

**FEDERAL RESERVE SYSTEM****12 CFR Part 205**

[Regulation E; Docket No. R-0830]

**Electronic Fund Transfers****AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Final rule.

**SUMMARY:** The Board is publishing a final rule to amend Regulation E, which implements the Electronic Fund Transfer Act. The amendments are a result of the Board's review of Regulation E under its Regulatory Planning and Review Program, which calls for the periodic review of all Board regulations. The final rule contains some substantive amendments, including changes to the existing exemptions for securities or commodities transfers. Primarily, the final amendments simplify the language and format of the regulation, and delete obsolete provisions. Commenters generally supported the Board's proposed amendments and offered suggestions for additional changes, some of which were adopted in the final rule. In conjunction with the amendments to the regulation, the Board also has made amendments to the staff commentary, published elsewhere in today's Federal Register.

**DATES:** *Effective date.* May 2, 1996.*Compliance date.* Mandatory compliance January 1, 1997.

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**SUPPLEMENTARY INFORMATION:****I. Background**

The Electronic Fund Transfer Act (EFTA) (15 U.S.C. 1693), enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The Federal Reserve Board was given rulewriting authority to issue implementing regulations. Types of transfers covered by the act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale terminal, automated clearinghouse, telephone bill-payment system, or home banking program. The act and Regulation E (12 CFR part 205) provide rules that govern

these and other EFTs. The rules prescribe restrictions on the unsolicited issuance of ATM cards and other access devices; disclosure of terms and conditions of an EFT service; documentation of EFTs by means of terminal receipts and periodic account statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized EFTs.

Board policy under its Regulatory Planning and Review (RPR) program calls for the periodic review of each Board regulation. The RPR program has four goals: to clarify and simplify regulatory language; to amend regulations to reflect technological and other developments; to reduce undue regulatory burden on the industry; and to delete obsolete provisions. In keeping with that policy, the Board conducted a detailed review of Regulation E to determine whether it can be simplified to ease compliance burdens for financial institutions, while meeting the Board's responsibility for implementing the consumer protections of the EFTA. The Board issued a proposed rule on March 7, 1994 (59 FR 10684).

Based on the comments received on the proposal and on its own further analysis, the Board has adopted a revised Regulation E. While certain substantive revisions have been made (see the section-by-section discussion below), the final rule leaves most of the regulatory provisions substantively unchanged. The regulation closely follows the statute, which contains detailed requirements in most areas; major changes to the regulation are not possible unless the act itself is amended. The Board solicited comment on whether specific legislative revisions to the EFTA are necessary and achievable without imposing a significant adverse impact on consumer protections. A number of commenters provided recommendations. The Board plans to convey these recommendations to the Congress, as appropriate, as part of a report that the Board will make pursuant to section 303 of the Community Development and Regulatory Improvement Act of 1994.

The final rule simplifies the language and format of each section of the regulation to state the requirements more clearly. All footnotes are either integrated into the text of the regulation or moved to the staff commentary, making the regulation itself less cumbersome to use. The final regulation is shorter than current Regulation E by about fifteen percent, a reduction largely attributable to the deletion of obsolete provisions and to the transfer of

explanatory material to the commentary. Commenters offered specific suggestions, as well as rationale, for changes to the regulation (beyond those proposed by the Board) that would facilitate compliance. A number of these suggestions have been incorporated in the final rule. Also, unless otherwise indicated below, the revisions that were proposed in March 1994 have been adopted in the final rule.

**II. Regulatory Revisions**

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

*Section 205.1—Authority and purpose*

This section has been simplified without substantive change. The discussion of congressional findings in former paragraph (b) and contained in § 902(a) of the act has been deleted as unnecessary. The paragraph relating to the coverage of the act and regulation has been moved to § 205.3.

*Section 205.2—Definitions**2(b) Account*

This paragraph incorporates in paragraph (b)(2) the exemption for trust accounts (former § 205.3(f)) to track more closely the statutory language contained in section 903(2) of the EFTA.

*2(d) Business day*

This paragraph defining business day is unchanged.

