

FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. 9743
October 18, 1984]

AMENDMENTS TO REGULATIONS E AND Z

*To All Depository Institutions, and Others Concerned,
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 adopted amendments to Regulation E — Electronic Fund Transfers — to expand the regulation's coverage, modify its error resolution requirements, and provide additional flexibility in the disclosure of charges for electronic fund transfer services. The amendments will become effective on November 16, 1984. However, financial institutions have until April 16, 1985, to comply with certain requirements relating to transfers resulting from debit card transactions that do not involve electronic terminals.

The amendments:

Expand coverage to all transfers resulting from debit card transactions, including transactions that do not involve an electronic terminal at the point of sale.

Extend time periods for resolution of errors resulting from point-of-sale debit card transactions.

Exempt consumer asset accounts, subject to the Board's Regulation T, from provisional recrediting requirements.

Provide more flexibility for the disclosure of charges for electronic fund transfers on periodic statements.

A debit card is one allowing consumers to purchase goods or services and to have the amount debited directly to a checking or other transaction account (as distinguished from the use of a credit card, which results in a promise by the consumer to pay for a purchase at a future time).

At the same time, the Board published an update of the official staff commentary on Regulation E.

In addition, the Board of Governors has published changes in the official staff commentary on Regulation Z, "Truth in Lending," regarding the disclosure of fees for the use of automated teller machines. At the same time, the Board withdrew a proposed change that pertains to the application of the securities transaction exemption.

Summaries of the Board's actions are printed on the following pages. Copies of the full text of the Board's notices may be obtained from our Circulars Division (Tel. No. 212-791-5216). Questions on these matters should be directed to our Regulations Division (Tel. No. 212-791-5914).

ANTHONY M. SOLOMON,
President.

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Reg. E; Docket No. R-0502]

ELECTRONIC FUND TRANSFERS

Final Rule and
Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule and official staff interpretation.

SUMMARY: The Board is adopting amendments to Regulation E (Electronic Fund Transfers) to: (1) cover, within the definition of electronic fund transfer, all transfers resulting from debit card transactions, including transactions that do not involve an electronic terminal at the time of the transaction; (2) extend the time periods for error resolution with respect to transfers resulting from point-of-sale transactions; (3) provide an exception from the provisional recrediting requirement when a consumer asset account is subject to the Board's Regulation T; and (4) provide more flexibility for the disclosure of charges for electronic fund transfers on periodic statements. The notice also contains several changes to the official staff commentary to Regulation E.

EFFECTIVE DATES: October 16, 1984, for the amendments that extend the error resolution periods for point-of-sale transactions, that except financial institutions from the provisional recrediting requirement when the alleged error involves a consumer asset account subject to Regulation T, and that provide additional flexibility in the disclosure of charges for electronic fund transfers on periodic statements, and for the revisions to the official staff commentary.

November 16, 1984, for the limitations on consumer liability for unauthorized transfers resulting from debit card transactions not involving electronic terminals at the time of the transaction, and the restrictions on the unsolicited issuance of debit cards for transactions not involving electronic terminals.

April 16, 1985, for all other requirements of the regulation that are applicable to transfers resulting from debit card transactions that do not involve an electronic terminal at the time of the transaction.

FOR FURTHER INFORMATION: Regarding the regulation and commentary, contact: Gerald P. Hurst or John C. Wood, Senior Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202) 452-3667 or (202) 452-2412. Regarding the economic impact analysis, contact: Frederick J. Schroeder, Staff Economist, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202) 452-2584.

SUPPLEMENTARY INFORMATION: General. The Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.) governs any transfer of funds to or from a consumer's asset account that constitutes an electronic fund transfer (EFT) as defined in the Act. This statute is implemented by the Board's Regulation E (12 CFR Part 205).

In January 1984 (49 FR 2204) the Board proposed an amendment to Regulation E to cover fund transfers resulting from debit card transactions that do not involve electronic terminals but that are processed electronically. The Board also proposed to extend certain error resolution periods for these transfers. In addition, the Board proposed an amendment that would provide flexibility in the disclosure of electronic fund transfer charges on periodic statements by allowing disclosure of these charges as a total amount or on a transaction-by-transaction basis.

The Board has now adopted these amendments to Regulation E in final form with certain modifications.

Update to official staff commentary. The Board is also publishing an update to the official staff commentary interpreting Regulation E (EFT-2, Supp. II to 12 CFR Part 205). The changes were published in proposed form on January 12, 1984 (49 FR 2204), and are now being adopted in final form. This represents the second periodic update; the first was published on April 6, 1983 (48 FR 14880).

The questions that have been added are self-explanatory. Some of the revisions relate to the regulatory amendments with respect to debit card transactions not involving electronic terminals.

The proposed change to Question 10-19 (regarding a consumer's stop payment order on a preauthorized debit) has not been adopted, due to the lack of support in the comments; existing Question 10-19 remains in effect. A change has been made to the commentary that was not contained in the proposal: Question 9-36 (regarding identification of the type of transfer) has been expanded to codify a longstanding staff position applicable to cases in which the amount of the transfer reflects the value of the goods purchased plus the sum of cash that the consumer received from the merchant.

The staff expects to publish the next proposed update to the official staff commentary in November 1984. The public is invited to identify issues that may warrant inclusion in that proposal; suggested items must be received by November 9, 1984, in order to assure consideration. It is contemplated that the final version of the next update will be published in March 1985.

