

**FEDERAL RESERVE BANK  
OF NEW YORK**

[ Circular No. **10698** ]  
March 18, 1994 ]

**ELECTRONIC FUND TRANSFERS**

— **Proposed Revision of Regulation E**  
— **Proposed Revision of the Official Staff Commentary to Regulation E**

*Comments Invited by May 31, 1994*

— **Amendments to Regulation E Regarding Electronic Benefit Transfer (EBT) Programs**

*To All Depository Institutions in the Second Federal  
Reserve District, and Others Concerned:*

**Proposed Revisions**

The following is from the text of a statement issued by the Board of Governors of the Federal Reserve System inviting comments on proposals to revise its Regulation E, "Electronic Fund Transfers," and the Staff Commentary to that regulation:

The Federal Reserve Board has published for public comment a proposal to simplify and update its Regulation E, which implements the Electronic Fund Transfer Act. Comment is requested by May 31, 1994.

In keeping with the Board's Regulatory Planning and Review Program, the proposed revisions focus on ways of easing the burdens imposed on financial institutions without diminishing consumer protections established by the act.

The proposal contains some substantive revisions, including changes to the existing exemptions for securities or commodities transfers and for preauthorized transfers to or from accounts at small institutions. For the most part, however, the revisions to Regulation E involve technical changes intended to make the regulation more consistent with the requirements of other regulations governing deposit accounts, simplify the language and format of the regulation, and delete obsolete provisions.

Major changes in the regulation would require that the act be amended, and the Board therefore also solicits comment on legislative revisions that could be achieved without significant adverse impact on consumer protections.

The Board also proposed changes to the staff commentary.

Printed on the following pages is the text of the proposals, which have been reprinted from the *Federal Register* of March 7. Comments on either of the proposals should be submitted by May 31, 1994, and may be sent to the Board of Governors, as specified in the official notices, or to our Compliance Examinations Department.

**Amendments to Regulation E**

In amending its Regulation E, the Board of Governors issued the following statement:

The Federal Reserve Board has issued final amendments to its electronic fund transfer regulation, Regulation E, to cover electronic benefit transfer (EBT) programs. Adoption of the Board's rule means that benefit recipients will be accorded much the same protections that are available to other users of electronic payment mechanisms.

EBT programs involve the issuance of plastic access cards and personal identification numbers to recipients of government benefits such as food stamps, Aid to Families with Dependent Children, and Supplemental Security Income. Benefits can be accessed through automated teller machines (ATMs) and point-of-sale terminals. The EBT amendments to Regulation E call for general application of the rules on liability for unauthorized transfers, error resolution, and most other provisions, except for periodic statement requirements. This rulemaking directly affects government agencies that administer EBT programs and indirectly affects depository institutions and other private-sector entities.

Mandatory compliance was set for March 1, 1997, as requested by a Federal EBT Task Force that represents all the major federal agencies with benefit programs. The task force is working to establish a nationwide system for electronic delivery of government benefits, and asked for the three-year delay so that agencies could implement these EBT programs in compliance with Regulation E.

Enclosed — for depository institutions in the Second Federal Reserve District and others who maintain sets of regulations of the Board of Governors — is the text of the amendments to Regulation E, which has also been reprinted from the *Federal Register* of March 7; additional, single copies may be obtained at this Bank (33 Liberty Street) from the Issues Division on the first floor, or by contacting the Circulars Division (Tel. No. 212-720-5215 or 5216). Questions regarding this regulation may be directed to Elizabeth Irwin-McCaughey, Manager, Compliance Examinations Department (Tel. No. 212-720-6820).

WILLIAM J. McDONOUGH,  
*President.*

**FEDERAL RESERVE SYSTEM**

**12 CFR Part 205**

[Regulation E; Docket No. R-0830]

**Electronic Fund Transfers**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed rule.

**SUMMARY:** The Board is publishing for comment a proposal to revise Regulation E, which implements the Electronic Fund Transfer Act. The proposal stems from the Board's review of Regulation E pursuant to its policy of periodically reviewing all of its regulations. The Board's review considered ways the regulation could be simplified to ease the burdens imposed on financial institutions, consistent with the Board's responsibility for implementing the act, and considered also whether the regulation could more effectively carry out the purposes of the act. The proposal contains several substantive revisions, including changes to the existing exemptions for securities or commodities transfers and for preauthorized transfers to or from accounts at small institutions. In addition, the proposal includes changes intended to make Regulation E more consistent with the requirements of other regulations governing deposit accounts. The proposal also simplifies the language and format of the regulation, deleting obsolete provisions and eliminating all of the footnotes. In conjunction with the proposed revisions to the regulation, the Board also has proposed revisions to the staff commentary published elsewhere in today's *Federal Register*.

**DATES:** Comments must be received on or before May 31, 1994.

**ADDRESSES:** Comments should refer to Docket No. R-0830 and be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may also be delivered to the guard station in the Eccles Building Courtyard on 20th Street, NW. (between Constitution Avenue and C Street) between 8:45 a.m. and 5:15 p.m. weekdays. Except as provided in the Board's rules regarding the availability of information (12 CFR 261.8), comments will be available for inspection and copying by members of the public in the Freedom of Information Office, room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. weekdays.

**FOR FURTHER INFORMATION CONTACT:** Jane Jensen Gell, Mary Jane Seebach, Staff

Attorneys, or John Wood, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452-2412 or (202) 452-3667. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson, at (202) 452-3544.

**SUPPLEMENTARY INFORMATION:**

**(1) Background**

The Electronic Fund Transfer Act (EFTA) (15 U.S.C. 1693), enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The Federal Reserve Board was given rulewriting authority to issue implementing regulations. Types of transfers covered by the act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale terminal, automated clearinghouse, telephone bill-payment system, or home banking program. The act and Regulation E (12 CFR part 205) provide rules that govern these and other EFTs. The rules prescribe restrictions on the unsolicited issuance of ATM cards and other access devices; disclosure of terms and conditions of an EFT service; documentation of EFTs by means of terminal receipts and periodic account statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized EFTs.

The Board's policy under its Regulatory Planning and Review (RPR) program calls for periodic review of each Board regulation. The RPR program has four goals: to clarify and simplify the regulatory language; to amend the regulation to reflect technological and other developments; to reduce undue regulatory burden on the industry; and to delete obsolete provisions. In keeping with that policy, the Board has made a detailed review of Regulation E to determine whether it can be simplified to ease compliance burdens for financial institutions, while meeting the Board's responsibility for implementing the consumer protections of the EFTA.

Based on its review, the Board now proposes revisions to Regulation E. While certain substantive revisions have been made to the regulation (see the section-by-section discussion below), the proposal leaves most of the regulatory provisions substantively unchanged. The regulation closely follows the language of the statute, which contains detailed requirements in most areas, and major changes to the

regulation are not possible unless the act itself is amended. Therefore, the Board is soliciting comment on whether specific legislative revisions to the EFTA are necessary and achievable without imposing a significant adverse impact on consumer protections.

The proposal simplifies the language and format of each section of the regulation to state the requirements more clearly. All of the footnotes have been either integrated into the text of the regulation or moved to the proposed staff commentary, making the regulation itself less cumbersome to use. The proposed regulation is shorter than current Regulation E by about fifteen percent, a reduction largely attributable to the deletion of obsolete provisions and to the transfer of explanatory material to the commentary. In addition to commenting on the proposed changes, the Board requests specific suggestions, as well as rationale, for additional changes to the regulation that would facilitate compliance.

**(2) Proposed Regulatory Revisions**

The following discussion covers the proposed revisions to Regulation E section-by-section. In many cases, the proposed changes would simplify or clarify the current text, with no substantive change in the regulatory requirements; where these changes are self-evident from reading the proposed text itself, they are not discussed.

*Section 205.1—Authority and Purpose*

The proposal simplifies the current section. Discussion of the Congressional findings has been deleted. Coverage issues currently addressed in § 205.1(b) have been moved to § 205.3.

*Section 205.2—Definitions*

Paragraph (b)(2)

The proposal incorporates the exemption for trust accounts (currently § 205.3(f)) into the definition of account. The definition more closely tracks the statutory language contained in section 903(2) of the EFTA.

Paragraph (d)—Business Day

The act and regulation define business day as any day on which the offices of the consumer's financial institution are open to the public for carrying on substantially all business functions. This currently requires that each financial institution determine when its offices are "carrying on substantially all business functions. Using its exception authority under section 904(c) of the EFTA, the Board proposes to change the definition so that it will mirror that used in Regulations CC (12 CFR part 229) and DD (12 CFR

part 230). Those regulations define a business day as a calendar day other than a Saturday, Sunday, or any legal public holiday specified in 5 U.S.C. 6103(a). The Board believes compliance with the multiple regulations that govern deposit accounts would be simplified if similar definitions were used and solicits comment on whether such a change will reduce burden without adversely affecting consumer protections.

#### Paragraph (g)—Financial Institution

The Board proposes to simplify the definition of financial institution (currently § 205.2(i)) by eliminating references to both state and federal institutions. Instead, the definition would include "a bank, savings association, credit union, or any other person that directly or indirectly holds an account belonging to a consumer." This is not intended as a substantive change in coverage.

#### Paragraph (h)—Person

The proposal adds a definition of "person," incorporating language from Regulations B (12 CFR 202.2(x)) and Z (12 CFR 226.2(a)(22)). The term is used in several places in the regulation, most notably in § 205.3(a), defining the regulation's coverage, and in § 205.10(e) on compulsory use.

#### Section 205.3—Coverage

The proposal includes a new section defining the regulation's coverage. The Board solicits comment on whether having a self-contained section on coverage would facilitate use of the regulation.

#### Paragraph (a)—General

The proposal clarifies that the regulation applies to any EFT that authorizes a financial institution to debit or credit a consumer's account. It also incorporates the discussion of coverage currently addressed in § 205.1(b).

#### Paragraph (b)—Electronic Fund Transfer

The definition of "electronic fund transfer" (currently § 205.2(g)), which is central to determining coverage under the regulation, has been moved into the coverage section. A minor change to the definition of an EFT makes clear that the term includes transfers initiated through a computer or through magnetic tape. This change is proposed because a strict reading of the current regulation might lead to the unintended conclusion that an EFT does not include transfers initiated through a computer not involving tape. The definitions of "preauthorized electronic fund transfer"

and "unauthorized electronic fund transfer" remain in the definitions section.

Questions have arisen about Regulation E coverage of smart cards. Generally, smart cards are plastic cards that have the capacity to either compute or communicate information. At one time, it was believed that smart card systems were not subject to Regulation E because no account existed within the definition of the act or regulation. With advances in smart card technology, that assumption is less clear. Increasingly more uses are available for smart cards. The Board believes that smart cards are subject to Regulation E if the cards are used to access an account. A similar analysis might be applied to value-added or prepaid cards.

The determination about whether smart cards and value-added cards are subject to the regulation has implications both for the private and public sectors. For example, any determination made on coverage of smart cards in the review could apply to electronic benefit transfer system programs. (See Docket No. R-0829 elsewhere in today's *Federal Register* in which the Board deferred to the review of Regulation E for discussion of smart cards and its implication on electronic benefit transfer systems.) The Board solicits comment on the coverage of smart cards.

#### Paragraph (c)—Exclusions From Coverage

The proposal's expanded section on coverage retains the exemptions currently contained in § 205.3. Including these exemptions with the definition of "electronic fund transfer" more closely tracks the statutory provisions. In addition, the Board believes having both coverage and exemption provisions in one section would facilitate the determination of whether compliance with the regulation is required. The paragraph contains several proposed revisions to current exemptions.

#### Paragraph (c)(3)—Wire Transfers

The proposal amends the exemption for wire transfers currently contained in § 205.3(b) to clarify that it exempts transfers through Fedwire (or similar wire transfer systems) and not all transfers through the Federal Reserve Communications System. The proposed amendment does not represent a substantive change in the scope of the exemption. Rather, it would correct the reference to more accurately reflect the statutory intent.

#### Paragraph (c)(4)—Securities and Commodities Transfers

The Board proposes to revise the exemption for certain securities and commodities transfers. When the current exemption was initially adopted, the Board omitted the requirement that the purchase or sale be through a broker-dealer registered with the Securities Exchange Commission (SEC). The intent of this change was to broaden the scope of the exemption to include securities transactions made by mutual funds and pension and profit-sharing plans. The Board noted at the time that existing federal laws and the regulations of the SEC and the Commodity Futures Trading Commission (CFTC), although not specifically promulgated for the regulation of payment transfers, provided protections to consumers that were consistent with the requirements of the EFTA and Regulation E.

As currently written, however, the exemption does not extend to a transfer for the purchase or sale of securities if the securities (for example, municipal securities) are not regulated by the SEC, even if the transfer is executed by a broker-dealer who is regulated by the SEC. In keeping with the statutory language, the proposed change would exempt transfers involving unregulated securities if the purchase or sale is transacted by a broker-dealer regulated by the SEC or a futures commission merchant regulated by the CFTC. The Board believes that the regulation of broker-dealers and futures commission merchants offers sufficient protection of payment transfers for consumers and that the application of the protections in Regulation E would only duplicate available safeguards.

The Board proposes to extend the exemption to all securities or commodities held in book-entry form by Federal Reserve Banks on behalf of the Treasury Department and other federal agencies (for example, Treasury Direct issues). Currently a transfer to purchase Treasury securities is technically covered by Regulation E because it is not regulated by the SEC or the CFTC and, when purchased from the Federal Reserve Banks, is not purchased or sold by a registered broker-dealer. The Board believes there is adequate regulation of transfers that involve Federal Reserve Banks and federal agencies, offering sufficient consumer protection (see 31 CFR part 370, regulations governing payments by the automated clearing house method on account of United States securities).

The Board solicits comments on whether these proposed changes strike

the appropriate balance between facilitating greater use of EFTs for securities transactions and providing adequate consumer protection.

Paragraph (c)(7)—Small Institutions

The Board proposes to increase the current-asset size cutoff of the small institution exemption in current § 205.3(g). Section 904(c) of the EFTA gives the Board authority to modify the requirements imposed by the regulation on small financial institutions if the Board determines that such modifications are necessary to alleviate any undue compliance burden on small institutions and that such modifications are consistent with the purposes and objective of the act. In 1982, the Board exempted preauthorized transfers to or from accounts at financial institutions with assets of less than \$25 million. The regulation exempts the preauthorized transfers as a class of transfers, and not the financial institutions themselves. A small financial institution that provides EFT services besides preauthorized transfers must comply with the regulation for those other services. For example, a small financial institution that offers ATM services must comply with Regulation E in regard to the issuance of debit cards, terminal receipts, periodic statements, and other requirements. In addition, the institution must comply with provisions of the act that apply to the financial institution's conduct rather than to the exempted transfers. For example, the prohibition against compulsory use of EFTs in section 913 of the act—in regard to credit or employment (see discussion below in § 205.10(e))—remains applicable.

When the Board adopted the exemption in 1982, many small institutions that did not offer EFT services such as ATM access benefitted from the exemption. Given the growth in assets of financial institutions in the past ten years, increasing the asset-size cutoff of the exemption to \$100 million could reduce burden without lessening the extent of consumer protection originally provided. Because many small institutions now offer a variety of EFT services, it appears that only a limited number of institutions would be exempted from Regulation E under the proposed increase. The Board solicits comment on the proposed increase in the exemption level. In addition, the Board requests comment on other ways the burden on small institutions could be reduced without sacrificing the consumer protections intended by the act.

Questions have been raised about the impact of Article 4A of the Uniform

Commercial Code (UCC) on the small institution exemption. In the revised commentary to Regulation E, the Board clarifies that Article 4A is not applicable to the preauthorized transfers that qualify for the small institution exemption. Article 4A applies primarily to large-dollar commercial wire transfers made, for example, via Fedwire, CHIPS, SWIFT, and Telex. Section 4A-108 excludes any transaction that is subject to the EFTA from coverage under Article 4A. The question is whether the transfers initiated by small financial institutions that take advantage of the regulatory exemption may be subject to the requirements of Article 4A as a consequence. For example, would a direct deposit to a consumer account at a small bank be covered by Article 4A if exempt from Regulation E? The Board regards these preauthorized transfers as remaining subject to certain requirements of the EFTA, and therefore not covered by Article 4A. The Board solicits comment on whether specific language is needed in the regulation to clarify this issue.

The Board proposes deleting footnote 1a, which refers to sections 913, 915, and 916 of the EFTA. Section 913 places restrictions on the compulsory use of EFTs. For example, an institution may not condition the extension of credit on repayment by preauthorized debit. The statutory language from section 913 has been incorporated in proposed § 205.10(e). Sections 915 and 916 provide for civil and criminal liability, respectively, for violations of the EFTA. References to sections 915 and 916 are contained in proposed § 205.3(c)(5)(ii). The Board has also added cross-references to § 205.10 and sections 915 and 916 in the appropriate paragraphs to replace footnote 1a.

Section 205.4—General Disclosure Requirements; Jointly Offered Services

Current § 205.4 describes certain requirements under the regulation. The Board proposes to consolidate the general disclosure requirements currently dispersed throughout the regulation in this section. In addition to adding paragraph (a), the proposal contains various editorial changes including a reordering of the section; no substantive change is intended.

Paragraph (a)—Form of Disclosures

The proposal incorporates the format requirements for disclosures currently found in §§ 205.7(a) and 205.9. The Board interprets these requirements as generally applying to all disclosures, in addition to the terminal receipts and periodic statements required by the regulation. The phrase "in a form the

consumer may keep" would replace the wording "the financial institution shall make available to the consumer a written receipt of the transfer(s) \* \* \*." currently contained in § 205.9(a). The proposed change is consistent with language in Regulation Z (12 CFR 226.17(a)) and Regulation DD (12 CFR 230.3(a)), for example. The Board does not consider this to be a substantive change, as the proposed language is drawn from the current commentary.

The paragraph also incorporates language currently in § 205.9(e) that permits an institution to use commonly accepted or readily understandable abbreviations in complying with the documentation requirements of the regulation.

Section 205.5—Issuance of Access Devices

The proposal contains extensive editorial changes to this section, including the addition of headings to help distinguish the rules for solicited and unsolicited issuance of access devices.

The proposal deletes the obsolete language in current § 205.5(a)(3), a paragraph that grandfathered renewals of pre-1979 access devices from the requirements of the section. In addition, the Board proposes to move the provisions relating to the Truth in Lending Act (TILA) contained in current § 205.5(c) to proposed § 205.12 to simplify the regulation by placing all references to TILA in the same section. (See the discussion of § 205.12 below.)

Footnote 1b, which provides guidance on issuance of an access device for a joint account, has been deleted from the regulation and moved to the commentary.

Section 205.6—Liability of Consumer for Unauthorized Transfers

Section 205.6 specifies the rules governing consumer liability for unauthorized use. The proposal significantly revises the section in an effort to simplify the text and make it easier to understand.

The Board proposes moving explanatory or illustrative material to the commentary. This includes the parenthetical in current § 205.6(a)(2), which provides examples of how a financial institution may identify the consumer to whom an access device is issued; § 205.6(b)(3), which explains the relationship between the various tiers of liability; and examples of extenuating circumstances that would permit delayed notification by consumers in current § 205.6(b)(4). The provisions in current § 205.6(d) concerning the

relation to the TILA now appear in proposed § 205.12.

Paragraph (a)—Conditions for Liability

The current regulation appears to condition consumer liability solely on the issuance of an accepted access device (§ 205.6(a)). The commentary, on the other hand, states that if the consumer fails to report an unauthorized EFT within 60 days of transmittal of the periodic statement reflecting the transfer, the consumer could be subject to liability for subsequent transfers (Q6-1). The Board interprets section 909 of the EFTA as precluding consumer liability for unauthorized transfers not involving an access device until 60 days after transmittal of the periodic statement reflecting the transfer. At that time, the consumer could be subject to unlimited liability for those transfers occurring after the 60 days.

The proposal incorporates the current commentary position that a consumer could be held liable for unauthorized EFTs that did not involve an access device. The Board believes a consumer cannot, however, be held liable for unauthorized transfers occurring before the 60-day period expires.

The proposed section slightly alters the current rule by requiring that a financial institution provide all of the disclosures required by § 205.7 in order to impose liability on the consumer. Currently § 205.6(a)(3) requires that only three of the disclosures from § 205.7 be provided before a consumer can be held liable for unauthorized transfers. The Board believes this proposed change would not impose a significant additional burden as institutions must initially provide all of the disclosures to comply with § 205.7(b). The Board solicits comment on whether this change increases the risk of liability for institutions.

Paragraph (b)—Limitations on Amount of Liability

Proposed paragraph (b) incorporates the substance of current paragraphs (b) (limitations on amount of liability) and (c) (notice to financial institution). In addition, the proposal spells out more clearly each of the three tiers of a consumer's liability (\$50, \$500, or unlimited). Subheadings provide further clarification.

Section 205.7—Initial Disclosures

The proposal includes structural and editorial changes to this section. To provide greater clarity, text has been organized into separate paragraphs on timing and content of disclosures, and subheadings have been added to make

the section easier to understand. Format requirements have been moved to proposed § 205.4(a).

The provision in current § 205.7(a)(1), giving financial institutions the option of informing the consumer about the advisability of promptly reporting lost or stolen access devices, has been moved to the commentary.

The Board proposes to move the error resolution notice from current § 205.7(a)(10) to appendix A (Model Form A-3), to streamline the regulation and place all model disclosures together.

The proposal deletes as obsolete current § 205.7(b) regarding disclosures for accounts that predate the statute.

Paragraph (a)(3)—Business Days

As described in the supplemental information to paragraph (d), the Board proposes to change the definition of business day to mean a calendar day other than a Saturday, Sunday, or any legal public holiday specified in 5 U.S.C. 6103(a). Accordingly, initial disclosures would have to include the revised definition of business day to assist consumers in understanding the timing provisions of the liability and error resolution rules under the regulation.

Section 205.8—Change in Terms Notice; Error Resolution Notice

The proposal makes two substantive changes in this section. In addition, the Board proposes to restructure the requirements of § 205.8 and add subheadings to make it easier to understand.

Paragraph (a)(1)—Prior Notice Required

Section 905(b) of the EFTA requires a financial institution to notify a consumer in writing at least twenty-one days before the effective date of certain adverse changes in terms or conditions contained in the initial disclosures. The Truth in Savings Act (TISA) (12 U.S.C. 4301) also requires institutions to provide a change in terms notice for deposit accounts. Section 266(c) of TISA requires a notice 30 days before the effective date of any adverse change in terms or conditions. In the proposed official staff interpretation of Regulation DD, the Board stated that if a financial institution changes a term that also triggers a change in terms notice under Regulation E, the institution may use the timing rules of Regulation E for sending the notice to affected consumers (see 59 FR 5543, February 7, 1994). The Board proposes to use its exception authority under the EFTA to extend the timing of the change-in-terms notice in Regulation E to 30 days to

coincide with the timing requirements of Regulation DD in order to facilitate compliance with the requirements of both regulations. The Board solicits comment on whether it is preferable to retain the flexibility offered by the two different timing requirements.

Paragraph (a)(2)—Prior Notice Exception

Currently, prior notice is not required when an immediate change in terms is needed to maintain or restore the security of an EFT system or account. If a change is made permanent, however, a financial institution must notify the consumer "on or with the next regularly scheduled periodic statement or within 30 days" of the change if disclosure would not raise security concerns. In certain circumstances, periodic statements are sent on a quarterly basis, and thus the consumer might not receive notification for up to ninety days after the change. The Board proposes to substitute a more specific timing rule for this subsequent notice. Under the proposal, if the change is made permanent, a financial institution must provide written notice within 45 days of the change unless disclosure raised security concerns. The Board requests comment on the proposed timing requirement.

Paragraph (b)—Error Resolution Notice

The Board proposes to move the alternate error resolution notice, which an institution may give with each periodic statement in place of the longer annual notice, from current § 205.8(b) to appendix A (Model Form A-3). This will streamline the regulation and place all model disclosures in one location.

Section 205.9—Receipts at Electronic Terminals; Periodic Statements

The proposed section contains a number of editorial revisions and two substantive changes. New paragraphs and headings have been added to better organize the text concerning the timing and contents of disclosures. As noted earlier, disclosure format requirements have been moved to § 205.4. Current paragraph (e), concerning use of abbreviations, was also moved to § 205.4.

The Board proposes to move footnote 2, which permits a financial institution to make receipts available through a third party, to the commentary.

The proposal deletes two obsolete paragraphs, (f) and (g), which dealt with receipts from terminals purchased prior to 1980 and delayed effective dates for certain periodic statements.

**Paragraph (a)(1)—Amount**

The current regulation allows financial institutions *other* than the account-holding institution to include a charge for the transfer in the total amount of the transfer, provided the amount of the charge is disclosed on the receipt and on a sign posted on or at the terminal. The proposal makes two changes. First, it would permit all financial institutions (including the account-holding institution) to include the charge in the total amount of the transfer, if the appropriate disclosures are made. Second, it would permit institutions to display the fee on or at the terminal—meaning either on a sign or on the ATM screen itself. The Board solicits comment on whether consumers would need added protections if the fee is displayed on the screen, for example, allowing the consumer to cancel the transaction after the fee is disclosed.

**Paragraph (a)(3)—Type**

This paragraph corresponds to current paragraph (a)(3) regarding disclosure of types of transfer and accounts. The examples included in the current paragraph have been moved to the proposed commentary.

Currently the regulation requires that a financial institution uniquely identify each account on the terminal receipt if more than one account of the same type may be accessed by a single access device. Footnote 3 provided an exception for instances in which the terminal is incapable of uniquely identifying each account, as well as for transactions at terminals purchased or ordered by the financial institution prior to 1980. The portion of the footnote which permits financial institutions to exclude identification of the type of account if the access device may access only one account at a terminal has been incorporated into the text of the proposed regulation at § 205.9(a)(3). The remainder of the footnote has been deleted as obsolete.

**Paragraph (a)(4)—Identification**

Currently, the regulation requires that financial institutions disclose on terminal receipts a number or code that uniquely identifies the consumer initiating the transfer, the consumer's account(s), or the access device used to initiate the transfer (§ 205.9(a)(4)). The Board proposes to delete the reference to a number or code that uniquely identifies the "consumer initiating the transfer" as superfluous. The Board believes that the remaining identification requirements sufficiently identify the consumer.

**Paragraph (a)(5)—Terminal Location**

This paragraph incorporates the substance of current § 205.9(b)(1)(iv). The detail contained in the current regulation which specifies appropriate location descriptions has been moved to the commentary.