The act and regulation define business day as any day on which the offices of the consumer's financial institution are open to the public for carrying on substantially all business functions. This requires that each financial institution determine when its offices are "carrying on substantially all business functions." The Board proposed to use its authority under section 904(c) of the EFTA to change the definition to mirror the definitions used in Regulations CC (12 CFR part 229) and DD (12 CFR part 230). Those regulations define a business day as a calendar day other than a Saturday, Sunday, or any legal public holiday specified in 5 U.S.C. 6103(a).

Some commenters supported the proposed change; they believed that the change would simplify compliance by conforming the regulations governing deposit accounts. Among these commenters, however, several qualified their support. Some believed that a financial institution should not be

required to investigate and resolve errors on a day that the institution is not open for business. These commenters were concerned that they could have fewer days to investigate and resolve errors; they suggested using the definition of "banking day" in Regulation CC (the current definition of "business day" in Regulation E) to compute the time period for resolving disputes. Using multiple definitions—including the existing definition for certain purposes—would seem to further complicate the regulation. Other commenters opposed changing the definition, mentioning the burden and cost associated with changing disclosures without corresponding benefit. After further analysis, the Board has retained the current definition.

#### 2(f) Credit

The definition of credit, inadvertently deleted from the proposal, has been retained.

#### 2(i) Financial institution

The definition of financial institution (former § 205.2(i)) has been simplified by eliminating references to both state and federal institutions.

#### 2(j) Person

A definition of "person" has been added, incorporating language similar to that in Regulation B (Equal Credit Opportunity, 12 CFR 202.2(x)) and Regulation Z (Truth in Lending, 12 CFR 226.2(a)(22)). The term is used in several places in the regulation, including § 205.3(a), which defines the regulation's coverage, § 205.10(e) on compulsory use, and § 205.13(b) on record retention.

#### Section 205.3—Coverage

This section (formerly captioned Exemptions) incorporates the definition of an EFT (formerly in § 205.2) and consolidates in one place all the rules dealing with coverage to facilitate compliance. A proposal regarding Regulation E coverage of stored-value products and other emerging EFT payment systems is published separately in today's Federal Register.

#### 3(b) Electronic fund transfer

The definition of "electronic fund transfer", which is central to determining coverage under the regulation, has been moved to paragraph 3(b). The definitions of "preauthorized electronic fund transfer" and "unauthorized electronic fund transfer" remain in the definitions section.

#### 3(c)(3) Wire or other similar transfers

The exemption for wire transfers in former § 205.3(b) has been revised to clarify that it exempts transfers through Fedwire (or similar wire transfer systems, such as CHIPS or S.W.I.F.T.) and not all transfers through the Federal Reserve Communications System such as the automated clearinghouse. No substantive change in the scope of the exemption is intended.

Commenters generally favored the proposed revision. One commenter requested examples of transfers similar to those through the Federal Reserve Communications System that are exempt from Regulation E. The commentary addresses this issue. (See comment 205.3(c)(3)–3.)

#### 3(c)(4) Securities and commodities transfers

The exemption for certain securities and commodities transfers (formerly § 205.3(c)) is revised to more closely parallel the statute. As revised, transfers involving unregulated securities are exempt from the EFTA if the purchase or sale is transacted by a broker-dealer regulated by the Securities and Exchange Commission (SEC) or a futures commission merchant regulated by the Commodity Futures Trading Commission (CFTC). The Board believes that the regulation of broker-dealers and futures commission merchants offers sufficient protection of payment transfers for consumers and that the application of the protections in Regulation E would only duplicate available safeguards.

Paragraph (c)(4)(iii) extends the exemption to all securities or commodities held in book-entry form by Federal Reserve Banks on behalf of the Treasury Department and other federal agencies (for example, Treasury Direct issues). Previously a transfer to purchase Treasury securities was technically covered by Regulation E because the securities were not regulated by the SEC or the CFTC and, when purchased from the Federal Reserve Banks, were not purchased or sold by a registered broker-dealer. The Board believes there is adequate regulation of transfers that involve Federal Reserve Banks and federal agencies, offering sufficient consumer protection (see 31 CFR part 370, regulations governing payments by the automated clearing house method on account of United States securities).

#### 3(c)(6) Telephone initiated transfers

Former § 205.3(e) exempted any transfer of funds initiated by a telephone conversation between a

consumer and an officer or an employee of a financial institution if the transfer is not under a prearranged plan. To accommodate telephone transfers initiated by facsimile or through telephone response machines, this paragraph has been revised to replace "conversation" with the broader term "communications." Also the phrase "officer and employee" has been deleted as unnecessary.

