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as trustee, to lend money in one trust to another trust, the negative balances in effect, for purposes of Regulation D, represent a loan from the depository institution. Consequently, negative balances in individual trust accounts should not be netted against positive balances in other individual trust accounts, and the balance in any transaction account containing commingled trust balances should reflect positive or zero balances for each individual trust.

(2) For example, where a trust department engages in securities lending activities for trust accounts, overdrafts might occur because of the trust department's attempt to ''normalize'' the effects of timing delays between the depository institution's receipt of the cash collateral from the broker and the trust department's posting of the transaction to the lending trust account. When securities are lent from a trust customer to a broker that pledges cash as collateral, the broker usually transfers the cash collateral to the depository institution on the day that the securities are made available. While the institution has the use of the funds from the time of the transfer, the trust department's normal posting procedures may not reflect receipt of the cash collateral by the individual account until the next day. On the day that the loan is terminated, the broker returns the securities to the lending trust account and the trust customer's account is debited for the amount of the cash collateral that is returned by the depository institution to the broker. The trust department, however, often does not liquidate the investment made with the cash collateral until the day after the loan terminates, a delay that normally causes a one day overdraft in the trust account. Regulation D requires that, on the day the loan is terminated, the depository institution regard the negative balance in the customer's account as zero for reserve requirement reporting purposes and not net the overdraft against positive balances in other accounts.

(c) *Procedures.* In order to meet the requirements of Regulation D, a depository institution must have procedures to determine the aggregate of trust department transaction account balances for Regulation D on a daily basis. The procedures must consider only the positive balances in individual trust accounts without netting negative balances except in those limited circumstances where loans are legally permitted from one trust to another, or where offsetting is permitted pursuant to trust law or written agreement, or where the amount that caused the overdraft is still available in a settlement, suspense or other trust account within the trust department and may be used to offset the overdraft.

[57 FR 38429, Aug. 25, 1992]

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

Sec.

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APPENDIX A TO PART 205—MODEL DISCLOSURE CLAUSES AND FORMS
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APPENDIX C TO PART 205—ISSUANCE OF STAFF INTERPRETATIONS
SUPPLEMENT I TO PART 205—OFFICIAL STAFF INTERPRETATIONS

AUTHORITY: 15 U.S.C. 1693b.

SOURCE: Reg. E, 61 FR 19669, May 2, 1996, unless otherwise noted.

§ 205.1 Authority and purpose.

(a) *Authority.* The regulation in this part, known as Regulation E, 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 part 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 on which the offices of the consumer's financial institution are open to the public for carrying on substantially all business functions.

(e) *Consumer* means a natural person.

(f) *Credit* means the right granted by a financial institution to a consumer to defer payment of debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

(g) *Electronic fund transfer* is defined in § 205.3.

(h) *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.

(i) *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.

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

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

(l) *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 in this paragraph (l).

(m) *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 employee.

§ 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, this part applies to financial institutions. For purposes of §§ 205.10 (b), (d), and (e) and 205.13, this 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.* Any transfer of funds that guarantees payment or authorizes acceptance of a check, draft, or similar paper instrument but that does not directly result in a debit or credit to a consumer's account.

(3) *Wire or other similar 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) 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 communication between a consumer and a financial institution making the transfer; and

(ii) Does not take place under a telephone bill-payment or other written plan 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 were $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 (c)(7) remain subject to §205.10(e) 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)(1) *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 this part.

(2) *Foreign language disclosures.* Disclosures required under this part may be made in a language other than English, provided that the disclosures are made available in English upon the consumer's request.

(b) *Additional information; disclosures required by other laws.* A financial institution may include additional information and may combine disclosures required by other laws (such as the Truth in Lending Act (15 U.S.C. 1601 et seq.) or the Truth in Savings Act (12 U.S.C. 4301 et seq.)) with the disclosures required by this part.

(c) *Electronic communication.* For rules governing the electronic delivery of disclosures, including the definition of electronic communication, see §205.17.

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

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

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

[Reg. E, 61 FR 19669, May 2, 1996, as amended at 63 FR 14532, Mar. 25, 1998; 66 FR 17793, Apr. 4, 2001]

§205.5 Issuance of access devices.

(a) *Solicited issuance.* Except as provided in paragraph (b) of this section, 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, meaning that 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 the disclosures required by §205.7, 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 has verified the consumer's identity by a reasonable means.

§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)(1), (2), and (3). 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.* 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, provided the institution establishes that these transfers would not have occurred had the consumer notified the institution within that two-day period.

(3) *Periodic statement; timely notice not given.* A consumer must report an unauthorized electronic fund transfer that appears on a periodic statement within 60 days of the financial institution's transmittal of the statement to avoid liability for subsequent transfers. If the consumer fails to do so, 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 the 60-day period. When an access device is involved in the unauthorized transfer, the consumer may be liable for other 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 a particular 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 to the institution by any other usual means. Notice may be considered constructively given when the institution becomes aware of circumstances leading to the reasonable belief that an unauthorized transfer to or from 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 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.* A financial institution shall provide the following disclosures, as applicable:

(1) *Liability of consumer.* A summary of the consumer's liability, under § 205.6 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. 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 receipts and periodic statements, as provided in §205.9, and notices regarding preauthorized transfers as provided in §§205.10(a), and 205.10(d).

(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).

(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 Model Form A–3 as set out in Appendix A of this part concerning error resolution.

(11) *ATM fees.* A notice that a fee may be imposed by an automated teller machine operator as defined in §205.16(a)(1), when the consumer initiates an electronic fund transfer or makes a balance inquiry, and by any network used to complete the transaction.

[Reg. E, 61 FR 19669, May 2, 1996, as amended at 66 FR 13412, Mar. 6, 2001]

§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 21 days before the effective date, of any change in a term or condition required to be disclosed under §205.7(b) if the change would result in:

(i) Increased fees for the consumer;

(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 account or an electronic fund transfer system. If the institution makes such a change permanent and disclosure would not jeopardize the security of the account or system, the institution shall notify the consumer in writing on or with the next regularly scheduled periodic statement or within 30 days of making the change permanent.

(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, an error resolution notice substantially similar to the model form set forth in Appendix A of this part (Model Form A–3). Alternatively, an institution may include an abbreviated notice substantially similar to the model form error resolution notice set forth in Appendix A of this part (Model Form A–3), on or with each periodic statement required by §205.9(b).

§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(s) to or from which funds are transferred. The type of account may be omitted if the access device used is able to access only one account at that terminal.

(4) *Identification.* A number or code that identifies the consumer's account

or accounts, or the access device used to initiate the transfer. The number or code need not exceed four digits or letters to comply with the requirements of this paragraph (a)(4).

(5) *Terminal location.* The location of the terminal where the transfer is initiated, or an identification such as a code or terminal number. Except in limited circumstances where all terminals are located in the same city or state, if the location is disclosed, it shall include the city and state or foreign country and one of the following:

(i) The street address; or

(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 an account 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 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 described 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.

(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 under § 205.8(b) 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).

(c) *Exceptions to the periodic statement requirement for certain accounts*—(1) *Preauthorized transfers to accounts.* For accounts that may be accessed only by preauthorized transfers to the account the following rules apply:

(i) *Passbook accounts.* For passbook accounts, the financial institution need not provide a periodic statement if the 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 financial institution must send a periodic statement at least quarterly.

(2) *Intra-institutional transfers.* For an electronic fund transfer 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 periodic 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 described in paragraph (c)(1) of this section and by intra-institutional transfers described in paragraph (c)(2) of this section, but by no other type of electronic fund transfers, qualifies for the exceptions provided by paragraph (c)(1) of this section .