The proposal deletes footnotes 5, 6, and 8 from the regulation. Footnote 5 allows institutions to omit the name of the state on terminal receipts for transfers occurring at terminals within 50 miles of the institution's main office. Footnotes 6 and 8 refer back to the text of footnote 5. The proposal incorporates this exception into the regulatory text. Footnote 5 also allows institutions to omit the name of the city and state if all of the terminals are located in the same city, and to omit the name of the state if all of the terminals are located in the same state. These exceptions have been deleted as obsolete, since most institutions that offer ATM access belong to networks operating on an interstate basis. Accordingly, few if any financial institutions are able to take advantage of the exception provided by the footnote. The Board solicits comment on whether these latter exceptions are still used by institutions.

The rules regarding terminal identification on the receipt have been slightly modified. Section 205.9(b)(1)(iv)(C) allows financial institutions to identify the terminal location by using the name of the entity at whose place of business the terminal is located, including identifying the name of the financial institution. Footnote 7 requires, however, that if the institution owns or operates terminals at more than one location, the terminal location must be identified on the periodic statement. Therefore, if an institution owns only one terminal (and does not belong to a network) it could identify the terminal using its own name. The proposal provides that the receipt and the periodic statement may provide the terminal location by giving the name of the institution if it is other than the account-holding institution. In the previous example, the institution would have to provide either a street address or a generally accepted name for the location. The Board believes this change makes the provision available to more institutions, since very few institutions own and operate only one terminal and do not belong to a network. The Board solicits comment on whether this imposes a burden on small institutions, and also on whether the change adversely reduces consumer information.

**Paragraph (a)(6)—Third Party Transfer**

Proposed paragraph (a)(6) incorporates the substance of current paragraph (a)(6). The excluded language, describing the use of codes or circumstances when the name of the payee cannot be duplicated by the terminal, has been incorporated into the proposed commentary.

**Paragraph (b)—Periodic Statements****Paragraph (b)(1)—Transaction Information**

The regulation requires financial institutions to disclose on the periodic statement either the location of the terminal as it appeared on the receipt or, if a code or terminal number was used to identify the location, both the code and a description of the location as specified in the regulation (§ 205.9(b)(1)(iv)). The proposed regulation simplifies the rule by not requiring a restatement of the code in addition to the location description (see the discussion in paragraph (a)(5) above). Proposed paragraph (b)(1)(iv) also incorporates the substance of footnote 4a, which provides that a financial institution need not identify the terminal location for transactions that involve the deposit of cash, checks, drafts, or similar paper instruments at electronic terminals.

Footnote 4 currently permits financial institutions to provide certain information on documents that accompany the periodic statement; and it permits the use of codes, if explained on either the statement or the accompanying documents. The footnote has been deleted and the substance moved to the proposed commentary. Footnote 9 allows an institution to omit the identification of third parties from periodic statements if their names appear on checks, drafts, or similar paper instruments deposited to the consumer's account at an electronic terminal. The footnote has been deleted and the substance moved to the proposed commentary.

**Paragraph (b)(3)—Fees**

Currently, § 205.9(b)(3) makes clear that a periodic statement required by Regulation E need not disclose any finance charge imposed under 12 CFR 226.7(f). The proposal eliminates the reference from the regulation, and moves the substance to the commentary.

Regulation DD requires institutions that provide periodic statements to itemize by type and amount certain fees imposed during the statement period (§ 230.6(a)(3)). Currently, § 205.9(b)(3) of Regulation E requires the disclosure of any fee that was assessed against the

account during the period for EFTs. The commentary to Regulation E (Q9-31) allows fees to be shown as a total dollar figure or to be itemized in part or in full, at the institution's option. Under Regulation DD, the Board has provided that institutions may follow the more flexible rules in Regulation E for fees associated with EFTs even though Regulation DD otherwise requires a more specific disclosure. The Board solicits comment on whether regulatory burden would be eased if the disclosure requirement in Regulation E mirrored the requirement in Regulation DD (see 12 CFR 230.6(a)(3)).

**Paragraph (c)—Exceptions to the Periodic Statement Requirements for Certain Accounts**

The proposal incorporates current paragraphs (c), (d), (h), and footnote 9a in revised § 205.9(c), pertaining to those circumstances in which a periodic statement is not required (for example, for a passbook account that can be accessed electronically only by preauthorized transfers to the account). No substantive change is intended.

**Paragraph (d)—Documentation for Foreign-Initiated Transfers**

Proposed paragraph (d) incorporates the essence of current paragraph (i) without substantive change.

**Section 205.10—Preauthorized Transfers**

The Board has reformatted this section and has added subheadings. The proposed section contains a substantive change from the current regulation and a new paragraph on compulsory use.

**Paragraph (a)—Preauthorized Transfers to Consumer's Account**

Section 205.10 sets forth general requirements for preauthorized transfers. The regulation currently requires that when a consumer's account will be credited by a preauthorized transfer from the same payor at least once every 60 days, the institution must credit the funds to the account as of the day the funds are received; this requirement would be deleted from the regulation as obsolete. The Board believes that mandating when funds must be credited to an account is no longer necessary since other regulations address both when funds must be made available to the consumer and when interest must be paid on the deposit (see Regulation CC, 12 CFR part 229; Treasury regulations, 31 CFR part 210; and ACH association rules). The Board solicits comment on whether there is a need to maintain the requirement in the regulation.

**Paragraph (b)—Written Authorization for Preauthorized Transfers From Consumer's Account**

The requirement that preauthorized EFTs from a consumer's account be authorized by the consumer only in writing has been revised. The requirement for the consumer's authorization to be a writing has been expanded to include authorizations which are "similarly authenticated" by the consumer. This proposed expansion addresses developments in electronic services, such as home banking. The broader interpretation of a "writing" would include, for example, electronic authorization by the consumer recorded on a computer memory unit. The Board believes this broader interpretation is consistent with the requirement in section 907 of the EFTA that the authorization be in writing. The Board solicits comment on whether additional safeguards are necessary to protect consumers in this situation. In addition, the Board solicits comment on other examples that might constitute "similarly authenticated" for purposes of this section. The Board notes that the revised requirement for a signed writing makes clear that only the consumer could produce the written authorization and not, for example, a third-party merchant on behalf of the consumer.

**Paragraph (e)—Compulsory Use**

Section 913 of the statute places certain restrictions on compulsory use of EFTs as a condition of credit, employment, or receipt of government benefits. The current regulation mentions the prohibition against compulsory use in footnote 1a, which references a financial institution's continuing duty to comply with section 913. The proposed paragraph is a counterpart to the statutory provision and would clarify that the provision applies to other persons (such as employers) and not just to financial institutions.

**Section 205.11—Procedures for Resolving Errors**

The Board proposes to reformat this section and add subheadings to facilitate compliance. The editorial revisions, with one exception, are not intended to make substantive changes.

Provisions contained in three footnotes have been moved to the proposed commentary: Footnote 10, which permits an institution to prescribe procedures for giving an error notice; footnote 11, which defines an agreement for purposes of § 205.14; and footnote 12, which allows institutions to

use a periodic statement to inform consumers that no error has occurred.

The provisions in current paragraph (i) relating to the TILA have been moved to proposed § 205.12.

**Paragraph (c)—Time Limits and Extent of Investigation**

Proposed paragraph (c) combines current paragraphs (c) and (d)(2) of § 205.11 concerning investigation of errors. The regulation currently requires a financial institution to provide the consumer with a written explanation, within the prescribed time period (either 10 business days or 45 calendar days), if an error occurred. If an error did not occur and the financial institution is operating under the 45-calendar-day rule, the institution has three additional days to notify the consumer of its findings. Section 908 of the EFTA makes clear the extra time is available when no error occurred, but is silent on the availability of extra time when an error is found (see the discussion in paragraph (e) below).

To facilitate compliance, the Board proposes to use its exception authority under section 904(c) to permit institutions to give notice within three business days of concluding its investigation regardless of the procedure being followed and whether or not an error has been found. The statutory language contained in section 908(d) lends itself to such an interpretation, and the Board believes the change will facilitate compliance with the section without any significant loss of consumer protection.

**Paragraph (d)—Procedures if Financial Institution Determines No Error or Different Error Occurred**

As discussed in the preceding paragraph, the Board proposes to allow institutions to provide notice within three business days of concluding an investigation, regardless of which time period is being followed.

**Section 205.12—Relation to Other Laws**

The proposed section contains the various references to the TILA and Regulation Z currently dispersed throughout Regulation E. The section also includes the standards applied by the Board in granting a state law preemption or in making an exemption determination.

**Paragraph (a)—Relation to Truth in Lending**

The Board proposes to consolidate all references from §§ 205.5, 205.6, and 205.11 to compliance with both the TILA and the EFTA in a single paragraph. The Board believes



consolidating these references in one section will facilitate compliance.

**Paragraph (b)—Preemption of Inconsistent State Laws**

Current § 205.12(a) and (b) are incorporated in proposed paragraph (b), with numerous editorial revisions.

**Paragraph (c)—State Exemptions**

Proposed paragraph (c) contains the rules the Board applies in granting a state exemption.

**Section 205.13—Administrative Enforcement; Record Retention**

Current § 205.13 contains information about administrative enforcement, issuance of staff interpretations, and record retention. With the exception of the record retention requirements, the proposal moves much of this information to the appendices.

**Paragraph (b)—Record Retention**

Certain provisions of the act and regulation apply to persons other than financial institutions (for example, the compulsory use provisions of section 913, which apply to all employers). The proposal differs from the current rule by limiting the record retention requirements to financial institutions, rather than covering "any person subject to the act and regulation." The Board solicits comment on whether this proposed change will produce an adverse impact on enforcement activities.

**Section 205.14—Electronic Fund Transfer Service Provider Not Holding Consumer's Account**

The Board proposes substantial editorial revisions to this section to simplify the text. Text has been reorganized into appropriate categories and subheadings added for greater clarity. Footnote 13 regarding delayed effective dates has been deleted as obsolete. The Board solicits comment on other ways the section could be simplified to facilitate compliance with the regulation.

**Section 205.15—Electronic Fund Transfer of Government Benefits**

The Board has issued a final rule in regard to the coverage by the EFTA and Regulation E of government benefits that federal, state, and local governments disburse to recipients by means of electronic benefit transfer (EBT) programs. (See Docket No. R-0829 elsewhere in today's Federal Register.) Having just issued that final rule, the Board is not incorporating the provisions governing EBT programs,

contained in a new § 205.15, in this proposal.

**Appendix A—Model Disclosure Clauses and Forms**

Most of the model disclosure clauses contained in appendix A remain unchanged. As noted earlier, the error resolution notices currently contained in §§ 205.7 and 205.8 have been moved from the regulation into appendix A to streamline the regulation (see Model Form A-3).

**Appendix B—Administrative Enforcement**

Appendix B lists the federal enforcement agencies responsible for enforcing Regulation E for particular classes of institutions.

**Appendix C—Issuance of Staff Interpretations**

The proposal includes a new appendix to replace current § 205.13(b) pertaining to requests for and issuance of staff interpretations of Regulation E. Much of the information contained in the current regulation, describing issuance of staff interpretations, has been deleted. The Board will continue to rely on the publication of interpretations in the official staff commentary as the primary means of interpreting the regulation. Specifically, and in keeping with the practice that has been in place for years, the proposal deletes any reference to unofficial staff interpretations that are in writing, limiting written interpretations to those that appear in the staff commentary, as revised. The Board believes this to be the most efficient and useful way to facilitate compliance.

**(3) Form of Comment Letters**

Comment letters should refer to Docket No. R-0830. The Board requests that, when possible, comments be prepared using a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on computer diskettes, using either the 3.5" or 5.25" size, in any DOS-compatible format. Comments on computer diskettes must be accompanied by a hard copy version.

**(4) Economic Impact Statement**

The Board's Division of Research and Statistics has prepared an economic impact statement on the proposed regulation. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal

Reserve System, Washington, DC 20551, or by telephone at (202) 452-3245.

**List of Subjects in 12 CFR Part 205**

Banks, banking, Consumer protection, Electronic fund transfers, Reporting and recordkeeping requirements.

**Text of Proposed Revisions**

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 205 as follows:

**PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)**

1. The authority citation for part 205 would be revised to read as follows:

**Authority:** 15 U.S.C. 1693.

2. Sections 205.1 through 205.14 are revised to read as follows:

**§ 205.1 Authority and purpose.**

(a) *Authority.* This part is issued by the Board of Governors of the Federal Reserve System pursuant to the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*). The information-collection requirements have been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and have been assigned OMB No. 7100-0200.

(b) *Purpose.* This part carries out the purposes of the Electronic Fund Transfer Act, which establishes the basic rights, liabilities, and responsibilities of consumers who use electronic fund transfer services and of financial institutions that offer these services. The primary objective of the act and this regulation is the protection of individual consumers engaging in electronic fund transfers.

**§ 205.2 Definitions.**

For purposes of this part, the following definitions apply:

(a)(1) *Access device* means a card, code, or other means of access to a consumer's account, or any combination thereof, that may be used by the consumer to initiate electronic fund transfers.

(2) An access device becomes an *accepted access device* when the consumer:

(i) Requests and receives, or signs, or uses (or authorizes another to use) the access device to transfer money between accounts or to obtain money, property, or services;

(ii) Requests validation of an access device issued on an unsolicited basis; or  
(iii) Receives an access device in renewal of, or in substitution for, an accepted access device from either the financial institution that initially issued the device or a successor.

(b)(1) *Account* means a demand deposit (checking), savings, or other

consumer asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution and established primarily for personal, family, or household purposes.

(2) The term does not include an account held by a financial institution under a bona fide trust agreement.

(c) *Act* means the Electronic Fund Transfer Act (title IX of the Consumer Credit Protection Act, 15 U.S.C. 1693 *et seq.*).

(d) *Business day* means any day other than a Saturday, a Sunday, or any of the legal public holidays specified in 5 U.S.C. 6103(a).

(e) *Consumer* means a natural person.

(f) *Electronic terminal* means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. The term includes, but is not limited to, point-of-sale terminals, automated teller machines, and cash dispensing machines.

(g) *Financial institution* means a bank, savings association, credit union, or any other person that directly or indirectly holds an account belonging to a consumer, or that issues an access device and agrees with a consumer to provide electronic fund transfer services.

(h) *Person* means a natural person or an organization, including a corporation, government agency, estate, trust, partnership, proprietorship, cooperative, or association.

(i) *Preauthorized electronic fund transfer* means an electronic fund transfer authorized in advance to recur at substantially regular intervals.

(j) *State* means any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of the above.

(k) *Unauthorized electronic fund transfer* means an electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit. The term does not include an electronic fund transfer initiated:

(1) By a person who was furnished the access device to the consumer's account by the consumer, unless the consumer has notified the financial institution that transfers by that person are no longer authorized;

(2) With fraudulent intent by the consumer or any person acting in concert with the consumer; or

(3) By the financial institution or its employees.

### § 205.3 Coverage.

(a) *General*. This part applies to any electronic fund transfer that authorizes a financial institution to debit or credit a consumer's account. Generally, the part applies to financial institutions. For purposes of §§ 205.10(b), (d), (e) and 205.13 of this part, the part applies to any person.

(b) *Electronic fund transfer*. The term electronic fund transfer means any transfer of funds that is initiated through an electronic terminal, telephone, 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:

- (1) Point-of-sale transfers;
- (2) Automated teller machine transfers;
- (3) Direct deposits or withdrawals of funds;
- (4) Transfers initiated by telephone; and
- (5) Transfers resulting from debit card transactions, whether or not initiated through an electronic terminal.

(c) *Exclusions from coverage*. The term electronic fund transfer does not include:

(1) *Checks*. Any transfer of funds originated by check, draft, or similar paper instrument; or any payment made by check, draft, or similar paper instrument at an electronic terminal.

(2) *Check guarantee or authorization services*. Any transfer of funds that guarantees payment or authorizes acceptance of a check, draft, or similar paper instrument which does not directly result in a debit or credit to a consumer's account.

(3) *Wire transfers*. Any transfer of funds through Fedwire or through a similar wire transfer system that is used primarily for transfers between financial institutions or between businesses.

(4) *Securities and commodities transfers*. Any transfer of funds the primary purpose of which is the purchase or sale of a security or commodity, if the security or commodity is:

(i) Regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission;

(ii) Purchased or sold through a broker-dealer regulated by the Securities and Exchange Commission or through a futures commission merchant regulated by the Commodity Futures Trading Commission; or

(iii) Held in book-entry form by a Federal Reserve Bank or federal agency.

(5) *Automatic transfers by account-holding institution*. Any transfer of funds under an agreement between a

consumer and a financial institution which provides that the institution will initiate individual transfers without a specific request from the consumer:

(i) Between a consumer's accounts within the financial institution;

(ii) From a consumer's account to an account of a member of the consumer's family held in the same financial institution; or

(iii) Between a consumer's account and an account of the financial institution, except that these transfers remain subject to § 205.10(e) of this part regarding compulsory use and sections 915 and 916 of the act regarding civil and criminal liability.

(6) *Telephone-initiated transfers*. Any transfer of funds that:

(i) Is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution; and

(ii) Does not take place under a telephone bill-payment plan or other written agreement in which periodic or recurring transfers are contemplated.

(7) *Small institutions*. Any preauthorized transfer to or from an account if the assets of the account-holding financial institution are \$100 million or less on the preceding December 31. If assets of the account-holding institution subsequently exceed \$100 million, the institution's exemption for preauthorized transfers terminates one year from the end of the calendar year in which the assets exceed \$100 million. Preauthorized transfers exempt under this paragraph remain subject to § 205.10(e) of this part regarding compulsory use and sections 915 and 916 of the act regarding civil and criminal liability.

### § 205.4 General disclosure requirements; jointly offered services.

(a) *Form of disclosures*. Disclosures required under this part shall be clear and readily understandable, in writing, and in a form the consumer may keep. A financial institution may use commonly accepted or readily understandable abbreviations in complying with the disclosure requirements of the part.

(b) *Additional information; disclosures required by other laws*. Information or disclosures required by other laws (such as the Truth in Lending Act or the Truth in Savings Act) may be combined with the disclosures required by this part.

(c) *Multiple accounts and account holders—(1) Multiple accounts*. If a consumer holds more than one account at a financial institution, the institution may combine the required disclosures into a single statement.

(2) *Multiple account holders.* For joint accounts held by two or more consumers, the financial institution need provide only one set of the required disclosures and it may provide them to any of the account holders.

(d) *Services offered jointly.* Financial institutions that provide electronic fund transfer services jointly may contract among themselves to comply with the requirements that this regulation imposes on any or all of them. An institution that provides electronic fund transfer services under an agreement with other institutions need make only those disclosures required by §§ 205.7 and 205.8 of this part that are within the purview of its relationship with the consumer for whom it holds an account.

#### § 205.5 Issuance of access devices.

(a) *Solicited issuance.* A financial institution may issue an access device to a consumer only:

(1) In response to an oral or written request for the device; or

(2) As a renewal of, or in substitution for, an accepted access device whether issued by the institution or a successor.

(b) *Unsolicited issuance.* A financial institution may distribute an access device to a consumer on an unsolicited basis if the access device is:

(1) Not validated, which means the institution has not yet performed all the procedures that would enable a consumer to initiate an electronic fund transfer using the access device;

(2) Accompanied by a clear explanation that the access device is not validated and how the consumer may dispose of it if validation is not desired;

(3) Accompanied by a complete disclosure, in accordance with § 205.7 of this part, of the consumer's rights and liabilities that will apply if the access device is validated; and

(4) Validated only in response to the consumer's oral or written request for validation, after the institution verifies the consumer's identity by a reasonable means (such as by photograph, fingerprint, personal visit, or signature comparison).

#### § 205.6 Liability of consumer for unauthorized transfers.

(a) *Conditions for liability.* A consumer may be held liable, within the limitations described in paragraph (b) of this section, for an unauthorized electronic fund transfer involving the consumer's account only if the financial institution has provided the disclosures required by § 205.7(b) of this part. If the unauthorized transfer involved an access device, it must be an accepted access device and the financial institution must have provided a means

to identify the consumer to whom it was issued.

(b) *Limitations on amount of liability.* The extent of a consumer's liability for an unauthorized electronic fund transfer or a series of related unauthorized transfers shall be determined as follows:

(1) *Timely notice given.* If the consumer notifies the financial institution within two business days after learning of the loss or theft of the access device, the consumer's liability shall not exceed the lesser of \$50 or the amount of unauthorized transfers that occur before notice to the financial institution.

(2) *Timely notice not given.* If the consumer fails to notify the financial institution within two business days after learning of the loss or theft of the access device, the consumer's liability shall not exceed the lesser of \$500 or the sum of:

(i) \$50 or the amount of unauthorized transfers that occur within the two business days, whichever is less; and

(ii) The amount of unauthorized transfers that occur after the close of two business days and before notice to the institution and that the institution establishes would not have occurred had the consumer notified the institution within that time.

(3) *Periodic statement; timely notice not given.* If the consumer fails to report an unauthorized electronic fund transfer that appears on a periodic statement within 60 days of the financial institution's transmittal of the statement, the consumer's liability shall not exceed the amount of the unauthorized transfers that occur after the close of the 60 days and before notice to the institution and that the institution establishes would not have occurred had the consumer notified the institution within that time. If an access device is involved, the consumer's liability may also extend to the amounts set forth in paragraphs (b)(1) or (b)(2) of this section, as applicable.

(4) *Extension of time limits.* If the consumer's delay in notifying the financial institution was due to extenuating circumstances, the institution shall extend the times specified above to a reasonable period.

(5) *Notice to financial institution—(i)* Notice to a financial institution is given when a consumer takes steps reasonably necessary to provide the institution with the pertinent information, whether or not an employee or agent of the institution actually receives the information.

(ii) The consumer may notify the institution in person, by telephone, or in writing.

(iii) Written notice is considered given at the time the consumer mails the notice or delivers it for transmission by any other usual means to the institution. Notice may be considered constructively given when the institution becomes aware of circumstances leading to the reasonable belief that an unauthorized transfer involving the consumer's account has been or may be made.

(6) *Liability under state law or agreement.* If state law or an agreement between the consumer and the financial institution imposes less liability than is provided by this section, the consumer's liability shall not exceed the amount imposed under the state law or the agreement.

#### § 205.7 Initial disclosures.

(a) *Timing of disclosures.* A financial institution shall make the disclosures required by this section at the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving the consumer's account.

(b) *Content of disclosures.* The following disclosures shall be provided, as applicable:

(1) *Liability of consumer.* A summary of the consumer's liability, under § 205.6 of this part or under state or other applicable law or agreement, for unauthorized electronic fund transfers.

(2) *Telephone number and address.* The telephone number and address of the person or office to be notified when the consumer believes that an unauthorized electronic fund transfer has been or may be made.

(3) *Business days.* The financial institution's business days.

(4) *Types of transfers; limitations.* The type of electronic fund transfers that the consumer may make and any limitations on the frequency and dollar amount of transfers. The details of the limitations need not be disclosed if confidentiality is essential to maintain the security of the electronic fund transfer system.

(5) *Fees.* Any fees imposed by the financial institution for electronic fund transfers or for the right to make transfers.

(6) *Documentation.* A summary of the consumer's right to receive documentation of electronic fund transfers, as provided in §§ 205.9, 205.10(a), and 205.10(d) of this part.

(7) *Stop payment.* A summary of the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure for placing a stop-payment order, as provided in § 205.10(c) of this part.

(8) *Liability of institution.* A summary of the financial institution's liability to

the consumer under section 910 of the act for failure to make or to stop certain transfers.

(9) *Confidentiality.* The circumstances under which, in the ordinary course of business, the financial institution may provide information concerning the consumer's account to third parties.

(10) *Error resolution.* A notice that is substantially similar to the notice concerning error resolution contained in appendix A of this part.

**§ 205.8 Change in terms notice; error resolution notice.**

(a) *Change in terms notice*—(1) *Prior notice required.* A financial institution shall mail or deliver a written notice to the consumer at least 30 days before the effective date of any change in a term or condition required to be disclosed under § 205.7(b) of this part if the change would result in:

- (i) Increased fees;
- (ii) Increased liability for the consumer;
- (iii) Fewer types of available electronic fund transfers; or
- (iv) Stricter limitations on the frequency or dollar amount of transfers.

(2) *Prior notice exception.* A financial institution need not give prior notice if an immediate change in terms or conditions is necessary to maintain or restore the security of an electronic fund transfer system or an account. If such a change is made permanent and disclosure would not jeopardize the security of the system or account, the financial institution shall notify the consumer in writing within 45 days of the change.

(b) *Error resolution notice.* For accounts to or from which electronic fund transfers can be made, a financial institution shall mail or deliver to the consumer, at least once each calendar year, the error resolution notice set forth in appendix A of this part. Alternatively, an institution may include an abbreviated notice substantially similar to the error resolution notice set forth in appendix A on or with each periodic statement required by § 205.9(b) of this part.

**§ 205.9 Receipts at electronic terminals; periodic statements.**

(a) *Receipts at electronic terminals.* A financial institution shall make a receipt available to a consumer at the time the consumer initiates an electronic fund transfer at an electronic terminal. The receipt shall set forth the following information, as applicable:

(1) *Amount.* The amount of the transfer. A transaction fee may be included in this amount, provided the amount of the fee is disclosed on the

receipt and displayed on or at the terminal.

(2) *Date.* The date the consumer initiates the transfer.

(3) *Type.* The type of transfer and the type of the consumer's account or accounts to or from which funds are transferred. The type of account may be omitted if the access device used may access only one account at that terminal.

(4) *Identification.* A number or code that uniquely identifies the consumer's account or the access device used to initiate the transfer.

(5) *Terminal location.* The location or an identification of the terminal where the transfer is initiated (such as a code or terminal number). The location shall include the city and state (the state may be omitted for terminals that are within 50 miles of the account-holding institution's main office) or foreign country and one of the following:

- (i) The street address;
- (ii) A generally accepted name for the specific location; or
- (iii) The name of the owner or operator of the terminal if other than the account-holding institution.

(6) *Third party transfer.* The name of any third party to or from whom funds are transferred.

(b) *Periodic statements.* For accounts to or from which electronic fund transfers can be made, a financial institution shall send a periodic statement for each monthly cycle in which an electronic fund transfer has occurred; and shall send a periodic statement at least quarterly if no transfer has occurred. The statement shall set forth the following information, as applicable:

(1) *Transaction information.* For each electronic fund transfer occurring during the cycle:

- (i) The amount of the transfer;
- (ii) The date the transfer was credited or debited to the consumer's account;
- (iii) The type of transfer and type of account or accounts to or from which funds were transferred;

(iv) For a transfer initiated by the consumer at an electronic terminal (except for a deposit of cash or a check, draft, or similar paper instrument), the terminal location in a form set forth in paragraph (a)(5) of this section; and

(v) The name of any third party to or from whom funds were transferred.

(2) *Account number.* The number of the account to which the statement pertains.

(3) *Fees.* The amount of any fees assessed against the account during the statement period for electronic fund transfers, for the right to make transfers, or for account maintenance.