#### 3(c)(7) Small institutions

The asset-size cutoff for the small institution exemption (formerly contained in § 205.3(g)) has been increased from \$25 million to \$100 million. Section 904(c) of the EFT gives the Board authority to modify the requirements imposed by the regulation on small financial institutions if the Board determines that such modifications are necessary to alleviate any undue compliance burden on small institutions and that such modifications are consistent with the purposes and objective of the act. In 1982, the Board exempted preauthorized transfers to or from accounts at financial institutions with assets of less than \$25 million to reduce compliance burdens for small institutions that did not offer any other EFT services.

The regulation exempts the preauthorized transfers as a class of EFTs, and not the financial institutions themselves. A small financial institution that provides EFT services besides preauthorized transfers must comply with the regulation for those *other* services. For example, a small financial institution that offers ATM services must comply with Regulation E in regard to the issuance of debit cards, terminal receipts, periodic statements, and other requirements. In addition, the institution must comply with provisions of the act that apply to the financial institution's conduct rather than to the exempted transfers. For example, the prohibition against compulsory use of EFTs in section 913 of the act, in regard to credit or employment, remains applicable.

When the Board adopted the \$25 million exemption in 1982, many small institutions that did not offer EFT services such as ATM access benefited from the exemption. Given the growth in assets of financial institutions in the past ten years, increasing the asset-size cutoff of the exemption to \$100 million could reduce burden without lessening the extent of consumer protection originally provided. Because many small institutions now offer a variety of EFT services, it appears that only a limited number of institutions would be

exempted from Regulation E under the increase.

The Board solicited comment on the proposed increase in the exemption level and on other ways the burden on small institutions could be reduced without sacrificing the consumer protections intended by the act. The majority of the commenters agreed that increasing the asset-size of the exemption would reduce burden and supported the proposal. Most commenters supporting the proposal are credit unions which do not offer EFTs other than preauthorized transfers such as payroll deductions. Other commenters opposed the proposal, stating that consumers should receive the same treatment from all institutions regardless of asset size.

Based on comments and further analysis, the Board has increased the asset-size cutoff to \$100 million. In light of current concerns about regulatory burden, the Board believes that increasing the asset-size cutoff will provide relief to small institutions offering limited EFT services, consistent with the principles under which the original exemption was granted.

Questions have been raised about the impact of Article 4A of the Uniform Commercial Code (UCC) on the small institution exemption. The revised commentary to Regulation E clarifies that Article 4A is not applicable to the preauthorized transfers that qualify for the small institution exemption. (See comment 3(c)(7)–1.) Article 4A applies primarily to large-dollar commercial wire transfers made, for example, via Fedwire, CHIPS, SWIFT, and Telex. Section 4A–108 excludes any transaction that is subject to the EFT from coverage under Article 4A. The question is whether the transfers initiated by small financial institutions that take advantage of the regulatory exemption (such as for direct deposits) may be subject to the requirements of Article 4A as a consequence. The Board regards these preauthorized transfers as remaining subject to certain requirements of the EFT, and therefore not covered by Article 4A.

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

and sections 915 and 916 in the appropriate paragraphs to replace footnote 1a.

#### *Section 205.4—General disclosure requirements; jointly offered services*

This section consolidates the general disclosure requirements currently dispersed throughout the regulation in this section. In addition to adding paragraph (a), the final rule contains various editorial changes including a reordering of the section; no substantive change is intended.

##### *4(a) Form of disclosures*

The format requirements for disclosures formerly found in §§ 205.7(a) and 205.9 are incorporated into this section. The Board interprets these requirements as generally applying to *all* disclosures and notices.

With the continuing emergence of EFT payment technologies, the Board has received inquiries about providing disclosures required under the EFTA and Regulation E to consumers in an electronic form, in lieu of paper documentation. The Board has addressed this issue in the proposed rulemaking on Regulation E published elsewhere in today's Federal Register.

##### *4(e) Services offered jointly*

This paragraph incorporates the substance of former paragraph 4(a). The Board has retained text concerning disclosures within an institution's knowledge, which had been omitted in the proposal as unnecessary. The Board did not intend to make a substantive change by omitting this language.

