdays. All material submitted should refer to Docket No. R-0388.

FOR FURTHER INFORMATION: Regarding the regulation, contact: Barbara D. Ranagan, Staff Attorney, or John C. Wood, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D. C. 20551 (202-452-3667). Regarding the economic impact analysis, contact: Frederick J. Schroeder, Economist, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D. C. 20551 (202-452-2584).

SUPPLEMENTARY INFORMATION: (1) General. The major portion of the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) and Regulation E went into effect on May 10, 1980. As discussed more fully below, the Board now proposes certain amendments in response to petitions it has received.

Section 904(a)(2) of the EFT Act requires the Board to prepare an analysis of the economic impact of the regulation that considers, among other things, the impact of the regulation on the various participants in electronic fund transfer systems, the effects upon competition in the provision of electronic fund transfer services among large and small financial institutions, and the availability of such services to different classes of consumers, particularly low-income consumers. In addition, § 603 of the Regulatory Flexibility Act (5 U.S.C. 603) requires that proposed regulations be accompanied by an initial regulatory flexibility analysis. The statement appearing in section (3) below satisfies both of these requirements. The statement and the proposed amendments have been transmitted to Congress, as required by § 904(a)(4) of the EFT Act.

The Board believes that an expedited rulemaking procedure is in the public interest. Accordingly, the Board is providing a comment period shorter than the 60 days specified in the expanded procedures published by the Board in its policy statement of January 19, 1979 (44 FR 3957).

(2) Regulatory provisions. Section 205.3(g) -- Preauthorized government transfers to accounts at small financial institutions. The EFT Act and Regulation E cover preauthorized electronic fund transfers to or from consumer asset accounts, whether the originator is government or private sector, whether the transfer is received in machine-readable or paper form, and whether the transfer is received directly from an automated clearing house (ACH) or through a correspondent institution or other intermediary. This includes transfers (such as Social Security payments) under the federal government's recurring payments program because they are made by the U.S. Treasury through an ACH.

Unlike the offering of other EFT services such as automated teller service, an institution's involvement in preauthorized government transfers is relatively passive. In the case of Social Security payments, for example, the customer takes the initiative by completing a U. S. Treasury authorization form and delivering it to the financial institution. The institution completes its portion of the form and sends it on to the Social Security Administration, which then starts sending the funds directly to the institution. The institution may agree to participate as an accommodation to the customer because this method of payment provides greater security to the recipient.

Frequently a small institution receiving federal recurring payments does not engage in electronic processing. It receives the transfers through a correspondent institution, which sends a paper listing of recipients and payment amounts to the account-holding institution, allowing it to post the accounts manually. The Board is concerned that there may be an undue compliance burden on these small institutions, particularly in cases where the transfers affect relatively few accounts. Coverage by the regulation means that the institution must give initial disclosures about the account terms, send certain additional disclosures and notices, maintain prescribed error resolution procedures, and provide periodic statements or passbook updates in compliance with the regulation.

The Board has special authority with respect to the modification of regulatory requirements for small institutions; § 904(c) of the EFT Act states in part:

The Board shall by regulation modify the requirements imposed by this title on small financial institutions if the Board determines that such modifications are necessary to alleviate any undue compliance burden on small financial institutions and such modifications are consistent with the purpose and objective of this title.

The Board is proposing to exercise this authority by amending Regulation E to exempt federal recurring payments that are made to an account at a financial institution whose assets are \$15 million or less. The \$15 million asset level was selected because it corresponds to an asset level used in another Board regulation that differentiates among institutions based on asset size. The Board solicits comment on whether a different asset cut-off should be used, and on whether there is an asset size at which compliance would not be unduly burdensome. The Board also notes that the level of burden imposed by Regulation E with respect to these transfers may not be a function of the financial institution's asset size alone, and solicits comment on what other factors might be taken into account in assessing the need for an exemption. Industry commenters should recognize, however, that the Board has a responsibility to consider not only the costs and burdens on financial institutions but also the costs and benefits to consumers.