(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 part 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.

§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 financial institution shall provide notice to the consumer by:

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

(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) *Readily-available telephone line.* 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 of a transfer if the payor gives the consumer positive notice that the transfer has been initiated.

(3) *Crediting.* A financial institution that receives a preauthorized transfer of the type described in paragraph (a)(1) of this section shall credit the amount of the transfer as of the date the funds for the transfer are received.

(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 the consumer written notice of the amount and date of the transfer 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 an extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers, except for credit extended under an overdraft credit plan or 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 of transfers or inquiries covered.* 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); or

(vii) The consumer's request for documentation required by §§ 205.9 or 205.10(a) 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) *Types of inquiries not covered.* 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, required by § 205.9, 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 the consumer requested under paragraph (a)(1)(vii) of this section, the consumer's notice of error is timely if received by the financial institution no later than 60 days after the institution sends the information requested.

(c) *Time limits and extent of investigation*—(1) *Ten-day period.* A financial institution shall investigate promptly and, except as otherwise provided in this paragraph (c), shall 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 from receipt of a notice of error to investigate and determine whether an error occurred, provided the institution does the following:

(i) Provisionally credits the consumer's account in the amount of the alleged error (including interest where applicable) within 10 business days of receiving the error notice. If the financial institution has a reasonable basis for believing that an unauthorized electronic fund transfer has occurred and the institution has satisfied the requirements of § 205.6(a), the institution may withhold a maximum of $50 from

the amount credited. An institution need not provisionally credit the consumer's account if:

(A) The institution 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 (Securities 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 the provisional 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 after completing its investigation (including, if applicable, notice that a provisional credit has been made final).

(3) *Extension of time periods.* The time periods in paragraphs (c)(1) and (c)(2) of this section are extended as follows:

(i) The applicable time is 20 business days in place of 10 business days under paragraphs (c)(1) and (c)(2) of this section if the notice of error involves an electronic fund transfer to or from the account within 30 days after the first deposit to the account was made.

(ii) The applicable time is 90 days in place of 45 days under paragraph (c)(2) of this section, for completing an investigation, if a notice of error involves an electronic fund transfer that:

(A) Was not initiated within a state;

(B) Resulted from a point-of-sale debit card transaction; or

(C) Occurred within 30 days after the first deposit to the account was made.

(4) *Investigation.* With the exception of transfers covered by §205.14, 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 following the procedures specified in paragraph (c) of this section, the financial institution shall follow the procedures set forth in this paragraph (d) if it determines that no error occurred or that an error occurred in a manner or amount different from that described by the consumer:

(1) *Written explanation.* The institution's report of the results of its 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. Upon request, the institution shall 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 notification. The institution shall honor items as specified in the notice, but need honor only 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 in the case of an error asserted by the consumer following receipt of information provided under paragraph (a)(1)(vii) of this section.

[Reg. E, 61 FR 19669, May 2, 1996, as amended at 63 FR 52118, Sept. 29, 1998]

§ 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 in 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 (under a

preexisting agreement between a consumer and a financial institution) only 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 errors involving an extension of credit that 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 (12 CFR part 226), which prohibit the unsolicited issuance of credit cards, govern:

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

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

(b) *Preemption of inconsistent state laws*—(1) *Inconsistent requirements.* The Board shall determine, upon its own motion or upon the request of a state, financial institution, or other interested party, whether the act and this part preempt state law relating to electronic fund transfers. Only state laws that are inconsistent with the act and this part are preempted and then only to the extent of the inconsistency. A state law is not inconsistent with the act and this part if it is more protective of consumers.

(2) *Standards for determination.* State law is inconsistent with the requirements of the act and this part 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 exceeds the limits imposed by the federal law;

(iii) Allows longer time periods than the federal law for investigating and correcting alleged errors, or does not require the financial institution to credit the consumer's account during an error investigation in accordance with § 205.11(c)(2)(i); 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 consumer rights granted by the state law and not by the federal law.

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

(i) Under state law the 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 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 the Board grants an exemption, the state law requirements shall constitute the requirements of the federal law for 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) Any person subject to the act and this part shall retain evidence of compliance with the requirements imposed by the act and this part for a period of not less than two years from the date disclosures are required to be made or action is required to be taken.

(2) Any person subject to the act and this part having actual notice that it is the subject of an investigation or an enforcement proceeding by its enforcement agency, 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 investigation, 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) *Provider of electronic fund transfer service.* A person that provides an electronic fund transfer service to a consumer but that does not hold the consumer's account is subject to all requirements of this part if the person:

(1) Issues a debit card (or other access device) that the consumer can use to access the consumer's account held by a financial institution; and

(2) Has no agreement with the account-holding institution regarding such access.

(b) *Compliance by 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 service provider shall give the disclosures and documentation required by §§ 205.7, 205.8, and 205.9 that are within the purview of its relationship with the consumer. The service provider need not furnish the periodic statement required by § 205.9(b) if the following conditions are met:

(i) The debit card (or other access device) issued to the consumer bears the service provider's name and an address or telephone number for making inquiries or giving notice of error;

(ii) The consumer receives a notice concerning use of the debit card that is substantially similar to the notice contained in Appendix A of this part;

(iii) The consumer receives, on or with the receipts required by § 205.9(a), the address and telephone number to be used for an inquiry, to give notice of an error, or to report the loss or theft of the debit card;

(iv) The service provider transmits to the account-holding institution the information specified in § 205.9(b)(1), in the format prescribed by the automated clearinghouse system used to clear the fund transfers;

(v) The service provider extends the time period for notice of loss or theft of a debit card, set forth in § 205.6(b) (1) and (2), from two business days to four business days after the consumer learns of the loss or theft; and extends the time periods for reporting unauthorized transfers or errors, set forth in §§ 205.6(b)(3) and 205.11(b)(1)(i), from 60 days to 90 days following the transmittal of a periodic statement by the account-holding institution.

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

(ii) 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).

(iii) 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).

(iv) If funds were provisionally credited and the service provider determines no error occurred, it may reverse the credit. The service provider shall 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). 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 part with respect to electronic fund transfers initiated through the service provider except as follows:

(1) *Documentation.* The account-holding institution shall provide a periodic statement that describes each electronic fund transfer initiated by the consumer with the access device issued by the service provider. The account-holding institution has no liability for the failure to comply with this requirement if the service provider did not provide the necessary information; and

(2) *Error resolution.* Upon request, the account-holding institution shall provide 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).

§ 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 this part 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, other than needs-tested benefits in a program established under state or local law or administered by a state or local agency. The agency shall comply with all applicable requirements of the act and this part, 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, but does not include an account for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency.

(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 (such as by 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 that is provided promptly in response to an oral or written request and that covers at least 60 days preceding the date of a request by the consumer.

(d) *Modified requirements.* A government agency that does not furnish periodic statements, in accordance with paragraph (c) of this section, shall comply with the following special rules:

(1) *Initial disclosures.* The agency shall modify the disclosures under § 205.7(b) by disclosing:

(i) *Account balance.* The means by which the consumer may obtain information concerning the account balance, including a telephone number. The agency provides a notice substantially similar to the notice contained in paragraph A–5 in 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 place of the periodic statement required by § 205.7(b)(6), and the telephone number to call to request an account history. This disclosure may be made by providing a notice substantially similar to the notice contained in paragraph A–5 in Appendix A of this part.

(iii) *Error resolution.* A notice concerning error resolution that is substantially similar to the notice contained in paragraph A–5 in Appendix A of this part, in place of the notice required by § 205.7(b)(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 paragraph A–5 in appendix A, in place of the notice required by § 205.8(b).