#### *Section 205.5—Issuance of access devices*

The final rule makes editorial changes to this section. The substance of footnote 1b, which provided guidance on issuance of an access device for a joint account, has been moved to the commentary.

The final rule deletes as obsolete former § 205.5(a)(3), which grandfathered renewals of pre-1979 access devices from the requirements of the section. The explanatory language from former § 202.5(b)(4)—providing examples of the methods a financial institution may use to verify a consumer's identity when validating an access device—has been moved to the commentary. (See comment 205.5(b)–4.)

The Board has moved the provisions relating to the Truth in Lending Act (TILA) from former § 205.5(c) to § 205.12, to simplify the regulation by placing all references to TILA in the same section.

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

Section 205.6 specifies the rules governing consumer liability for unauthorized use. To simplify the text and make it easier to understand, the Board has moved explanatory or illustrative material to the commentary. This includes examples of means of identification that an institution may provide to the consumer to whom an access device is issued; part of former § 205.6(b)(3), on the relationship between the various tiers of liability; and former § 205.6(b)(4), about extenuating circumstances that would permit delayed notification by consumers. The provisions in former § 205.6(d) concerning the relation to the TILA now appear in § 205.12.

##### *6(a) Conditions for liability*

The former regulation appeared to condition consumer liability for unauthorized EFTs in all cases on the issuance of an accepted access device (§ 205.6(a)). The former commentary, on the other hand, stated that if the consumer failed to report an unauthorized EFT within sixty days of transmittal of the periodic statement reflecting the transfer, the consumer could be subject to liability for subsequent transfers, even if the unauthorized transfer did not involve an access device.

Paragraph 6(a) is revised to clarify that a consumer can be held liable for unauthorized EFTs that do not involve an access device, but only those that occur sixty days after transmittal of the periodic statement reflecting an unauthorized transfer. Some commenters believed that a sixty-day period was unreasonable and suggested an alternative time period ranging from thirty to forty-five days; such a revision, however, would require a statutory change.

Section 205.6(a)(3) requires that only three of the disclosures from § 205.7 to be provided before a consumer can be held liable for unauthorized transfers. The Board proposed to require that a financial institution provide all of the disclosures required by § 205.7 in order to impose liability, given that institutions must initially provide *all* of the disclosures to comply with § 205.7(b).

Commenters were split on whether this change would increase the risk of liability for institutions. Some agreed with the Board that the proposed requirement would not increase compliance burden. Others believed that the requirement could have adverse consequences due to inadvertent

disclosure errors unrelated to consumers' liability. Upon further analysis, the Board has retained the current rule.

*6(b) Limitations on amount of liability*

Paragraph (b) incorporates the substance of former paragraphs (b) (limitations on amount of liability) and (c) (notice to financial institution). The final rule more clearly sets forth each of the three tiers of a consumer's liability (\$50, \$500, or unlimited).

*Section 205.7—Initial disclosures*

The final rule includes format and editorial changes to this section to provide greater clarity. No substantive changes are intended. The format requirements in former paragraph (a) have been moved to § 205.4(a).

The provision in former § 205.7(a)(1), giving financial institutions the option of informing the consumer about the advisability of promptly reporting lost or stolen access devices, has been moved to comment 7(b)(1)–3 of the commentary.

The Board has moved the error resolution notice from former § 205.7(a)(10) to appendix A (Model Form A–3), to streamline the regulation and place all model disclosures together. The final rule deletes as obsolete former § 205.7(b) regarding disclosures for accounts that predate the statute.

*7(a)(3) Business days*

Because the Board did not adopt the proposed definition of business day, as discussed under § 205.2(d), the disclosure requirement has been retained.

*Section 205.8—Change in terms notice; error resolution notice*

The Board has restructured § 205.8 and added subheadings to make it easier to follow.

*8(a)(1) Prior notice required*

Section 905(b) of the EFTA requires a financial institution to notify a consumer in writing at least 21 days before the effective date of an adverse change in certain terms or conditions contained in the initial disclosures. The Truth in Savings Act (TISA) (12 U.S.C. 4301) also requires institutions to provide a change-in-terms notice for deposit accounts. Section 266(c) of TISA requires a notice 30 days before the effective date of any adverse change in terms or conditions. The official staff commentary of Regulation DD (Truth in Savings) provides that if a changed term also triggers a change in terms notice under Regulation E, the institution may

use the timing rules of Regulation E for sending the notice to affected consumers (see 59 FR 5543, February 7, 1994).