[The full text of the notice is available upon request from the Federal Reserve Banks.]

FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; TIL-1]

TRUTH IN LENDING

Official Staff Commentary Revisions

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final official staff interpretation.

SUMMARY: The Board is publishing in final form changes to the official staff commentary to Regulation Z (Truth in Lending), 12 CFR Part 226, that address the disclosure of fees for the use of automated teller machines. The Board is not adopting another proposed change to the official staff commentary that addressed the scope of the securities transaction exemption contained in § 226.3(d) of Regulation Z. The commentary applies and interprets the requirements of Regulation Z with regard to consumer credit transactions and is a substitute for individual staff interpretations of the regulation.

EFFECTIVE DATE: October 16, 1984.

FOR FURTHER INFORMATION CONTACT: Ruth R. Amberg and Gerald P. Hurst, Senior Attorneys, and Richard S. Garabedian, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452-3667.

[The full text of the notice is available upon request from the Federal Reserve Banks.]

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Reg. E; Docket No. R-0502]

Electronic Fund Transfers; Final Rule and Update to Official Staff Commentary

AGENCY: Board of Governors of the Federal Reserve System.**ACTION:** Final rule and official staff interpretation.

SUMMARY: The Board is adopting amendments to Regulation E (Electronic Fund Transfers) to: (1) Cover, within the definition of electronic fund transfer, all transfers resulting from debit card transactions, including transactions that do not involve an electronic terminal at the time of the transaction; (2) extend the time periods for error resolution with respect to transfers resulting from point-of-sale transactions; (3) provide an exception from the provisional recrediting requirement when a consumer asset account is subject to the Board's Regulation T; and (4) provide more flexibility for the disclosure of charges for electronic fund transfers on periodic statements. The notice also contains several changes to the official staff commentary to Regulation E.

EFFECTIVE DATES: October 16, 1984, for the amendments to: § 205.1(a) which adds the control number required by the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), § 205.9(b)(3) which extends the error resolution periods for point-of-sale transactions, § 205.11(c)(3) which exempts financial institutions from the provisional recrediting requirement when the alleged error involves a consumer asset account subject to Regulation T, and § 205.11(c)(4) which provides additional flexibility in the disclosure of charges for electronic fund transfers on periodic statements; and for the revisions to the Official Staff Commentary on Regulation E (EFT-2, Supp. II to 12 CFR Part 205).

The amended definition in § 205.2(g) is effective: (1) on November 16, 1984, for purposes of the limitations on consumer liability for unauthorized transfers (§ 205.6) resulting from debit card transactions not involving electronic terminals at the time of the transaction, and of the restrictions on the unsolicited issuance of debit cards (§ 205.5) for transactions not involving electronic terminals; and (2) on April 16, 1985, for purposes of all other requirements of the regulation that are applicable to transfers resulting from debit card transactions that do not involve electronic terminals at the time of the transaction.

FOR FURTHER INFORMATION CONTACT:

Regarding the regulation and commentary, contact: Gerald P. Hurst or John C. Wood, Senior Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202) 452-3667 or (202) 452-2412. Regarding the economic impact analysis, contact: Frederick J. Schroeder, Staff 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 Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) governs any transfer of funds to or from a consumer's asset account that constitutes an electronic fund transfer (EFT) as defined in the Act. This statute is implemented by the Board's Regulation E (12 CFR Part 205).

In January 1984 (49 FR 2204) the Board proposed an amendment to Regulation E to cover fund transfers resulting from debit card transactions that do not involve electronic terminals but that are processed electronically. The Board also proposed to extend certain error resolution periods for these transfers. In addition, the Board proposed an amendment that would provide flexibility in the disclosure of electronic fund transfer charges on periodic statements by allowing disclosure of these charges as a total amount or on a transaction-by-transaction basis.

The Board has now adopted these amendments to Regulation E in final form, with the modifications discussed below.

(2) *Transfers resulting from transactions that do not involve electronic terminals.* Certain debit card transactions do not involve an electronic terminal but do involve the transmission of transaction information by electronic means to the account-holding institution. In January 1984, the Board published a proposed amendment to its EFT regulation to cover these transfers.

The Board based its proposal on the following findings:

- The authority granted to the Board by the Congress to carry out the purposes of the act and to define "electronic fund transfer," as set forth in the act and its legislative history, supports coverage so as to ensure that the basic purpose of the act is effectuated—that is, that the rights and responsibilities of all the parties to the transfers are established.
- The fund transfers resulting from the transactions can be viewed as

electronically initiated and thus within the electronic fund transfer definition.

- The transactions, and the resultant transfers, are not excluded from the general definition of an electronic fund transfer by the exclusion for "transactions[s] originated by check, draft, or similar paper instrument."

The Board received 74 comments on the proposal; they were about evenly divided between those who supported and those who opposed the proposal.

The commenters supporting the proposal generally agreed with the Board's analysis and stated that the proposal would avoid confusion and provide consumer protection.

About twenty of the commenters opposing the proposal questioned the Board's authority to amend the regulation to cover these transfers, on the grounds that the transfers resulting from debit card transactions that do not involve electronic terminals cannot be viewed as initiated electronically and, as a result, cannot be viewed as EFTs. A number of them took the position that these transfers should not be covered because the EFT definition in the Act and the regulation excludes transactions "originated by check, draft, or similar paper instrument," and the debit card transactions involve a sales slip. Many of them cited the lack of evidence of consumer problems or financial institution abuse, and stated that absent such evidence the Board should not expand the regulation's coverage.