(3) *Limitations on liability.* For purposes of § 205.6(b)(3), regarding a 60-day period for reporting any unauthorized transfer that appears on a periodic statement, the 60-day period shall begin with 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.

[Reg. E, 61 FR 19669, May 2, 1996, as amended at 62 FR 43469, Aug. 14, 1997]

§ 205.16 Disclosures at automated teller machines.

(a) *Definition. Automated teller machine operator* means any person that operates an automated teller machine at which a consumer initiates an electronic fund transfer or a balance inquiry and that does not hold the account to or from which the transfer is made, or about which an inquiry is made.

(b) *General.* An automated teller machine operator that imposes a fee on a consumer for initiating an electronic fund transfer or a balance inquiry shall:

(1) Provide notice that a fee will be imposed for providing electronic fund transfer services or a balance inquiry; and

(2) Disclose the amount of the fee.

(c) *Notice requirement.* An automated teller machine operator must comply with the following:

(1) *On the machine.* Post the notice required by paragraph (b)(l) of this section in a prominent and conspicuous location on or at the automated teller machine; and

(2) *Screen or paper notice.* Provide the notice required by paragraphs (b)(1) and (b)(2) of this section either by showing it on the screen of the automated teller machine or by providing it on paper, before the consumer is committed to paying a fee.

(d) *Temporary exemption.* Through December 31, 2004, the notice requirement in paragraph (c)(2) of this section does not apply to any automated teller machine that lacks the technical capability to provide such information.

(e) *Imposition of fee.* An automated teller machine operator may impose a fee on a consumer for initiating an electronic fund transfer or a balance inquiry only if

(1) The consumer is provided the notices required under paragraph (c) of this section, and

(2) The consumer elects to continue the transaction or inquiry after receiving such notices.

[Reg. E, 66 FR 13412, Mar. 6, 2001]

§ 205.17 Requirements for electronic communication.

(a) *Definition. Electronic communication* means a message transmitted electronically between a financial institution and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

(b) *General rule.* In accordance with the Electronic Signatures in Global and National Commerce Act (the E-Sign Act), 15 U.S.C. 7001 *et seq.*, and the rules of this part, a financial institution may provide by electronic communication any disclosure required by this part to be in writing.

(c) *Address or location to receive electronic communication.* A financial institution that uses electronic communication to provide disclosures required by this part shall:

(1) Send the disclosure to the consumer's electronic address; or

(2) Make the disclosure available at another location such as an Internet web site; and

(i) Alert the consumer of the disclosure's availability by sending a notice to the consumer's electronic address (or to a postal address, at the financial institution's option). The notice shall identify the account involved and the address of the Internet web site or other location where the disclosure is available; and

(ii) Make the disclosure available for at least 90 days from the date the disclosure first becomes available or from the date of the notice alerting the consumer of the disclosure, whichever comes later.

(d) *Redelivery.* When a disclosure provided by electronic communication is returned to a financial institution undelivered, the financial institution shall take reasonable steps to attempt redelivery using information in its files.

(e) *Persons other than financial institutions.* Persons other than a financial institution that are required to comply

with this part may use electronic communication in accordance with the requirements of §205.17, as applicable.

[Reg. E, 66 FR 17793, Apr. 4, 2001]

APPENDIX A TO PART 205—MODEL DISCLOSURE CLAUSES AND FORMS

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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 than $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 are (Monday through Friday) (Monday through Saturday) (any day including Saturdays and Sundays). Holidays are (not) included.

(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:

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

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

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

(iv) 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); §205.10(d))*—(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:

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

(2) If the transfer would go over the credit limit on your overdraft line.

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

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

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

(6) There may be other exceptions stated in our agreement with you.

(j) *ATM fees (§205.7(b)(11)).* When you use an ATM not owned by us, you may be charged a fee by the ATM operator [or any network used] (and you may be charged a fee for a balance inquiry even if you do not complete a fund transfer).

A–3—Model Forms For Error Resolution Notice (§§205.7(b)(10) and 205.8(b))

(a) *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] Write us at [insert address] [or E-mail us at [insert electronic mail 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 determine whether an error occurred 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.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

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

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

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].

A–5—Model Forms For Government Agencies(§205.15(d)(1) and (2))

(a) *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.]

(b) *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] Write us at [insert address] [or E-mail us at [insert electronic mail 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 determine whether an error occurred 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.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. 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].

[Reg. E, 61 FR 19669, May 2, 1996, as amended at 63 FR 52118, Sept. 29, 1998; 66 FR 13412, Mar. 6, 2001; 66 FR 17793, Apr. 4, 2001]

APPENDIX B TO PART 205—FEDERAL ENFORCEMENT AGENCIES

The following list indicates which Federal agency enforces Regulation E (12 CFR part 205) 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, S.W., Washington, D.C. 20590.

Brokers and Dealers

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

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

Federal Trade Commission, Electronic Fund Transfers, Washington, D.C. 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 part. Except in unusual circumstances, such interpretations will not be issued separately but will be incorporated in an official commentary to this part, 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, D.C. 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.

SUPPLEMENT I TO PART 205—OFFICIAL STAFF INTERPRETATIONS

SECTION 205.2—DEFINITIONS

2(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 (EFT) to or from a consumer account. The term does not include magnetic tape or other devices used internally by a financial institution to initiate electronic transfers.

2. *Checks used to capture information.* The term ''access device'' does not include a check or draft used to capture the MICR (Magnetic Ink Character Recognition) encoding to initiate a one-time ACH debit. For example, if a consumer authorizes a one-time ACH debit from the consumer's account using a blank, partially completed, or fully completed and signed check for the merchant to capture the routing, account, and serial numbers to initiate the debit, the check is not an access device. (Although the check is not an access device under Regulation E, the transaction is nonetheless covered by the regulation. See comment 3(b)–1(v).)

2(b) Account

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

i. Club accounts, such as 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.

ii. 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.

2. Examples of accounts not covered by Regulation E (12 CFR part 205) include:

i. Profit-sharing and pension accounts established under a trust agreement, which are exempt under §205.2(b)(2).

ii. Escrow accounts, such as those established to ensure payment of items such as real estate taxes, insurance premiums, or completion of repairs or improvements.

iii. Accounts for accumulating funds to purchase U.S. savings bonds.

Paragraph 2(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 Regulation E.

2(d) Business Day

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

2. *Substantially all business functions.* ''Substantially all business functions'' include both the public and the back-office operations of the institution. For example, if the offices of an institution are open on Saturdays for handling some consumer transactions (such as deposits, withdrawals, and other teller transactions), but not for performing internal functions (such as investigating account errors), then Saturday is not a business day for that institution. In this case, Saturday does not count toward the business-day standard set by the regulation for reporting lost or stolen access devices, resolving errors, etc.

3. *Short hours.* A financial institution may determine, at its election, whether an abbreviated day is a business day. For example, if an institution engages in substantially all business functions until noon on Saturdays instead of its usual 3:00 p.m. closing, it may consider Saturday a business day.

4. *Telephone line.* If a financial institution makes a telephone line available on Sundays for reporting the loss or theft of an access device, but performs no other business functions, Sunday is not a business day under the ''substantially all business functions'' standard.

2(h) 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:

i. A consumer uses a debit card at a public telephone to pay for the call.

ii. A consumer initiates a transfer by a means analogous in function 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 even if no access device is used to initiate the transaction. (See §205.9 for receipt requirements.)

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 a consumer's access device (using the consumer's PIN, for example) are EFTs and are subject to other requirements of the regulation. If an access device is used only for identification purposes or for determining the account balance, the transfers are not EFTs for purposes of the regulation.