(4) *Account balances.* The balance in the account at the beginning and at the close of the statement period.

(5) *Address and telephone number for inquiries.* The address and telephone number to be used for inquiries or notice of errors, preceded by "Direct inquiries to" or similar language. The address and telephone number provided on an error resolution notice given on or with the statement satisfies this requirement.

(6) *Telephone number for preauthorized transfers.* A telephone number the consumer may call to ascertain whether preauthorized transfers to the consumer's account have occurred, if the financial institution uses the telephone-notice option under § 205.10(a)(1)(iii) of this part.

(c) *Exceptions to the periodic statement requirements for certain accounts*—(1) *Preauthorized transfers to accounts.* A financial institution need not send a monthly periodic statement for accounts that may only be accessed by preauthorized transfers to the account if:

(i) *Passbook accounts.* The financial institution updates the passbook upon presentation or enters on a separate document the amount and date of each electronic fund transfer since the passbook was last presented.

(ii) *Other accounts.* For accounts other than passbook accounts, the institution sends the periodic statement quarterly.

(2) *Intra-institutional transfers.* If an electronic fund transfer is initiated by the consumer between two accounts of the consumer in the same institution, documenting the transfer on a periodic statement for one of the two accounts satisfies the statement requirement.

(3) *Relationship between paragraphs (c)(1) and (c)(2) of this section.* An account that is accessed by preauthorized transfers to the account and by intra-institutional transfers described in paragraph (c)(2), but by no other type of electronic fund transfers, qualifies for the exceptions provided by paragraph (c)(1).

(d) *Documentation for foreign-initiated transfers.* The failure by a financial institution to provide a terminal receipt for an electronic fund transfer or to document the transfer on a periodic statement does not violate this regulation if:

(1) The transfer is not initiated within a state; and

(2) The financial institution treats an inquiry for clarification or documentation as a notice of error in accordance with § 205.11 of this part.

§ 205.10 Preauthorized transfers.

(a) Preauthorized transfers to consumer's account—(1) Notice by financial institution. When a person initiates preauthorized electronic fund transfers to a consumer's account at least once every 60 days, the account-holding institution shall provide notice to the consumer by:

(i) Positive notice. Providing oral or written notice of the transfer within two business days after it occurs;

(ii) Negative notice. Providing oral or written notice, within two business days after the date on which the transfer was scheduled to occur, that the transfer did not occur; or

(iii) Telephone. Providing a readily available telephone line that the consumer may call to determine whether the transfer occurred and disclosing the telephone number on the initial disclosure of account terms and on each periodic statement.

(2) Notice by payor. A financial institution need not provide notice if the payor gives the consumer positive notice that the transfer has been initiated.

(b) Written authorization for preauthorized transfers from consumer's account. Preauthorized electronic fund transfers from a consumer's account may be authorized only by a writing signed or similarly authenticated by the consumer. The person that obtains the authorization shall provide a copy to the consumer.

(c) Consumer's right to stop payment—(1) Notice. A consumer may stop payment of a preauthorized electronic fund transfer from the consumer's account by notifying the financial institution orally or in writing at least three business days before the scheduled date of the transfer.

(2) Written confirmation. The financial institution may require the consumer to give written confirmation of a stop-payment order within 14 days of an oral notification. An institution that requires written confirmation shall inform the consumer of the requirement and provide the address where confirmation must be sent when the consumer gives the oral notification. An oral stop-payment order ceases to be binding after 14 days if the consumer fails to provide the required written confirmation.

(d) Notice of transfers varying in amount—(1) Notice. When a preauthorized electronic fund transfer from the consumer's account will vary in amount from the previous transfer under the same authorization or from the preauthorized amount, the designated payee or the financial institution shall send written notice of

the amount and date of the transfer to the consumer at least 10 days before the scheduled date of transfer.

(2) Range. The designated payee or the institution shall inform the consumer of the right to receive notice of all varying transfers, but may give the consumer the option of receiving notice only when a transfer falls outside a specified range of amounts or only when a transfer differs from the most recent transfer by more than an agreed-upon amount.

(e) Compulsory use—(1) Credit. No financial institution or other person may condition the extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers, except for credit that is extended under an overdraft credit plan or that is extended to maintain a specified minimum balance in the consumer's account.

(2) Employment or government benefit. No financial institution or other person may require a consumer to establish an account for receipt of electronic fund transfers with a particular institution as a condition of employment or receipt of a government benefit.

§ 205.11 Procedures for resolving errors.

(a) Definition of error—(1) Types included. The term "error" means:

(i) An unauthorized electronic fund transfer;

(ii) An incorrect electronic fund transfer to or from the consumer's account;

(iii) The omission of an electronic fund transfer from a periodic statement;

(iv) A computational or bookkeeping error made by the financial institution relating to an electronic fund transfer;

(v) The consumer's receipt of an incorrect amount of money from an electronic terminal;

(vi) An electronic fund transfer not identified in accordance with § 205.9 or § 205.10(a) of this part; or

(vii) The consumer's request for documentation required by § 205.9 or § 205.10(a) of this part or for additional information or clarification concerning an electronic fund transfer, including a request the consumer makes to determine whether an error exists under paragraphs (a)(1) (i) through (vi) of this section.

(2) Exclusions. The term "error" does not include:

(i) A routine inquiry about the consumer's account balance;

(ii) A request for information for tax or other recordkeeping purposes; or

(iii) A request for duplicate copies of documentation.

(b) Notice of error from consumer—(1) Timing; contents. A financial institution

shall comply with the requirements of this section with respect to any oral or written notice of error from the consumer that:

(i) Is received by the institution no later than 60 days after the institution sends the periodic statement or provides the passbook documentation on which the alleged error is first reflected;

(ii) Enables the institution to identify the consumer's name and account number; and

(iii) Indicates why the consumer believes an error exists and includes to the extent possible the type, date, and amount of the error, except for requests described in paragraph(a)(1)(vii) of this section.

(2) Written confirmation. A financial institution may require the consumer to give written confirmation of an error within 10 business days of an oral notice. An institution that requires written confirmation shall inform the consumer of the requirement and provide the address where confirmation must be sent when the consumer gives the oral notification.

(3) Request for documentation or clarifications. When a notice of error is based on documentation or clarification that was requested under paragraph (a)(1)(vii) of this section, the notice is timely if received by the financial institution within 60 days of transmitting the requested information.

(c) Time limits and extent of investigation—(1) Ten-day period. A financial institution shall promptly investigate and determine whether an error occurred within 10 business days of receiving a notice of error. The institution shall report the results to the consumer within three business days after completing its investigation. The institution shall correct the error within one business day after determining that an error occurred.

(2) Forty-five day period. If the financial institution is unable to complete its investigation within 10 business days, the institution may take up to 45 days after receiving a notice of error, provided the institution:

(i) Provisionally credits the consumer's account in the amount of the alleged error (including interest where applicable) within 10 business days after receiving the error notice. If the financial institution has a reasonable basis for believing that an unauthorized electronic fund transfer has occurred and it has satisfied the requirements of § 205.6(a) of this part, the institution may withhold a maximum of \$50 from the amount credited. An institution need not provisionally credit the consumer's account if:

(A) It requires but does not receive written confirmation within 10 business days of an oral notice of error; or

(B) The alleged error involves an account that is subject to Regulation T (credit by brokers and dealers, 12 CFR part 220);

(ii) Informs the consumer, within two business days after the provisional crediting, of the amount and date of crediting and gives the consumer full use of the funds during the investigation;

(iii) Corrects the error, if any, within one business day after determining that an error occurred; and

(iv) Reports the results to the consumer within three business days of completing its investigation (including, if applicable, notice that a provisional credit has been made final).

(3) *Extension of time periods.* The applicable time periods in this subsection shall be 20 business days in place of 10 business days, and 90 days in place of 45 days, if a notice of error involves an electronic fund transfer that:

- (i) Was not initiated within a state; or
(ii) Resulted from a point-of-sale debit card transaction.

(4) *Investigation.* With the exception of transfers covered by § 205.14 of this part, a financial institution's review of its own records regarding an alleged error satisfies the requirements of this section if:

- (i) The alleged error concerns a transfer to or from a third party; and
(ii) There is no agreement between the institution and the third party for the type of electronic fund transfer involved.

(d) *Procedures if financial institution determines no error or different error occurred.* In addition to the procedures specified in paragraph (c) of this section, the financial institution shall follow the procedures set forth in this paragraph if it determines that no error occurred or that an error occurred in a different manner or amount from that described by the consumer:

(1) *Written explanation.* The institution's report of the results of the investigation shall include a written explanation of the institution's findings and shall note the consumer's right to request the documents that the institution relied on in making its determination. The institution shall, upon request, promptly provide copies of the documents.

(2) *Debiting provisional credit.* Upon debiting a provisionally credited amount, the financial institution shall:

- (i) Notify the consumer of the date and amount of the debiting;
(ii) Notify the consumer that the institution will honor checks, drafts, or

similar instruments payable to third parties and preauthorized transfers from the consumer's account (without charge to the consumer as a result of an overdraft) for five business days after the notice; and honor items as specified in the notice. The institution need only honor items that it would have paid if the provisionally credited funds had not been debited.

(e) *Reassertion of error.* A financial institution that has fully complied with the error resolution requirements has no further responsibilities under this section should the consumer later reassert the same error, except that the institution shall investigate an error asserted by the consumer following receipt of information requested under paragraph (a)(1)(vii) of this section.

§ 205.12 Relation to other laws.

(a) *Relation to Truth in Lending.* (1) The Electronic Fund Transfer Act and this part govern:

(i) The addition to an accepted credit card, as defined under Regulation Z (12 CFR 226.12(a)(2), footnote 21), of the capability to initiate electronic fund transfers;

(ii) The issuance of an access device that permits credit extensions only under a preexisting agreement between a consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account; and

(iii) A consumer's liability for an unauthorized electronic fund transfer and the investigation of an alleged error that involves an extension of credit, if the extension of credit occurs under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.

(2) The Truth in Lending Act and Regulation Z, which prohibit the unsolicited issuance of credit cards, govern:

(i) The addition of a credit feature to an accepted access device; and

(ii) The issuance of a credit card that is also an access device, except as provided in paragraph (a)(1)(ii) of this section.

(b) *Preemption of inconsistent state laws—(1) Inconsistent requirements.* The Board shall determine, upon its own motion or upon the request of any state, financial institution, or other interested party, whether the act and this regulation preempt state law relating to electronic fund transfers. Only those state laws that are inconsistent with the act and this

regulation shall be preempted and then only to the extent of the inconsistency. A state law is not inconsistent with the act and this regulation if it is more protective of consumers.

(2) *Standards for determination.* State law is inconsistent with the requirements of the act and the regulation if it:

(i) Requires or permits a practice or act prohibited by the federal law;

(ii) Provides for consumer liability for unauthorized electronic fund transfers that exceed the limits imposed by the federal law;

(iii) Allows longer time periods than the federal law for the investigation and correction of errors alleged by a consumer, or fails to require the crediting of the consumer's account during the investigation of errors as set forth in § 205.11(c)(2)(i) of this part; or

(iv) Requires initial disclosures, periodic statements, or receipts that are different in content from those required by the federal law except to the extent that the disclosures relate to rights granted to consumers by the state law and not by the federal law.

(c) *State exemptions—(1) General rule.* Any state may apply to the Board for an exemption from the requirements of the federal law for any class of electronic fund transfers within the state. The Board shall grant an exemption if the Board determines that:

- (i) Under state law that class of electronic fund transfers is subject to requirements substantially similar to those imposed by the federal law; and
(ii) There is adequate provision for state enforcement.

(2) *Exception.* To assure that the federal and state courts will continue to have concurrent jurisdiction, and to aid in implementing the act:

(i) No exemption shall extend to the civil liability provisions of section 915 of the act; and

(ii) When an exemption has been granted, the requirements of the applicable state law shall constitute the requirements of the federal law, for the purposes of section 915 of the act, except for state law requirements not imposed by the federal law.

§ 205.13 Administrative enforcement; record retention.

(a) *Enforcement by federal agencies.* Compliance with this part is enforced by the agencies listed in appendix B of this part.

(b) *Record retention—(1)* A financial institution shall retain evidence of compliance with the requirements imposed by the act and this regulation for a period of not less than two years. Records may be stored by use of

microfiche, microfilm, magnetic tape, or any other method capable of accurately retaining and reproducing information.

(2) A financial institution having actual notice that it is the subject of an investigation or an enforcement proceeding by an agency charged with monitoring compliance with the act and this regulation, or having been served with notice of an action filed under sections 910, 915, or 916(a) of the act, shall retain the records that pertain to the action or proceeding until final disposition of the matter, unless an earlier time is allowed by court or agency order.

**§ 205.14 Electronic fund transfer service provider not holding consumer's account.**

(a) *Electronic fund transfer service providers subject to regulation.* An electronic fund transfer service provider that does not hold the consumer's account qualifies as a financial institution subject to this regulation if it:

- (1) Issues an access device to a consumer;
- (2) Provides electronic fund transfer service to the consumer by allowing the access device to be used to access the consumer's account held by another financial institution; and
- (3) Has no agreement with the account-holding institution regarding service involving that access device.

(b) *Compliance by electronic fund transfer service provider.* In addition to the requirements generally applicable under this part, the service provider shall comply with the following special rules:

(1) *Disclosures and documentation.* The electronic fund transfer service provider shall provide the disclosures and documentation required by §§ 205.7, 205.8, and 205.9 of this part that are within the purview of its relationship with the consumer, but need not furnish a periodic statement to the consumer under § 205.9(b) of this part if the service provider:

- (i) Issues a debit card (to be used by the consumer to initiate electronic fund transfers) bearing the service provider's name and an address or telephone number for consumer inquiries or for consumers to give notice of error;
- (ii) Provides the consumer a notice concerning transactions made with the debit card that is substantially similar to the notice contained in appendix A of this part;
- (iii) Provides, on or with the receipts required by § 205.9(a) of this part, the address and telephone number to be used for an inquiry, or to give notice of an error, to report the loss or theft of the debit card;

(iv) Transmits to the account-holding institution the information specified in § 205.9(b)(1) of this part in the format prescribed by the automated clearinghouse system used to clear the fund transfers;

(v) Extends the time period set forth in § 205.6(b) (1) and (2) of this part for notice of loss or theft of a debit card, from two business days to four business days after the consumer learns of the loss or theft; and

(vi) Extends the time periods set forth in §§ 205.6(b)(3) and 205.11(b)(1)(i) of this part for reporting unauthorized transfers or errors, from 60 days to 90 days following the transmittal of a periodic statement by the account-holding institution.

(2) *Error resolution*—(i) *Extension of error notification period.* The electronic fund transfer service provider shall extend by a reasonable time the period specified in § 205.11(b)(1)(i) of this part in which notice of an error must be received if a delay resulted from the initial attempt by the consumer to notify the account-holding institution.

(ii) *Disclosure of provisional credit.* The service provider shall disclose to the consumer the date on which it initiates a transfer to effect a provisional credit in accordance with § 205.11(c)(2)(ii) of this part.

(iii) *Error occurred.* If the service provider determines an error occurred, it shall transfer funds to or from the consumer's account, in the appropriate amount and within the applicable time period, in accordance with § 205.11(c)(2)(i) of this part.

(iv) *No error occurred.* If funds were provisionally credited and the service provider determines no error occurred, it may reverse the credit. The service provider shall then notify the account-holding institution of the period during which the account-holding institution must honor debits to the account in accordance with § 205.11(d)(2)(ii) of this part. If an overdraft results, the service provider shall promptly reimburse the account-holding institution in the amount of the overdraft.

(c) *Compliance by account-holding institution.* The account-holding institution need not comply with the requirements of the act and this regulation with respect to electronic fund transfers made by the electronic fund transfer service provider except as follows:

(1) The account-holding institution shall provide a periodic statement describing each electronic fund transfer involving transactions initiated by the consumer with the access device issued by the service provider. The account-holding institution has no liability for

failure to comply with this requirement if the service provider did not provide the necessary information; and

(2) The account-holding institution shall provide, upon request, information or copies of documents needed by the service provider to investigate errors or to furnish copies of documents to the consumer. The account-holding institution shall also honor debits to the account in accordance with § 205.11(d)(2)(ii) of this part.

3. Appendices A and B are revised, and Appendix C is added to part 205 to read as follows:

**Appendix A to Part 205—Model Disclosure Clauses and Forms**

- A-1—Model Clauses for Unsolicited Issuance (§ 205.5(b)(2))
- A-2—Model Clauses for Initial Disclosures (§ 205.7(b))
- A-3—Model Forms for Error Resolution Notice (§§ 205.7(b)(10) and 205.8(b))
- A-4—Model Form for Service-Providing Institutions (§ 205.14(b)(1)(ii))

**A-1—Model Clauses for Unsolicited Issuance (§ 205.5(b)(2))**

(a) *Accounts using cards.* You cannot use the enclosed card to transfer money into or out of your account until we have validated it. If you do not want to use the card, please (destroy it at once by cutting it in half).

Financial institution may add validation instructions here

(b) *Accounts using codes.* You cannot use the enclosed code to transfer money into or out of your account until we have validated it. If you do not want to use the code, please (destroy this notice at once).

Financial institution may add validation instructions here

**A-2—Model Clauses for Initial Disclosures (§ 205.7(b))**

(a) *Consumer Liability (§ 205.7(b)(1)).* (Tell us AT ONCE if you believe your [card] [code] has been lost or stolen. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account (plus your maximum overdraft line of credit). If you tell us within 2 business days, you can lose no more the \$50 if someone used your [card][code] without your permission. (If you believe your [card] [code] has been lost or stolen, and you tell us within 2 business days after you learn of the loss or theft, you can lose no more than \$50 if someone used your [card] [code] without your permission.)

If you do NOT tell us within 2 business days after you learn of the loss or theft of your [card] [code], and we can prove we could have stopped someone from using your [card] [code] without your permission if you had told us, you could lose as much as \$500.

Also, if your statement shows transfers that you did not make, tell us at once. If you do not tell us within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can

prove that we could have stopped someone from taking the money if you had told us in time.

If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

(b) Contact in event of unauthorized transfer (§ 205.7(b)(2)). If you believe your [card] [code] has been lost or stolen or that someone has transferred or may transfer money from your account without your permission, call:

[Telephone number]

or write:

[Name of person or office to be notified]

[Address]

(c) Business days (§ 205.7(b)(3)). For purposes of these disclosures, our business days include every day other than Saturday, Sunday or one of the federal holidays.

(d) Transfer types and limitations (§ 205.7(b)(4))—(1) Account access. You may use your [card][code] to:

(i) Withdraw cash from your [checking] [or] [savings] account.

(ii) Make deposits to your [checking] [or] [savings] account.

(iii) Transfer funds between your checking and savings accounts whenever you request.

(iv) Pay for purchases at places that have agreed to accept the [card] [code].

(v) Pay bills directly [by telephone] from your [checking] [or] [savings] account in the amounts and on the days you request.

Some of these services may not be available at all terminals.

(2) Limitations on frequency of transfers.—(i) You may make only [insert number, e.g., 3] cash withdrawals from our terminals each [insert time period, e.g., week].

(ii) You can use your telephone bill-payment service to pay [insert number] bills each [insert time period] [telephone call].

(iii) You can use our point-of-sale transfer service for [insert number] transactions each [insert time period].

(iv) For security reasons, there are limits on the number of transfers you can make using our [terminals] [telephone bill-payment service] [point-of-sale transfer service].

(3) Limitations on dollar amounts of transfers—(i) You may withdraw up to [insert dollar amount] from our terminals each [insert time period] time you use the [card] [code].

(ii) You may buy up to [insert dollar amount] worth of goods or services each [insert time period] time you use the [card] [code] in our point-of-sale transfer service.

(e) Fees (§ 205.7(b)(5))—(1) Per transfer charge. We will charge you [insert dollar amount] for each transfer you make using our [automated teller machines] [telephone bill-payment service] [point-of-sale transfer service].

(2) Fixed charge. We will charge you [insert dollar amount] each [insert time period] for our [automated teller machine service] [telephone bill-payment service] [point-of-sale transfer service].

(3) Average or minimum balance charge. We will only charge you for using our [automated teller machines] [telephone bill-

payment service] [point-of-sale transfer service] if the [average] [minimum] balance in your [checking account] [savings account] [accounts] falls below [insert dollar amount]. If it does, we will charge you [insert dollar amount] each [transfer] [insert time period].

(f) Confidentiality (§ 205.7(b)(9)). We will disclose information to third parties about your account or the transfers you make:

(1) Where it is necessary for completing transfers, or

(2) In order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant, or

(3) In order to comply with government agency or court orders, or

(4) If you give us your written permission.

(g) Documentation (§ 205.7(b)(6))—(1) Terminal transfers. You can get a receipt at the time you make any transfer to or from your account using one of our [automated teller machines] [or] [point-of-sale terminals].

(2) Preauthorized credits. If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, (we will let you know if the deposit is [not] made.) [the person or company making the deposit will tell you every time they send us the money] [you can call us at [insert telephone number] to find out whether or not the deposit has been made].

(3) Periodic statements. You will get a [monthly] [quarterly] account statement (unless there are no transfers in a particular month. In any case you will get the statement at least quarterly).

(4) Passbook account where the only possible electronic fund transfers are preauthorized credits. If you bring your passbook to us, we will record any electronic deposits that were made to your account since the last time you brought in your passbook.

(h) Preauthorized payments (§ 205.7(b)(6), (7) and (8))—(1) Right to stop payment and procedure for doing so. If you have told us in advance to make regular payments out of your account, you can stop any of these payments. Here's how:

Call us at [insert telephone number], or write us at [insert address], in time for us to receive your request 3 business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call. (We will charge you [insert amount] for each stop-payment order you give.)

(2) Notice of varying amounts. If these regular payments may vary in amount, [we] [the person you are going to pay] will tell you, 10 days before each payment, when it will be made and how much it will be. (You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.)

(3) Liability for failure to stop payment of preauthorized transfer. If you order us to stop one of these payments 3 business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.

(i) Financial institution's liability (§ 205.7(b)(8)). If we do not complete a

transfer to or from your account on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

• If, through no fault of ours, you do not have enough money in your account to make the transfer.

• If the transfer would go over the credit limit on your overdraft line.

• If the automated teller machine where you are making the transfer does not have enough cash.

• If the [terminal] [system] was not working properly and you knew about the breakdown when you started the transfer.

• If circumstances beyond our control (such as fire or flood) prevent the transfer, despite reasonable precautions that we have taken.

• There may be other exceptions stated in our agreement with you.

A-3—Model Forms for Error Resolution Notice

1. Initial and annual error resolution notice §§ 205.7(b)(10) and 205.8(b)

In Case of Errors or Questions About Your Electronic Transfers, Telephone us at [insert telephone number] or Write us at [insert address] as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will tell you the results of our investigation within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

If we decide that there was no error, we will send you a written explanation within three business days after we finish our investigation. You may ask for copies of the documents that we used in our investigation.

2. Error resolution notice on periodic statements § 205.8(b)

In Case of Errors or Questions About Your Electronic Transfers, Telephone us at [insert telephone number] or Write us at [insert address] as soon as you can, if you think your statement or receipt is wrong or if you need



more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation.

**A-4—Model Form for Service-Providing Institutions § 205.14(b)(1)(ii)**

ALL QUESTIONS ABOUT TRANSACTIONS MADE WITH YOUR (NAME OF CARD) CARD MUST BE DIRECTED TO US (NAME OF SERVICE PROVIDER), AND NOT TO THE BANK OR OTHER FINANCIAL INSTITUTION WHERE YOU HAVE YOUR ACCOUNT. We are responsible for the [name of service] service and for resolving any errors in transactions made with your [name of card] card.

We will not send you a periodic statement listing transactions that you make using your [name of card] card. The transactions will appear only on the statement issued by your bank or other financial institution. SAVE THE RECEIPTS YOU ARE GIVEN WHEN YOU USE YOUR [NAME OF CARD] CARD, AND CHECK THEM AGAINST THE ACCOUNT STATEMENT YOU RECEIVE FROM YOUR BANK OR OTHER FINANCIAL INSTITUTION. If you have any questions about one of these transactions, call or write us at [telephone number and address] [the telephone number and address indicated below].

IF YOUR [NAME OF CARD] CARD IS LOST OR STOLEN, NOTIFY US AT ONCE by calling or writing to us at [telephone number and address].

**Appendix B to Part 205—Federal Enforcement Agencies**

The following list indicates which Federal agency enforces Regulation E for particular classes of institutions. Any questions concerning compliance by a particular institution should be directed to the appropriate enforcing agency. Terms that are not defined in the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 U.S.C. 3101).

*National banks, and Federal branches and Federal agencies of foreign banks*

District office of the Office of the Comptroller of the Currency where the institution is located.

*State member banks, branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act*

Federal Reserve Bank serving the District in which the institution is located.

*Nonmember insured banks and insured state branches of foreign banks*

Federal Deposit Insurance Corporation regional director for the region in which the institution is located.

*Savings institutions insured under the Savings Association Insurance Fund of the FDIC and federally-chartered savings banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund)*

Office of Thrift Supervision Regional Director for the region in which the institution is located.

*Federal Credit Unions*

Division of Consumer Affairs, National Credit Union Administration, 1775 Duke Street, Alexandria, Virginia 22314-3428

*Air Carriers*

Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590.

*Brokers and Dealers*

Division of Market Regulation, Securities and Exchange Commission, Washington, DC 20549.

*Retailers, Consumer Finance Companies, Certain Other Financial Institutions, and all others not covered above*

Federal Trade Commission, Electronic Fund Transfers, Washington, DC 20580.

**Appendix C to Part 205—Issuance of Staff Interpretations**

*Official Staff Interpretations*

Pursuant to section 915(d) of the act, the Board has designated the director and other officials of the Division of Consumer and Community Affairs as officials "duly authorized" to issue, at their discretion, official staff interpretations of this regulation. Except in unusual circumstances, such interpretations will not be issued separately but will be incorporated in an official commentary to the regulation, which will be amended periodically.

*Requests for Issuance of Official Staff Interpretations*

A request for an official staff interpretation shall be in writing and addressed to the Director, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. The request shall contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

*Scope of Interpretations*

No staff interpretations will be issued approving financial institutions' forms or statements. This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.

By order of the Board of Governors of the Federal Reserve System, February 24, 1994.

**William W. Wiles,**  
*Secretary of the Board.*

[FR Doc. 94-4680 Filed 3-2-94; 12:38 pm]

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**FEDERAL RESERVE SYSTEM**

**12 CFR Part 205**

[Regulation E; Docket No. R-0831]

**Electronic Fund Transfers**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed Official Staff Interpretation.

**SUMMARY:** The Board is publishing for comment a proposal to revise the official staff commentary to Regulation E (Electronic Fund Transfers). This proposal is part of the Board's current review of Regulation E. The commentary interprets the requirements of Regulation E in order to facilitate compliance by financial institutions that offer electronic fund transfer services to consumers. The proposed revisions change the question and answer format to a narrative one in order to make the commentary easier to use and to conform it with the format of the Board's other staff commentaries. It also includes interpretative provisions previously contained in the regulation that were more explanatory in nature. The proposal includes additional interpretations on matters not previously addressed.