The purpose of the Electronic Fund Transfer Act, as stated in section 902(b) of the Act (15 U.S.C. 1693(b)), is "to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. The primary objective, however, is the provision of individual consumer rights." The Board believes that this objective would be unfulfilled for an increasing number of consumers and transfers in the absence of coverage by Regulation E.¹ Absence of Regulation E coverage could be particularly troublesome for consumers who may be taking protections under federal law for granted because of the similarity between debit cards and credit cards, in both appearance and function, and because use of the card in some transactions clearly results in electronic

¹ In addition to the recent increase in the number of debit cards issued by financial institutions under the VISA and Mastercard tradenames for use in transactions that may not involve electronic terminals, there are pilot programs currently under way that could result in the issuance of many additional debit cards for such transactions.

fund transfers that are covered by the Act and regulation. Allowing a legal distinction to exist would result in a situation in which a consumer's rights would depend on whether the consumer (or the thief, in the case of a stolen debit card) used the debit card at an electronic or non-electronic terminal.

After consideration of the comments and further analysis, the Board concludes that coverage of the transfers resulting from these transactions under Regulation E would further the objectives of the Act in establishing the rights and responsibilities of the parties to these transfers, and is within the rulewriting authority that the Congress gave the Board to insure the Act's effectiveness in providing for consumer protections in this area. The Board believes that it has the responsibility, as well as the authority, to deal with questions of coverage and to prescribe regulations that will carry out the purposes of the Act.

The Board believes that the EFT definition in the Act is broad enough to include transfers resulting from debit card transactions that do not involve electronic terminals at the inception of the transactions.² In most cases, the sales slips in these transactions are truncated at the merchant's financial institution and the data are converted to an electronic form and transmitted to the account-holding financial institution, where debits are made to the consumers' asset accounts. As a result, the Board believes that the transfers can be viewed as electronically initiated and thus within the definition of an EFT.

To focus solely on whether an electronic terminal is used at the time of the transactions to determine coverage results in a narrow reading of the Act's coverage that would significantly undermine the legislative purpose. The Board has also concluded that the exclusion in the EFT definition for transactions "originated by check, draft, or similar paper instrument" does not apply to these fund transfers because the transactions are originated, for purposes of the Electronic Fund Transfer Act and Regulation E, with the card (or the card in combination with the sales slip), not by the sales slip alone; and although the transaction involves a paper sales slip, that sales slip is not a "similar paper instrument" as that term is used in the Act and regulation.

In some cases the merchant's financial institution may be the same as the

account-holding financial institution. In these cases the transfers may involve electronic processing only within the account-holding institution. The Board had solicited comment in the proposal on whether transfers resulting from these transactions should also be covered. There was comment both for and against coverage. Some of the commenters believed that these transfers could not be covered as EFTs, while others favored coverage in order to provide uniform protection and avoid uncertainty for consumers and financial institutions.

The Board believes that coverage of all debit card transactions—including those in which the financial institution processing the transaction is the same as the institution maintaining the consumer asset account—is necessary to prevent confusion as to the protections available to consumers in this class of transactions. Coverage will avoid a situation in which a consumer's protections when using a debit card would depend upon whether a merchant and the consumer do business with the same institution.

(3) *Compliance burden and adjustments to regulatory provisions.* The Board has considered the extent of the compliance burden that might result from this amendment to Regulation E. Many financial institutions are already complying with the regulation for certain transfers because the debit cards are capable of being used at electronic point-of-sale terminals or at automated teller machines. As a result, these institutions have already provided initial disclosure statements, are furnishing periodic statements that comply with the regulation, and have established error resolution procedures. In addition, certain regulatory requirements do not apply to these transfers, and hence represent no compliance problem. For example, unless they capture data electronically, the terminals at the point of the transaction are not "electronic terminals" for purposes of the regulation, even though the resulting transfers are characterized as *electronic fund transfers*. Thus the requirement for terminal receipts does not apply. Similarly, in the absence of an electronic terminal, the periodic statement need not include a terminal location—a disclosure that, if applicable, might have represented a significant problem.

One regulatory provision that, without modification, could have imposed a significant compliance burden is error resolution. Regulation E permits the financial institution to take up to 45 calendar days to resolve an error, but requires in such cases that the financial

institution provisionally recredit the consumer's account within 10 business days. When an error is alleged, it is often necessary to obtain documentation of the transaction in order to verify the date, amount, or other information. Obtaining documentation, usually in the form of a copy of the sales slip, often takes longer than 10 business days.

In the proposal the Board solicited comment on an amendment to allow longer periods for resolving error allegations related to point-of-sale transactions not involving an electronic terminal. The Board proposed to extend, from 10 business days to 20 business days, the time within which a financial institution must provisionally recredit the consumer's account with the amount of the alleged error. In addition, the Board proposed to increase the time allowed for final resolution of an error allegation from 45 calendar days to 90 calendar days.

Several commenters questioned whether any increase in the time periods for error resolution was necessary. The overwhelming majority of the comments, however, supported increased periods for error resolution if the Board were to adopt the proposed change in coverage. A number of the comments urged yet longer periods.

Some of the commenters also urged that the longer error resolution periods be made available for *all* point-of-sale debit card transactions. This change would avoid requiring financial institutions to distinguish between the transactions that involved electronic terminals at the point of sale, and those that did not involve electronic terminals.