2(k) Preauthorized Electronic Fund Transfer

1. *Advance authorization.* A ''preauthorized electronic fund transfer'' under Regulation E

is one authorized by the consumer in advance of a transfer that will take place on a recurring basis, at substantially regular intervals, and will require no further action by the consumer to initiate the transfer. In a bill-payment system, for example, if the consumer authorizes a financial institution to make monthly payments to a payee by means of EFTs, and the payments take place without further action by the consumer, the payments are preauthorized EFTs. In contrast, if the consumer must take action each month to initiate a payment (such as by entering instructions on a touch-tone telephone or home computer), the payments are not preauthorized EFTs.

2(m) 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 an 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 or fraud.* An unauthorized EFT includes a transfer initiated by a person who obtained the access device from the consumer through fraud or robbery.

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

5. *Reversal of direct deposits.* The reversal of a direct deposit made in error is not an unauthorized EFT when it involves:

i. A credit made to the wrong consumer's account;

ii. A duplicate credit made to a consumer's account; or

iii. A credit in the wrong amount (for example, when the amount credited to the consumer's account differs from the amount in the transmittal instructions).

SECTION 205.3—COVERAGE

3(a) General

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

i. The consumer and the financial institution (including an account for which an access device has been issued to the consumer, for example);

ii. 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.

2. *Automated clearing house (ACH) membership.* The fact that membership in an ACH requires a financial institution to accept EFTs to accounts at the institution does not make every account of that institution subject to the regulation.

3. *Foreign applicability.* Regulation E applies to all persons (including branches and other offices of foreign banks located in the United States) that offer EFT services to residents of any state, including resident aliens. It covers any account located in the United States through which EFTs are offered to a resident of a state. 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 in the United States or a foreign country. The regulation does not apply to a foreign branch of a U.S. bank unless the EFT services are offered in connection with an account in a state as defined in §205.2(l).

3(b) Electronic Fund Transfer

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

i. 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 EFTs to or from the account to which the deposit is made.

ii. A transfer sent via ACH. 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.

iii. 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.

iv. A transfer from the consumer's account resulting from a debit-card transaction at a merchant location, 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.

v. A transfer via ACH where a consumer has provided a check to enable the merchant or other payee to capture the routing, account, and serial numbers to initiate the transfer, whether the check is blank, partially completed, or fully completed and signed; whether the check is presented at POS or is mailed to a merchant or other payee or lockbox and later converted to an EFT; or whether the check is retained by the consumer, the merchant or other payee, or the payee's financial institution.

vi. A payment made by a bill payer under a bill-payment service available to a consumer via computer or other electronic means, unless the terms of the bill-payment service explicitly state that all payments, or all payments to a particular payee or payees, will be solely by check, draft, or similar paper instrument drawn on the consumer's account, and the payee or payees that will be paid in this manner are identified to the consumer.

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

i. A payment that does not debit or credit a consumer asset account, such as a payroll allotment to a creditor to repay a credit extension (which is deducted from salary).

ii. A payment made in currency by a consumer to another person at an electronic terminal.

iii. 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.

3. *Authorization of one-time EFT initiated using MICR encoding on a check.* A consumer authorizes a one-time EFT (in providing a check to a merchant or other payee for the MICR encoding), where the consumer receives notice that the transaction will be processed as an EFT and completes the transaction. Examples of notice include, but are not limited to, signage at POS and written statements.

3(c) Exclusions From Coverage

Paragraph 3(c)(1)—Checks

1. *Re-presented checks.* The electronic representment of a returned check is not covered by Regulation E because the transaction originated by check. Regulation E does apply, however, to any fee authorized by the consumer to be debited electronically from the consumer's account because the check was returned for insufficient funds. Authorization occurs where the consumer has received notice that a fee imposed for returned checks will be debited electronically from the consumer's account.

2. *Check used to capture information for a one-time EFT.* See comment 3(b)–1(v).

Paragraph 3(c)(2)—Check Guarantee or Authorization

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.

Paragraph 3(c)(3)—Wire or Other Similar Transfers

1. *Fedwire and ACH.* If a financial institution makes a fund transfer to a consumer's account after receiving funds through Fedwire or a similar network, the transfer by 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 UCC section 4A–202, which encourages verification of Fedwire payment orders 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 from a telephone bill-payment or other prearranged plan subject to Regulation E. The Board's Regulation J (12 CFR part 210) specifies the rules applicable to funds handled by Federal Reserve Banks. To ensure that the rules for all fund transfers through Fedwire are consistent, the Board used its preemptive authority under UCC section 4A–107 to determine that subpart B of Regulation J (12 CFR part 210), including the provisions of Article 4A, applies to all fund 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 of Regulation J (12 CFR part 210).

3. *Similar fund transfer systems.* Fund transfer systems that are similar to Fedwire include the Clearing House Interbank Payments System (CHIPS), Society for Worldwide Interbank Financial Telecommunication (SWIFT), Telex, and transfers made on the books of correspondent banks.

Paragraph 3(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. *Example of exempt transfer.* 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.

3. *Examples of nonexempt transfers.* The exemption does not apply to a transfer involving:

i. A debit card or other access device that accesses a securities or commodities account such as a money market mutual fund and

that the consumer uses for purchasing goods or services or for obtaining cash.

ii. 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).

Paragraph 3(c)(5)—Automatic Transfers by Account-Holding Institution

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

i. 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.

ii. 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.

iii. EFTs 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.

iv. 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.

Paragraph 3(c)(6)—Telephone-Initiated Transfers

1. *Written plan or agreement.* A transfer that the consumer initiates by telephone is covered by Regulation E if the transfer is made under a written plan or agreement between the consumer and the financial institution making the transfer. A written statement available to the public or to account holders that describes a service allowing a consumer to initiate transfers by telephone constitutes a plan—for example, a brochure, or material included with periodic statements. The following, however, do not by themselves constitute a written plan or agreement:

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

ii. 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 reserve requirements under Regulation D (12 CFR part 204).

iii. 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:

i. An employee of the financial institution completes the transfer manually (for example, by means of a debit memo or deposit slip).

ii. The consumer is required to make a separate request for each transfer.

iii. The consumer uses the plan infrequently.

iv. The consumer initiates the transfer via a facsimile machine.

v. The consumer initiates the transfer using a financial institution's audio-response or voice-response telephone system.

Paragraph 3(c)(7)—Small Institutions

1. *Coverage.* This exemption is limited to preauthorized transfers; institutions that offer other EFTs must comply with the applicable sections of the regulation as to such services. The preauthorized transfers remain subject 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

4(a) Form of Disclosures

1. *General.* Although no particular rules govern 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 form.

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 of this section.

5(a) Solicited Issuance

Paragraph 5(a)(1)

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

2. *Permissible forms of request.* The request for an access device may be written or oral (for example, in response to a telephone solicitation by a card issuer).

Paragraph 5(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, a change-in-terms notice or new disclosures are required.

2. *Renewal or substitution by a successor institution.* A successor institution is an entity that replaces the original financial institution (for example, following a corporate merger or acquisition) or that acquires accounts or assumes the operation of an EFT system.

5(b) Unsolicited Issuance

1. *Compliance.* A financial institution may issue an unsolicited access device (such as the 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 verifies the consumer's identity does not comply with the regulation.

2. *PINS.* A financial institution may impose no liability on a consumer for unauthorized transfers involving an unsolicited access device until the device becomes an ''accepted access device'' under the regulation. A card and PIN combination may be treated as an accepted access device once the consumer has used it to make a transfer.