**DATES:** Comments must be received on or before May 31, 1994.

**ADDRESSES:** Comments should refer to Docket No. R-0831 and be mailed to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. They may also be delivered to the guard station in the Eccles Building Courtyard on 20th Street NW. (between Constitution Avenue and C Street) between 8:45 a.m. and 5:15 p.m. weekdays. Except as provided in the Board's rules regarding the availability of information (12 CFR 261.8), comments received will be available for inspection and copying by any member of the public in the Freedom of Information Office, Room MP-500 of the Martin Building between 9 a.m. and 5 p.m. weekdays.

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**FOR FURTHER INFORMATION CONTACT:** Jane Jensen Gell or Mary Jane Seebach, Staff Attorneys, or John Wood, Senior Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-2412 or (202) 452-3667. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452-3544.

**SUPPLEMENTARY INFORMATION:**

**(1) Background**

The Electronic Fund Transfer Act (EFTA) (15 U.S.C. 1693), enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The EFTA is implemented by the Board's Regulation E (12 CFR part 205). In 1981, the Board published an official staff commentary to Regulation E. The commentary substitutes for individual official staff interpretations and is designed to facilitate compliance and provide protection from civil liability, under section 915(d)(1) of the act, for financial institutions that act in conformity with it.

The question and answer format of the present commentary was designed to make compliance easier by providing specific answers, in nontechnical language, to commonly asked questions. The Board proposes to replace the current approach with a narrative format, similar to other commentaries issued by the Board. The proposed change is intended to provide more general applicability, as the current format usually relies on specific factual situations and often restricts the scope of an interpretation.

The order of comments in the proposal corresponds with the new sections in the regulatory proposal. Throughout the commentary, reference to "this section" or "this paragraph" means the section or paragraph in the regulation that is the subject of the comment. Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets.

The proposed commentary incorporates text that was moved from the regulation because it is more explanatory in nature than regulatory. In addition, a number of comments would be deleted as obsolete. The Board solicits comment on whether deleting any of these comments creates confusion as to the Board's current interpretation of a particular matter.

The section-by-section description that follows points out those provisions

that differ in some significant way from the current commentary. Similarly, those portions of the current regulation that would be moved to the commentary are also discussed. Comments in the existing commentary will be referred to as "questions" and will be cited by the section number and the number of the question. For example, Q2-11 would be the citation for question number 11 in the commentary to § 205.2. As the substance of many questions does not change in the new format, those comments are not specifically discussed. At the beginning of each section of the proposed commentary is a listing that matches existing comments with the proposed new commentary provisions. It also provides a listing of comments that would be deleted from the commentary, comments that are new, and comments that would be moved to other sections.

**(2) Form of Comment Letters**

Comment letters should refer to Docket No. R-0831. The Board requests that, when possible, comments be prepared using a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format.

**(3) Explanation of Proposed Revisions**

*Section 205.2—Definitions*

| New         | Old                             |
|-------------|---------------------------------|
| (a)-1 ..... | Q2-1.                           |
| (b)-1 ..... | Q2-2, Q2-3, Q2-4, Q2-5, Q2-5.5. |
| (b)-2 ..... | Q3-20, Q3-21.                   |
| (d)-1 ..... | Q2-8.                           |
| (f)-1 ..... | Q2-25.5, Q2-23.                 |
| (f)-2 ..... | Q2-24.                          |
| (f)-3 ..... | Q2-25.                          |
| (k)-1 ..... | Q2-26.                          |
| (k)-2 ..... | Q2-27.                          |
| (k)-3 ..... | Q2-27.                          |
| (k)-4 ..... | Q2-28.                          |

*Comments Deleted*

- Q2-6: Business day—substantially all business functions
- Q2-7: Business day—duration
- Q2-9: Business day—short hours
- Q2-22: Electronic terminal—telephone bill payment

Paragraph 2(b)(2)

In the regulatory proposal, the exemption for trust accounts has been incorporated into the definition of account. Accordingly, Q3-20 (custodial

agreements) and Q3-21 (trust accounts) would be included in this section. The change mirrors the statutory definition of account.

(d) Business Day

The regulatory proposal includes a new definition of business day. Currently, the term is defined as any day on which the offices of the consumer's financial institution are open to the public for carrying on substantially all business functions. The proposal defines a business day as a calendar day other than a Saturday, Sunday, or any legal public holiday specified in 5 U.S.C. 6103(a). Q2-6, Q2-7 and Q2-9 provide guidance on interpreting "substantially all business functions" and would be deleted as obsolete.

(k) Unauthorized Electronic Fund Transfer

Proposed comment (k)-2 incorporates Q2-27, which provides that when the consumer furnishes an access device and grants actual authority to make transfers to another person (a family member or co-worker, for example) who then exceeds that authority, the consumer is liable for the transfers unless the consumer notifies the financial institution that transfers by that person are no longer authorized. The Board solicits comment on whether financial institutions should be required to disclose a consumer's liability in this instance as part of the initial disclosures of § 205.7. While institutions are required to provide a summary of the consumer's liability under § 205.6 in the initial disclosures, the current model clauses do not refer to this type of situation.

*Section 205.3—Coverage*

| New            | Old   |
|----------------|---|
| (a)-1 .....    | New (revised Q9-15).                          |
| (a)-2 .....    | New (foreign applicability).                  |
| (b)-1 .....    | Q2-11, reverses Q2-16, Q2-18, Q2-19, Q2-21.5. |
| (b)-2 .....    | Q2-10, Q2-12, Q2-21.                          |
| (c)(2)-1 ..... | Q3-1.   |
| (c)(3)-1 ..... | Q3-3.   |
| (c)(3)-2 ..... | New (UCC Article 4A/wire transfer).           |
| (c)(3)-3 ..... | New (similar fund transfer systems).          |
| (c)(4)-1 ..... | New (securities exemption).                   |
| (c)(4)-2 ..... | Q3-3.5, Q3-3.6, new (margin call).            |
| (c)(5)-1 ..... | Q3-8, Q3-9, Q3-10, Q3-11, Q3-12.              |
| (c)(5)-2 ..... | Q3-13.  |
| (c)(6)-1 ..... | Q3-14, Q3-15, Q3-16, Q3-19.5.                 |

| New            | Old   |
|----------------|---|
| (c)(6)-2 ..... | Q3-17, Q3-18, Q3-19, new (facsimile machine). |
| (c)(7)-1 ..... | New (UCC Article 4A/small institutions).      |

*Comments Deleted*

- Q2-12.5: Fund transfer—withholding of income tax on interest
- Q2-12.6: Fund transfer—EBT
- Q2-13: Fund transfer—withdrawal at another institution
- Q2-14: Fund transfer—check truncation
- Q2-15: Fund transfer—payee information, nonelectronic form
- Q2-17: Fund transfer—ACH
- Q2-20: Fund transfer—preauthorized debits by paper drafts, ACH
- Q3-2: Wire transfer—instructions on magnetic tape
- Q3-4: Telephone transfer plans—applicability of intrainstitutional exemption
- Q3-5: Compulsory use—preauthorized loan payments
- Q3-22: Small institutions exemption—grace period

*Comments Moved*

- Q3-6, Q3-7, and Q3-7.5 (see proposed commentary to § 205.10(e))
- Q3-20 and Q3-21 (see proposed commentary to § 205.2)

Section 205.3 of the proposed regulation is a new section on the regulation's coverage. It includes the existing language on the scope of Regulation E, as well as the definition of EFT and the exemptions from the regulation.

3(a) General

To correspond with the regulatory proposal, the commentary proposal consolidates existing and new comments on the regulation's coverage. Q9-15, which specifies when periodic statements are required, also details the types of accounts subject to the requirements of the regulation and has been incorporated into comment (a)-1.

Proposed comment (a)-2 is new. It explains the application of Regulation E in situations involving foreign-based financial institutions, consumers who are not U.S. citizens, or both. Language for this proposed comment was modeled upon the commentary to Regulation Z on foreign applicability (12 CFR part 226, supp. I, comment 1(c)-1). The Board requests comment on whether the scope of the proposed comment offers sufficient coverage of foreign-related EFTs.

(b) Electronic Fund Transfer

In the regulatory proposal, the definition of "electronic fund transfer"

(currently § 205.2(g)) has been incorporated into the coverage section as the definition is central to determining coverage under the regulation. The proposed commentary reflects this change and consolidates in this section the majority of questions pertaining to EFTs. A number of comments have been deleted due to a change in Board position. For example, Q2-12.6 deals with the electronic payment of government benefits and states that such transfers are not subject to Regulation E. As the Board has adopted amendments to Regulation E extending coverage to electronic benefit transfer programs established by federal, state, or local government agencies, Q2-12.6 has been deleted (see Docket No. R-0829 in today's Federal Register).

Proposed comment (b)-1 provides examples of EFTs subject to Regulation E. The comment incorporates Q2-19, and reverses Q2-16 to achieve consistency. Q2-16 states that credits to consumers' accounts made by a composite check accompanied by a magnetic tape containing payee information are not EFTs for purposes of Regulation E. Q2-19, on the other hand, states that debits made to consumer accounts by use of a magnetic tape containing consumers' billing information will be considered EFTs covered by the regulation even if all the debits are combined on one composite check sent to the payee. The proposed comment treats both credits and debits to consumer accounts by use of composite checks as EFTs.

Proposed comment (b)-2 provides examples of EFTs that are not covered by the regulation. The comment generally states that any payment that does not debit or credit a consumer asset account is not an EFT. It also incorporates Q2-10 and Q2-12. Q2-10 provides that a EFT excludes not only payments made by check, draft, or similar paper instrument at an electronic terminal, but also payments in currency since they do not debit or credit a consumer's account. Q2-12 provides that payroll allotments are transfers not covered by Regulation E; an example is a sum designated by the consumer to be deducted from payroll to repay a debt of the consumer. This amount is deducted before a deposit is made to the consumer's account and so the payroll allotment is not a debit to a consumer asset account.

(c) Exclusions From Coverage

The regulatory proposal incorporates the exemptions from current § 205.3 into the expanded section on coverage. The Board believes having coverage and exemption provisions in one section

simplifies the analysis of whether or not compliance with the regulation is required.

Two new comments address the relationship of Regulation E to Article 4A of the Uniform Commercial Code (UCC). Article 4A provides comprehensive rules governing the rights and responsibilities arising from wire transfers. It applies primarily to large-dollar, commercial wire transfers made via Fedwire, Clearing House Interbank Payments Systems (CHIPS), Society for Worldwide Interbank Payments Systems (SWIFT) and Telex.

(c)(3) Wire Transfers

UCC § 4A-108 provides that Article 4A does not cover a fund transfer any part of which is governed by the EFTA. In drafting Article 4A, the National Conference of Commissioners on Uniform State Laws stated that if a fund transfer is made in part by Fedwire and in part via automated clearinghouse (ACH), because the EFTA applies to the ACH part of the transfer, Article 4A does not apply to any part of the transfer. Institutions that offer Fedwire services have been concerned that these transfers would lose the legal certainty offered by complying with the requirements of Article 4A if some part of the transfer was subject to the EFTA. This concern must be balanced with the potential of subjecting consumers to full liability for unauthorized transfers merely because some part of the transfer, which would ordinarily be covered by Regulation E, was made via Fedwire.

In 1990, the Board adopted a comprehensive revision of subpart B to Regulation J (55 FR 40791, October 5, 1990). Regulation J (12 CFR part 210) specifies the rules applicable to funds transfers handled by Federal Reserve Banks. To ensure that the rules for all funds transfers through Fedwire are consistent, the Board used its preemptive authority under UCC section 4A-107 to determine that subpart B, including the provisions of Article 4A, applies to all funds transfers through Fedwire, even if a portion of the fund transfer is governed by the EFTA. The portion of the fund transfer that is governed by the EFTA is not governed by subpart B.

Even with this relief, the Board has received questions about the effect of dual coverage. For example, if an institution offers consumers the ability to initiate Fedwire transfers pursuant to a telephone transfer agreement, the transfer would be covered by both Regulation E and Article 4A. UCC section 4A-202 encourages verification of the authenticity of a Fedwire

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payment order pursuant to a "security procedure" established by agreement between the customer and a receiving bank. Putting such an agreement in writing could be deemed to constitute a telephone transfer plan for purposes of Regulation E. The Board believes that if an institution offers Fedwire payments as a service to consumers and does not make the service available in conjunction with a telephone plan subject to Regulation E, then the protections of Article 4A are applicable to the transfer. Proposed comment (c)(3)-2 explains that if the service is offered as a product separate from the more typical telephone bill-payment or other prearranged plan, then any security procedure followed to establish an agreement will not be deemed to create a telephone plan subject to Regulation E.

The wire transfer exemption extends to any transfer of funds through Fedwire or through a similar fund transfer system. Comment (c)(3)-3 provides examples of such systems.

**(c)(4) Securities and Commodities Transfers**

The Board has proposed to revise the current exemption for certain securities and commodities transfers contained in § 205.3(c). The exemption would apply to a transfer for the purchase or sale of securities or commodities, even if the security or commodity is not regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission so long as it is sold by a registered broker-dealer or futures commission merchant (for example, municipal securities). Proposed comment (c)(4)-1 provides additional clarification on this point.

Proposed comment (c)(4)-2 provides examples from the current commentary of covered and exempt securities transfers (Q3-3.5 and Q3-3.6). The comment also contains a new example of an exempt transfer, that of a telephone order to exercise a margin call. The Board believes that the exercise of a margin call is so closely linked to the purchase or sale of securities as to come within the purview of the exemption. The Board solicits comment on what additional examples may be needed to illustrate the extent of this exemption.

**(c)(6) Telephone-Initiated Transfers**

Proposed comment (c)(6)-2 incorporates examples contained in the current commentary of covered transfers under a written plan (Q3-17, Q3-18 and Q3-19). The proposal also contains a new example, use of a facsimile machine to initiate a transfer. The Board

has received questions about plans in which the consumer uses facsimile paper designed to look like a paper "draft" to initiate a transfer sent via facsimile machine. The EFTA's definition of EFT includes any transfer through a "telephonic instrument." The Board considers a facsimile machine to be the functional equivalent of a telephone. Since it is a telephone, it is inconsequential whether information about the transfer is transmitted orally or by facsimile. The Board requests comment on this interpretation and solicits additional examples of both covered and exempt transfers.

**(c)(7) Small Institutions**

Proposed comment (c)(7)-1 clarifies that Article 4A is not applicable to transfers exempt from Regulation E under the small institution exemption. As noted above, the drafters of Article 4A considered the EFTA and Regulation E to be mutually exclusive. The Board has been asked whether preauthorized transfers by small institutions (currently, institutions with assets under \$25 million) which are largely exempt from Regulations E are thus subject to the requirements of Article 4A by virtue of the exemption (for example, a direct deposit to a consumer's account at a small bank). As noted in the proposed comment, the Board regards the transfers as generally subject to the EFTA, and therefore not covered by Article 4A.

**Section 205.4—General Disclosure Requirements; Jointly Offered Services**

| New         | Old                 |
|-------------|---------------------|
| (a)-1 ..... | Q7-3, Q9-4.         |
| (a)-2 ..... | New (revises Q7-4). |

**Comments Deleted**

- Q4-1: Shared system—scope of disclosures
- Q4-2: Shared system—disclosures on behalf of another institution
- Q4-3: Multiple accounts and account holders (clarified in § 205.4(c)(1) of proposed regulation)

The Board's regulatory proposal includes both general disclosure requirements and special requirements for providing the various disclosures in a revised § 205.4.

**(a) Form of Disclosures**

The Board has consistently interpreted the format requirements currently contained in §§ 205.7(a) and 205.9 as generally applicable to all of the disclosures required by the regulation. Comments incorporating Q7-3 and Q9-4 have been moved to this

section of the commentary to provide additional guidance on disclosure requirements.

Currently, Q7-4 provides that Spanish language disclosures satisfy the requirement that disclosures be readily understandable so long as disclosures in English are given to consumers who request them. Proposed comment (a)-2 provides that disclosures may be made in languages other than English, if the disclosures are available in English upon request. This is consistent with the new disclosure requirements in Regulation DD (see 12 CFR 230.3(b)).

**Section 205.5—Issuance of Access Devices**

| New            | Old   |
|----------------|---|
| 1 .....        | Q5-1.5.                                     |
| (a)(1)-1 ..... | New (footnote 1b to current § 205.5(a)(1)). |
| (a)(2)-1 ..... | Q5-1, Q5-2.                                 |
| (a)(2)-2 ..... | Q5-3.                                       |
| (b)-1 .....    | Q5-6, Q5-7.                                 |
| (b)-2 .....    | Q5-4.5.                                     |
| (b)-3 .....    | Q5-5.                                       |
| (b)-4 .....    | Q5-8.                                       |

**Comment Deleted**

Q5-4: Renewal or substitution—pre-February 8, 1979 device

**Comments Moved**

Q5-9, Q5-10 (see proposed commentary to § 205.12)

Section 205.5 provides the rules for issuance of access devices. The substance of existing commentary provisions have been incorporated into the proposal, with one addition.

**(a) Solicited Issuance**

**(a)(1)**

Footnote 1b to current § 205.5(a)(1) provides that financial institutions may issue an access device to each joint account holder for whom the requesting account holder specifically requests an access device. The footnote would be deleted from the regulation and moved to comment (a)(1)-1.

**Section 205.6—Liability of Consumer for Unauthorized Transfers**

| New            | Old                                |
|----------------|------------------------------------|
| (a)-1 .....    | Q6-4, new (current § 205.6(a)(2)). |
| (a)-2 .....    | Q6-3.                              |
| (b)-1 .....    | Q6-5 (revised).                    |
| (b)-2 .....    | Q6-6.5.                            |
| (b)(1)-1 ..... | Q6-5 (revised).                    |
| (b)(1)-2 ..... | Q6-6 (revised).                    |
| (b)(2)-1 ..... | Q6-5 (revised).                    |
| (b)(3)-1 ..... | Q6-5 (revised).                    |
| (b)(3)-2 ..... | Q6-5 (revised).                    |
| (b)(4)-1 ..... | New (current § 205.6(b)(4)).       |
| (b)(5)-1 ..... | Q6-7.                              |

| New            | Old                            |
|----------------|--------------------------------|
| (b)(5)-2 ..... | New (notice from third party). |
| (b)(5)-3 ..... | Q6-8.                          |

*Comment Deleted*

- Q6-1: Unauthorized transfers—access device not involved
- Q6-2: Failure to disclose business days

*Comments Moved*

Q6-9, Q6-10, and Q6-11 (see proposed commentary to § 205.12)

(a) Conditions for Liability

The current regulation conditions consumer liability solely on the issuance of an accepted access device (§ 205.6(a)). Q6-1, on the other hand, states that if the consumer fails to report an unauthorized EFT within 60 days of transmittal of the periodic statement reflecting the transfer, the consumer could be subject to liability for subsequent transfers. The Board has incorporated the current commentary into the regulatory text. Accordingly, Q6-1 has been deleted.

Current § 205.6(a)(2) of the regulation requires that the institution provide a means of identifying the consumer to whom the access device is issued. The regulation currently provides example of such permissible means; this explanatory language has been moved to proposed comment (a)-1.

Current § 205.6(a)(3) of the regulation requires institutions to disclose certain information to the consumer before imposing liability for unauthorized EFTs involving the consumer's account. The information required to be disclosed is already part of the initial disclosures under § 205.7. The regulatory proposal to this section requires that an institution have complied with § 205.7(b) before imposing liability. Accordingly, Q6-2, which pertains to these disclosures, has been deleted.

(b) Limitations on Amount of Liability

Q6-5 provides examples of when the liability rules apply. Material from Q6-5, in revised form, has been incorporated into the commentary to paragraph (b).

(b)(4) Extension of Time Limits

Current § 205.6(b)(4) provides examples of what constitutes extenuating circumstances for purposes of delaying notification to the institution that an access device has been lost or stolen. The examples have been deleted from the proposed regulation and moved to comment (b)(4)-1.

(b)(5) Notice to Financial Institution

The Board has received questions about whether notice from a third party is sufficient under § 205.6. Proposed comment (b)(5)-2 indicates that such notice is considered adequate if it is communicated by a third party on the consumer's behalf.

*Section 205.7—Initial Disclosures*

| New             | Old                                |
|-----------------|------------------------------------|
| (a)-1 .....     | Q7-1.                              |
| (a)-2 .....     | Q7-2.                              |
| (a)-3 .....     | Q7-5.5.                            |
| (a)-4 .....     | Q7-6, new (timing of disclosures). |
| (a)-5 .....     | Q7-6.5.                            |
| (a)-6 .....     | Q7-5.                              |
| (b)(1)-1 .....  | Q7-8.                              |
| (b)(1)-2 .....  | Q7-7.                              |
| (b)(1)-3 .....  | New (current § 205.7(a)(1)).       |
| (b)(2)-1 .....  | Q7-19, Q7-20.                      |
| (b)(4)-1 .....  | Q7-11.                             |
| (b)(4)-2 .....  | Q7-11.5.                           |
| (b)(4)-3 .....  | Q7-10.                             |
| (b)(5)-1 .....  | Q7-12, 7-13.                       |
| (b)(5)-2 .....  | Q7-14, 7-15.                       |
| (b)(5)-3 .....  | Q7-15.5.                           |
| (b)(9)-1 .....  | Q7-16, 7-17.                       |
| (b)(10)-1 ..... | Q7-18.                             |
| (b)(10)-2 ..... | Q7-18.5.                           |

*Comments Deleted*

Q7-9: Summary disclosure of rights

*Comments Moved*

Q7-3, Q7-4 (see proposed commentary to § 205.4)

(a) Timing of Disclosures

Proposed comment (a)-4 expands on Q7-6, which discusses the addition of new EFT services. The current commentary requires financial institutions to provide disclosures for the additional service if it is subject to terms and conditions different from those previously described in the initial disclosures; the commentary is silent, however, as to when such disclosures should be provided. The proposed comment requires that such disclosures be given either when the consumer contracts for the new service or before the first EFT is made using the new service.

(b) Content of Disclosures

Current § 205.7(a)(1) gives financial institutions the option of including advice about promptly reporting the loss or theft of the access device or other unauthorized transfers in the summary of the consumer's liability. This language has been deleted from the proposed regulation and moved to comment (b)(1)-3.

*Section 205.8—Change in Terms Notice; Error Resolution Notice*

| New            | Old                                    |
|----------------|--|
| (a)-1 .....    | Q8-6.                                  |
| (a)-2 .....    | Q8-3, Q8-5.                            |
| (a)-3 .....    | Q8-4.                                  |
| (a)-4 .....    | Q8-2.                                  |
| (a)(2)-1 ..... | New (45 calendar days to send notice). |
| (b)-1 .....    | Q8-8.                                  |

*Comments Deleted*

Q8-1: Terms requiring change in terms notice

Q8-7: Error resolution notice—no periodic statements sent

(a) Change in Terms Notice

(a)(2) Prior Notice Exception

Proposed comment (a)(2)-1 addresses circumstances when financial institutions are required to send a subsequent notice upon making a permanent change in terms related to security. The Board proposes to extend the time period in which financial institutions must send such notice to 45 days (from the current 30 days) to allow institutions to more easily use the periodic statement as a vehicle of the consumer notice.

*Section 205.9—Receipts at Electric Terminals; Periodic Statements*

| New                 | Old  |
|---------------------|--|
| (a)-1 .....         | Q9-1.  |
| (a)-2 .....         | New (footnote 2 to current § 205.9(a)), Q9-2.  |
| (a)-3 .....         | Q9-3.5.  |
| (a)-4 .....         | Q9-5.  |
| (a)-5 .....         | Q9-6.  |
| (a)-6 .....         | Q9-4.  |
| (a)(1)-1 .....      | New (displaying amount of fee on ATM screen).  |
| (a)(2)-1 .....      | Q9-7.  |
| (a)(3)-1 .....      | New (current § 205.9(a)(3)).   |
| (a)(3)-2 .....      | New (footnote 3 to current § 205.9(a)(3)), Q9-9, 9-10.                                   |
| (a)(3)-3 .....      | Q9-8.  |
| (a)(3)-4 .....      | New (current § 205.9(a)(3)), Q9-37.  |
| (a)(3)-5 .....      | Q9-36, Q9-27.  |
| (a)(4)-1 .....      | New (identification among accounts held by, or access devices issued by an institution). |
| (a)(5)-1 .....      | Q9-38.   |
| (a)(5)-2 .....      | Q9-40.   |
| (a)(5)(i)-1 .....   | New (current § 205.9(b)(1)(iv)(A)).  |
| (a)(5)(ii)-1 .....  | New (current § 205.9(b)(1)(iv)(B)).  |
| (a)(5)(iii)-1 ..... | New (current § 205.9(b)(1)(iv)(C)).  |
| (a)(6)-1 .....      | Q9-13, new (current § 205.9(a)(6)).  |
| (a)(6)-2 .....      | Q9-14.   |
| (b)-1 .....         | Q9-19, 9-20.   |
| (b)-2 .....         | New (defining periodic cycle).   |

| New               | Old  |
|-------------------|--|
| (b)-3 .....       | Q9-17.                                       |
| (b)-4 .....       | Q9-18.                                       |
| (b)-5 .....       | Q9-21.                                       |
| (b)-6 .....       | Q9-23, new (footnote 4 to §205.9(b)(1)).     |
| (b)(1)-1 .....    | Q9-25.                                       |
| (b)(1)(i)-1 ....  | Q9-35.                                       |
| (b)(1)(iii)-1 ... | Q9-36.                                       |
| (b)(1)(iv)-1 ...  | Q9-40.5.                                     |
| (b)(1)(v)-1 ...   | Q9-28.                                       |
| (b)(1)(v)-2 ...   | Q9-30.                                       |
| (b)(1)(v)-3 ...   | Q9-41.                                       |
| (b)(1)(v)-4 ...   | Q9-43.                                       |
| (b)(1)(v)-5 ...   | Q9-44.                                       |
| (b)(1)(v)-6 ...   | New (footnote 9 to current §205.9(b)(1)(v)). |
| (b)(3)-1 .....    | Q9-31.                                       |
| (b)(3)-2 .....    | Q9-31.5.                                     |
| (b)(3)-3 .....    | New (current §205.9(b)(3)).                  |
| (b)(4)-1 .....    | Q9-32.                                       |
| (b)(5)&(6)-1 ..   | Q9-33.                                       |
| (c)-1 .....       | Q9-50.                                       |
| (d)-1 .....       | Q9-51.                                       |

#### Comments Deleted

- Q9-3: Receipts—information displayed on screen
- Q9-10.5: Receipts—type of account, interchange system
- Q9-11: Receipts—unique identifier
- Q9-12: Receipts—terminal location
- Q9-16: Periodic statements—frequency
- Q9-24: Periodic statements—accompanying documents
- Q9-29: Periodic statements—multiple transferees
- Q9-34: Periodic statements—telephone numbers
- Q9-39: Receipts/periodic statements—location code
- Q9-42: Receipts/periodic statements—intermediate party
- Q9-45: Passbook updates—when required
- Q9-46: Passbook accounts—telephone notice alternative
- Q9-47: Passbook updates—discarding of data
- Q9-48: Passbook updates—periodic transmittals
- Q9-49: Quarterly statements—compliance with regular requirements

#### Comments Moved

- Q9-4 (see proposed commentary to § 205.4)
- Q9-15 (see proposed commentary to § 205.2)
- Q9-26 (see proposed commentary to § 205.11)

The Board has proposed a number of editorial revisions to § 205.9 such as adding new paragraphs and headings to better organize the text concerning timing and content of disclosures. A number of comments have been deleted from the proposed commentary to this section. Many of the current questions are very fact specific, and believed to be

unnecessary in the revised commentary. No substantive changes are intended.