The Board has adopted the longer error resolution periods that were proposed. The Board believes that periods longer than 20 business days and 90 calendar days are not necessary or appropriate. In light of the Board's desire to minimize confusion and uncertainty for everyone concerned, the Board is also amending the regulation to apply the longer time periods for error resolution to *all* transfers resulting from point-of-sale debit card transactions. This change seems especially appropriate since only a small portion of the point-of-sale debit card transactions currently involve electronic terminals. Thus the compliance savings to financial institutions in not having to distinguish between types of point-of-sale debit card transactions appears to exceed the slight loss of consumer protections.

(4) *Exception from the provisional recrediting requirement for certain consumer asset accounts.* Comments received from representatives of the securities industry expressed concern

²These debit card transactions include both transactions for the purchase of goods or services and transactions to obtain cash. For simplicity, the discussion, although applicable to both types, focuses on point-of-sale transactions for the purchase of goods or services.

that the provisional recrediting requirement might in some cases result in conflict with the margin and other requirements of the Board's Regulation T (12 CFR Part 220).³

The Board believes that it is important to avoid the possibility of any such conflict, which could result in increased compliance costs for financial institutions with little or no consumer benefit. As a result, the Board is amending Regulation E to provide an exception from the requirement for provisional recrediting when the consumer asset account is subject to the margin requirements or other aspects of Regulation T. The other Regulation E error resolution provisions, including the requirement for prompt investigation of alleged errors, continue to apply (subject to the extended time limits, where applicable).

(5) *Disclosure of EFT charges.*

Regulation E currently requires that the periodic statement disclose, as a total sum, all charges assessed against the account during the statement period for electronic fund transfers (or for the right to make such transfers) or for account maintenance. Some financial institutions would like to itemize EFT charges on a transaction-by-transaction basis, rather than disclose a total charge. As a result the Board proposed in January to amend the regulation to allow for such disclosure, which is likely to be at least as informative to the consumer as the disclosure of a total figure. The comments supported this proposal and the Board is therefore amending the regulation to permit disclosure of charges on an itemized basis. Disclosure of a total amount continues to be permitted as an alternative, at the institution's option.

(6) *Effective dates of amendments.*

Some of the amendments reduce the requirements of the regulation, or provide additional flexibility, and their applicability is not limited to transfers resulting from debit card transactions not involving electronic terminals at the time of the transaction; these amendments are effective on October 16, 1984. They are the amendments extending the error resolution periods for point-of-sale transactions, excepting financial institutions from having to provisionally recredit disputed amounts to consumer asset accounts that are subject to Regulation T, and providing

additional flexibility in the disclosure of EFT charges on periodic statements.

No later than November 16, 1984, financial institutions must comply with the limitations on consumer liability for unauthorized transfers resulting from debit card transactions that do not involve electronic terminals, and follow the Regulation E procedures for issuance of access devices when issuing debit cards.

Financial institutions have until April 16, 1985, to comply with the other requirements of the regulation applicable to transfers resulting from debit card transactions that do not involve electronic terminals. Financial institutions that have provided Regulation E disclosures for certain transfers made with the debit card need not issue revised disclosures to their existing customers. Any disclosures given on or after April 16, 1985, must reflect that all transfers resulting from debit card transactions are now electronic fund transfers under the regulation.

(7) *Economic impact analysis.— Introduction.* The Board has amended Regulation E by extending its coverage to transfers resulting from debit card transactions that do not involve data capture by electronic terminals at the time of the transaction. In addition, the regulation has been amended to extend the time periods for the resolution of error allegations related to all point-of-sale debit card transactions, and to exempt accounts that are subject to the margin requirements or other aspects of Regulation T (12 CFR Part 220) from the provisional recrediting requirement applicable in some error resolution proceedings. The Board has also adopted an amendment to provide greater flexibility in the periodic statement disclosure requirements for the charges for electronic fund transfers.

Prior to the amendments, certain debit card transactions led to fund transfers that many financial institution did not treat as electronic fund transfers covered by Regulation E. For example, transactions initiated at point of sale when an embossed debit card is used to imprint a paper sales slip could result in electronic debits to the consumer's asset account. In most cases, such paper sales slips are truncated at the merchant's financial institution and the transaction data are converted to electronic form for transmission to the consumer's financial institution.

According to figures provided by industry sources, the number of debit cards outstanding has been increasing rapidly. As of the end of 1978, there were approximately 400,000 debit card

accounts with 590,000 cardholders. Currently, the number of debit cardholders is estimated to be in excess of 6 million. The number and dollar volume of transactions made with these cards have also increased. Information from industry sources indicates that approximately 50 million transactions with a value of about \$2.4 billion were made with debit cards at the point of sale in the past year. It is estimated that more than 90 percent of these debit card transactions were not covered by Regulation E because they did not involve electronic data capture at the time of the transaction.