3. *Functions of PIN.* If an institution issues a PIN 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.* To verify the consumer's identity, a financial institution may use any reasonable means, such as a photograph, fingerprint, personal visit, signature comparison, or personal information about the consumer. However, even if reasonable means were used, if an institution fails to verify correctly the consumer's identity 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

6(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:

i. Electronic or mechanical confirmation (such as a PIN).

ii. 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.

6(b) Limitations on Amount of Liability

1. *Application of liability provisions.* There are three possible tiers of consumer liability for unauthorized EFTs depending on the situation. A consumer may be liable for (1) up to $50; (2) up to $500; or (3) an unlimited amount depending on when the unauthorized EFT occurs. More than one tier may apply to a given situation because each corresponds to a different (sometimes overlapping) time period or set of conditions.

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 a debit card or on a piece of paper kept with the card, does not affect the consumer's liability for unauthorized transfers. (However, refer to comment 2(m)–2 regarding termination of the authority of given by the consumer to another person.)

3. *Limits on liability.* 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.

Paragraph 6(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.

3. *Two-business-day rule.* The two-business-day period does not include the day the consumer learns of the loss or theft or any day

that is not a business day. The rule is calculated based on two 24-hour periods, without regard to the financial institution's business hours or the time of day that the consumer learns of the loss or theft. For example, a consumer learns of the loss or theft at 6 p.m. on Friday. Assuming that Saturday is a business day and Sunday is not, the two-business-day period begins on Saturday and expires at 11:59 p.m. on Monday, not at the end of the financial institution's business day on Monday.

Paragraph 6(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 this example, assume a $100 unauthorized transfer was made on Tuesday and a $600 unauthorized transfer on Thursday. Because the consumer is liable for the amount of the loss that occurs within the first two business days (but no more than $50), plus the amount of the unauthorized transfers that occurs 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 on Thursday, the consumer's maximum liability would be $150 ($50 of the $600 plus $100).

Paragraph 6(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 made with a lost or stolen debit card, 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 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 liable for any transfers occurring after the close of the 60 days and before notice is given to the institution. For example, a consumer's account is 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 the transmittal of the periodic statement that shows the unauthorized transfer, the consumer has no liability. However, if in addition to the $200, the consumer's account is debited for a $400 unauthorized transfer on the 61st day and the consumer fails to notify the institution of the first unauthorized transfer until the 62nd day, the consumer may be liable for the full $400.

Paragraph 6(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.

Paragraph 6(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 notifies the institution but 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. A financial institution may require appropriate documentation from the person representing the consumer to establish that the person is acting on the consumer's behalf.

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 the account number or the 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

7(a) Timing of Disclosures

1. *Early disclosures.* Disclosures given by a financial institution earlier than the regulation requires (for example, when the consumer opens a checking account) need not be repeated when the consumer later enters into an agreement with a third party who will initiate preauthorized transfers to or from the consumer's account, unless the terms and conditions differ from those that the institution previously disclosed. On the other hand, if an agreement is directly between the consumer and the account-holding institution, disclosures must be given in close proximity to the event requiring disclosure, for example, when the consumer contracts for a new service.

2. *Lack of advance notice of a transfer.* Where a consumer authorizes a third party to debit or credit the consumer's account, an account-holding institution that has not received advance notice of the transfer or transfers must provide the required disclosures as soon as reasonably possible after the first debit or credit is made, unless the institution has previously given the disclosures.

3. *Addition of new accounts.* If a consumer opens a new account permitting EFTs at a financial institution, and the consumer already has received Regulation E disclosures for another account at that institution, the institution need only disclose terms and conditions that differ from those previously given.

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

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

6. *Disclosures covering all EFT services offered.* An institution may provide disclosures covering all EFT services that it offers, even if some consumers have not arranged to use all services.

7(b) Content of Disclosures

Paragraph 7(b)(1)—Liability of Consumer

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

2. *Preauthorized transfers.* If the only EFTs from an account are preauthorized transfers, liability could arise if the consumer fails to report unauthorized transfers reflected on a periodic statement. To impose such liability on the consumer, the institution must have disclosed the potential liability and 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.

Paragraph 7(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:

i. Reporting the loss or theft of an access device or possible unauthorized transfers;

ii. Inquiring about the receipt of a preauthorized credit;

iii. Stopping payment of a preauthorized debit;

iv. Giving notice of an error.

2. *Location of telephone number.* 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.

Paragraph 7(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, 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 daily withdrawal limitations apply and need not disclose that the limitations may

not always be in force (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 EFTs must be disclosed even if the restriction also applies to transfers made by nonelectronic means. For example, Regulation D (12 CFR Part 204) restricts the number of payments to third parties that may be made from a money market deposit account; an institution that does not execute fund transfers in excess of those limits must disclose the restriction as a limitation on the frequency of EFTs.

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

Paragraph 7(b)(5)—Fees

1. *Disclosure of EFT fees.* An institution is required to disclose all fees for EFTs or the right to make them. Others fees (for example, minimum-balance fees, stop-payment fees, or account overdrafts) may, but need not, be disclosed (but see Regulation DD, 12 CFR Part 230. An institution is not required to disclose fees for inquiries made at an ATM since no transfer of funds is involved.

2. *Fees also applicable to non-EFT.* A per-item fee for EFTs 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 that is referenced in the statement.

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 they are imposed on the consumer by the account-holding institution. Fees for use of an ATM that are debited directly from the consumer's account by an institution other than the account-holding institution (for example, fees included in the transfer amount) need not be disclosed. (See §205.7(b)(11) for the general notice requirement regarding fees that may be imposed by ATM operators and by a network used to complete the transfer.)

Paragraph 7(b)(9)—Confidentiality

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

Paragraph 7(b)(10)—Error Resolution

1. *Substantially similar.* The error resolution notice must be substantially similar to the model form in appendix A of part 205. An institution may use different wording so long as the substance of the notice remains the same, may delete inapplicable provisions (for example, the requirement for written confirmation of an oral notification), and may substitute substantive state law requirements affording greater consumer protection than Regulation E.

2. *Extended time-period for certain transactions.* To take advantage of the longer time periods for resolving errors under §205.11(c)(3) (for new accounts as defined in Regulation CC (12 CFR part 229), transfers initiated outside the United States, or transfers resulting from POS debit-card transactions), a financial institution must have disclosed 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 (12 CFR part 220) must have disclosed accordingly.

SECTION 205.8—CHANGE-IN-TERMS NOTICE; ERROR RESOLUTION NOTICE

8(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:

i. Closing some of an institution's ATMs;

ii. Cancellation of an access device.

3. *Limitations on transfers.* When the initial disclosures omit details about limitations because secrecy is 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 in place when the initial disclosures were given and 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.* When a financial institution changes the telephone number or address used for reporting possible unauthorized transfers, a change-in-terms notice is required only if the institution will impose liability on the consumer for unauthorized transfers under §205.6. (See also §205.6(a) and the related commentary.)

8(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 sent under the old method.

2. *Exception for new accounts.* For new accounts, disclosure of the longer error resolution time periods under §205.11(c)(3) is not required in the annual error resolution notice or in the notice that may be provided with each periodic statement as an alternative to the annual notice.

SECTION 205.9—RECEIPTS AT ELECTRONIC TERMINALS; PERIODIC STATEMENTS

9(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 may 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 when a terminal runs out of paper or the mechanism jams, no violation results if the financial institution maintains procedures reasonably adapted to avoid such occurrences.

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

Paragraph 9(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 a sign at the terminal or on the terminal screen for a reasonable duration. Displaying the fee on a screen provides adequate notice, as long as a consumer is given the option to cancel the transaction after receiving notice of a fee. (See §205.16 for the notice requirements applicable to ATM operators that impose a fee for providing EFT services.)