Comment is also requested on whether the exemption should apply to a broader (or to a narrower) class of preauthorized transfers. For example, should there be an exemption for all preauthorized transfers, both government and private sector? The Board is aware that preauthorized transfers initiated by the private sector may create similar if not greater operational problems for small financial institutions. Under present ACH operating rules, however, an institution that agrees to accept private-sector preauthorized credits must also accept private-sector preauthorized debits, placing consumers at somewhat greater risk if things go wrong. Comment is requested on whether the exemption might be expanded without reducing significant consumer protections provided by the EFT Act and Regulation E.

Financial institutions are asked to include in their comments information about their asset size, whether they currently receive both federal government and private sector transfers, and whether they offer other EFT services such as telephone bill payment or ATM service.

The proposed amendment would exempt federal government payments from all requirements of the EFT Act and Regulation E. The Board solicits comment on whether some provisions of the act or regulation should continue to apply -- for example, the prohibition on compulsory use of EFT, found in § 913 of the act, or the error resolution procedures, set forth in § 205.11 of the regulation. Commenters should discuss the reasons they believe particular provisions of this sort should (or should not) remain applicable, and the relative difficulties and costs of compliance with the provisions in question.

The proposal, strictly speaking, exempts a category of transfers and not the institution. Thus, a small institution that wishes to offer telephone bill payment services, for example, may continue to take advantage of the exemption for its federal recurring payments, although the telephone transfers would be subject to the regulation. A small institution that offers no EFT services other than federal recurring payments, of course, would be completely exempt from the act and regulation.

Proposed § 205.3(g)(1) sets forth the exemption, and sets December 31 of each year as the date for determining whether an institution's assets exceed the \$15 million level. The Board requests comment on whether some other determination date would be more appropriate. Proposed § 205.3(g)(2) provides a grace period for institutions that lose the exemption for preauthorized government transfers because their assets grow beyond the \$15 million level. This grace period would allow time for bringing operations into compliance.

Section 205.9(a)(3) -- Interchange cash dispensing service. For transfers initiated at an electronic terminal, Regulation E requires that the terminal receipt indicate the type of account accessed. A bank card organization has requested that the Board grant an exemption from this requirement for use of debit cards in ATMs or cash dispensers in a planned nationwide cash dispensing system.

Regulation E currently provides an exemption from the requirement to identify type of account for point-of-sale (POS) transfers in which the access device can access only one account at point of sale. The planned cash dispensing system apparently faces operational difficulties similar to those that led to the Board's adoption of the POS exception. As in the POS situation, the consumer can access only one particular account in the interchange system. However, neither the debit card nor the interchange system, involving many different financial institutions all over the country, can provide information on the terminal receipt regarding the type of account being accessed.

The proposed amendment would revise the last sentence of footnote 3 to § 205.9(a)(3). The revision would treat transfers initiated in an interchange system the same as POS transfers. As in the case of POS transfers, the exemption would be available if the access device used can access only one particular account when used in the interchange system. Similarly, it would remain available in the interchange setting even if the access device can access more than one account when used at the account-holding institution's own ATMs.

"Interchange system" is intended to refer to a network or system in which ATMs or cash dispensers of various financial institutions are available to customers of other institutions to allow them access to their accounts. The Board solicits comment on whether this terminology adequately describes such a system.

Section 205.9(c), (d), and (h) -- Telephone transfers between savings and checking accounts. Regulation E requires institutions, as a general rule, to provide a periodic account statement for each EFT-accessible account. Exceptions currently exist only for accounts accessible by preauthorized credits but

by no other type of electronic fund transfers. The Board has been asked to create a new exception for certain accounts that are accessible by telephone transfers.