Analysis. While representing only a small share of all transactions by consumers at point of sale, paper-based debit transactions have grown substantially in number since enactment of the Electronic Fund Transfer Act. The extension of Regulation E coverage to these transactions is expected to provide benefits through the definition of rights and responsibilities of parties involved in these transactions. The costs of implementing and complying with the amendments are not expected to be great for four reasons:

While all financial institutions will have to familiarize themselves with the rule changes, relatively few institutions currently issue debit cards that are not already covered by Regulation E. Regulation E applies to financial institutions, defined to include (1) depository institutions and any other person who, directly or indirectly, holds and EFT-accessible account belonging to a consumer; and (2) any person who issues an EFT access device and agrees with a consumer to provide EFT services. The amendments will primarily affect only the relatively few financial institutions not already covered by Regulation E and Offering point-of-sale debit cards that can be used in transactions not involving electronic terminals. The impact of the amendments is expected to be small because of the relatively narrow class of affected institutions and because most issuers of POS debit cards also provide other EFT services to consumers. For these reasons, these institutions will already have established the compliance procedures required by the amendments.

Even if compliance procedures are already in place, financial institutions are expected to incur some additional costs because of the amendments. This is because institutions will experience some growth in the volume of alleged EFT errors as the newly covered transactions become subject to the regulation's error resolution procedures.

³ According to industry sources approximately two million debit cards have been issued in connection with various consumer asset management accounts involving securities. Transactions involving the purchase or sale of securities remain subject to the Board's margin requirements under Regulation T and other applicable securities regulations.

Based on evidence from consumer surveys conducted for the Federal Reserve Board, the incremental cost burden of this increased error resolution activity is not expected to be great because the incidence of errors is low relative to the volume of EFT transactions.

The large credit and debit card associations have existing operating systems in place that are available to facilitate compliance for most affected institutions.

It is anticipated that most of the issuers affected will belong to the major credit card associations. While a significant and growing number of transactions will be covered, the issuers and their associations have well-established systems and methods in place for resolving errors, providing documentation, and otherwise controlling credit card transactions. Member debit card issuers can make use of these systems. The amendments are unlikely to impose a significant additional burden on these systems.

The overall economic impact on small financial institutions is not expected to be significant. Relatively few small institutions issue debit cards, and the small institutions that do issue debit cards are likely to receive compliance guidance from third-party providers of EFT systems or from the large credit and debit card associations.

The terminal receipt requirements will not apply and an extension of error resolution procedure time limits will minimize the impact of the amendments.

An important feature of the amendments is the absence of any terminal receipt requirements. Because the terminals involved in paper-based debit card transactions are not electronic terminals for purposes of the act and regulation, no specific documentation at POS is required by the regulation. Consumers would, however, normally receive some form of documentation. Furthermore, because there is no required terminal receipt, there is no obligation to conform the information in periodic statements with the information on POS receipts. Periodic statements must identify third parties to whom funds were transferred by EFT, but this information would appear in any case as the merchant identification for each transaction.

The amendments also extend the time periods allowed for error resolution. It is important to note that the extended time periods will apply to *all* transfers resulting from point-of-sale debit card transactions, including those that *do* involve an electronic terminal. The modification allows 20 business days for error resolution before the provisional recrediting provisions of Regulation E

take effect, with a maximum of 90 days for error resolution. Before the amendments, the existing regulation allowed 10 business days and 45 days, respectively, for error resolution, except that 20 business days and 90 days, respectively, are allowed for error resolution with respect to EFTs initiated in foreign countries. Most commenters and industry representatives have indicated that the proposed time limits appear adequate for resolving most errors. These changes substantially reduce or eliminate the compliance burden associated with these requirements of the regulation, without significantly reducing the consumer protections intended by the Act.

Accounts subject to the margin requirements or other aspects of Regulation T are exempted from the provisional recrediting rules.

This amendment will preclude a confusing and potentially costly conflict with the margin requirements of Regulation T, if a provisional recrediting to such an account later had to be reversed. It is estimated that approximately two million of the debit cards now in existence have been issued in connection with consumer asset accounts or asset management plans. No significant loss of consumer protection is expected to follow from this amendment.

In summary, the incremental compliance requirements of the amendments are not expected to be very burdensome. Nonetheless, many financial institutions are likely to incur some cost associated with familiarizing themselves with and interpreting these amendments to determine whether the specific provisions apply. Those institutions to which the amendments apply will have to incur the costs of revising operating manuals and procedures. The assistance that the large credit and debit card organizations make available to their members is expected to streamline compliance for most institutions and minimize the burden of compliance requirements.

Section 904(a)(2) of the EFT Act requires the Board to prepare an analysis of the economic impact of any regulations under the Act. In addition, section 604 of the Regulatory Flexibility Act (5 U.S.C. 604) requires that regulations be accompanied by a final regulatory flexibility analysis. The foregoing analysis satisfies both of these requirements.

(8) *Update to official staff commentary.* The Board is also publishing an update to the official staff commentary interpreting Regulation E (EFT-2, Supp. II to 12 CFR Part 205). The changes were published in proposed form on January 12, 1984 (49 FR 2204),

and are now being adopted in final form. This represents the second periodic update; the first was published on April 6, 1983 (48 FR 14880).

The questions that have been added are self-explanatory. Some of the revisions relate to the regulatory amendments with respect to debit card transactions not involving electronic terminals.

The proposed change to Question 10-19 (regarding a consumer's stop payment order on a preauthorized debit) has not been adopted, due to the lack of support in the comments; existing Question 10-19 remains in effect. A change has been made to the commentary that was not contained in the proposal: Question 9-36 (regarding identification of the type of transfer) has been expanded to codify a longstanding staff position applicable to cases in which the amount of the transfer reflects the value of the goods purchased plus the sum of cash that the consumer received from the merchant.