2. *Relationship between §205.9(a)(1) and §205.16.* The requirements of §§205.9(a)(1) and 205.16 are similar but not identical.

i. Section 205.9(a)(1) requires that if the amount of the transfer as shown on the receipt will include the fee, then the fee must be disclosed either on a sign on or at the terminal, or on the terminal screen. Section 205.16 requires disclosure both on a sign on or at the terminal (in a prominent and conspicuous location) and on the terminal screen. Section 205.16 permits disclosure on a paper notice as an alternative to the on-screen disclosure.

ii. The disclosure of the fee on the receipt under §205.9(a)(1) cannot be used to comply with the alternative paper disclosure procedure under §205.16, if the receipt is provided at the completion of the transaction because, pursuant to the statute, the paper notice must be provided before the consumer is committed to paying the fee.

iii. Section 205.9(a)(1) applies to any type of electronic terminal as defined in Regulation E (for example, to POS terminals as well as to ATMs), while §205.16 applies only to ATMs.

Paragraph 9(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.

Paragraph 9(a)(3)—Type

1. *Identifying transfer and account.* Examples identifying the type of transfer and the type of the consumer's account 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 particular account at terminals not operated by the account-holding institution, or may be able to access only one particular account when the terminal is off-line. The exception is available even if, in addition to accessing one asset account, the consumer also can access a credit line.

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.

Paragraph 9(a)(5)—Terminal Location

1. *Options for identifying terminal.* The institution may provide either:

i. The city, state or foreign country, and the information in §§205.9(a)(5) (i), (ii), or (iii), or

ii. A number or a code identifying the terminal. If the institution chooses the second option, the 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.

3. *Omission of a state.* A state may be omitted from the location information on the receipt if:

i. All the terminals owned or operated by the financial institution providing the statement (or by the system in which it participates) are located in that state, or

ii. All transfers occur at terminals located within 50 miles of the financial institutions's main office.

4. *Omission of a city and state.* A city and state may be omitted if all the terminals owned or operated by the financial institution providing the statement (or by the system in which it participates) are located in the same city.

Paragraph 9(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 9(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 9(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.

Paragraph 9(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 the regulation constitutes prima facie proof of a payment to another person, except in the case of a terminal receipt documenting a deposit.

9(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 cycle. 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. *Interim statements.* Generally, a financial institution must provide periodic statements for each monthly cycle in which an EFT occurs, and at least quarterly if a transfer has not occurred. Where EFTs occur between regularly-scheduled cycles, interim statements must be provided. For example, if an institution issues quarterly statements at the end of March, June, September and December, and the consumer initiates an EFT in February, an interim statement for February must be provided. If an interim statement contains interest or rate information, the institution must comply with Regulation DD, 12 CFR 230.6.

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

4. *Statement pickup.* A financial institution may permit, but may not require, consumers to pick up their periodic statements at the financial institution.

5. *Periodic statements limited to EFT 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 provide a periodic statement requirement that reflects

only the EFTs 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:

i. Include copies of terminal receipts to reflect transfers initiated by the consumer at electronic terminals;

ii. Enclose posting memos, deposit slips, and other documents that, together with the statement, disclose all the required information;

iii. Use codes for names of third parties or terminal locations and explain the information to which the codes relate on an accompanying document.

Paragraph 9(b)(1)—Transaction Information

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

Paragraph 9(b)(1)(i)

1. *Incorrect deposit amount.* If a 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 of the discrepancy. The periodic statement reflecting the deposit may show either the correct amount of the deposit or the amount entered by the consumer along with the institution's adjustment.

Paragraph 9(b)(1)(iii)

1. *Type of transfer.* There is no prescribed terminology for describing a type of transfer. Placement of the amount of the transfer in the debit or the credit column is sufficient 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 9(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 that owns or operates the terminal, plus the city and state.

Paragraph 9(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 (such as, ''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.

Paragraph 9(b)(3)—Fees

1. *Disclosure of fees.* The fees disclosed may include fees for EFTs and for other nonelectronic 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 EFTs, 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.

Paragraph 9(b)(4)—Account Balances

1. *Opening and closing balances.* The opening and closing balances must reflect both EFTs and other account activity.

Paragraph 9(b)(5)—Address and Telephone Number for Inquiries

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).

Paragraph 9(b)(6)—Telephone Number for Preauthorized Transfers

1. *Telephone number.* See comment 9(b)(5)–1.

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

1. *Transfers between accounts.* The regulation provides an exception from 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 EFTs 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.

Paragraph 9(c)(1)—Preauthorized Transfers to Accounts

1. *Accounts that may be accessed only by preauthorized transfers to the account.* The exception for ''accounts that may be accessed only by preauthorized transfers to the account'' includes accounts that can be accessed by means other than EFTs, such as checks. If, however, an account may be accessed by any EFT other than preauthorized credits to the account, such as preauthorized debits or ATM transactions, the account does not qualify for the exception.

2. *Reversal of direct deposits.* For direct-deposit-only accounts, a financial institution must send a periodic statement at least quarterly. A reversal of a direct deposit to correct an error does not trigger the monthly statement requirement when the error represented a credit to the wrong consumer's account, a duplicate credit, or a credit in the wrong amount. (See also comment 2(m)–5.)

9(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 if the institution is not 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

10(a) Preauthorized Transfers to Consumer's Account

Paragraph 10(a)(1)—Notice by Financial Institution

1. *Content.* No specific language is required for 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.* A financial institution may use different methods of notice for various types or series of preauthorized transfers, and 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.* The absence of a deposit entry (on a periodic statement sent within two business days of the scheduled transfer date) will serve as negative notice.

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 call 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 response. 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.

10(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 when the existing authorization does not specify that debiting is to occur electronically or specifies that the debiting will occur by paper means. A new authorization also is not required when a successor institution begins collecting payments.

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

3. *Written authorization for preauthorized transfers.* The requirement that preauthorized EFTs be authorized by the consumer ''only by a 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 preauthorization form, and ask the consumer to sign and return one and to retain the second copy.

5. *Similarly authenticated.* The similarly authenticated standard permits signed, written authorizations to be provided electronically. The writing and signature requirements of this section are satisfied by complying with the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7001 *et seq.*, which defines electronic records and electronic signatures. Examples of electronic signatures include, but are not limited to, digital signatures and security codes. A security code need not originate with the account-holding institution. The authorization process should evidence the consumer's identity and assent to the authorization. The person that obtains the authorization must provide a copy of the terms of the authorization to the consumer either electronically or in paper form. Only the consumer may authorize the transfer and not, for example, a third-party merchant on behalf of the consumer.

6. *Requirements of an authorization.* An authorization is valid if it is readily identifiable as such and the terms of the preauthorized transfer are clear and readily understandable.

7. *Bona fide error.* Consumers sometimes authorize third-party payees, by telephone or on-line, to submit recurring charges against a credit card account. If the consumer indicates use of a credit card account when in fact a debit card is being used, the payee does not violate the requirement to obtain a written authorization if the failure to obtain written authorization was not intentional and resulted from a bona fide error, and if the payee maintains procedures reasonably adapted to avoid any such error. If the payee is unable to determine, at the time of the authorization, whether a credit or debit card number is involved, and later finds that the card used is a debit card, the payee must obtain a written and signed or (where appropriate) a similarly authenticated authorization as soon as reasonably possible, or cease debiting the consumer's account.

10(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 a 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 (for example, by requiring 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 honor subsequent debits to the account.