#### (a) Receipts at Electronic Terminals

Footnote 2 to current § 205.9(a) allows an account-holding institution to make terminal receipts available through third parties. The footnote would be deleted from the regulation and moved to comment (a)-2.

#### (a)(1) Amount

Current § 205.9(a)(1) provides that financial institutions other than the account-holding institution may include a fee for a transfer in the amount of the transfer if the fee is disclosed on the receipt and on a sign posted on or at the terminal. The regulatory proposal would modify these requirements and allow the account-holding institution to take advantage of the exception. In addition, proposed comment (a)(1)-1 provides that the requirement to display the amount of a transaction fee "on or at the terminal" could be met by displaying the fee on the terminal screen before the consumer has initiated the transfer if displayed for a reasonable duration. The Board requests comment on whether the proposed changes provide adequate notice to the consumer.

#### (a)(3) Type

Current § 205.9(a)(3) requires disclosure of the type of transfer and the type of consumer's account to or from which funds are transferred. It also provides examples of descriptions for such accounts. The examples would be deleted from the regulation and moved to comment (a)(3)-1. In addition, § 205.9(a)(3) provides generic descriptions for accounts that are similar in function. These examples would also be deleted from the regulation and incorporated with the substance of Q9-37 in proposed comment (a)(3)-4.

Footnote 3 to current § 205.9(a)(3) provides an exception to the requirement to disclose the type of transfer and account if the consumer can access only one account at a particular time or terminal. The exception would be deleted from the regulation and the substance moved to comment (a)(3)-2.

#### (a)(4) Identification

Proposed comment (a)(4)-1 clarifies that an identifying number or code that uniquely identifies the consumer's account or access device—among all accounts held by an institution or access devices issued by an institution—is sufficient to meet the requirements of the regulation.

#### (a)(5) Terminal Location

The current regulation includes detailed guidance for specifying the terminal location on both the receipt and periodic statement (see current § 205.9(b)(1)(iv)). While the substantive requirement to disclose the location remains unchanged, the illustrative language would be moved to comments (a)(5)(i)-1, (a)(5)(ii)-1, and (a)(5)(iii)-1.

#### (a)(6) Third Party Transfer

Current § 205.9(a)(6) requires that the name of any third party to or from whom funds are transferred be disclosed on the receipt. It also provides guidance on the use of codes and an exception to the disclosure requirement when the name of the payee cannot be duplicated by the terminal. This secondary information would be deleted from the regulation and moved to comment (a)(6)-1.

#### (b) Periodic Statements

Current § 205.9(b) provides that periodic statements must be sent for each monthly or shorter cycle in which an EFT has occurred, but at least quarterly if no transfer has occurred. As the Board believes that few institutions send a statement (for Regulation E purposes) for a cycle shorter than one month, the regulatory proposal has deleted reference to a "shorter cycle." The reference would be moved to comment (b)-1.

Proposed comment (b)-2 provides additional guidance on what is considered a cycle for purposes of Regulation E. The comment requires that financial institutions provide relevant information for the cycle or period since the last statement was issued. The Board has adopted a similar approach in the proposed commentary to Regulation DD (see 59 FR 5536, February 7, 1994). For example, if an institution may issue quarterly statements in March, June, September, and December and the consumer initiates an EFT in February, an interim statement would be provided. The comment indicates that the statement should provide information for the months of January and February. The regularly scheduled March statement would provide information only about the month of March. The proposed Regulation DD commentary provides that disclosures given on the interim statement cannot be repeated on the regularly scheduled statement. In the example above, the March statement could not repeat information disclosed on the February statement. The Board solicits comment on whether the same

approach should be adopted in Regulation E.

Footnote 4 to current § 205.9(b)(1) permits financial institutions to provide certain periodic statement disclosures on documents that accompany the statement; it also permits institutions to use codes for the disclosures if they are explained either on the statement or accompanying documents. The footnote would be deleted from the regulation and the substance moved to comment (b)-6.

Paragraph 9(b)(1)(v)

Footnote 9 to current § 205.9(b)(1)(v) provides that a financial institution need not identify on the periodic statement third parties whose names appear on checks, drafts, or similar paper instruments deposited to the consumer's account at an electronic terminal. The footnote would be deleted from the regulation and the substance moved to comment (b)(1)(v)-6.

(b)(3) Fees

Section 205.9(b)(3) provides that financial institutions must disclose the amount of any fees other than a finance charge imposed under Regulation Z, 12 CFR 226.7(f) that were assessed against the account during the statement period for EFTs. The reference to finance charges would be deleted from the regulation and moved to comment (b)(3)-3

Section 205.10—Preauthorized Transfers

| New            | Old   |
|----------------|---|
| (a)(1)-1 ..... | Q10-5, Q10-6.                                       |
| (a)(1)-2 ..... | Q10-1.  |
| (a)(1)-3 ..... | Q10-7.  |
| (a)(1)-4 ..... | Q10-8, Q10-9, New (reverses part of Q10-7).         |
| (a)(1)-5 ..... | Q10-10.   |
| (a)(1)-6 ..... | Q10-12.   |
| (a)(1)-7 ..... | Q10-11.   |
| (b)-1 .....    | Q10-17, New (example of preexisting authorization). |
| (b)-2 .....    | Q10-18.   |
| (b)-3 .....    | Q10-18.6.   |
| (b)-4 .....    | Q10-18.5.   |
| (b)-5 .....    | New (similarly authorized).                         |
| (c)-1 .....    | Q10-19.   |
| (c)-2 .....    | Q10-19.5.   |
| (d)(1)-1 ..... | Q10-21.   |
| (d)(2)-1 ..... | new (range).  |
| (e)(1)-1 ..... | Q3-7, Q3-7.5.                                       |
| (e)(1)-2 ..... | New (repayment of overdrafts).                      |
| (e)(2)-1 ..... | Q3-6.   |

Comments Deleted

- Q10-2: Notice of credit—when receipt guaranteed
- Q10-3: Notice provided by payor
- Q10-4: Notice provided by payor—form

- Q10-13: Preauthorized credits—availability of funds
- Q10-14: Preauthorized credits—posting schedule
- Q10-15: Preauthorized credits—funds received prior to agreed crediting date
- Q10-16: Preauthorized debits—preexisting authorizations
- Q10-20: Ten-day notice of varying debits—preexisting authorizations
- Q3-5: Compulsory use—preauthorized loan payments

Section 205.10 sets forth the substantive and disclosure requirements for authorizing preauthorized transfers to and from a consumer's account. The Board has proposed to expand this section to include guidance on the prohibitions against compulsory use, and corresponding commentary has been added. The section contains several new interpretations, as discussed below.

(a) Preauthorized Transfers to Consumer's Account

Regulation E currently requires financial institutions that receive preauthorized transfers to credit the funds to the consumers account as of the day the funds are received. The regulatory proposal would delete this requirement as obsolete. Accordingly, Q10-13, 10-14, and Q10-15 also have been deleted.

(a)(1) Notice by Financial Institution

Section 906(b) of the EFTA and current § 205.10(a)(1) of the regulation provide that when a payor credits a consumer's account by preauthorized EFT at least once every 60 days, the account-holding institution must inform the consumer either that the transfer has or has not occurred or provide a phone number for the consumer to use to verify the transfer. Q10-7 provides that the absence of a deposit entry on a periodic statement can serve as notice that a preauthorized transfer has not occurred. Proposed comment (a)(1)-4 reverses the current position and states that the absence of a deposit entry is not negative notice. The Board believes the requirement is an affirmative duty to provide notice either positively or negatively.

(b) Written Authorization for Preauthorized Transfers From Consumer's Account

Proposed comment (b)-1 incorporates Q10-17, which provides that a financial institution or designated payee does not need to obtain new authorizations before shifting from a paper-based to an electronic debiting system. The proposed comment also provides that a successor payee or institution may rely

on a preexisting authorization to debit payments from the consumer's account, for example when an institution purchases the mortgage servicing rights from a party that previously obtained the consumer's authorization. The Board solicits comment on other instances in which a new authorization may not be necessary.

The requirement in current § 205.10(b) that preauthorized EFTs from a consumer's account be authorized by the consumer only in writing has been revised. The requirement for the authorization to be a signed writing has been expanded to include authorizations which are "similarly authenticated" by the consumer. This enhancement addresses developments in electronic services, such as home banking. Proposed comment (b)-5 provides an example of a consumer's authorization that is "similarly authenticated." The comment provides that for a home banking system to satisfy the requirement, there must be some means to identify the consumer (such as a security code), and the consumer must have the ability to obtain a printed copy of the authorization (either from the consumer's printer or from the payee). The Board solicits comment on whether additional safeguards are necessary to protect consumers in this situation. For example, should the commentary require that the authorization remain in the institution's computer memory and be available to the consumer through the home banking device until it is modified or terminated? Should the commentary explicitly require that the authorization may only be provided by the consumer (by using a personal identification code) and not by a payee on the consumer's behalf? How would this change affect the stop payment rules under § 205.10(c)? The Board solicits comment on these and other issues related to the requirements of a written authorization under this section.

The Board solicits comment on two issues that have not been discussed previously in the commentary. The Board has received inquiries about telephone-initiated transfers when the consumer provides an account number to the caller and authorizes a draft or an ACH debit to be submitted against the consumer's account. The Board believes such transfers are EFTs since they are initiated by telephone and authorize the debiting of the consumer's account. The transfers are not "preauthorized transfers," however, and the rules regarding written authorization by the consumer thus are not applicable. The Board solicits comment on whether this type of transfer poses sufficient

consumer risk as to warrant special provision in the regulation or commentary.

The Board has also received questions on what are appropriate means for obtaining a consumer's authorization for preauthorized transfers. For example, the Board has been asked whether sending the consumer a check which incorporates in the endorsement an authorization for the financial institution to automatically debit the consumer's account on a monthly basis is a legitimate method for obtaining the consumer's authorization. The Board solicits comment on whether the commentary or regulation should address such format issues.

(d) Notice of Transfers Varying in Amount

(d)(2) Range

Proposed comment (d)(2)-1 provides guidance on what is an acceptable range for purposes of this section. The comment provides that an acceptable range is one that could plausibly be anticipated by the consumer. For example, if the consumer's monthly payment is approximately \$50, providing a range between zero and \$10,000 does not seem reasonable. The Board solicits comment on how financial institutions currently determine such a range, as well as reaction to the proposed analysis.

(e) Compulsory Use

(e)(1) Credit

The regulatory proposal incorporates the statutory restrictions against compulsory use of EFTs as a condition of credit, employment, or receipt of government benefits into § 205.10(e). The questions pertaining to compulsory use in the current commentary (under § 205.3) have, for the most part, been incorporated into the commentary proposal. The regulatory proposal also incorporates the substance of footnote 1a to § 205.3 into proposed § 205.10(e)(1), which provides that a financial institution may require the automatic repayment of credit that is extended under an overdraft credit plan or that is extended to maintain a specified minimum balance in the consumer's account. The commentary proposal includes a new comment (e)(1)-2 which allows an institution to use the exception even if the overdraft extension is charged to an open-end account that may be accessed by the consumer in ways other than by overdrafts. For example, in addition to overdraft protection, a consumer may be able to obtain cash advances directly from the credit line without going

through a checking account. The Board believes that the exemption applies to such plans and that it is not practicable to distinguish between extensions of credit triggered under such plans because of the overdraft mechanism versus those advanced to the consumer by some other means.

Section 205.11—Procedures for Resolving Errors

| New               | Old   |
|-------------------|---|
| (a)-1 .....       | Q9-26.  |
| (a)-2 .....       | Q11-2.  |
| (a)-3 .....       | Q11-3.  |
| (a)-4 .....       | Q11-4.  |
| (b)(1)-1 .....    | Q11-8, new (example added).                         |
| (b)(1)-2 .....    | New (required submission of an affidavit).          |
| (b)(1)-3 .....    | Q11-5.  |
| (b)(1)-4 .....    | Q11-6.  |
| (b)(1)-5 .....    | Q11-7.  |
| (b)(1)-6 .....    | New (footnote 10 to current §205.11(b)(1)(i)).      |
| (b)(2)-1 .....    | Q11-9, new (provisional crediting).                 |
| (c)-1 .....       | New (provide notices either orally or in writing).  |
| (c)-2 .....       | Q11-10.   |
| (c)-3 .....       | New (strengthens Q11-31).                           |
| (c)-4 .....       | New (current §205.11(d)(3)).                        |
| (c)-5 .....       | Q11-20, new (footnote 12 to current §205.11(e)(2)). |
| (c)-6 .....       | New (current §205.11(e)(1)), Q11-19.                |
| (c)-7 .....       | New current §205.11(d)(1).                          |
| (c)(2)(i)-1 ..... | New (current §205.11(c)(3)).                        |
| (c)(3)-1 .....    | Q11-11.5.   |
| (c)(4)-1 .....    | Q11-13.   |
| (c)(4)-2 .....    | Q11-14.   |
| (c)(4)-3 .....    | Q11-16.   |
| (c)(4)-4 .....    | New (footnote 11 to current §205.11(d)(1)).         |
| (d)-1 .....       | Q11-17.   |
| (d)(1)-1 .....    | Q11-25.   |
| (d)(2)-1 .....    | Q11-23.   |
| (d)(2)-1 .....    | Q11-24.   |
| (e)-1 .....       | Q11-30.   |

Comments Deleted

- Q11-1: Transfers—initiated by institution
- Q11-11: Deadlines for investigation of error
- Q11-12: Request for documentation—facsimile or photocopy
- Q11-15: Scope of investigation—preauthorized credits
- Q11-18: Crediting of interest
- Q11-21: Written explanation—timing
- Q11-22: Debiting of recredited funds—items to be honored
- Q11-26: Documents relied on—privacy issue
- Q11-27: Documents relied on—no information on relevant tapes
- Q11-28: Withdrawal of error notice
- Q11-29: Withdrawal of error notice

Comments Moved

- Q11-32, Q11-33 (see proposed commentary to § 205.12)

Section 205.11 sets forth the regulation's procedures for error resolution. The regulatory proposal reformatted the section to facilitate compliance and the commentary provisions have accordingly been assigned. The proposed commentary contains several new comments, most of which have been removed from the regulation.

(b) Notice of Error From Consumer

(b)(1) Timing; Contents

Section 908 of the EFTA and § 205.11 of the regulation require institutions to investigate and make a final determination as to a consumer's allegation of an error within either 10 business days or 45 calendar days. Financial institutions have asked whether they can delay initiating or completing an investigation pending receipt of an affidavit related to the alleged error. Proposed comment (b)(1)-2 prohibits institutions from delaying their investigation until a consumer has produced the affidavit. The Board believes that permitting delay would allow institutions to circumvent the investigation procedures currently mandated by the act and regulation.

Footnote 10 to current § 205.11(b)(1)(i), which permits a financial institution to prescribe procedures for giving notice of an error, would be deleted from the regulation and the substance moved to comment (b)(1)-6.

(b)(2) Written Confirmation

Q11-9 provides that a financial institution does not have to have referral procedures for forwarding a written confirmation of error that is sent to the wrong address. Proposed comment (b)(2)-1 further provides that institutions operating under the 45-calendar-day rule need not provisionally credit the consumer's account when the written confirmation is delayed beyond 10 business days because it was sent to the wrong address.

(c) Time Limits and Extent of Investigation

As noted in § 205.4, most disclosures required by Regulation E must be in writing and in a form the consumer may keep. Proposed comment (c)-1 provides that financial institutions may give the notices required by § 205.11 either orally or in writing, unless otherwise indicated in the section. This exception would not apply to a consumer's request for documentation pursuant to proposed § 205.11(a)(1)(vii).

Q11-31 articulates the Board's concern that charging consumers for the



financial institution's compliance with the regulation's error resolution procedures might have a chilling effect on the good faith assertion of errors. The Board believes that as the EFTA specifically grants the consumer error-resolution rights, institutions must avoid any deterrent to exercising such rights. To clarify its position, the Board proposes to add comment (c)-3 to explicitly prohibit institutions from charging consumers for error resolution. The Board solicits comment on the impact of such a prohibition on institutions and consumers.

Current § 205.11(d)(3) provides that a financial institution may correct an error in the amount or manner alleged by the consumer without complying with the investigation requirements of this section if it complies with all other requirements of § 205.11. The provision would be deleted from the regulation and moved to comment (c)-4.

Footnote 12 to current § 205.11(e)(2) allows financial institutions to provide the notice of correction on the periodic statement that is mailed or delivered within the time limits specified in the section. The footnote would be deleted from the regulation and moved to comment (c)-5.

Current § 205.11(e)(1) provides that if a financial institution determines an error occurred, it must correct the error including, where applicable, the crediting of interest and the refunding of any fees or charges imposed. This language would be deleted from the regulation and combined with the substance of Q11-19 in comment (c)-6. The comment would also clarify that the requirement only applies to fees imposed by the institution versus those imposed by third parties.

Paragraph (c)(2)(i)

Current § 205.11(c)(3) provides examples of when a financial institution must comply with all requirements of § 205.11 except the provisional crediting requirements. While the examples have been retained in the regulatory proposal, the language requiring compliance with other requirements of the section would be deleted and moved to comment (c)(2)(i)-1.

(c)(4) Investigation

Footnote 11 to current § 205.11(d)(1) provides examples of what does and does not constitute an agreement for purposes of this section. The explanatory language would be deleted from the regulation and moved to comment (c)(4)-4.

Section 205.12—Relation to Other Laws

| New         | Old  |
|-------------|--|
| (a)-1 ..... | Q6-9, Q6-10, Q6-11, Q11-32, Q11-33.                  |
| (a)-2 ..... | Q5-9, Q5-10.   |
| (b)-1 ..... | Q12-1, new (compliance without Board determination). |
| (b)-2 ..... | New (current preemption of Michigan law).            |

The regulatory proposal has consolidated the references to the Truth in Lending Act and Regulation Z in § 205.12. The section would also contain the rules the Board applies in determining the preemption of inconsistent state laws or in granting a state exemption. The commentary provisions have been consolidated in this section as well.

(b) Preemption of Inconsistent State Laws

Proposed comment (b)-1 incorporates Q12-1, which provides that state law may be preempted even if the Board has not issued a determination. The comment also notes that financial institutions are not protected from liability for failing to comply with state law in the absence of a preemption determination by the Board.

Proposed comment (b)-2 incorporates into the commentary an official staff interpretation preempting certain provisions of Michigan's EFT statute. Future preemption determinations would also be included in the commentary.

Section 205.13—Administrative Enforcement; Record Retention

| New         | Old    |
|-------------|--------|
| (b)-1 ..... | Q13-2. |

Comments Moved

Q13-1 (see proposed commentary to appendix A)

Current § 205.13 contains information about administrative enforcement, issuance of staff interpretations and record retention. The regulatory proposal moved much of the detail pertaining to these topics to the appendices. With one exception, no substantive change was intended. As noted above, the information describing issuance of staff interpretations would be deleted from the regulation, including any reference to unofficial staff interpretations (which the Board no longer issues in writing). Information about procedures for the official commentary is set forth in a new appendix C.

Section 205.14—Electronic Fund Transfer Service Provider Not Holding Consumer's Account

| New            | Old                            |
|----------------|--------------------------------|
| (a)-1 .....    | Q14-1, Q14-2.                  |
| (a)-2 .....    | Q14-3.                         |
| (b)-1 .....    | New (formerly § 205.14(a)(1)). |
| (b)(1)-1 ..... | Q14-4.                         |
| (b)(2)-1 ..... | Q14-6.                         |
| (c)(1)-1 ..... | Q14-7.                         |

Comment Deleted

Q14-5: Periodic statement—issuance of card

Section 205.14 details the requirements for financial institutions that issue access devices and provide EFT services to consumers even though the consumers' accounts are held by a second institution.

(b) Compliance by Electronic Fund Transfer Service Provider

Current § 205.14(a)(1) provides that the service-providing institution shall reimburse the consumer for unauthorized EFTs in excess of the limits set by § 205.6. This provision would be deleted from the regulation and moved to comment (b)-1.

Section 205.15—Electronic Fund Transfer of Government Benefits

Proposed comments interpreting the requirements of this section will be published at a later date.

Appendix A—Model Disclosure Clauses and Forms

| Old         | New           |
|-------------|---------------|
| Q13-1 ..... | Appendix A-1. |

Text of Proposed Revisions

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 205 as follows:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 205 would be revised to read as follows:

Authority: 15 U.S.C. 1693.

2. In part 205, Supplement I would be revised to read as follows:

Supplement I to Part 205—Official Staff Interpretations

Section 205.2—Definitions

(a) Access device

1. Examples. The term access device includes 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 to or from

a consumer account. The term does not include magnetic tapes or other devices used internally by a financial institution to initiate electronic transfers.

**(b)(1) Account**

1. *Consumer asset accounts.* The term consumer asset account includes:

- Club accounts, such as Christmas or vacation clubs. In many cases, however, these accounts are exempt from the regulation under § 205.3(c)(5) because all electronic transfers to or from the account have been preauthorized by the consumer and involve another account of the consumer at the same institution.

- A retail repurchase agreement (repo) which is a loan made to a financial institution by a consumer that is collateralized by government or government-insured securities.

The term "consumer asset account" does not include:

- Profit-sharing and pension accounts established under a trust agreement, which are exempt under § 205.2(b)(2).
- Escrow accounts, such as those established to ensure payment of items such as real estate taxes, insurance premiums, or completion of repairs or improvements.
- Accounts for accumulating funds to purchase U.S. savings bonds.

**Paragraph (b)(2)**

1. *Bona fide trust agreements.* The term bona fide trust agreement is not defined by the act or regulation. Therefore, financial institutions must look to state or other applicable law for interpretation.

2. *Custodial agreements.* An account held under a custodial agreement that qualifies as a trust under the Internal Revenue Code, such as an individual retirement account, is considered to be held under a trust agreement for purposes of this part.

**(d) Business Day**

1. *Duration.* A business day includes the entire 24-hour period ending at midnight and notice is effective even if given outside normal business hours. The regulation does not require, however, that telephone lines be available on a 24-hour basis.

**(f) Electronic Terminal**

1. *Point-of-sale (POS) payments initiated by telephone.* Because the term electronic terminal excludes a telephone operated by a consumer, a financial institution need not provide a terminal receipt when:

- A consumer uses a debit card at a public telephone to pay for the call.
- A consumer initiates a transfer by the equivalent to a telephone, such as by home banking equipment or a facsimile machine.

2. *POS terminals.* A POS terminal that captures data electronically, for debiting or crediting to a consumer's asset account, is an electronic terminal for purposes of Regulation E if a debit card is used to initiate the transaction.

3. *Teller-operated terminals.* A terminal or other computer equipment operated by an employee of a financial institution is not an electronic terminal for purposes of the regulation. 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, the transfers are not electronic fund transfers for purposes of the regulation.

**(k) Unauthorized Electronic Fund Transfer**

1. *Transfer by institution's employee.* A consumer has no liability for erroneous or fraudulent transfers initiated by an employee of a financial institution.

2. *Authority.* If a consumer furnishes the access device and grants authority to make transfers to a person (such as a family member or co-worker) who exceeds the authority given, the consumer is fully liable for the transfers unless the consumer has notified the financial institution that transfers by that person are no longer authorized.

3. *Access device obtained through robbery, fraud.* An unauthorized electronic fund transfer includes a transfer initiated by a person who obtained the access device from the consumer through fraud or robbery.

4. *Forced initiation.* An electronic fund transfer at an automated teller machine (ATM) is an unauthorized transfer if the consumer is induced by force to initiate the transfer.

**Section 205.3—Coverage**

**(a) General**

1. *Accounts covered.* The requirements of the regulation apply only to accounts for which an agreement for electronic fund transfer services to or from the account has been entered into between:

- The consumer and the financial institution (including accounts for which an access device has been issued to the consumer, for example);
- The consumer and a third party (for preauthorized debits or credits, for example), when the account-holding institution has received notice of the agreement and the fund transfers have begun.

The fact that membership in an automated clearing house 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.

2. *Foreign applicability.* Regulation E applies to all persons (including branches and other offices of foreign banks located in the United States) that offer electronic fund transfer services to residents of any state (including resident aliens). It covers any account located in the United States through which electronic fund transfer services are offered to a U.S. resident. This is the case whether or not a particular transfer takes place in the United States and whether or not the financial institution is chartered or based in the United States or a foreign country. The regulation does not apply to a foreign branch of a U.S. bank unless the electronic fund transfer services are offered in connection with an account held by the consumer in a state as defined in § 205.(j).

**(b) Electronic Fund Transfer**

1. *Fund transfers covered.* The term electronic fund transfer includes:

- A deposit made at an ATM or other electronic terminal (including a deposit in cash or by check) provided a specific agreement exists between the financial institution and the consumer for electronic fund transfers to or from the account to which the deposit is made.
- Any transfer sent via an automated clearing house. For example, social security benefits under the U.S. Treasury's direct-deposit program are covered, even if the listing of payees and payment amounts reaches the account-holding institution by means of a computer printout from a correspondent bank.
- A preauthorized transfer credited or debited to an account in accordance with instructions contained on magnetic tape, even if the financial institution holding the account sends or receives a composite check.
- A transfer resulting from a debit-card transaction, even if no electronic terminal is involved at the time of the transaction, if the consumer's asset account is subsequently debited for the amount of the transfer.

2. *Fund transfers not covered.* The term electronic fund transfer does not include:

- A payment that does not debit or credit a consumer asset account, such as payroll allotments to a creditor to repay a credit extension that are deducted from salary payments and not from consumer accounts, or any payment made in currency by a consumer to another person at an electronic terminal.
- A preauthorized check drawn by the financial institution on the consumer's account (such as an interest or other recurring payment to the consumer or another party), even if the check is computer-generated.