The staff expects to publish the next proposed update to the official staff commentary in November 1984. The public is invited to identify issues that may warrant inclusion in that proposal; suggested items must be received by November 9, 1984, in order to assure consideration. It is contemplated that the final version of the next update will be published in March 1985.

List of Subjects in 12 CFR Part 205

Banks, Banking, Consumer protection, Electronic fund transfers, Penalties.

PART 205—[AMENDED]

(9) *Regulatory text.* Pursuant to the authority granted in section 904 of the Electronic Fund Transfer Act, 15 U.S.C. 1693b, the Board amends Regulation E, 12 CFR Part 205, by adding an OMB control number to § 205.1 and by revising §§ 205.1(a), 205.2(g), 205.9(b)(3), and 205.11(c)(3) and (c)(4), to read as follows:

§ 205.1 Authority, purpose, and scope.

(a) *Authority.* This regulation, issued by the Board of Governors of the Federal Reserve System, implements title IX (Electronic Fund Transfer Act) of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 *et seq.*).

* * * * *

[Information collection requirements contained in this regulation have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 7100-0200.]

§ 205.2 Definitions and rules of construction.

(g) "Electronic fund transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephone, or computer or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes, but is not limited to, point-of-sale transfers, automated teller machine transfers, direct deposits or withdrawals of funds, and transfers initiated by telephone. It includes all transfers resulting from debit card transactions, including those that do not involve an electronic terminal at the time of the transaction. The term does not include payments made by check, draft, or similar paper instrument at an electronic terminal.

§ 205.9 Documentation of transfers.

(b) *Periodic statement.*

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

§ 205.11 Procedures for resolving errors.

(c) *Investigation of errors.*

(3) A financial institution shall comply with all requirements of this section except that it need not provisionally recredit the consumer's account if—

(i) It requires but does not receive timely written confirmation of oral notice of an error; or

(ii) The notice of an error involves an account that is subject to the margin requirements or other aspects of Regulation T (12 CFR Part 220).

(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), or involves an electronic fund transfer resulting from a point-of-sale debit card transaction, the applicable time periods for action in subsections (c), (e), and (f) shall be 20 business days in place of 10 business days, and 90 calendar days in place of 45 calendar days.

(10) *Text of revision to official staff commentary.* The revisions to the Official Staff Commentary on

Regulation E (EFT-2, Supp. II to 12 CFR Part 205) read as follows:

Section 205.2—Definitions and Rules of Construction

2-21.5 Q: Fund transfer—debit card transaction. A consumer uses a debit card to purchase goods or services or to obtain cash. The card is used to generate a sales slip and no electronic terminal is involved. The consumer's asset account is later debited for the amount of the transaction. Is this transfer subject to the regulation?

A: Yes. The definition of "electronic fund transfer" covers transfers resulting from debit card transactions whether or not an electronic terminal is involved at the time of the transaction. (See question 2-24.) (§ 205.2(g))

2-24 Q: Point-of-sale terminals. Does the regulation cover POS transactions in which the consumer presents an access device such as a debit card, and does the terminal receipt requirement apply?

A: The regulation applies to all transfers resulting from debit card transactions at point of sale whether or not an electronic terminal is involved. However, if there is no electronic terminal, a terminal receipt is not required and the periodic statement need not disclose terminal location. Point-of-sale terminals are electronic terminals for purposes of the regulation 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. (See question 2-21.5. Also see § 205.11(c)(4) regarding the extension of certain error resolution deadlines.) (§§ 205.2(h) and 205.9(a))

Section 205.3—Exemptions

3-3.5 Q: Securities exemption—asset management accounts. Some consumer financial services include both an electronic fund transfer service and the purchase and sale of securities. An example is a program involving a debit card issued by a bank or other card issuer which the consumer uses to purchase goods or services, and a money market mutual fund held by a broker. Debits are processed by the card issuer and transmitted to the broker for payment from the money market mutual fund. Are such transfers exempt from coverage under the securities exemption?

A: No. The exemption applies only to transfers whose "primary purpose" is the purchase or sale of securities—for example, a telephone order to a stockbroker to buy or sell securities. It does not apply to transfers resulting from use of the card for the purchase of goods or services or to obtain cash. (A transaction involving the purchase or sale of securities also remains subject to the Board's margin requirements under

Regulation T (12 CFR Part 220) and other applicable securities regulations.) (§ 205.3(c))

Section 205.5—Issuance of Access Devices

5-1.5 Q: Issuance—addition of new accounts. A consumer has been issued an access device for accessing an asset account. The account-holding institution wants to make an additional account accessible to the consumer by means of the same access device. May the institution do so without a request by the consumer?

A: No. Making an additional account accessible through an existing access device is equivalent to issuing an access device for that account, and is subject to the unsolicited issuance provisions. (Additional disclosures may be required in some circumstances. See question 7-5.5.) (§ 205.5(a)(1))

Section 205.6—Liability of Consumer for Unauthorized Transfers

6-6.5 Q: Consumer negligence. A consumer writes the PIN on the ATM card or on a piece of paper kept with the card—actions that may constitute negligence under state law. Do such actions affect the liability for unauthorized transfers that may be imposed on the consumer?

A: No. The extent of the consumer's liability is determined by the promptness in reporting loss or theft of an access device or unauthorized transfers appearing on a periodic statement. Negligence on the consumer's part cannot be taken into account to impose greater liability than is permissible under the act and Regulation E. (§ 205.6(b))

Section 205.7—Initial Disclosure of Terms and Conditions

7-5.5 Q: Addition of new accounts. A consumer arranges for electronic fund transfers to and from an account, and receives disclosures. Later, the consumer arranges for transfers involving an additional account at the same financial institution. Does the addition of the new account require further disclosures?