10(d) Notice of Transfers Varying in Amount

Paragraph 10(d)(1)—Notice

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

Paragraph 10(d)(2)—Range

1. *Range.* A financial institution or designated payee that elects to offer the consumer a specified range of amounts for debiting (in lieu of providing the notice of transfers varying in amount) must provide an acceptable range that could 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.

10(e) Compulsory Use

Paragraph 10(e)(1)—Credit

1. *Loan payments.* Creditors may not require repayment of loans by electronic means on a preauthorized, recurring basis. 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:

i. 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.

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

2. *Overdraft.* A financial institution may require the automatic repayment of an overdraft credit plan 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.

Paragraph 10(e)(2)—Employment or Government Benefit

1. *Payroll.* An employer (including a financial institution) may not require its employees to receive their salary by direct deposit to any particular institution. An employer may require direct deposit of salary by electronic means if employees are allowed to choose the institution that will receive the direct deposit. Alternatively, an employer may give employees the choice of having their salary deposited at a particular institution (designated by the employer) or receiving their salary by another means, such as by check or cash.

SECTION 205.11—PROCEDURES FOR RESOLVING ERRORS

11(a) Definition of Error

1. *Terminal location.* With regard to deposits at an ATM, a consumer's request for the terminal location or other information triggers the error resolution procedures, but the financial institution need only provide the ATM location if it has captured that information.

2. *Verifying an account debit or credit.* If the consumer contacts the financial institution to ascertain whether a payment (for example, in a home-banking or bill-payment program) or any other type of EFT was debited to the account, or whether a deposit made via ATM, preauthorized transfer, or any other type of EFT was credited to the account, without asserting an error, the error resolution procedures do not apply.

3. *Loss or theft of access device.* A financial institution is required to comply with the error resolution procedures 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.

4. *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.

5. *Request for documentation or information.* A request for documentation or other information must be treated as an error unless it is clear that the consumer is requesting a duplicate copy for tax or other record-keeping purposes.

11(b) Notice of Error From Consumer

Paragraph 11(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. *Investigation pending receipt of information.* While a financial institution may request a written, signed statement from the consumer relating to a notice of error, it may not delay initiating or completing an investigation pending receipt of the statement.

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 when a notice of error is received from the consumer, and not when the financial institution itself discovers and corrects an error.

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.

Paragraph 11(b)(2)—Written Confirmation

1. *Written confirmation-of-error notice.* If the consumer sends a written confirmation of error to the wrong address, the financial 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 in getting to the right place because it was sent to the wrong address.

11(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. *Charges for error resolution.* If a billing error occurred, whether as alleged or in a different amount or manner, the financial institution may not impose a charge related to any aspect of the error-resolution process (including charges for documentation or investigation). Since the act grants the consumer error-resolution rights, the institution should avoid any chilling effect on the good-faith assertion of errors that might result if charges are assessed when no billing error has occurred.

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. The institution must determine whether such a mailing will be prompt enough to satisfy the requirements of this section, 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 must 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/EFT 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 §205.11(c). If the institution has provisionally credited the consumer's account in accordance with §205.11(c)(2), it may debit the amount upon transmitting the requested information, clarification, or documentation.

Paragraph 11(c)(2)(i)

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 §205.11.

Paragraph 11(c)(3)—Extension of Time Periods

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

Paragraph 11(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 period.

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 when 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.* An agreement that a third party will honor an access device is an agreement for purposes of this paragraph. A financial institution does not have an agreement for purposes of §205.11(c)(4)(ii) solely because it participates in transactions that occur 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.

11(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 §205.11 (c) and (d), as relevant. The institution may give the notice of correction and the explanation separately or in a combined form.

Paragraph 11(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 convert the applicable data into readable form, for example, by printing it and explaining any codes.

Paragraph 11(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 §205.11. 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.

11(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 alleging an error. 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

12(a) Relation to Truth in Lending

1. *Determining applicable regulation.* i. For transactions involving access devices that also function as credit cards, whether Regulation E or Regulation Z (12 CFR part 226) applies depends on the nature of the transaction. For example, if the transaction solely involves 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 debits a checking account only (with no credit extended), the provisions of Regulation E apply. If the transaction debits a checking account but also draws on an overdraft line of credit attached to the account, Regulation E's liability limitations apply, in addition to §§226.13 (d) and (g) of Regulation Z (which apply because of the extension of credit associated with the overdraft feature on the checking account). If a consumer's access device is also a credit card and the device is used to make unauthorized withdrawals from a checking account, but also is used to obtain unauthorized cash advances directly from a line of credit that is separate from the checking account, both Regulation E and Regulation Z apply.

ii. The following examples illustrate these principles:

A. A consumer has a card that can be used either as a credit card or a debit card. When used as a debit card, the card draws on the consumer's checking account. When used as a credit card, the card draws only on a separate line of credit. If the card is stolen and used as a credit card to make purchases or to get cash advances at an ATM from the line of credit, the liability limits and error resolution provisions of Regulation Z apply; Regulation E does not apply.

B. In the same situation, if the card is stolen and is used as a debit card to make purchases or to get cash withdrawals at an ATM from the checking account, the liability limits and error resolution provisions of Regulation E apply; Regulation Z does not apply.

C. In the same situation, assume the card is stolen and used both as a debit card and as a credit card; for example, the thief makes some purchases using the card as a debit card, and other purchases using the card as a credit card. Here, the liability limits and error resolution provisions of Regulation E apply to the unauthorized transactions in which the card was used as a debit card, and the corresponding provisions of Regulation Z apply to the unauthorized transactions in which the card was used as a credit card.

D. Assume a somewhat different type of card, one that draws on the consumer's checking account and can also draw on an overdraft line of credit attached to the checking account. There is no separate line of credit, only the overdraft line, associated with the card. In this situation, if the card is stolen and used, the liability limits and the error resolution provisions of Regulation E apply. In addition, if the use of the card has resulted in accessing the overdraft line of credit, the error resolution provisions of §226.13(d) and (g) of Regulation Z also apply, but not the other error resolution provisions of Regulation Z.

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 (12 CFR part 226) 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.

12(b) Preemption of Inconsistent State Laws

1. *Specific determinations.* The regulation prescribes standards for determining whether state laws that govern EFTs 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.* The Board determined that certain provisions in the state law of Michigan are preempted by the federal law, effective March 30, 1981:

i. Definition of unauthorized use. Section 5(4) is preempted to the extent that it relates to the section of state law governing consumer liability for unauthorized use of an access device.

ii. Consumer liability for unauthorized use of an account. Section 14 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.

iii. Error resolution. Section 15 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 within 45 days.

iv. Receipts and periodic statements. Sections 17 and 18 are preempted because they are inconsistent with §205.9. The state 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

13(b) Record Retention

1. *Requirements.* A financial institution need not retain records that it has given disclosures and documentation to each consumer; it need only retain evidence demonstrating that its procedures reasonably ensure the consumers' receipt of required disclosures and documentation.

SECTION 205.14—ELECTRONIC FUND TRANSFER SERVICE PROVIDER NOT HOLDING CONSUMER'S ACCOUNT

14(a) Electronic Fund Transfer Service Providers Subject to Regulation

1. *Applicability.* This section applies only when a service provider issues an access device to a consumer for initiating transfers to or from the consumer's account at a financial institution and the two entities have no agreement regarding this EFT service. If the service provider does not issue an access device to the consumer for accessing an account held by another institution, it does not qualify for the treatment accorded by §205.14. For example, this section does not apply to an institution that initiates preauthorized payroll deposits to consumer accounts on behalf of an employer. By contrast, §205.14 can apply to an institution that issues a code for initiating telephone transfers to be carried out through the ACH from a consumer's account at another institution. This is the case even if the consumer has accounts at both institutions.