The Board proposed to use its exception authority under the EFTA to extend the timing of the change-in-terms notice in Regulation E from 21 to 30 days to parallel Regulation DD and facilitate compliance with both regulations. The Board solicited comment on whether it is preferable to retain the flexibility offered by the two different timing requirements. Most commenters opposed extending the timing requirement to 30 days because the extension would in many cases double the period of notice before a change in terms could be implemented without a special mailing. The Board believes the proposed change might unnecessarily increase regulatory burden and, accordingly, has retained the 21-day notice requirement.

*8(a)(2) Prior notice exception*

Prior notice is not required when an immediate change in terms is needed to maintain or restore the security of an EFT system or account. If a change is made permanent, however, a financial institution must notify the consumer "on or with the next regularly scheduled periodic statement or within 30 days" of the change if disclosure would not raise security concerns. In certain circumstances, periodic statements are sent on a quarterly basis, and thus the consumer might not receive notification of a change for up to ninety days after the change occurs.

The Board proposed to require written notice within 45 days of the change. Most commenters opposed the proposal. The majority believe the revision would result in increased costs and regulatory burden. Where financial institutions send quarterly periodic statements, or where no EFT has been made during a statement cycle, notice of the change in terms would have to be provided in a separate mailing. Some commenters asked the Board to clarify whether the notice is triggered by the date of the initial change or the date the change becomes permanent; it is the latter.

Based on the comments and upon further analysis, the Board has retained the current rule. The notice provided to consumers reflects a change in terms that has already been made. Since many institutions send statements monthly, in many cases consumers will obtain notice in or around 45 days after the change. In all instances, notice will be provided within 90 days. Given the likelihood that a section 8(a)(2) change is rare, and that most notices will be provided within 45 days (and all no

later than 90 days), the minimal consumer benefit associated with the change is outweighed by the potential compliance cost to financial institutions.

*8(b) Error resolution notice*

To streamline the regulation and place all model disclosure forms in one location, the abbreviated error resolution notice in former § 205.8(b)—which an institution may give with each periodic statement in place of the longer annual notice—has been moved to appendix A (Model Form A–3). Language has been added to clarify that financial institutions may use a form substantially similar to the model form.

*Section 205.9—Receipts at electronic terminals; periodic statements*

This section contains a number of editorial revisions and several substantive changes. New paragraphs and headings have been added to better organize the text concerning the content of disclosures.

Disclosure format requirements, and former paragraph (e) concerning use of abbreviations, have been moved to § 205.4. Former footnote 2, which permits a financial institution to make receipts available through a third party, has been moved to the commentary. Two obsolete paragraphs, (f) and (g), which dealt with receipts from terminals purchased prior to 1980 and delayed effective dates for certain periodic statements have been deleted.

*9(a)(1)—Amount*

The former regulation allowed financial institutions *other* than the account-holding institution to include a charge for the transfer in the total amount of the transfer, provided the amount of the charge is disclosed on the receipt and on a sign posted on or at the terminal. The final rule permits all financial institutions (including the account-holding institution) to include the charge in the total amount of the transfer, if the appropriate disclosures are made; and permits institutions to display the fee on or at the terminal—meaning either on a sign posted at the terminal or on the terminal screen itself.

Some commenters requested clarification as to whether disclosure of a transaction fee on the receipt or at the terminal would substitute for disclosure of the fee under § 205.7(a)(5), initial disclosures. Institutions holding a consumer's account must continue to disclose transaction fees under § 205.7(a)(5), as well as on the receipt and at the terminal.

The Board solicited comment on whether consumers would need

protections if the fee is displayed on the screen, for example, allowing the consumer to cancel the transaction after the fee is disclosed. Commenters generally believed that displaying the fee on a screen provided adequate notice, as long as consumers are provided with the option to cancel the transaction after receiving notice. This interpretation is reflected in comment 9(a)(1)-1 of the staff commentary.

#### *9(a)(3)—Type*

The examples included in former paragraph (a)(3) have been moved to the commentary.