A: The addition of a new account would require the institution to furnish any of the required disclosures that differ from those previously given. (See questions 5-1.5 and 7-6.) (§ 205.7(a))

7-6.5 Q: Addition of service—in interchange system. A financial institution operates electronic terminals through which consumers can access their accounts, and gives the required disclosures regarding the service. Later, the institution joins an interchange or shared system of terminals, giving consumers access to terminals operated by other institutions in the system. Are new disclosures required?

A: The institution must provide any of the required disclosures that differ from those previously given. (§ 205.7(a))

7-15.5 Q: Charges—in interchange system. Charges are imposed on the account-holding institution by the operator of a shared or interchange ATM system for the use of the system. In addition, charges may be imposed by other institutions in the system for the use of their ATMs. Must such charges be disclosed by the account-holding institution in the initial disclosures?

A: The fact that charges are imposed on the account-holding institution by the system or terminal-operating institution does not, by itself, require a disclosure to the consumer. However, the institution must disclose any charges it imposes on the consumer for EFT services, including charges for ATM transactions in an interchange or shared ATM system.

Charges for use of an ATM imposed on the consumer by an institution other than the account-holding institution are not within the purview of the account-holding institution's relationship with its customer and need not be disclosed in the initial disclosures. (See question 4-1.) (§§ 205.7(a)(5) and 205.4(a))

Section 205.9—Documentation of Transfers

9-31 Q: Periodic statements—charges. What charges must be disclosed on the periodic statement?

A: Financial institutions should disclose the charges assessed against the account during the statement period for electronic fund transfers or the right to make transfers, or for account maintenance (including both EFT and non-EFT and both fixed fees and per-item charges). The charges may be disclosed as a total or may be itemized in part or in full, at the institution's option. (§ 205.9(b)(3))

9-31.5 Q: Periodic statements—charges in interchange system. Charges are imposed on the account-holding institution by the operator of a shared or interchange ATM system for the use of the system. In addition, charges may be imposed by other institutions in the system for the use of their ATMs. Must such charges be disclosed by the account-holding institution on the periodic statement?

A: The fact that charges are imposed on the account-holding institution by the system or terminal-operating institution does not, by itself, require a disclosure to the consumer. However, the institution must disclose any charges it imposes on the consumer for EFT services, including charges for ATM transactions in an interchange or shared ATM system.

Charges for use of an ATM imposed on the consumer by an institution other than the account-holding institution and included in the amount of the transfer by the terminal-operating institution need not be separately disclosed on the periodic statement. (§ 205.9(a)(1), (b)(1)(i), and (b)(3))

9-36 Q: 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 (such as a terminal location or third-party name) enables the consumer to identify the type of transfer. As a further example, when a consumer obtains cash from a merchant in addition to purchasing goods, it is not necessary to treat the transaction as involving two different types of transfers. (§ 205.9(a)(3) and (b)(1)(iii))

9-40.5 Q: Receipts/periodic statements—interchange system; terminal location. In a shared or interchange system, a consumer uses terminals operated by institutions other than the account-holding institution. The terminal operators have terminals at more than one location, and the terminal receipts include a street address, city, and state in addition to the name of the terminal operator. In contrast, the periodic statement provided by the account-holding institution identifies the terminal location for these transfers by listing the name of the terminal operator and the city and state. Does this identification comply with the regulation?

A: Yes. For transfers initiated at non-proprietary terminals, the account-holding institution may describe the location on the periodic statement by naming the entity at whose place of business the terminal is located (or which owns or operates the terminal), plus the city and state. It need not repeat on the periodic statement the street address given on the terminal receipt; similarly, it need not include identification codes or terminal numbers shown on the receipt by the terminal operator. (§ 205.9(a)(5) and (b)(1)(iv))

Section 205.10—Preauthorized Transfers

10-18.5 Q: Preauthorized debits—authorization. A consumer telephones the financial institution or designated payee to arrange for preauthorized electronic fund transfers from the consumer's account, and subsequently receives a form for authorizing the fund transfers. The consumer signs and returns one copy of the form, and retains a copy. Does this procedure comply with the regulation?

A: Yes; the confirmation form serves as the required written authorization. The regulation does not require that a prescribed format be used. (§ 205.10(b))

Section 205.12—Relation to State Law

12-1 Q: 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, a state law is inconsistent with the federal law, and is not more protective, is it automatically preempted by operation of law, absent a Board determination of preemption?

A: State law may be preempted even if the Board has not issued a determination. Interested parties may seek a Board determination by following the procedures

set forth in the regulation. (§ 205.12(a) and (b))

By order of the Board of Governors of the Federal Reserve System, October 11, 1984.

William W. Wiles,
Secretary of the Board.

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FEDERAL RESERVE SYSTEM

12 CFR Part 226

[Reg. Z; TIL-1]

**Truth in Lending; Official Staff
Commentary Revisions**

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final official staff interpretation.