**(c) Exclusions From Coverage**

**(c)(2) Check Guarantee or Authorization Services**

1. *Memo posting.* Under a check guarantee or check authorization service, debiting of the consumer's account occurs when the check or draft is presented for payment. These services are exempt from coverage, even when a temporary hold on the account is memo-posted electronically at the time of authorization.

**(c)(3) Wire Transfers**

1. *Fedwire and ACH.* If a financial institution makes a fund transfer via an automated clearing house (ACH) after receiving funds via Fedwire or a similar network, the transfer by the ACH is covered by the regulation even though the Fedwire or network transfer is exempt.

2. *Article 4A.* Financial institutions that offer telephone-initiated Fedwire payments are subject to the requirements of the UCC section 4A-202, which encourages that Fedwire payment orders be verified pursuant to a security procedure established by agreement between the consumer and the receiving bank. These transfers are not subject to Regulation E and the agreement is not considered a telephone plan if the service is offered separately and apart from any

telephone bill-payment or other prearranged plan normally subject to Regulation E.

3. *Similar fund transfer systems.* Examples of fund transfer systems similar to Fedwire include the Clearing House Interbank Payments System (CHIPS), Society for Worldwide Interbank Financial Telecommunication (SWIFT), and Telex.

(c)(4) *Securities and Commodities Transfers*

1. *Coverage.* The securities exemption applies to securities and commodities that may be sold by a registered broker-dealer or futures commission merchant, even when the security or commodity itself is not regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission.

2. *Examples of exempt and nonexempt transfers.* The exemption applies to a transfer involving:

- A transfer initiated by a telephone order to a stockbroker to buy or sell securities or to exercise a margin call.

The exemption does not apply to a transfer involving:

- A debit card that accesses a money market mutual fund and that the consumer uses for purchasing goods or services or obtaining cash.
- A payment of interest or dividends into the consumer's account, for example, from a brokerage firm or from a Federal Reserve Bank (for government securities).

(c)(5) *Automatic Transfers by Account-Holding Institution*

1. *Automatic transfers exempted.* The exemption applies to:

- Electronic debits or credits to consumer accounts for check charges, stop-payment charges, NSF charges, overdraft charges, provisional credits, error adjustments, and similar items that are initiated automatically on the occurrence of certain events.
- Debits to consumer accounts for group insurance available only through the financial institution and payable only by means of an aggregate payment from the institution to the insurer.
- Electronic fund transfers between a thrift institution and its paired commercial bank in the state of Rhode Island, which are deemed under state law to be intra-institutional.
- Automatic transfers between a consumer's accounts within the same financial institution, even if the account holders on the two accounts are not identical.

2. *Automatic transfers not exempted.* Transfers between accounts of the consumer at affiliated institutions (such as between a bank and its subsidiary or within a holding company) are not intra-institutional transfers, and thus do not qualify for the exemption.

(c)(6) *Telephone-Initiated Transfers*

1. *Written plan or agreement.* A transfer that the consumer initiates by telephone is covered only if the transfer is made under a written plan or agreement between the consumer and the financial institution making the transfer. The following do not, by themselves, constitute a written plan or agreement:

- A hold-harmless agreement on a signature card that protects the institution if the consumer requests a transfer.

• A legend on a signature card, periodic statement, or passbook that limits the number of telephone-initiated transfers the consumer can make from a savings account because of Regulation D (12 CFR part 204) reserve requirements.

• An agreement permitting the consumer to approve by telephone the rollover of funds at the maturity of an instrument.

2. *Examples of covered transfers.* When a written plan or agreement has been entered into, a transfer initiated by a telephone call from a consumer is covered even though:

- An employee of the financial institution completes the transfer manually, for example, by means of a debit memo or deposit slip.
- The consumer is required to make a separate request for each transfer.
- The consumer uses the plan infrequently.
- The consumer initiates the transfer via a facsimile machine.

(c)(7) *Small Institutions*

1. *Coverage.* This exemption is limited to preauthorized transfers; institutions that offer electronic fund transfer services other than preauthorized transfers must comply with the applicable sections of the regulation as to such services. The preauthorized transfers remain subject, however, to sections 913, 915, and 916 of the act and § 205.10(e) and are therefore exempt from UCC Article 4A.

Section 205.4—*General Disclosure Requirements; Jointly Offered Services*

(a) *Form of Disclosures*

1. *General.* Although no particular rules govern such matters as type size, number of pages, or the relative conspicuousness of various terms, the disclosures must be in a clear and readily understandable written form that the consumer may retain. Numbers or codes are considered readily understandable if explained elsewhere on the disclosure.

2. *Foreign language disclosures.* Disclosures may be made in languages other than English, provided they are available in English upon request.

Section 205.5—*Issuance of Access Devices*

1. *Coverage.* The provisions of this section limit the circumstances under which a financial institution may issue an access device to a consumer. Making an additional account accessible through an existing access device is equivalent to issuing an access device and is subject to the limitations in this section.

(a) *Solicited Issuance*

Paragraph (a)(1)

1. *Joint account.* For joint accounts, a financial institution may issue an access device to each account holder if the requesting holder specifically authorizes the issuance.

Paragraph (a)(2)

1. *One-for-one rule.* In issuing a renewal or substitute access device, a financial institution may not provide additional devices. For example, only one new card and PIN may replace a card and PIN previously

issued. If the replacement device permits either additional or fewer types of electronic fund transfer services, new disclosures or a change-in-terms notice are required.

2. *Renewal or substitution by a successor institution.* A successor institution is an entity that replaced the original financial institution (for example, through a corporate merger or acquisition) or that has acquired accounts or assumed the operation of an electronic fund transfer system.

(b) *Unsolicited Issuance*

1. *Compliance.* A financial institution may issue an unsolicited access device (such as a combination of a debit card and PIN) if the institution's ATM system has been programmed not to accept the access device until after the consumer requests and the institution validates the device. Merely instructing a consumer not to use an unsolicited debit card and PIN until after the institution has satisfactorily verified the consumer's identity does not comply with the regulation.

2. *PINS.* A financial institution may impose no liability on the consumer for unauthorized transfers involving an unsolicited access device until the device becomes an "accepted access device" under the regulation. A card-PIN combination can be treated as an accepted access device once the card and PIN have been used by the consumer.

3. *Functions of PIN.* If an institution issues a personal identification number at the consumer's request, the issuance may constitute both a way of validating the debit card and the means to identify the consumer (required as a condition of imposing liability for unauthorized transfers).

4. *Verification of identity.* A financial institution may use other means, not just those listed in the regulation, to verify the consumer's identity. However, if an institution fails to correctly verify the consumer's identity, even if reasonable means were used, and an imposter succeeds in having the device validated, the consumer is not liable for any unauthorized transfers from the account.

Section 205.6—*Liability of Consumer for Unauthorized Transfers*

(a) *Conditions for Liability*

1. *Means of identification.* A financial institution may use various means for identifying the consumer to whom the access device is issued including but not limited to:

- Electronic or mechanical confirmation (such as a PIN).
- Comparison of the consumer's signature, fingerprint, or photograph.

2. *Multiple users.* When more than one access device is issued for an account, the financial institution may, but need not, provide a separate means to identify each user of the account.

(b) *Limitations on Amount of Liability*

1. *Application of liability provisions.* There are three possible tiers of consumer liability for unauthorized electronic fund transfers depending on the situation. A consumer may be liable for (1) up to \$50; (2) up to \$500; or (3) an unlimited amount. More than one tier

may apply to a given situation because each corresponds to a different (sometimes overlapping) time period.

2. *Consumer negligence.* Negligence by the consumer cannot be used as the basis for imposing greater liability than is permissible under Regulation E. Thus, consumer behavior that may constitute negligence under state law, such as writing the PIN on the ATM card or on a piece of paper kept with the card, does not affect the consumer's liability for unauthorized transfers. The extent of the consumer's liability is determined solely by the consumer's promptness in reporting the loss or theft of an access device. Similarly, no agreement between the consumer and an institution may impose greater liability on the consumer for an unauthorized transfer than the limits provided in Regulation E.

(b)(1) *Timely Notice Given*

1. *\$50 limit applies.* The basic liability limit is \$50. For example, the consumer's card is lost or stolen on Monday and the consumer learns of the loss or theft on Wednesday. If the consumer notifies the financial institution within two business days of learning of the loss or theft (by midnight Friday), the consumer's liability is limited to \$50 or the amount of the unauthorized transfers that occurred before notification, whichever is less.

2. *Knowledge of loss or theft of access device.* The fact that a consumer has received a periodic statement that reflects unauthorized transfers may be 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.

(b)(2) *Timely Notice Not Given*

1. *\$500 limit applies.* The second tier of liability is \$500. For example, the consumer's card is stolen on Monday and the consumer learns of the theft that same day. The consumer reports the theft on Friday. The \$500 limit applies because the consumer failed to notify the financial institution within two business days of learning of the theft (which would have been by midnight Wednesday). How much the consumer is actually liable for, however, depends on when the unauthorized transfers take place. In the example above, assume an unauthorized transfer for \$100 was made on Tuesday, and another unauthorized transfer for \$600 occurred on Thursday. As the consumer is liable for the amount of the loss that occurred within the first two business days (but no more than \$50), plus the amount of the unauthorized transfers that occurred after the first two business days and before the consumer gives notice, the consumer's total liability is \$500 (\$50 of the \$100 transfer plus \$450 of the \$600 transfer in this example). But if \$600 was taken on Tuesday and \$100 was taken on Thursday, the consumer's maximum liability would be \$150.

(b)(3) *Periodic Statement; Timely Notice Not Given*

1. *Unlimited liability applies.* The standard of unlimited liability applies if unauthorized transfers appear on a periodic statement, and

may apply in conjunction with the first two tiers of liability. If a periodic statement shows an unauthorized transfer, the consumer must notify the financial institution within 60 calendar days after the periodic statement was sent; otherwise, the consumer faces unlimited liability for all unauthorized transfers made after the 60-day period. The consumer's liability for unauthorized transfers before the statement is sent and up to 60 days following is determined based on the first two tiers of liability: up to \$50 if the consumer notifies the financial institution within two business days of learning of the loss or theft of the card and up to \$500 if the consumer notifies the institution after two business days of learning of the loss or theft.

2. *Transfers not involving access device.* The first two tiers of liability do not apply to unauthorized transfers from a consumer's account that were made without an access device. If, however, the consumer fails to report such unauthorized transfers within 60 calendar days of the financial institution's transmittal of the periodic statement, the consumer may be held liable for any transfers occurring after the close of the 60 days and before notice is given to the institution. For example, assume a consumer's account has been electronically debited for \$200 without the consumer's authorization and by means other than the consumer's access device. If the consumer notifies the institution within 60 days of transmittal of the periodic statement that shows the unauthorized transfer, the consumer has no liability. If, however, in addition to the \$200 transaction, the consumer's account is debited without authorization for \$400 on the 61st day after transmittal of the statement and the consumer fails to notify the institution of the unauthorized transfers until the 62nd day, the consumer is liable for the full \$400.

(b)(4) *Extension of Time Limits*

1. *Extenuating circumstances.* Examples of circumstances that require extension of the notification periods under this section include the consumer's extended travel or hospitalization.

(b)(5) *Notice to Financial Institution*

1. *Receipt of notice.* A financial institution is considered to have received notice for purposes of limiting the consumer's liability if notice is given in a reasonable manner, even if the consumer uses an address or telephone number other than the one specified by the institution.

2. *Notice by third party.* Notice to a financial institution by a person acting on the consumer's behalf is considered valid under this section. For example, if a consumer is hospitalized and unable to report the loss or theft of an access device, notice is considered given when someone acting on the consumer's behalf notifies the bank of the loss or theft.

3. *Content of notice.* Notice to a financial institution is considered given when a consumer takes reasonable steps to provide the institution with the pertinent account information. Even when the consumer is unable to provide an account number or card number in reporting a lost or stolen access

device or an unauthorized transfer, the notice effectively limits the consumer's liability if the consumer otherwise identifies sufficiently the account in question. For example, the consumer may identify the account by the name on the account and the type of account in question.

Section 205.7—Initial Disclosures

(a) *Timing of Disclosures*

1. *Early disclosures.* Disclosures given earlier than the regulation requires (for example, when the consumer opens a checking account) need not be repeated when the consumer later signs up for an electronic fund transfer service if the electronic fund transfer agreement is between the consumer and a third party who will initiate preauthorized transfers to or from the consumer's account, unless the terms and conditions required to be disclosed differ from those previously given. If, on the other hand, the electronic fund transfer agreement is directly between the consumer and the account-holding institution, the disclosures must be given in close proximity to the event requiring disclosure, for example, signing up for a service.

2. *Lack of prenotification of direct deposit.* In some instances, before direct deposit of government payments such as Social Security takes place, the consumer and the financial institution both must complete a Form 1199A (or comparable form providing notice to the institution) and the institution can make disclosures at that time. If an institution has not received advance notice that direct deposits are to be made to a consumer's account, the institution must provide the required disclosures as soon as reasonably possible after the first direct deposit is made, unless the institution has previously given disclosures.

3. *Addition of new accounts.* If a consumer opens a new account permitting electronic fund transfers in a financial institution where the consumer already maintains an account that provides for electronic fund transfer services, the institution need only disclose terms and conditions that differ from those previously given.

4. *Addition of new electronic fund transfer services.* If an electronic fund transfer service is added to a consumer's account and is subject to terms and conditions different from those described in the initial disclosures, disclosures pertaining to the additional service must be given. The disclosures must be provided either when the consumer contracts for the new service or before the first electronic fund transfer is made using the new service.

5. *Addition of service in interchange systems.* If a financial institution joins an interchange or shared network system (providing access to terminals operated by other institutions in the system), new disclosures are required for any additional services not previously available to consumers if the terms and conditions for the additional services differ from those previously disclosed.

6. *Disclosures covering all electronic fund transfer services offered.* An institution may provide disclosures covering all electronic fund transfer services that it offers, even if

some consumers have not arranged to use all services.

(b) Content of Disclosures

(b)(1) Liability of Consumer

1. No liability imposed by financial institution. If a financial institution chooses to impose zero liability for unauthorized electronic fund transfers, it need not provide liability disclosures. If the institution later decides to impose liability, however, it must first provide the disclosures.

2. Preauthorized transfers. If the only electronic fund transfers from an account are preauthorized transfers, an institution must disclose that liability could arise if the consumer fails to report unauthorized transfers reflected on a periodic statement in order to impose liability on the consumer. The institution must also disclose the telephone number and address for reporting unauthorized transfers.

3. Additional information. At the institution's option, the summary of the consumer's liability may include advice on promptly reporting unauthorized transfers or the loss or theft of the access device.

(b)(2) Telephone Number and Address

1. Disclosure of telephone numbers. An institution may use the same or different telephone numbers in the disclosures for the purpose of:

- Reporting the loss or theft of an access device or possible unauthorized transfers;
- Inquiring about the receipt of a preauthorized credit;
- Stopping payment of a preauthorized debit; and
- Giving notice of an error.

The telephone number need not be incorporated into the text of the disclosure; for example, the institution may instead insert a reference to a telephone number that is readily available to the consumer, such as "Call your branch office. The number is shown on your periodic statement."

However, an institution must provide a specific telephone number and address on or with the disclosure statement for reporting a lost or stolen access device or a possible unauthorized transfer.

(b)(4) Types of Transfers; Limitations

1. Security limitations. Information about limitations on the frequency and dollar amount of transfers generally must be disclosed in detail, even if related to security aspects of the system. If the confidentiality of certain details is essential to the security of an account or system, however, these details may be withheld (but the fact that limitations exist must still be disclosed). For example, an institution limits cash ATM withdrawals to \$100 per day. The institution may disclose that certain daily withdrawal limitations apply and need not disclose that the limitations may not always be enforced (such as during periods when its ATMs are "off-line").

2. Restrictions on certain deposit accounts. A limitation on account activity that restricts the consumer's ability to make electronic fund transfers must be disclosed even if the restriction also applies to transfers made by nonelectronic means. For example,

Regulation D restricts the number of payments to third parties that may be made from a money market deposit account; an institution that does not execute EFTs in excess of those limits must disclose the restriction as a limitation on the frequency of electronic fund transfers.

3. Preauthorized transfers. Financial institutions are not required to list preauthorized transfers among the types of transfers that a consumer can make.

(b)(5) Fees

1. Disclosure of fees. A per-item fee for electronic fund transfers must be disclosed even if the same fee is imposed on nonelectronic transfers. If a per-item fee is imposed only under certain conditions, such as when the transactions in the cycle exceed a certain number, those conditions must be disclosed. Itemization of the various fees may be provided on the disclosure statement or on an accompanying document. In the latter case, the statement must refer to the accompanying document.

2. Fees also applicable to non-electronic fund transfer. An institution is required to disclose all fees that are attributable to electronic fund transfers or the right to make them. Fees that are relevant to both electronic and nonelectronic transfers (for example, minimum balance fees, stop-payment fees or account overdrafts) may, but need not, be disclosed. An institution is not required to disclose fees for inquiries at an ATM since no transfer of funds is involved.

3. Interchange system fees. Fees paid by the account-holding institution to the operator of a shared or interchange ATM system need not be disclosed, unless imposed on the consumer by the account-holding institution. Fees for use of an ATM that are debited directly to the consumer's account by an institution other than the account-holding institution (for example, fees included in the transfer amount) need not be separately disclosed.

(b)(9) Confidentiality

1. Information provided to third parties. The institution must describe the circumstances under which any information relating to an account to or from which electronic fund transfers are permitted, not just information concerning those electronic transfers, will be made available to third parties. The term "third parties" includes affiliates such as other subsidiaries of the same holding company.

(b)(10) Error Resolution

1. Substantially similar. The error resolution notice must be substantially similar to the model form in appendix A. An institution may delete inapplicable provisions (for example, the requirement for written confirmation of an oral notification), substitute substantive state law requirements affording greater consumer protection than Regulation E, or use different wording so long as the substance of the notice remains the same.

2. Exception from provisional crediting. If a financial institution takes advantage of the longer time periods for resolving errors under § 205.11(c)(3) (for transfers initiated outside the United States, or resulting from POS

debit-card transactions), it must disclose these longer time periods. Similarly, an institution that relies on the exception from provisional crediting in § 205.11(c)(2) for accounts subject to Regulation T must disclose accordingly.

Section 205.8—Change in Terms Notice; Error Resolution Notice

(a) Change in Terms Notice

1. Form of notice. No specific form or wording is required for a change in terms notice. The notice may appear on a periodic statement, or may be given by sending a copy of a revised disclosure statement, provided attention is directed to the change (for example, in a cover letter referencing the changed term).

2. Changes not requiring notice. The following changes do not require disclosure:

- Closing some of an institution's ATMs
- Cancellation of an access device

3. Limitations on transfers. When the initial disclosures omit details essential to the security of the account or system, a subsequent increase in those limitations need not be disclosed if secrecy is still essential. If, however, an institution had no limits when the initial disclosures were given and it now wishes to impose limits for the first time, it must disclose at least the fact that limits have been adopted. (See also § 205.7(b)(4) and the related commentary.)

4. Change in telephone number or address.

A change in terms notice is not required when a financial institution changes the telephone number or address used for reporting possible unauthorized transfers, but the change must be disclosed under § 205.6 as a condition of imposing liability on the consumer for unauthorized transfers. (See also § 205.6(a) and the related commentary.)

(a)(2) Prior Notice Exception

1. Notice of permanent change included in periodic statement. If a change under this paragraph is made permanent, the financial institution may include the written notice to the consumer on or with a periodic statement sent within 45 calendar days of the permanent change.

(b) Error Resolution Notice

1. Change between annual and periodic notice. If an institution switches from an annual to a periodic notice, or vice versa, the first notice under the new method must be sent no later than 12 months after the last notice under the old method.

Section 205.9—Receipts at Electronic Terminals; Periodic Statements

(a) Receipts at Electronic Terminals

1. Receipts furnished only on request. The regulation requires that a receipt be "made available." A financial institution may program its electronic terminals to provide a receipt only to consumers who elect to receive one.

2. Third party providing receipt. An account-holding institution may make terminal receipts available through third parties such as merchants or other financial institutions.

3. Inclusion of promotional material. A financial institution may include

promotional material on receipts if the required information is set forth clearly (for example, by separating it from the promotional material). In addition, a consumer must not be required to surrender the receipt or that portion containing the required disclosures in order to take advantage of a promotion.

4. *Transfer not completed.* The receipt requirement does not apply to a transfer that is initiated but not completed, for example, if the ATM is out of currency or the consumer decides not to complete the transfer.

5. *Receipts not furnished due to inadvertent error.* If a receipt is not provided to the consumer because of a bona fide unintentional error, such as the terminal running out of paper or the mechanism jamming, no violation results if the financial institution maintains procedures reasonably adapted to avoid such an error.

6. *Individual transfers.* If the consumer makes multiple transfers at the same time, the financial institution may document them on a single or on separate receipts.

(a)(1) Amount

1. *Disclosure of transaction fee.* The required display of a fee amount on or at the terminal may be accomplished by displaying the fee on the terminal screen before the consumer has initiated the transfer if displayed for a reasonable duration.

(a)(2) Date

1. *Calendar date.* The receipt must disclose the calendar date on which the consumer uses the electronic terminal. An accounting or business date may be disclosed in addition if the dates are clearly distinguished.

(a)(3) Type

1. *Identifying transfer and account.* Examples identifying the type of transfer and the type of the consumer's account to or from which funds are transferred include "withdrawal from checking," "transfer from savings to checking," or "payment from savings."

2. *Exception.* Identification of an account is not required when the consumer can access only one asset account at a particular time or terminal, even if the access device can normally be used to access more than one account. For example, the consumer may be able to access only one account at terminals operated by institutions other than the account-holding institution, or to access only one account when the terminal is off-line. If a consumer can use an access device at a terminal to debit an asset account and also to access a credit line, the exception is still available.

3. *Access to multiple accounts.* If the consumer can use an access device to make transfers to or from different accounts of the same type, the terminal receipt must specify which account was accessed, such as "withdrawal from checking I" or "withdrawal from checking II." If only one account besides the primary checking account can be debited, the receipt can identify the account as "withdrawal from other account."

4. *Generic descriptions.* Generic descriptions may be used for accounts that

are similar in function such as share draft or NOW accounts and checking accounts. In a shared system, for example, when a credit union member initiates transfers to or from a share draft account at a terminal owned or operated by a bank, the receipt may identify a withdrawal from the account as a "withdrawal from checking."

5. *Point-of-sale transactions.* There is no prescribed terminology for identifying a transfer at a merchant's POS terminal. A transfer may be identified, for example, as a purchase, a sale of goods or services, or a payment to a third party. When a consumer obtains cash from a POS terminal in addition to purchasing goods, or obtains cash only, the documentation need not differentiate the transaction from one involving the purchase of goods.

(a)(4) Identification

1. *Unique identification.* A number or code used by a financial institution to identify the consumer's account or the access device used to initiate the transfer need be unique only within that financial institution.

(a)(5) Terminal Location

1. *Location code.* A code or terminal number identifying the terminal where the transfer is initiated may be given as part of a transaction code.

2. *Omission of city name.* The city may be omitted if the generally accepted name (such as a branch name) contains the city name.

Paragraph (a)(5)(i)

1. *Street address.* The address should include number and street (or intersection); the number (or intersecting street) may be omitted if the street alone uniquely identifies the terminal location.

Paragraph (a)(5)(ii)

1. *Generally accepted name.* Examples of a generally accepted name for a specific location include a branch of the financial institution, a shopping center, or an airport.

Paragraph (a)(5)(iii)

1. *Name of owner or operator of terminal.* Examples of an owner or operator of a terminal are a financial institution or a retail merchant.

(a)(6) Third Party Transfer

1. *Omission of third-party name.* The receipt need not disclose the third-party name if the name is provided by the consumer in a form that is not machine-readable (for example, if the consumer indicates the payee by depositing a payment stub into the ATM). If, on the other hand, the consumer keys in the identity of the payee, the receipt must identify the payee by name or by using a code that is explained elsewhere on the receipt.

2. *Receipt as proof of payment.* Documentation required under this regulation constitutes prima facie proof of a payment to another person, except in the case of a terminal receipt documenting a deposit.

(b) Periodic Statements

1. *Periodic cycles.* Periodic statements may be sent on a cycle that is shorter than

monthly. The statements must correspond to periodic cycles that are reasonably equal, that is, do not vary by more than four days from the regular period. The requirement of reasonably equal cycles does not apply when an institution changes cycles for operational or other reasons, such as to establish a new statement day or date.

2. *Defining a cycle.* Financial institutions must provide relevant information for the cycle or period since the last statement was issued. For example, an institution regularly issues quarterly periodic statements at the end of March, June, September and December. If the consumer initiates an electronic fund transfer in February, an interim statement would be provided. The interim statement should provide relevant information for the period since the last statement was issued, (the months of January and February in this example). The regularly scheduled statement would provide information from the date of the interim statement.

3. *Inactive accounts.* A financial institution need not send statements to consumers whose accounts are inactive as defined by the institution.

4. *Customer pickup.* A financial institution may permit, but may not require, consumers to call for their periodic statements.

5. *Periodic statements limited to electronic fund transfer activity.* A financial institution that uses a passbook as the primary means for displaying account activity, but also allows the account to be debited electronically, may comply with the periodic statement requirement by providing a statement that reflects only the electronic fund transfers and other required disclosures (such as charges, account balances, and address and telephone number for inquiries). (See § 205.9(c)(1)(i) for the exception applicable to preauthorized transfers for passbook accounts.)

6. *Codes and accompanying documents.* To meet the documentation requirements for periodic statements, a financial institution may:

- Include copies of terminal receipts to reflect transfers initiated by the consumer at electronic terminals;
- Enclose posting memos, deposit slips, and other documents that, together with the statement, disclose all the required information;
- Use codes for names of third parties or terminal locations and explain the information to which the codes relate on an accompanying document.

(b)(1) Transaction Information

1. *Information obtained from others.* While financial institutions must maintain reasonable procedures to insure the integrity of data obtained from another institution, a merchant, or other third parties, independent verification of the data for each transfer is not required for purposes of the periodic statement disclosures.

Paragraph (b)(1)(i)

1. *Incorrect deposit amount.* If the financial institution determines that the amount actually deposited at an ATM is different from the amount entered by the consumer, the institution need not immediately notify

the consumer about the discrepancy. The periodic statement reflecting the deposit may either show the correct amount of the deposit, or the amount entered by the consumer along with the institution's adjustment.

**Paragraph (b)(1)(iii)**

1. *Type of transfer.* There is no prescribed terminology for describing the type of transfer. It is sufficient 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.