#### *9(a)(4)—Identification*

In a previous rulemaking, the Board deleted the requirement that a financial institution “uniquely” identify the consumer. See 55 FR 15032 (March 22, 1995). The final rule, effective April 24, 1995, no longer requires that terminal receipts uniquely identify the consumer, the consumer’s account, or the consumer’s card. The change allows institutions to truncate the number on the receipt and helps protect consumers and financial institutions against fraudulent withdrawals.

#### *9(a)(5)—Terminal location*

This paragraph incorporates the substance of former § 205.9(b)(1)(iv), the rules regarding terminal identification on receipts; former footnote 5 and much of the explanatory material on describing locations has been moved to the commentary.

The Board had proposed to delete the exception in footnote 5 allowing institutions (1) to omit the name of the city and state if all of the terminals owned or operated by the financial institution providing the statement are located in the same city, or if the system in which the financial institution’s terminal participates is located in the same city and (2) to omit the state if all of the terminals are located in the same state. Since most institutions that offer ATM access belong to networks operating on an interstate basis, the Board believed that few, if any, financial institutions would be able to take advantage of the exception provided by the footnote. The Board solicited comment on whether the exception is still used by institutions. Many commenters stated that credit unions and “closed systems” frequently used at universities continue to benefit from this exception because such institutions do not belong to interstate networks. Thus, the Board has retained the exception but moved it to the commentary. (See comment 205.9(a)(5)(iv)-1.)

The rules regarding terminal identification on the receipt have been slightly modified. Former § 205.9(b)(1)(iv)(C) allowed financial institutions to identify the terminal location by using the name of the entity at whose place of business the terminal is located or the entity that owns or operates the terminal (such as the financial institution). Footnote 7 required, however, that if the financial institution owns or operates terminals at more than one location, the terminal location must be identified on the periodic statement in accordance with former 9(b)(1)(iv) (A) or (B) and had to provide either a street address or a generally accepted name for the location. If an institution owned only one terminal (and did not belong to a network), however, it could identify the terminal using its own name under paragraph 9(b)(1)(iv)(C). The final rule omits the footnote, removing the limitation so that the receipt and the periodic statement may provide the terminal location by giving the name of the institution if it is other than the account-holding institution. The Board believes this change makes the provision available to more institutions, since very few institutions own and operate only one terminal and do not belong to a network. Commenters generally believed this change would not adversely reduce consumer information.

#### *9(a)(6) Third party transfer*

Paragraph (a)(6), which requires disclosure of the name of any third party to or from whom funds are transferred, has been revised; guidance on the use of codes as identification or the exception to the requirement when the name of the payee cannot be duplicated by the terminal has been incorporated into the commentary. (See comment 205.9(a)(6)-1.)

#### *9(b) Periodic statements*

##### *9(b)(1)—Transaction information*

For each transfer initiated at an electronic terminal, paragraph (b)(1)(iv) requires financial institutions to disclose on the periodic statement the location of the terminal as it appeared on the receipt provided under § 205.9(a). Under the former rule, if a code or terminal number on the receipt was used to identify the location, both the code and a description of the location, as specified in § 205.9(b)(1)(iv) had to be disclosed on the periodic statement. The final rule does not require a restatement of the code in addition to the location description. Commenters generally supported this

revision, noting that the code was of little use and that rules of the National Association of Automated Clearing Houses already require codes to be retained by the institution which would allow consumers to get the code upon request. The substance of footnote 4a, which provided that a financial institution need not identify the terminal location for transactions that involve the deposit of cash, checks, drafts, or similar paper instruments at electronic terminals, has been incorporated into paragraph (b)(1)(iv).

Former footnote 4 permitted financial institutions to provide transaction information on documents that accompany the periodic statement; and permits the use of codes, if explained on either the statement or the accompanying documents. Former footnote 9 allowed an institution to omit the identification of third parties from periodic statements if their names appear on checks, drafts, or similar paper instruments deposited to the consumer’s account at an electronic terminal. The substance of former footnotes 4 and 9 has been moved to the commentary. (See comments 205.9(b)-6 and 205.9(b)(1)(v)-6.)

##### *9(b)(3)—Fees*

The reference in former § 205.9(b)(3) that a periodic statement required by Regulation E need not disclose any finance charge imposed under 12 CFR 226.7(f) has been moved to the commentary. (See comment 205.9(b)(3)-3.)