SUMMARY: The Board is publishing in final form changes to the official staff commentary to Regulation Z (Truth in Lending), 12 CFR Part 226, that address the disclosure of fees for the use of automated teller machines. The Board is not adopting another proposed change to the official staff commentary that addressed the scope of the securities transaction exemption contained in § 226.3(d) of Regulation Z. The commentary applies and interprets the requirements of Regulation Z with regard to consumer credit transactions and is a substitute for individual staff interpretations of the regulation.

EFFECTIVE DATE: October 16, 1984.

FOR FURTHER INFORMATION CONTACT:

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SUPPLEMENTARY INFORMATION:

1. General

Effective October 13, 1981, an official staff commentary was published to interpret Regulation Z (12 CFR Part 226). The commentary is designed to provide guidance to creditors in applying the regulation to specific transactions and is updated periodically to address significant questions.

On December 6, 1983, the Board proposed to add a new comment 4(b)(2)-2 regarding the disclosure of fees in interchange or shared systems, and an additional example to comment 6(b)-1 (48 FR 54642). Final action on these proposals is being taken at this time. Although creditors are free to rely on the provisions as of the effective date, and are protected if they do so, they need not follow the revisions until October 1, 1985.

In addition, on January 18, 1984, the Board published a proposed change to comment 3(d)-1 of the official staff commentary that would have specifically addressed the application of the securities transaction exemption in

§ 226.3(d) of Regulation Z to margin credit transactions in consumer asset management accounts (49 FR 2211). These accounts combine transaction and investment features and are offered by brokerage and investment firms. The accounts offer the consumer the capability to place assets (for example, cash and securities) in one account for the purpose of engaging in consumer transactions, investing excess cash balances (in a money market mutual fund, for example), and buying and selling securities. Margin credit is extended by the broker if the uninvested free credit balances and the redemption of money market shares are insufficient to pay for the transaction. After further analysis of the proposal and of the comments received, the staff believes that Regulation Z should not be interpreted to apply to these margin credit transactions. The proposal is therefore not being adopted.

2. Commentary Revisions

Following is a brief description of the revisions to the commentary regarding the disclosure of fees for using an automated teller machine (ATM) to obtain a cash advance.

Subpart A—General

Section 226.4—Finance charge.

4(a) Definition.

Comment 4(a)-5 is added to provide that certain charges imposed on cardholders by card issuers for using an ATM to obtain a cash advance are not finance charges. The final provision has been substantially simplified from the proposal in response to operational and other concerns raised by the commenters, and has been relocated from the commentary on § 226.4(b) to the commentary on § 226.4(a).

The final comment has been revised from the proposal to apply to charges imposed by card issuers on cardholders for using an ATM to obtain a cash advance in a proprietary system, as well as to charges in interchange or shared systems. A charge imposed on the cardholder by the card issuer for obtaining a cash advance at an ATM is not a finance charge to the extent that the charge does not exceed the charge imposed by the card issuer for cash withdrawals from consumer asset accounts, such as checking or savings accounts, at the ATM.

Subpart B—Open-End Credit

Section 226.6—Initial disclosure statement.

6(b) Other charges.

Comment 6(b)-1 is revised by adding an example to clarify that the charges described in comment 4(a)-5 that are not finance charges must be disclosed as "other charges" under §§ 226.6(b). Comment 6(b)-2 is also revised by adding an example to clarify that the card issuer has no disclosure responsibilities on the initial disclosure statement for certain charges that might be imposed on the cardholder by other institutions for the use of their ATMs.

Section 226.7—Periodic statement.

7(b) Identification of transactions.

New comment 7(b)-2 is added for guidance on how charges imposed by terminal-operating institutions other than the card issuer should be disclosed on the card issuer's periodic statement.

List of Subjects in 12 CFR Part 226

Advertising, Banks, Banking, Consumer protection, Credit, Federal Reserve System, Finance, Penalties, Truth in lending.

PART 226—[AMENDED]

(3) *Text of revisions.* The revisions to the commentary (Supplement I to Part 226) read as follows:

Subpart A—General

* * * * *

Section 226.4—Finance charge.

4(a) Definition.

* * * * *

5. *Treatment of fees for use of automated teller machines.* Any charge imposed on a cardholder by a card issuer for the use of an automated teller machine (ATM) to obtain a cash advance (whether in a proprietary, shared, interchange, or other system) is not a finance charge to the extent that it does not exceed the charge imposed by the card issuer on its cardholders for using the ATM to withdraw cash from a consumer asset account, such as a checking or savings account. (See the commentary to § 226.6(b).)

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Subpart B—Open-End Credit

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Section 226.6—Initial disclosure statement.

* * * * *

6(b) Other charges.

1. *General; examples of other charges.* Under section 226.6(b), significant charges related to the plan (that are not finance charges) must also be disclosed. For example:

- Automated teller machine (ATM) charges described in comment 4(a)-5 that are not finance charges.
- 2. *Exclusions.* The following are examples of charges that are not "other charges": * * *
- Charges imposed on a cardholder by an institution other than the card issuer for the use of the other institution's ATM in a

shared or interchange system. (See also comment 7(b)-2.)

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Section 226.7—Periodic statement.

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7(b) Identification of transactions.

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2. Automated teller machine (ATM) charges imposed by other institutions in shared or interchange systems. A charge imposed on the cardholder by an institution other than the card issuer for the use of the other institution's ATM in a shared or interchange system and included by the terminal-operating institution in the amount of the transaction need not be separately disclosed on the periodic statement.

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Board of Governors of the Federal Reserve System, October 11, 1984.

William W. Wiles,

Secretary of the Board.

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