**Paragraph (b)(1)(iv)**

1. *Nonproprietary terminal in network.* An institution need not reflect on the periodic statement the street addresses, identification codes, or terminal numbers for transfers initiated in a shared or interchange system at a terminal operated by an institution other than the account-holding institution. The statement must, however, specify the entity which owns or operates the terminal, plus the city and state.

**Paragraph (b)(1)(v)**

1. *Recurring payments by government agency.* The third-party name for recurring payments from federal, state or local governments need not list the particular agency. For example, "U.S. gov't" or "N.Y. sal" will suffice.

2. *Consumer as third-party payee.* If a consumer makes an electronic fund transfer to another consumer, the financial institution must identify the recipient by name (not just by an account number, for example).

3. *Terminal location/third party.* A single entry may be used to identify both the terminal location and the name of the third party to or from whom funds are transferred. 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."

4. *Account-holding institution as third party.* Transfers to the account-holding institution, by ATM for example, must show the institution as the recipient, unless other information on the statement, for example, "loan payment from checking," clearly indicates that the payment was to the account-holding institution.

5. *Consistency in third-party identity.* The periodic statement must disclose a third-party name as it appeared on the receipt, whether it was, for example, the "dba" (doing business as) name of the third party or the parent corporation's name.

6. *Third-party identity on deposits at electronic terminal.* A financial institution need not identify third parties whose names appear on checks, drafts, or similar paper instruments deposited to the consumer's account at an electronic terminal.

**(b)(3) Fees**

1. *Disclosure of fees.* The fees disclosed may include fees for electronic fund transfers and for other non-electronic services and

both fixed fees and per-item fees; they may be given as a total or may be itemized in part or in full.

2. *Fees in interchange system.* An account-holding institution must disclose any fees it imposes on the consumer for electronic fund transfer services, including fees for ATM transactions in an interchange or shared ATM system. Fees 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.

3. *Finance charges.* The requirement to disclose any fees assessed against the account does not include a finance charge imposed on the account during the statement period.

**(b)(4) Account Balances**

1. *Opening and closing balances.* The opening and closing balances in the consumer's account must reflect both electronic fund transfers and other account activity.

**(b)(5) Address and Telephone Number for Inquiries**

**(b)(6) Telephone Number for Preauthorized Transfers**

1. *Telephone number.* A single telephone number, preceded by the "direct inquiries to" language, will satisfy the requirements of § 205.9(b)(5) and (6).

**(c) Exceptions to the Periodic Statement Requirements for Certain Accounts**

1. *Transfers between accounts.* The regulation provides an exception to the periodic statement requirement for certain intra-institutional transfers between a consumer's accounts. The financial institution must still comply with the applicable periodic statement requirements for any other electronic transfers to or from the account. For example, a Regulation E statement must be provided quarterly for an account that also receives payroll deposits electronically, or for any month in which an account is also accessed by a withdrawal at an ATM.

**(d) Documentation for Foreign-Initiated Transfers**

1. *Foreign-initiated transfers.* An institution must make a good faith effort to provide all required information for foreign initiated transfers. For example, even though the institution may not be able to provide a specific terminal location, it should identify the country and city in which the transfer was initiated.

**Section 205.10—Preauthorized Transfers**

**(a) Preauthorized Transfers to Consumer's Account**

**(a)(1) Notice by Financial Institution**

1. *Content.* No specific language is required in the notice regarding receipt of a preauthorized transfer. Identifying the deposit is sufficient; however, simply providing the current account balance is not.

2. *Notice of credit.* The financial institution may use separate methods of notice for

different types or series of preauthorized transfers. The institution need not offer consumers a choice of notice methods.

3. *Positive notice.* A periodic statement sent within two business days of the scheduled transfer, showing the transfer, can serve as notice of receipt.

4. *Negative notice.* With a negative-notice system, a financial institution must provide notice if payment is not received by the close of the second business day. If preauthorized transfers cease, the institution should send negative notices following at least three separate missed payments; or it may notify the consumer earlier that it believes the transfers have stopped and that it will no longer send negative notices. The absence of a deposit entry will not serve as negative notice for purposes of a negative-notice system.

5. *Telephone notice.* If a financial institution uses the telephone notice option, it should be able in most instances to verify during a consumer's initial telephone inquiry whether a transfer was received. The institution must respond within two business days to any inquiry not answered immediately.

6. *Phone number for passbook accounts.* The financial institution may use any reasonable means necessary to provide the telephone number to consumers with passbook accounts that can only be accessed by preauthorized credits and that do not receive periodic statements. For example, it may print the telephone number in the passbook, or include the number with the annual error resolution notice.

7. *Telephone line availability.* To satisfy the readily-available standard, the financial institution must provide enough telephone lines so that consumers get a reasonably prompt answer. The institution need only provide telephone service during normal business hours. Within its primary service area, an institution must provide a local or toll-free telephone number. It need not provide a toll-free number or accept collect long-distance calls from outside the area where it normally conducts business.

**(b) Written Authorization for Preauthorized Transfers From Consumer's Account**

1. *Preexisting authorizations.* The financial institution need not require a new authorization before changing from paper-based to electronic debiting merely because the existing authorization does not specify that debiting is to occur electronically or specifies that the debiting is to occur by paper means. A new authorization also need not be obtained when a successor institution begins collecting payments. For example, when an institution acquires the servicing rights for a mortgage loan, it may rely on the original preauthorized transfer authorization.

2. *Authorization obtained by third party.* The account-holding financial institution does not violate this regulation when a third-party payee fails to obtain the authorization in writing or to give a copy to the consumer; rather, it is the third-party payee who is in violation of the regulation.

3. *Written authorization for preauthorized transfers.* The requirement that preauthorized electronic fund transfers be authorized by the

consumer "only in writing" cannot be met by a payee's signing a written authorization on the consumer's behalf with only an oral authorization from the consumer. A tape recording of a telephone conversation with a consumer who agrees to preauthorized debits also does not constitute written authorization for purposes of this provision.

4. *Use of a confirmation form.* A financial institution or designated payee may comply with the requirements of this section in various ways. For example, a payee may provide the consumer with two copies of a form to permit preauthorized transfers from the consumer's account and require the consumer to sign and return one, while retaining the second copy.

5. *Similarly authenticated.* An example of a consumer's authorization that is not in the form of a signed writing but is instead "similarly authenticated" is a consumer's authorization via a home computer. For a home banking system to satisfy the requirements of this section, there must be some means to identify the consumer (such as a security code), and the consumer must have the ability to obtain a printed copy of the authorization (such as by printing it on the consumer's printer or by the payee's making a copy for the consumer).

(c) *Consumer's Right To Stop Payment*

1. *Stop-payment order.* The financial institution must honor an oral stop-payment order made at least three business days before a scheduled debit. If the debit item is resubmitted, the institution must continue to honor the stop-payment order, for example, by suspending all subsequent payments to the payee-originator until the consumer notifies the institution that payments should resume.

2. *Revocation of authorization.* Once the financial institution has been notified that the consumer's authorization is no longer valid, it must block all future payments for the particular debit transmitted by the designated payee-originator. The institution may not wait for the payee-originator to terminate the automatic debits. The institution may confirm that the consumer has informed the payee-originator of the revocation by requiring, for example, a copy of the consumer's revocation as written confirmation to be provided within fourteen days of an oral notification. If the institution does not receive the required written confirmation within the fourteen-day period, it may pay subsequent debits to the account.

(d) *Notice of Transfers Varying in Amount*

(d)(1) *Notice*

1. *Preexisting authorizations.* A financial institution holding the consumer's account does not violate this regulation if the designated payee fails to provide notice of varying amounts.

(d)(2) *Range*

1. *Range.* Financial institutions that elect to provide the consumer with a specified range of amounts for debiting (in lieu of providing the notice of transfers varying in amount) must provide a range that could plausibly be anticipated by the consumer. For example, if the transfer is for payment of

a gas bill, an appropriate range might be based on the highest bill in winter and the lowest bill in summer.

(e) *Compulsory Use*

(e)(1) *Credit*

1. *Loan payments.* Creditors may not require repayment of loans by electronic means. A creditor may offer a program with a reduced annual percentage rate or other cost-related incentive for an automatic repayment feature, provided the program with the automatic payment feature is not the only loan program offered by the creditor for the type of credit involved. Examples include:

- Mortgages with graduated payments in which a pledged savings account is automatically debited during an initial period to supplement the monthly payments made by the borrower.

- Mortgage plans calling for preauthorized biweekly payments that are debited electronically to the consumer's account and provide a lower total finance charge.

2. *Overdraft.* The provision allowing institutions to require the automatic repayment of an overdraft credit plan applies even if the overdraft extension is charged to an open-end account that may be accessed by the consumer in ways other than by overdrafts.

(e)(2) *Employment or Government Benefit*

1. *Payroll.* Employers are subject to the act's prohibition against compulsory use of electronic fund transfers as a condition of employment. For example, a financial institution (as an employer) may not require its employees to receive their salary by direct deposit to that same institution. An employer may, however, require direct deposit of salary by electronic means if employees are given a choice of institutions that would receive the direct deposit. Alternatively, an employer may give employees the choice of having their salary deposited at a particular institution, or receiving their salary by check or cash.

Section 205.11—Procedures for Resolving Errors

(a) *Definition of Error*

1. *Terminal location.* With regard to deposits at an ATM, the consumer's request for the terminal location or other information triggers the error resolution procedures. The financial institution need only provide the consumer with the ATM location if it has captured that information with regard to deposits. If the consumer merely calls to ascertain whether a deposit made via ATM, preauthorized transfer, or any other type of electronic fund transfer was credited to the account, without asserting an error, the error resolution procedures do not apply.

2. *Loss or theft of access device.* A financial institution is required to comply with the error resolution procedures of this section when a consumer reports the loss or theft of an access device if the consumer also alleges possible unauthorized use as a consequence of the loss or theft.

3. *Error asserted after account closed.* The financial institution must comply with the

error resolution procedures when a consumer properly asserts an error, even if the account has been closed.

4. *Request for documentation or information.* Requests for documentation or other information must be treated as errors unless it is clear that the request by the consumer is only for duplicate copies for tax or other record-keeping purposes.

(b) *Notice of Error From Consumer*

(b)(1) *Timing; Contents*

1. *Content of error notice.* The notice of error is effective even if it does not contain the consumer's account number, so long as the financial institution is able to identify the account in question. For example, the consumer could provide a social security number or other unique means of identification.

2. *Requirement of an affidavit.* While a financial institution may require the consumer to sign an affidavit relating to a notice of error, it may not delay initiating or completing an investigation pending receipt of the affidavit.

3. *Statement held for consumer.* When a consumer has arranged for periodic statements to be held until picked up, the statement for a particular cycle is deemed to have been transmitted on the date the financial institution first makes the statement available to the consumer.

4. *Failure to provide statement.* When a financial institution fails to provide the consumer with a periodic statement, a request for a copy is governed by this section if the consumer gives notice within 60 days from the date on which the statement should have been transmitted.

5. *Discovery of error by institution.* The error resolution procedures of this section apply only when a notice of error is received from the consumer. If the financial institution itself discovers and corrects an error, it need not comply with the procedures.

6. *Notice at particular phone number or address.* A financial institution may require the consumer to give notice only at the telephone number or address disclosed by the institution, provided the institution maintains reasonable procedures to refer the consumer to the specified telephone number or address if the consumer attempts to give notice to the institution in a different manner.

(b)(2) *Written Confirmation*

1. *Written confirmation-of-error notice.* If the consumer sends a written confirmation of error to the wrong address, the institution must process the confirmation through normal procedures. But the institution need not provisionally credit the consumer's account if the written confirmation is delayed beyond 10 business days because it was sent to the wrong address.

(c) *Time Limits and Extent of Investigation*

1. *Notice to consumer.* Unless otherwise indicated in this section, the financial institution may provide the required notices to the consumer either orally or in writing.

2. *Written confirmation of oral notice.* A financial institution must begin its



investigation promptly upon receipt of an oral notice. It may not delay until it has received a written confirmation.

3. *No charge for error resolution.* The financial institution may not impose charges for any aspect of the error-resolution process, including charges for documentation or investigation.

4. *Correction without investigation.* A financial institution may make, without investigation, a final correction to a consumer's account in the amount or manner alleged by the consumer to be in error, but must comply with all other applicable requirements of § 205.11.

5. *Correction notice.* A financial institution may include the notice of correction on a periodic statement that is mailed or delivered within the 10-business-day or 45-calendar-day time limits and that clearly identifies the correction to the consumer's account. Whether such a mailing will be prompt enough to satisfy the requirements of this section must be determined by the institution, taking into account the specific facts involved.

6. *Correction of an error.* If the financial institution determines an error occurred, within either the 10-day or 45-day period, it shall correct the error (subject to the liability provisions of § 205.6 (a) and (b)) including, where applicable, the crediting of interest and the refunding of any fees imposed by the institution. In a combined credit/electronic fund transfer transaction, for example, the institution must refund any finance charges incurred as a result of the error. The institution need not refund fees that would have been imposed whether or not the error occurred.

7. *Extent of required investigation.* A financial institution complies with its duty to investigate, correct, and report its determination regarding an error described in § 205.11(a)(1)(vii) by transmitting the requested information, clarification, or documentation within the time limits set forth in paragraph (c) of this section. If the institution has provisionally credited the consumer's account in accordance with paragraph (c)(2) of this section, it may debit the amount upon transmitting the requested information, clarification, or documentation.

#### Paragraph (c)(2)(ii)

1. *Compliance with all requirements.* Financial institutions exempted from provisionally crediting a consumer's account under § 205.11(c)(2)(i) (A) and (B) must still comply with all other requirements of the section.

#### (c)(3) Extension of Time Periods

1. *POS debit card transactions.* The extended deadlines for investigating errors resulting from POS debit card transactions include all debit card transactions, including those for cash only, at merchants' point-of-sale terminals. The deadlines do not apply to transactions at an ATM, however, even though the ATM may be in a merchant location. POS debit card transactions also include mail and telephone orders.

#### (c)(4) Investigation

1. *Third parties.* When information or documentation requested by the consumer is

in the possession of a third party with whom the financial institution does not have an agreement, the institution satisfies the error resolution requirement by so advising the consumer within the specified time frame.

2. *Scope of investigation.* When an alleged error involves a payment to a third party under the financial institution's telephone bill-payment plan, a review of the institution's own records is sufficient, assuming no agreement exists between the institution and the third party concerning the bill-payment service.

3. *POS transfers.* When a consumer alleges an error involving a transfer to a merchant via a POS terminal, the institution must verify the information previously transmitted in executing the transfer. For example, the financial institution may request a copy of the sales receipt to verify that the amount of the transfer correctly corresponds to the amount of the consumer's purchase.

4. *Agreement.* A financial institution does not have an agreement for purposes of § 205.11(c)(4)(ii) solely because it participates in transactions occurring under the federal recurring payments programs, or that are cleared through an ACH or similar arrangement for the clearing and settlement of fund transfers generally, or because it agrees to be bound by the rules of such an arrangement. But an agreement that a third party will honor an access device is an agreement for purposes of this paragraph.

#### (d) Procedures if Financial Institution Determines No Error or Different Error Occurred

1. *Error 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, it must comply with the requirements of both paragraphs (c) and (d) of this section, as relevant. The institution may give the notice of correction and the explanation separately or in a combined form.

#### (d)(1) Written Explanation

1. *Request for documentation.* When a consumer requests copies of documents, the financial institution must provide the copies in an understandable form. If an institution relied on magnetic tape it must translate the applicable data into readable form, for example, by printing it and explaining any codes.

#### (d)(2) Debiting Provisional Credit

1. *Alternative procedure for debiting of credited funds.* The financial institution may comply with the requirements of this section by notifying the consumer that the consumer's account will be debited five business days from the transmittal of the notification, specifying the calendar date on which the debiting will occur.

2. *Fees for overdrafts.* The financial institution may not impose fees for items it is required to honor under this section. It may, however, impose any normal transaction or item fee that is unrelated to an overdraft resulting from the debiting. If the account is still overdrawn after five business days, the institution may impose the fees or

finance charges to which it is entitled, if any, under an overdraft credit plan.

#### (e) Reassertion of Error

1. *Withdrawal of error; right to reassert.* The financial institution has no further error resolution responsibilities if the consumer voluntarily withdraws the notice. A consumer who has withdrawn an allegation of error has the right to reassert the allegation unless the financial institution had already complied with all of the error resolution requirements before the allegation was withdrawn. The consumer must do so, however, within the original 60-day period.

#### Section 205.12—Relation to Other Laws

##### (a) Relation to Truth in Lending

1. *Determining applicable regulation.* For transactions involving access devices that also constitute credit cards, the applicability of Regulation E versus Regulation Z depends on the nature of the transaction. For example, if the transaction is purely an extension of credit, and does not include a debit to a checking account (or other consumer asset account), the liability limitations and error resolution requirements of Regulation Z apply. If the transaction only debits a checking account (with no credit extended), the comparable provisions of Regulation E apply. Finally, if the transaction debits a checking account but also draws on an overdraft line of credit, the Regulation E provisions apply, as well as 12 CFR 226.13(d) and (g) of Regulation Z. 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.

2. *Issuance rules.* For access devices that also constitute credit cards, the issuance rules of Regulation E apply if the only credit feature is a preexisting credit line attached to the asset account to cover overdrafts (or to maintain a specified minimum balance). Regulation Z rules apply if there is another type of credit feature, for example, one permitting direct extensions of credit that do not involve the asset account.

##### (b) Preemption of Inconsistent State Laws

1. *Specific determinations.* The regulation prescribes standards for determining whether state laws that govern electronic fund transfers are preempted by the act and the regulation. A state law that is inconsistent may be preempted even if the Board has not issued a determination. However, nothing in § 205.12(b) provides a financial institution with immunity for violations of state law if the institution chooses not to make state disclosures and the Board later determines that the state law is not preempted.

2. *Preemption determination.* Effective March 30, 1981, the Board has determined that certain provisions in the state law of Michigan are preempted by the federal law:

- Section 5(4)—Definition of unauthorized use. This provision is preempted to the extent that it relates to the section of state law governing consumer liability for unauthorized use of an access device.
- Section 14—Consumer liability for unauthorized use of an account. This provision is inconsistent with § 205.6 and is less protective of the consumer than the

federal law. The state law places liability on the consumer for the unauthorized use of an account in cases involving the consumer's negligence. Under the federal law, a consumer's liability for unauthorized use is not related to the consumer's negligence and depends instead on the consumer's promptness in reporting the loss or theft of the access device.

- Section 15—Error resolution. This provision is preempted because it is inconsistent with § 205.11 and is less protective of the consumer than the federal law. The state law allows financial institutions up to 70 days to resolve errors, whereas the federal law generally requires errors to be resolved in 45 days.

- Sections 17 and 18—Receipts and periodic statements. These provisions are preempted because they are inconsistent with § 205.9. The provisions require a different disclosure of information than does the federal law. The receipt provision is also preempted because it allows the consumer to be charged for receiving a receipt if a machine cannot furnish one at the time of a transfer.

**Section 205.13—Administrative Enforcement; Record Retention**

**(b) Record Retention**

1. *Requirements.* To evidence compliance, a financial institution should be able to establish that its procedures reasonably ensure the consumer's receipt of required disclosures and documentation.

**Section 205.14—Electronic Fund Transfer Service Provider Not Holding Consumer's Account**

**(a) Electronic Fund Transfer Service Providers Subject to Regulation**

1. *Applicability.* This section applies only when a service provider issues an access device (a debit card or a code, for example) to a consumer with which the consumer can initiate transfers to or from the consumer's account at a financial institution and the two entities have no agreement regarding this electronic fund transfer service. If the service provider does not issue an access device to the consumer, it does not qualify for the treatment accorded by this section. For example, this section does not apply to an institution that initiates preauthorized

payroll deposits on behalf of an employer to the consumer's account at another institution. By contrast, this section does apply to an institution that issues a code for initiating telephone transfers from a consumer's account at another institution (provided the account-holding institution does not have an agreement with the other institution regarding the service). This is the case even if the consumer has accounts at both institutions.

2. *ACH agreements.* An ACH agreement under which members agree to honor each other's electronic fund transfer cards constitutes an "agreement" for purposes of this section.

**(b) Compliance by Electronic Fund Transfer Service Provider**

1. *Liability.* The service provider is liable for unauthorized electronic fund transfers that exceed the consumer's liability limits in § 205.6.

**(b)(1) Disclosures and Documentation**

1. *Periodic statements from electronic fund transfer service provider.* A service provider that meets the conditions set forth in the regulation does not have to issue periodic statements. A service provider that does not meet the condition need only include information on periodic statements sent to the consumer about transfers initiated with the access device it has issued.

**(b)(2) Error Resolution**

1. *Error resolution.* When a consumer notifies the service provider of an error, the electronic fund transfer service provider must investigate and resolve the error as set forth in the regulation. If an error occurred, any fees or charges imposed as a result of the error, either by the service provider or by the account-holding institution (for example, overdraft or dishonor fees) must be reimbursed to the consumer by the service provider.

**(c) Compliance by Account-Holding Institution**

**Paragraph (c)(1)**

1. *Periodic statements from account-holding institution.* The periodic statement provided by the account-holding institution need only contain the information required by § 205.9(c)(1).

**Appendix A—Model Disclosure Clauses and Forms**

1. *Review of forms.* Neither the Board nor its staff will review or approve disclosure forms or statements for financial institutions. However, the Board has issued model clauses for institutions to use in designing their disclosures. If an institution uses these clauses accurately to reflect its service, the institution is protected from liability for failure to make disclosures in proper form.

2. *Use of the forms.* The appendix contains model disclosure clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of §§ 205.5(b)(2), and (b)(3), 205.6(a), 205.7, and 205.14(b)(1)(ii). Section 915(d)(2) of the statute provides that use of these clauses in conjunction with other requirements of the regulation will protect a financial institution from liability under sections 915 and 916 of the act to the extent that the clauses accurately reflect the institution's electronic fund transfer services.

3. *Altering the clauses.* Financial institutions may use clauses of their own design in conjunction with the Board's model clauses. The inapplicable words or portions of phrases in parentheses should be deleted. The underscored catchlines are not part of the clauses and need not be used. Financial institutions may make alterations, substitutions, or additions in the clauses to reflect the services offered, such as technical changes (e.g., substitution of a trade name for the word "card," deletion of inapplicable services, or substitution of lesser liability limits. Model Clauses A—(2) include references to a telephone number and address. Where two or more of these clauses are used in a disclosure, the telephone number and address may be referenced and need not be repeated.

**Supplement II to Part 205 [Removed]**

3. Supplement II to Part 205 is removed. By order of the Board of Governors of the Federal Reserve System, February 24, 1994.  
**William W. Wiles,**  
*Secretary of the Board.*  
[FR Doc. 94-4682 Filed 3-2-94; 12:38 pm]  
BILLING CODE 6210-01-P

Board of Governors of the Federal Reserve System

REGULATION E

AMENDMENTS REGARDING ELECTRONIC TRANSFER (EBT) PROGRAMS

MANDATORY COMPLIANCE MARCH 1, 1997

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R-0829]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing a final rule to amend Regulation E, pursuant to its authority under sections 904(c) and (d) of the Electronic Fund Transfer Act, to cover electronic benefit transfer (EBT) programs established by federal, state, or local government agencies. EBT programs involve the issuance of access cards and personal identification numbers to recipients of government benefits so that they can obtain their benefits through automated teller machines and point-of-sale terminals. The final rule applies Regulation E to EBT programs but sets forth certain limited modifications under authority granted to the Board by section 904(c) of the act. In particular, periodic account statements are not required if account balance information and written account histories are made available to benefit recipients by other specified means. This rulemaking directly affects government agencies that administer EBT programs and indirectly affects depository institutions and other private-sector entities.

DATES: Effective date: February 28, 1994. Compliance date. To provide adequate time to prepare for compliance, the Board has delayed mandatory compliance until March 1, 1997.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell or Mary Jane Seebach, Staff Attorneys, or John C. Wood, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452-2412 or (202) 452-3667. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

(1) Background

EFT Act and Regulation E

Regulation E implements the Electronic Fund Transfer Act (EFTA). The act and regulation cover any electronic fund transfer initiated through an automated teller machine (ATM), point-of-sale (POS) terminal, automated clearinghouse, telephone bill-payment system, or home banking program and provide rules that govern these and other electronic transfers. The regulation sets rules for the issuance of ATM cards and other access devices; disclosure of terms and conditions of an EFT service; documentation of electronic fund transfers by means of terminal receipts and account statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized transfers.

The EFTA is not limited to traditional financial institutions holding consumers' accounts. For EFT services made available by entities other than an account-holding financial institution, the act directs the Board to assure, by regulation, that the provisions of the act are made applicable. The regulation also applies to entities that issue access devices and enter into agreements with consumers to provide EFT services.

Government Programs Involving Electronic Delivery of Benefits

The federal government, in conjunction with state and local agencies, is working to expand electronic delivery of government benefits both for direct federal benefit programs and for federally funded programs that are state administered. An electronic benefit transfer (EBT) system functions much like a private-sector EFT program. Benefit recipients receive plastic magnetic-stripe cards and personal identification numbers (PINs) and access benefits through electronic terminals. For cash benefits such as Aid

to Families with Dependent Children (AFDC) or Supplemental Security Income (SSI), the programs may use existing private-sector ATM networks as well as POS terminals to disburse benefits. For food stamp purchases, the programs use POS terminals in grocery stores. In some cases the POS equipment is dedicated solely to the EBT program, while in others it also is used for private-sector transactions.

For many state and local agencies, EBT may provide a way to increase operational efficiency, to reduce costs, and to improve service to benefit recipients. Federal legislation that took effect April 1, 1992, provided new impetus for the use of EBT, authorizing the states to use electronic delivery of food stamp benefits in place of paper coupons. States previously could seek approval to use EBT for food stamp benefits only on a demonstration basis. Currently, about 30 states have EBT programs in different stages of operation or development.

In November 1993, the Clinton administration established a Federal Electronic Benefits Task Force. The group's assigned task is to develop and implement a nationwide system for the electronic delivery of benefits from government programs, pursuant to a recommendation from the National Performance Review. In December, the EBT Task Force wrote to the Federal Reserve Board, expressing the federal agencies' commitment to providing consumer protection for EBT recipients, and noting at the same time the need for program integrity and accountability for public funds. The EBT Task Force asked that the Board provide a three-year delay in the effective date if the Board should ultimately decide to apply Regulation E to EBT programs. The EBT Task Force stated that this delay was necessary for implementing EBT in accordance with Regulation E; among other things, the agencies needed the time to collect and evaluate comparative loss data at EBT test sites, data that they could then use as the basis for seeking

legislative authorization and funding to pay for replacing benefits lost due to unauthorized transfers.