An association of mutual savings banks has petitioned the Board to permit institutions offering telephone transfers (between transaction and savings accounts, for example) to satisfy the periodic statement requirements of § 205.9(b) by providing a complying statement for the transaction account, but not the savings account. The association believes that the duplicative statements currently required by the regulation are unnecessary for consumer protection and are unduly costly for institutions to provide, that the telephone transfer service is beneficial to consumers, and that many institutions that have offered the service either have discontinued it or will be forced to do so because of the duplicative costs.

Section 904(c) of the act authorizes the Board, in adopting regulations to implement the act, to make such adjustments and exceptions as the Board believes necessary and proper. Section 904(a) directs the Board to consider and weigh the costs and benefits of the implementing regulations to institutions and consumers, including the extent to which "additional documentation, reports, records, or other paper work would be required." The current requirement to produce periodic statements for both accounts affected by a telephone transfer may be one whose costs outweigh its benefits. Each telephone transfer currently appears, in essentially duplicate form, on the statement for each account affected. Documentation of the transfer on only one statement may be adequate, since the description shows not only the amount and date but also the type of transfer and type of account affected (for example, "telephone transfer from savings"). In addition, the customary forms of documentation (e.g., passbook updates or quarterly statements) would continue to be available to the consumer.

Accordingly, the Board is proposing to modify the periodic statement requirements by adding a new paragraph (h) to § 205.9. The proposed paragraph states that an institution need not provide a periodic statement for an account accessible by telephone transfers between accounts, so long as statements complying with § 205.9(b) are being provided for the other account involved in the service. To qualify for this exception, both accounts must be maintained at the same institution and be held by the same consumer; in addition, the account for which a complying statement is not provided would have to be accessible by telephone transfers but by no other type of electronic transfer.

The proposal would also amend § 205.9(c) and (d) by adding a footnote to the effect that an account qualifies for the special treatment provided in paragraphs (c) and (d) even if the account is accessible by telephone transfers of the type described in paragraph (h) in addition to preauthorized credits.

Sections 205.9(i) and 205.11(c)(4) -- Foreign-initiated transfers. The EFT Act applies to financial institutions holding consumer accounts within the United States and its territories. Although an ATM cash withdrawal may be initiated abroad, it is covered by the act and Regulation E if it ultimately debits a consumer account at a U.S. bank. Several bank associations have

asked the Board to exempt electronic fund transfers initiated outside the United States. In the alternative, they ask that such transfers be exempted from certain portions of the documentation and error resolution requirements.

Many foreign ATMs do not comply with Regulation E receipt requirements, nor do they necessarily capture the information that enables the U. S. bank to describe the transaction on periodic statements in keeping with the Regulation E requirements. The failure to capture certain information also makes it difficult for a U. S. bank to investigate a consumer's allegation of error and to comply with the strict time periods for error resolution specified in the regulation.

The Board recognized the same type of problem in the credit card environment, and provided relief by relaxing the periodic statement requirements in Regulation Z (Truth in Lending) with regard to the description of foreign transactions. Similar recognition of the problems with foreign EFT transactions seems appropriate, and the Board is proposing to modify certain requirements.

The first proposed amendment would add a new paragraph (i) to § 205.9. It states that failure to comply with the terminal receipt and periodic statement requirements of § 205.9 is not a violation for a transfer initiated abroad, provided the account-holding institution treats a request for documentation or clarification concerning the transfer as a notice of error and follows the error correction provisions of § 205.11. This means, for example, that if the account holder requests documentation, the institution must provide it as required by § 205.11(e).

The other proposed amendment would add a new paragraph (4) to § 205.11(c). For alleged errors involving transfers initiated outside the United States, the new paragraph would substitute a 90-calendar-day deadline for the 45-calendar-day deadline that is generally applicable. The other provisions of § 205.11 (including the requirement for provisional recrediting if the resolution process takes longer than 10 business days) remain applicable.

(3) Economic impact analysis. Section 205.3(g). The Board proposes to exempt from Regulation E all preauthorized federal recurring payments made to consumer accounts at financial institutions that have total assets of \$15 million or less. The proposal is based on the preliminary finding that small institutions receiving such payments may bear a disproportionately large and undue regulatory compliance burden relative to their involvement in EFT.