2. *ACH agreements.* The ACH rules generally do not constitute an agreement for purposes of this section. However, an ACH agreement under which members specifically agree to honor each other's debit cards is an ''agreement,'' and thus this section does not apply.

14(b) Compliance by Electronic Fund Transfer Service Provider

1. *Liability.* The service provider is liable for unauthorized EFTs that exceed limits on the consumer's liability under §205.6.

Paragraph 14(b)(1)—Disclosures and Documentation

1. *Periodic statements from electronic fund transfer service provider.* A service provider that meets the conditions set forth in this paragraph does not have to issue periodic statements. A service provider that does not meet the conditions need only include on periodic statements information about transfers initiated with the access device it has issued.

Paragraph 14(b)(2)—Error Resolution

1. *Error resolution.* When a consumer notifies the service provider of an error, the EFT service provider must investigate and resolve the error in compliance with §205.11 as modified by §205.14(b)(2). 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.

14(c) Compliance by Account-Holding Institution

Paragraph 14(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(b)(1).

SECTION 205.16—DISCLOSURES AT AUTOMATED TELLER MACHINES

16(b) General

Paragraph 16(b)(1)

1. *Specific notices.* An ATM operator that imposes a fee for a specific type of transaction such as a cash withdrawal, but not a balance inquiry, may provide a general statement that a fee will be imposed for providing EFT services or may specify the type of EFT for which a fee is imposed.

SECTION 205.17—REQUIREMENTS FOR ELECTRONIC COMMUNICATION

17(b) General Rule

1. *Relationship to the E-Sign Act.* The E-Sign Act authorizes the use of electronic disclosures. It does not affect any requirement imposed under this part other than a provision that requires disclosures to be in paper form, and it does not affect the content or timing of disclosures. Electronic disclosures are subject to the regulation's format, timing, and retainability rules and the clear and readily understandable standard. For example, to satisfy the clear and readily understandable standard for disclosures, electronic disclosures must use visual text.

2. *Clear and readily understandable standard.* A financial institution must provide electronic disclosures using a clear and readily understandable format. Also, in accordance with the E-Sign Act:

i. The institution must disclose the requirements for accessing and retaining disclosures in that format;

ii. The consumer must demonstrate the ability to access the information electronically and affirmatively consent to electronic delivery; and

iii. The institution must provide the disclosures in accordance with the specified requirements.

3. *Timing and effective delivery when a consumer signs up for an EFT service on-line.* When a consumer contracts for an EFT service on the Internet and will be able immediately to initiate a fund transfer, a financial institution satisfies the timing requirements under this part if, at the time the consumer contracts for the service or before the first transfer is made, the disclosures automatically appear on the screen, even if multiple screens are required to view the entire disclosure. Or a financial institution may provide a link to electronic disclosures, as long as consumers cannot bypass the link and they are required to access the disclosures before initiating the first transfer. The institution is not required to confirm that the consumer has read the disclosures.

4. *Timing and effective delivery for disclosures provided periodically.* Disclosures provided by e-mail are timely based on when the disclosures are sent. Disclosures posted at an Internet web site, such as periodic statements or change-in-terms and other notices, are timely when the financial institution has both made the disclosures available and sent a notice alerting the consumer that the disclosures have been posted. For example, under §205.8(a), institution offering accounts with EFT services must provide a change-in-terms notice to consumers at least 21 days in advance of certain changes. For a change-in-terms notice posted on the Internet, an institution must both post the notice and notify consumers of its availability at least 21 days in advance of the change.

5. *Retainability of disclosures.* Financial institutions satisfy the requirement that disclosures be in a form that the consumer may keep if electronic disclosures are delivered in a format that is capable of being retained (such as by printing or storing electronically). The format must also be consistent with the information required to be provided under section 101(c)(1)(C)(i) of the E-Sign Act (15 U.S.C. 7001(c)(1)(C)(i)) about the hardware and software requirements for accessing and retaining electronic disclosures.

6. *Disclosures provided on financial institution's equipment.* A financial institution that controls the equipment providing electronic disclosures to consumers (for example, an ATM or computer terminal in a financial institution's lobby) must ensure that the equipment satisfies the regulation's requirements to provide timely disclosures in a clear and readily understandable format and in a form that the consumer may keep. For example, if disclosures are required at the time of an on-line transaction, the disclosures must be sent to the consumer's e-mail address or must be made available at another location such as the financial institution's Internet web site, unless the financial institution provides a printer that automatically prints the disclosures.

17(c) Address or Location To Receive Electronic Communication

Paragraph 17(c)(1)

1. *Electronic address.* A consumer's electronic address is an e-mail address that is not limited to receiving communications transmitted solely by the financial institution.

Paragraph 17(c)(2)

1. *Identifying account involved.* A financial institution may identify a specific account in a variety of ways and is not required to identify an account by reference to the account number. For example, where the consumer has only one checking account, and no confusion would result, the institution may refer to ''your checking account.'' If the consumer has two checking accounts, the institution may, for example, differentiate accounts based on names for different checking account programs or by using a truncated account number.

2. *90-day rule.* The actual disclosures provided to the consumer must be available for at least 90 days, but the financial institution has discretion to determine whether they should be available at the same location for the entire period.

17(d) Redelivery

1. *E-mail returned as undeliverable.* If an e-mail to the consumer (containing an alert notice or other disclosure) is returned as undeliverable, the redelivery requirement is satisfied if, for example, the institution sends the disclosure to a different e-mail address or postal address that the institution has on file for the consumer. Sending the disclosure a second time to the same electronic address is not sufficient if the institution has a different address for the consumer on file.

17(e) Persons Other Than Financial Institutions

1. *Electronic disclosures.* Entities other than financial institutions, such as merchants, are subject to certain provisions of Regulation E, including §§ 205.10(b) and (d). These entities too may use electronic communication to provide disclosures required to be in writing.

APPENDIX A—MODEL DISCLOSURE CLAUSES AND FORMS

1. *Review of forms.* The Board will not 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, 205.8(b), 205.14(b)(1)(ii) and 205.15(d)(7) and (d)(2). The use of appropriate clauses in making disclosures will protect a financial institution from liability under sections 915 and 916 of the act provided the clauses accurately reflect the institution's EFT 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 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 (including the substitution of a trade name for the word ''card,'' deletion of inapplicable services, or substitution of lesser liability limits). Several of the model clauses 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.

[Reg. E, 61 FR 19686, May 2, 1996, as amended at 66 FR 13412, Mar. 6, 2001; 66 FR 15192, Mar. 16, 2001; 66 FR 17794, Apr. 4, 2001]

PART 206—LIMITATIONS ON INTERBANK LIABILITIES (REGULATION F)

Sec.

206.1 Authority, purpose, and scope.
206.2 Definitions.
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AUTHORITY: 12 U.S.C. 371b–2

SOURCE: Reg. F, 57 FR 60106, Dec. 18, 1992, unless otherwise noted.

§ 206.1 Authority, purpose, and scope.

(a) *Authority and purpose.* This part (Regulation F, 12 CFR part 206) is issued by the Board of Governors of the Federal Reserve System (Board) under authority of section 23 of the Federal Reserve Act (12 U.S.C. 371b–2). The purpose of this part is to limit the risks that the failure of a depository institution would pose to insured depository institutions.

(b) *Scope.* This part applies to all depository institutions insured by the Federal Deposit Insurance Corporation.

[Reg. F, 57 FR 60106, Dec. 18, 1992, as amended by Reg. F, 68 FR 53283, Sept. 10, 2003]

§ 206.2 Definitions.

As used in this part, unless the context requires otherwise:

(a) *Bank* means an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), and includes an insured