**(2) Discussion**

*Board Authority*

The Federal Reserve Board has a broad mandate under the EFTA to determine coverage when electronic services are offered by other than traditional financial institutions. Section 904(d) provides that in the event EFT services are made available to consumers by a person other than a financial institution holding a consumer's account, the Board shall ensure that the act's provisions are made applicable to such persons and services.

The legislative history of the EFTA provides guidance on the Board's authority to determine if particular services should be covered by the act, based on whether transfers are initiated electronically, whether current laws provide adequate consumer safeguards, and whether coverage is necessary to achieve the act's basic objectives. A Senate Banking Committee report noted that the statutory delegation of authority to the Board enables the Board to examine new services on a case-by-case basis, thereby contributing substantially to the act's overall effectiveness. The Congress contemplated that, as no one could foresee EFT developments in the future, regulations would keep pace with new services and assure that the act's basic protections continue to apply. See S. Rep. No. 915; S. Rep No. 1273, 95th Cong., 2d Sess. 25-26 (1978).

In February 1993 the Board published a proposal to amend Regulation E to cover EBT programs, with certain modifications. 58 FR 8714, February 17, 1993. The Board believes that a number of factors support Regulation E coverage of EBT programs. EBT recipients use the same kinds of access devices and electronic terminals in conducting transactions as do consumers of EFT services in general. Indeed, in EBT systems that piggyback on existing EFT networks, the terminals used are one and the same. The transactions themselves, such as cash withdrawals and purchases, are also similar.

To obtain benefits, recipients insert a magnetic-stripe card into a terminal that reads the encoded information, and enter a PIN to verify their identity. The terminal communicates with a database to ascertain that a recipient is eligible for benefits, that the card has not been reported lost or stolen, and that benefits are available in an amount sufficient to cover the requested transaction. In cash

benefit programs, the recipient receives a cash disbursement; in the case of food stamp benefits, the recipient's allotment is charged and the merchant's account credited for the amount of the food purchase. From a recipient's viewpoint, an EBT system functions much the same as if the recipient had an ordinary checking account with direct deposits of government benefits and with ATM and POS service available to access the benefits.

The Board believes that the strong similarity of EBT systems and other EFT services, the act's legislative history, and the language of the EFTA and Regulation E support coverage of EBT programs under the act and regulation. Therefore, the Board has determined that EBT programs must comply with the requirements of Regulation E as modified by this final rule, pursuant to its authority under 904(c) and (d) of the EFTA.

The Board's action, amending the regulation, supersedes an interpretation in the Official Staff Commentary to Regulation E (12 CFR part 205, supp. II). The commentary stated that an electronic payment of government benefits was not a credit or debit to a "consumer asset account" because the account was established by a government agency rather than the consumer (the recipient). The Board has reexamined that interpretation, and has concluded that a sufficient basis does not exist for excluding these accounts from Regulation E's coverage.

The act defines the term "account" to mean "a demand deposit, savings deposit, or other asset account \* \* \* as described in regulations of the Board, established primarily for personal, family, or household purposes \* \* \*". Regulation E uses substantially the same wording, and refers to "other consumer asset account." The reference to "consumer" asset accounts distinguishes them from business-purpose accounts, which are not subject to the regulation.

The EFTA's coverage is not limited to traditional depository institutions, but may extend to any person (including a government agency) " \* \* \* who issues an access device and agrees with a consumer to provide electronic fund transfer services." In the case of EBT programs, the Board's action will affect primarily government agencies that administer EBT programs and issue EBT cards to benefit recipients for accessing benefits, or that arrange for such services to be provided. The revised rule will affect only indirectly most depository institutions and other private-sector entities.

*Board's Proposal*

While the Board proposed general coverage of EBT under the EFTA, the proposal published in February 1993 modified certain documentation requirements, recognizing differences between EBT and EFT systems. A periodic statement would not be required if information about account balances and account histories were otherwise made available to consumers. In addition, modifications were proposed in the rules on the issuance of access devices, initial disclosures, and the notices on error resolution procedures, to tailor the requirements to EBT programs.

The Board received approximately 175 comment letters on its proposal from a broad range of commenters. About 125 commenters—including state and local agencies that provide benefits, federal agencies, financial institutions, and a bank trade association—opposed the Board's proposal. Many of them requested an exemption for EBT programs from the Regulation E liability and error resolution rules. They asserted that full application of Regulation E would increase the costs of delivering benefits to the point that offering EBT might not be economically feasible, because EBT programs may be only marginally cost-effective even without factoring in Regulation E compliance costs. They expressed the view that the expected advantages of EBT might not be realized if Regulation E were to apply, and that its application would hinder the introduction or expansion of EBT programs.

In place of the Board's proposal, the majority of the commenters supported recommendations given to the Board in May 1992 by an interagency steering committee established within the federal government to coordinate EBT efforts among program agencies. Agencies represented on that group included the Treasury Department's Financial Management Service, the Agriculture Department's Food and Nutrition Service, the Health and Human Services Department's Social Security Administration and Administration for Children and Families, the Office of Management and Budget, and other federal agencies that have an interest in planning for EBT systems. The steering committee's proposal primarily differed from the Board's proposal in that benefit recipients would be liable for unauthorized transfers subject to certain conditions, and the error resolution requirements would not apply if an agency maintained "efficient, fair, and

timely procedures" for resolving errors and disputes, including an appeals process.

Anticipating public opposition to Regulation E coverage, the Board in the proposal indicated that commenters should offer explanations of why modifications in the regulatory requirements were needed, together with specifics such as data on costs. Approximately 35 commenters included estimates of the additional cost they believed would be imposed by Regulation E. In some cases the estimates were quite detailed. A few estimates were based on agency experience with the replacement of lost or stolen cards in EBT programs. Most of the cost estimates were based on loss and fraud experience under existing paper-based benefit programs (such as mailed AFDC checks and mailed food coupons). Nationwide, one group estimated the projected costs due to Regulation E, in worst-case scenarios, to be between \$164 million and \$986 million annually.

Many commenters suggested that private-sector financial institutions differ from government agencies in ways that relate to how compliance costs can be borne. For example, financial institutions can control their costs by selecting the customers to whom they are willing to offer EFT services, while program agencies must accept all who qualify for the benefit program. If a customer of a financial institution is suspected of engaging in fraud, the institution can terminate the account relationship. In a like situation, an agency could shift a recipient from EBT back to the paper-based system, but commenters believe it may not be feasible to operate dual systems.

Similarly, commenters noted, private-sector institutions handle losses related to the Regulation E customer-liability limitations by spreading the losses over their entire customer base in the form of increased fees or reduced interest paid. Agencies cannot do so, and thus losses would have to be paid out of tax revenues, or, where permitted, by reducing benefits. If neither method is available, then the EBT program would be eliminated or cut back.

Approximately 35 commenters supported the Board's proposal. This group included advocacy groups for benefit recipients, financial institutions, a bank trade association, and individuals. These commenters agreed with the premise that the same rules should apply to both EBT recipients and EFT users in the general public, and that both government and private-sector organizations offering EFT services

should be subject to the same rules.

Some commenters in this group called for even greater consumer protection for EBT recipients than would be provided by existing Regulation E. For example, one advocacy group argued that the regulation should prohibit mandatory EBT programs. Other commenters urged the Board to require disputed amounts to be provisionally credited to the consumer's account within one business day (instead of 10 business days for ATM transactions, or 20 business days for POS transactions, as allowed by existing Regulation E). A coalition of consumer groups suggested that the limits on liability for unauthorized transactions are too high in the EBT context, and that, for example, the \$50 liability that can be imposed even if a recipient promptly reports a lost or stolen debit card should be reduced or eliminated.

*Final Action on Proposal*

After a review of the comments, further analysis, and a weighing of policy considerations, the Board has adopted a final rule pursuant to its authority under 904 (c) and (d) of the EFTA. The Board's action requires EBT programs to comply with the requirements of Regulation E as modified by this final rule. The Board continues to believe that all consumers using EFT services should receive substantially the same protection under the EFTA and Regulation E, absent a showing that compliance costs outweigh the need for consumer protections. The Board recognizes that benefit program agencies are concerned about the operational and cost impacts of coverage, specifically in the areas of liability for unauthorized transfers and error resolution, but believes that the cost data presented to support exemptions in these areas were not definitive.

The Board has provided a delayed implementation date, making compliance optional until March 1, 1997, in keeping with a request received in December 1993 from the Federal EBT Task Force. As discussed above, the EBT Task Force, which represents all the major agencies with large individual benefit programs, asked for the three-year delay so that agencies could develop and implement a nationwide system for delivering multiple-program benefits in compliance with Regulation E.

The Board's modified rules for EBT programs are limited to programs for disbursing welfare and similar government benefits. Some of the military services, as well as certain

private-sector employers, have installed ATMs through which salary and other payments can be made in a manner similar to EBT systems. Such systems remain fully covered by Regulation E.

In bringing EBT accounts within the scope of the EFTA's definition of "account," the Board does not take a position about the legal status of the funds for any other purpose. For example, legal ownership of the funds in EFT accounts (by the recipient or a state, for instance) is not affected by this rulemaking.

Some commenters asked for clarification on whether the Board viewed specialized types of programs, such as Medicaid, or programs using different technology (specifically, smart card programs) as covered by the EFTA and Regulation E. The Board believes that when a consumer can access funds in an account using electronic means, Regulation E is applicable. The Board believes that Medicaid programs do not involve an account within the meaning of Regulation E, given that benefits under these programs are not made available to the consumer in terms of a dollar amount available to be accessed by the consumer, as is the case in EBT programs such as AFDC, SSI, and food stamps.

With regard to smart card systems, the Board has issued a proposal to review Regulation E, also published in today's **Federal Register**, that solicits comment on the question of coverage of smart card systems in general (both public and private sector). Any determination made on coverage of smart cards in the review could apply to EBT smart card programs.

**(3) Explanation of New § 205.15**

*Section 205.15—Electronic Fund Transfer of Government Benefits*

A new section is added to the regulation to specifically address the rules on the electronic fund transfer of government benefits. Agencies are generally required to comply with all applicable sections of the regulation. Section 205.15 contains the modified rules for EBT programs on the issuance of access devices, periodic statements, initial disclosures, liability for unauthorized use, and error resolution notices.

Paragraph (a)—Government Agency Subject to Regulation

Paragraph (a)(1)

The act and regulation define coverage in terms of "financial institution." Coverage applies to entities that provide EFT services to consumers

whether these entities are banks, other depository institutions, or other types of organizations entirely. The substance of paragraph (a)(1), which defines when a government agency is a financial institution for purposes of the act and regulation, is unchanged from the proposal. Editorial changes have been made for clarity.

Paragraph (a)(2)

The term "account," which is defined generally in § 205.2(b), is defined for purposes of § 205.15 to mean an account established by a government agency for distributing benefits to a consumer electronically, such as through ATMs or POS terminals, whether or not the account is directly held by the agency or a bank or other depository institution. For example, an "account" under this section would include use of a database containing the consumer's name and record of benefit transfers that is accessed for verification purposes before a particular transaction is approved. For purposes of this section, government benefits include cash benefits such as AFDC and SSI and noncash benefits such as benefits under the food stamp program.

Paragraph (b)—Issuance of Access Devices

Under § 205.5, debit cards, PINs, and other access devices may not be issued except in response to a consumer's request or application for a device, or to replace a device previously accepted by the consumer. Financial institutions are permitted to issue unsolicited access devices in limited circumstances under § 205.5(b). The general prohibition against unsolicited issuance is intended to protect a consumer against the issuance of an access device that could be used to access the consumer's funds without the consumer's knowledge and approval or without the consumer's being informed of the terms and conditions applicable to the device.

The Board's final rule makes clear that in the case of EBT, an agency may issue an access device to a recipient without a specific request. A recipient of government benefits is deemed to have requested an access device by applying for benefits that the agency disburses or will disburse by means of EBT. The Board believes that it is unlikely that a government agency would issue an access device without the recipient's being made aware that the way to access benefits is by use of the device and that to safeguard benefits the device must be protected. Moreover, given that initial disclosures would be provided during training, the recipient

will be informed of the account's terms and conditions.

The Board does recognize, however, commenters' concerns about the need for agencies to verify the identity of the consumer receiving the device before it is activated. As in the case of the private sector, an issuing agency will have to verify the identity of the consumer by a reasonable means before a device is activated. Reasonable means include methods of identification such as a photograph or signature comparison.

Some commenters expressed concern about the statutory prohibition against the compulsory use of EFT and its implications for EBT programs. Section 913 of the EFTA prohibits requiring a consumer to establish an account at a particular institution for receiving electronic fund transfers as a condition of employment or receipt of government benefits. This prohibition does not prevent an agency from requiring benefits to be delivered electronically.

In EBT programs, agencies do not require recipients to open or maintain bank accounts at a particular institution for the electronic receipt of government benefits. This is the case even when an agency enters into an arrangement with a single financial institution that then serves as the agency's financial intermediary. Consequently, the Board believes that the prohibition against compulsory use is not an impediment to mandatory EBT programs. Nevertheless, pursuant to its authority under section 904(c) of the EFTA, the Board has determined that a government agency with a mandatory EBT program should ensure that recipients of cash benefits have access to other electronic options (for example, direct deposit of benefits to an existing bank account or to an account established by the recipient for that purpose).

Paragraph (c)—Alternative to Periodic Statement

Regulation E requires financial institutions to provide periodic statements for an account to or from which EFTs can be made. Periodic statements are a central component of Regulation E's disclosure scheme. But as long as other means of obtaining account information are available to benefit recipients, the Board believes that periodic statements are not absolutely necessary for EBT programs due to the limited types of transactions involved, particularly given the expense of routinely mailing monthly statements to all recipients. Moreover, requiring periodic statements could impede the effort to eliminate paper and move toward a fully electronic system. Most

commenters supported the Board's proposal to exempt government agencies from the requirement if the agency furnishes the consumer with other means of accessing account information.

Under the proposal, agencies were to provide balance information by means of an electronic terminal, balance inquiry terminal, or a readily available telephone line, and to make available a written account history upon request. The final rule contains these alternatives with modifications that respond to the comments.

To make balance information readily available, the proposal also would have required that the terminal receipt show the balance available to the consumer after the transfer. A number of commenters stated that this requirement would be difficult for some EBT systems to implement because existing ATM networks may not be capable of providing current account balances at all times. Commenters suggested that giving consumers access to balance information by other means (such as telephone or balance inquiry terminals) would achieve the same purpose. Accordingly, the final rule does not require that terminal receipts include the account balance as long as a consumer can access balance information by the other means set forth in paragraph (c) of this section.

A number of commenters urged that agencies should not make telephone access the only method by which a recipient can obtain an account balance. Taking these comments into consideration, the Board has modified the final rule. The final rule requires, in addition to a telephone line, at least one alternative method (such as a balance inquiry terminal) for access to balance information.

Commenters suggested that the telephone line be toll-free and available on a 24-hour basis. For EFT systems generally, the Board interprets a readily available telephone line to mean at least a local or toll-free line available during standard business hours. The Board believes that the same interpretation is appropriate for EBT systems, although an agency may of course choose to provide recipients with a 24-hour line.

Commenters requested that the Board provide certainty by clarifying how a consumer may request a written account history and the time period for compliance. The final rule clarifies that a request may be either written or oral, that the history should cover the 60 calendar days preceding the request date, and that the history should be

provided promptly upon request. In addition, commenters asked for clarification about whether an agency could charge for written account histories or other disclosures required by the regulation. The Board believes that imposing fees in such instances would be contrary to public policy.

The Board had solicited comment on whether more complex EBT systems developed in the future (for example, systems allowing third-party payments) may necessitate periodic statements or other documentation, and whether the Board should address this issue at present. Several commenters encouraged the Board not to address the issue at this time, but to delay a decision until performance under the final rule can be assessed. Accordingly, the Board has deferred taking a position at this time.

Paragraph (d)—Modified Requirements

Paragraph (d)(1)—Initial Disclosures

Section 205.7 requires that written disclosures of the terms and conditions of an EFT service be given at or before the commencement of the service. Three disclosures have been modified for EBT programs. Under paragraph (d)(1)(i), government agencies must disclose the means by which the consumer may obtain account balance information, including the telephone number for that purpose. The disclosures will explain the ways in which balance information will be made available. (See model disclosure form A(12) below.) Under paragraph (d)(1)(ii), agencies must disclose that the consumer has the right to receive a written account history, upon request, and must provide a telephone number for obtaining the account history. This disclosure substitutes for the disclosure of a summary of the consumer's right to a periodic statement under § 205.7(a)(6) of the regulation. Under paragraph (d)(1)(iii), agencies must provide an error resolution notice substantially similar to model disclosure form A(13) rather than the notice currently contained in § 205.7(a)(10).

Paragraph (d)(2)—Annual Error Resolution Notice

Section 205.8(a) of the regulation requires that financial institutions provide a notice in advance of certain adverse changes to terms that were disclosed in the initial disclosures. No modification has been made for EBT programs. Consequently, agencies will have to provide a notice for certain changes in terms, such as in transaction

limitations. Other changes, such as a decrease in the amount of a consumer's benefits, continue to be governed only by the agencies' program rules.

Section 205.8(b) of the regulation requires financial institutions to provide periodic error resolution notices to consumers, either annually or with each monthly account statement. In substitution for these notices, paragraph (d)(2) requires agencies to provide an error resolution notice substantially similar to model disclosure form A(13). The notice is to be provided annually.

Paragraph (d)(3)—Limitations on Liability

Section 205.6 of the regulation limits a consumer's liability for unauthorized transfers. If the consumer notifies the account-holding institution within two business days after learning of the loss or theft of a debit card, the consumer's liability is limited to \$50. If notification is not made until after two business days, liability can rise another \$450 for transfers made after two business days, for a total of \$500. If the consumer does not notify the institution until more than 60 days after a periodic statement is sent showing an unauthorized transfer, the consumer's liability is unlimited for unauthorized transfers occurring after the 60th day and before notification.

The Board believes that the EFTA generally mandates the same degree of protection for benefit recipients as for the general public. The Board solicited comment on potential costs associated with implementing the liability rules for EBT programs and why such implementation would present a greater burden for government agencies than that experienced by financial institutions. Commenters submitted data on the expected cost impact of Regulation E on EBT programs, specifically on costs related to the limitations on consumer liability for unauthorized transfers and error resolution requirements; as discussed earlier, however, the Board believes the data are not definitive. Under the final rule, therefore, the limits on liability for unauthorized use, the error resolution requirements, and most other provisions of Regulation E would apply to EBT.

The Board recognizes the concerns about the potential cost impact of coverage, especially in regard to unauthorized use because of the potential for abuse through fraudulent claims. The Board believes, however, that through the leadership of the Federal Electronic Benefits Task Force, which has the goal of developing a

nationwide system for delivering government benefits electronically, it should be possible for the agencies to implement cost-effective procedures that will help minimize the risk of fraudulent claims and potential abuse of EBT systems.

The Board notes in particular that Regulation E does not mandate an automatic replacement when a claim of lost or stolen funds is made. In the case of EBT as in the private sector, the agency would investigate the claim, consider the available evidence, and exercise judgment in making a determination about whether the transfer was unauthorized or was made by the recipient or by someone to whom the recipient gave access. The Board does not underestimate the difficulties that these investigations may pose for EBT program agencies. But the Board also believes that practical ways can be found, within the scope of Regulation E, that will enable EBT administrators to control potential losses.

The operational procedures developed to minimize risk will need to address some aspects of EBT that are different from the commercial setting—such as the fact that program agencies, unlike private sector institutions, may not be able in cases of suspected fraud or abuse simply to terminate their relationship with the recipient. Some of the measures that federal agencies have inquired about, which may be compatible with the special requirements of EBT, relate to aspects of the relationship that are not addressed by Regulation E. Thus their implementation would not conflict with regulatory requirements. Some of these include putting recipients on restricted issuance systems—requiring, for instance, that the recipient call in advance for authorization before each access to benefits, or restricting the sites at which the recipient could obtain benefits, or crediting the recipient's benefits in weekly increments rather than the full monthly amounts. Or the agency could appoint a representative payee, or place the recipient on a backup paper-based benefit payment system. Imposing these or other limitations may not be desirable from either an agency's or the recipients' perspective except in circumscribed situations. But if found to be cost-effective, such measures represent some possible approaches for dealing with recipients who show themselves to be irresponsible in their use of the EBT system.

In regard to recurring claims for the replacement of benefits, EBT agencies may not establish a presumption that,

because a recipient has filed a claim in the past, the recipient's assertion of a second claim of unauthorized withdrawals can be automatically rejected. On the other hand, depending on the circumstances, it would not be unreasonable for the agency, in making its determination about the validity of a claim, to give weight to the fact that a particular recipient within a certain period of time has previously filed a claim, or multiple claims, of stolen funds. The Board believes that these are just some of the areas in which the Federal EBT Task Force can be helpful in setting operating guidelines and procedures.

Regulation E provides that a consumer may bear unlimited liability for failing to report within 60 days any unauthorized transfers that appear on a periodic statement. Because EBT recipients will not receive periodic statements, under the Board's proposal the 60 days would have run from the transmittal of a written account history provided upon the consumer's request. The final rule differs somewhat in that the 60-day period also can be triggered when the consumer obtains balance information via a terminal or telephone or on a terminal receipt.

**Paragraph (d)(4)—Error Resolution**

Section 205.11 of Regulation E sets certain time limits within which a consumer must file a notice of an alleged error. Under the Board's proposal for EBT, government agencies were to comply with the error resolution procedures in § 205.11 in response to an oral or written notice of error from the consumer received no later than 60 days after the consumer obtained a terminal receipt or a written account history on which the alleged error was reflected. The final rule differs somewhat, in that error resolution procedures can be triggered by any information provided to the consumer under paragraph (c).

**List of Subjects in 12 CFR Part 205**

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board amends 12 CFR part 205 as follows:

**PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)**

1. The authority citation for part 205 is revised to read as follows:

**Authority:** 15 U.S.C. 1693.

2. Section 205.15 is added to read as follows:

**§ 205.15 Electronic fund transfer of government benefits.**

(a) *Government agency subject to regulation.* (1) A government agency is deemed to be a financial institution for purposes of the act and regulation if directly or indirectly it issues an access device to a consumer for use in initiating an electronic fund transfer of government benefits from an account. The agency shall comply with all applicable requirements of the act and regulation, except as provided in this section.

(2) For purposes of this section, the term *account* means an account established by a government agency for distributing government benefits to a consumer electronically, such as through automated teller machines or point-of-sale terminals.

(b) *Issuance of access devices.* For purposes of this section, a consumer is deemed to request an access device when the consumer applies for government benefits that the agency disburses or will disburse by means of an electronic fund transfer. The agency shall verify the identity of the consumer receiving the device by reasonable means before the device is activated.

(c) *Alternative to periodic statement.* A government agency need not furnish the periodic statement required by § 205.9(b) if the agency makes available to the consumer:

(1) The consumer's account balance, through a readily available telephone line and at a terminal (which may include providing balance information at a balance-inquiry terminal or providing it, routinely or upon request, on a terminal receipt at the time of an electronic fund transfer); and

(2) A written history of the consumer's account transactions for at least 60 days preceding the date of a request by the consumer. The account history shall be provided promptly in response to an oral or written request.

(d) *Modified requirements.* A government agency that does not furnish periodic statements, pursuant to paragraph (c) of this section, shall comply with the following requirements:

(1) *Initial disclosures.* The agency shall modify the disclosures under § 205.7(a) by providing:

(i) *Account balance information.* The means by which the consumer may obtain information concerning the account balance, including a telephone number. This disclosure may be made by providing a notice substantially similar to the notice contained in section A(12) of appendix A of this part.

(ii) *Written account history.* A

summary of the consumer's right to receive a written account history upon request, in substitution for the periodic statement disclosure required by § 205.7(a)(6), and a telephone number that can be used to request an account history. This disclosure may be made by providing a notice substantially similar to the notice contained in section A(12) of appendix A of this part.

(iii) *Error resolution notice.* A notice concerning error resolution that is substantially similar to the notice contained in section A(13) of appendix A of this part, in substitution for the notice required by § 205.7(a)(10).

(2) *Annual error resolution notice.* The agency shall provide an annual notice concerning error resolution that is substantially similar to the notice contained in section A(13) of appendix A of this part, in substitution for the notice required by § 205.8(b).

(3) *Limitations on liability.* For purposes of § 205.6(b) (2) and (3), in regard to a consumer's reporting within 60 days any unauthorized transfer that appears on a periodic statement, the 60-day period shall begin with the transmittal of a written account history or other account information provided to the consumer under paragraph (c) of this section.

(4) *Error resolution.* The agency shall comply with the requirements of § 205.11 in response to an oral or written notice of an error from the consumer that is received no later than 60 days after the consumer obtains the written account history or other account information, under paragraph (c) of this section, in which the error is first reflected.

3. Appendix A to part 205 is revised by adding sections A(12) and A(13) to read as follows:

**Appendix A to Part 205—Model Disclosure Clauses**

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**Section A(12)—Disclosure by Government Agencies of Information About Obtaining Account Balances and Account Histories (§ 205.15(d)(1) (i) and (ii))**

You may obtain information about the amount of benefits you have remaining by calling [telephone number]. That information is also available [on the receipt you get when you make a transfer with your card at (an ATM)(a POS terminal)] [when you make a balance inquiry at an ATM] [when you make a balance inquiry at specified locations].

You also have the right to receive a written summary of transactions for the 60 days preceding your request by calling [telephone number]. [Optional: Or you may request the summary by contacting your caseworker.]

**Section A(13)—Disclosure of Error Resolution Procedures for Government**



**Agencies That Do Not Provide Periodic Statements (§ 205.15(d)(1)(iii) and (d)(2))**

In Case of Errors or Questions About Your Electronic Transfers Telephone us at [telephone number] or Write us at [address] as soon as you can, if you think an error has occurred in your [EBT][agency's name for program] account. We must hear from you no later than 60 days after you learn of the error. You will need to tell us:

- Your name and [case] [file] number.
- Why you believe there is an error, and the dollar amount involved.
- Approximately when the error took place.

If you tell us orally, we may require that

you send us your complaint or question in writing within 10 business days. We will generally complete our investigation within 10 business days and correct any error promptly. In some cases, an investigation may take longer, but you will have the use of the funds in question after the 10 business days. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account during the investigation.

For errors involving transactions at point-of-sale terminals in food stores, the periods referred to above are 20 business days instead of 10 business days.

If we decide that there was no error, we

will send you a written explanation within three business days after we finish our investigation. You may ask for copies of the documents that we used in our investigation.

If you need more information about our error resolution procedures, call us at [telephone number][the telephone number shown above].

By order of the Board of Governors of the Federal Reserve System, February 24, 1994.

**William W. Wiles,**  
*Secretary of the Board.*

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