Many small institutions may be subject to Regulation E solely because they receive preauthorized federal recurring payments that were electronically initiated. These payments are primarily Social Security benefits that are credited to consumer accounts. The compliance costs incurred may be substantial. Institutions that receive only one or a few of those transfers and that engage in no other type of EFT must comply with a large proportion of Regulation E requirements. Moreover, many small institutions receive transfers in paper form from a correspondent bank, service bureau, or other intermediary and do not themselves engage in electronic processing.

Evidence currently available indicates that relatively few small institutions offer EFT services other than automatic preauthorized transfers to or from consumers' accounts. Information is not available on the sizes of institutions actually offering preauthorized transfers, but the number of small institutions offering those transfers is large and likely to grow.^{1/} The proposed exemption would provide relief for the many small institutions, including a large number of credit unions, that now participate in the Treasury Department's Direct Deposit Program or that are expected to join the program in the next few years. Without the exemption, all institutions would become subject to Regulation E by joining the program.

The extent of the cost savings depends on the definition of small. The exemption could potentially provide significant cost savings to small institutions by reducing their current compliance expenses and limiting their liability exposure for noncompliance. If small institutions are defined to have total assets of \$15 million or less, the exemption would potentially affect 4,637 (or 31.4 percent of all) commercial banks, 583 (or 14.6 percent of all) savings and loan associations, 67 (or 9.2 percent of all) mutual savings banks, and 17,243 (or 95.5 percent of all) credit unions. Not all small institutions would actually benefit, however. The amount of relief would be limited in that (1) not all small institutions receive the exempted transfers and (2) those small institutions that have already invested in compliance programs may find it uneconomical to drop their programs, particularly when other EFT services are offered or planned. It is estimated that less than five percent of all U.S. transaction account deposit dollars would be exempted.

If the proposed exemption were to be extended to private-sector preauthorized electronic transfers, more relief would be available to small institutions. This would require exempting both debits and credits to consumer accounts, however, because debits and credits are operationally indistinguishable for ACH participants. The Board solicits comment on the desirability of a small-institution exemption of private-sector transfers, including debits, from coverage by the regulation.

Consumer benefits are not likely to be diminished significantly by the proposed exemption. Many consumer protections provided by Regulation E are likely to be provided by U.S. Treasury rules, existing institutional practices, and state laws. Furthermore, the likelihood of errors in these transactions is very small. Consumers will benefit from increased availability of automatic preauthorized federal payments.

^{1/} In November 1981 there were 10,982 banks and 3,052 thrift institutions participating in automated clearing houses (ACHs) and therefore engaging in electronic fund transfer, according to NACHA SurePay Update (Washington, D.C.: National Automated Clearing House Association), December 1981. Because almost all large institutions currently participate in ACHs, further growth in the number of participants will come primarily from small institutions.

Public comment is requested on the potential effects of the proposed exemption on costs to institutions and on costs and benefits to consumers. In particular, comment is requested on the appropriate asset level definition of small institution. Comments should take into account the size level at which financial institutions are so automated or involved with other EFT services that the proposed exemption would provide little relief.

Section 205.9(a)(3). The Board proposes to exempt transfers made in an interchange system from the requirement that the financial institution identify the type of account accessed. This exemption, by removing a requirement that would be prohibitively costly to implement, is likely to remove a barrier to the availability of national interchange services for consumers. No significant loss of information to consumers is expected from the exemption because only one of a consumer's accounts at a particular institution can be accessed by this means.

Section 205.9(c), (d), and (h). Some financial institutions, including many mutual savings banks, permit telephone transfers between a consumer's accounts at the same institution. Monthly statements are currently required for both accounts involved in telephone transfers. The Board proposes to amend the regulation so that it would require a monthly periodic statement for only one of the two accounts involved in such a transfer; for these transactions, the other account would be exempted from Regulation E requirements. This amendment is expected to reduce compliance costs significantly for many institutions and eliminate duplicative paperwork. There would be no loss of error resolution procedure protections. Evidence is solicited on the number of institutions, accounts, transactions, and periodic statements affected and on the potential cost savings for financial institutions.

Sections 205.9(i) and 205.11(c)(4). The Board proposes to exempt all electronic fund transfers initiated abroad from the regulation's terminal receipt and periodic statement documentation requirements. Financial institutions are unable to control terminals used by consumers abroad, and the proposed exemption would eliminate potential liability for noncompliance with these requirements. Error resolution time limits would also be relaxed to allow institutions more time to investigate and resolve alleged errors involving transfers initiated abroad. The proposed exemption may make EFT services more accessible to U.S. consumers traveling abroad. There is no expectation that consumer protections would be significantly reduced. Comment is requested on the anticipated effects on costs to institutions and benefits to consumers.

(4) Pursuant to the authority granted in 15 U.S.C. 1693b, the Board proposes to amend Regulation E, 12 CFR Part 205, by adding a new paragraph (g) to § 205.3, revising the last sentence of footnote 3 to § 205.9(a)(3), adding a new footnote 9a to § 205.9(c) and (d), adding new paragraphs (h) and (i) to § 205.9, and adding a new paragraph (4) to § 205.11(c), as follows:

SECTION 205.3 -- EXEMPTIONS

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(g) Government transfers to small financial institutions. (1) Any preauthorized transfer by the federal government to an account if the assets of the account-holding financial institution are \$15 million or less on December 31.

(2) If the account-holding financial institution's assets subsequently exceed \$15 million, its exemption for this class of transfers shall terminate one year from the end of the period in which the assets exceed \$15 million.

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SECTION 205.9 -- DOCUMENTATION OF TRANSFERS

(a) Receipts at electronic terminals.***

(3) The type of transfer and the type of the consumer's account(s)^{3/}***

^{3/}***In a transfer initiated at point of sale or at remote terminals in an interchange system, the type of account need not be identified if the access device may access only one account in such a transfer.

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(c) Documentation for certain passbook accounts. In the case of a consumer's passbook account which may not be accessed by any electronic fund transfers other than preauthorized transfers to the account, ^{9a/}***

(d) Periodic statements for certain non-passbook accounts. If a consumer's account other than a passbook account may not be accessed by any electronic fund transfers other than preauthorized transfers to the account, ^{9a/}***

^{9a/}Accounts that also are accessible by telephone transfers described in paragraph (h) of this section may continue to be documented in accordance with paragraph (c) or (d) of this section.

* * * * *

(h) Periodic statements for telephone transfers. A financial institution need not provide the periodic statement required by paragraph (b) of this section for an account that may be accessed only by electronic fund transfers initiated by the consumer under a telephone transfer plan, if the telephone transfers are to or from an account for which the financial institution provides a periodic statement to the consumer in compliance with paragraph (b) of this section.

(i) Documentation for foreign-initiated transfers. Failure to provide the terminal receipt and periodic statement required by paragraphs (a) and (b) of this section for a particular electronic fund transfer shall not be deemed a failure to comply with this regulation, if:

(1) the transfer is not initiated in a state as defined in § 205.2(k); and

(2) the financial institution treats an inquiry for clarification or documentation as a notice of error, and corrects the error in accordance with § 205.11.

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SECTION 205.11 -- PROCEDURES FOR RESOLVING ERRORS

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(c) Investigation of errors.***

(4) If a notice of an error involves an electronic fund transfer that was not initiated in a state as defined in § 205.2(k), a financial institution may take up to 90 calendar days instead of the 45 calendar days specified in paragraph (c)(2) of this section to resolve the error.

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By order of the Board of Governors, March 22, 1982.

(signed) William W. Wiles
William W. Wiles
Secretary to the Board

[SEAL]