The Board solicited comment on whether regulatory compliance burden would be eased if the fee disclosure requirements in Regulations E and DD were identical. Many commenters preferred having the option of complying with Regulation E or Regulation DD. The Board has retained the existing fee disclosure requirements.

##### *9(c) Exceptions to the periodic statement requirements for certain accounts*

The final rule incorporates current paragraphs (c), (d), (h), and footnote 9a in § 205.9(c), pertaining to intra-institutional transfers and the circumstances in which a periodic statement for EFT transactions is not required (for example, for a passbook account that can be accessed electronically only by preauthorized transfers to the account) or is not required on a monthly cycle. Some editorial changes have been made in the final rule that differ slightly from the proposal but no substantive change is intended.

*9(d)—Documentation for foreign-initiated transfers*

Paragraph (d) incorporates the substance of former paragraph (i) without substantive change.

*Section 205.10—Preauthorized transfers*

Section 205.10 sets forth general requirements for preauthorized transfers. The Board has reformatted and made editorial changes to this section. Substantive changes are discussed below.

*10(a) Preauthorized transfers to consumer's account**10(a)(3)—Crediting*

This paragraph (formerly paragraph 10(a)(2)) provides that when a consumer's account will be credited by a preauthorized EFT from the same payor at least once every 60 days, an institution must credit the funds to the account as of the day the funds for the transfer are received. The Board believed that this provision was not necessary since other regulations address both when funds must be made available to the consumer and when interest must be paid on the deposit (see Regulation CC, 12 CFR part 229; Treasury regulations, 31 CFR part 210; and ACH association rules). The Board solicited comment on its proposed deletion of paragraph 10(a)(2).

Most commenters agreed that Regulation CC, NACHA rules governing automated clearing house transactions, and Treasury direct-deposit rules adequately covered this issue and supported the Board's proposal to delete the requirement. Several commenters requested that a reference to the other rules and regulations be added to the paragraph 10(a)(2). One commenter distinguished the requirements under paragraph 10(a)(2) from those under other rules and regulations, noting that paragraph 10(a)(2) addressed crediting and that the NACHA rules, for example, address the availability of funds for withdrawal. The commenter recommended retaining the current language.

Upon further analysis, the Board believes that the requirement under current paragraph 10(a)(2) is, in fact, different from those required by other regulations and has retained the current rule in paragraph 10(a)(3).

*10(b) Written authorization for preauthorized transfers from consumer's account*

Under the former rule, preauthorized EFTs from a consumer's account may be authorized by the consumer only in writing (typically a signed paper

document); a copy of the authorization must be given to the consumer. To address developments in electronic services such as home banking, the Board has more broadly interpreted a written authorization to include electronic authorizations which are "similarly authenticated" by the consumer. The Board believes this broader interpretation is consistent with the requirement in section 907 of the EFTA that the authorization be in writing.

This change would, for example, allow preauthorized transfers in an electronic payment system to be authenticated by a "digital signature" or a security code. The Board believes that these are options that may provide the same assurance as a signature in a paper-based system. To meet the requirement that an authorization be in writing, the electronic agreement would have to be displayed on a computer screen (or other visual display) that enables the consumer to read the communication. The person that obtains the authorization must provide an electronic or hard copy to the consumer. These interpretations are codified in the commentary.

*10(e) Compulsory use*

This paragraph incorporates section 913 of the EFTA, which places certain restrictions on compulsory use of EFTs as a condition of credit, employment, or receipt of government benefits. This paragraph also clarifies that the provision applies to persons such as employers, and not just to financial institutions. In the former regulation, the prohibition against compulsory use was referenced in footnote 1a.

*Section 205.11—Procedures for resolving errors*

The Board has reformatted this section and made editorial revisions to simplify the language and facilitate compliance. The one substantive change, discussed below, allows a financial institution three business days to provide notice after it has determined that an error has occurred.

The substance of three footnotes has been moved to the commentary: footnote 10, permitting an institution to prescribe procedures for giving an error notice; footnote 11, defining an agreement for purposes of § 205.14; and footnote 12, allowing institutions to use a periodic statement to inform consumers that no error has occurred.

The substance of former paragraphs (d)(1), (3); (e)(1); and (g) has been moved to the commentary. Paragraph (e) on reasserting errors replaces former paragraph (h). Former paragraph (i),

rules relating to the TILA, has been moved to § 205.12.

*11(c) Time limits and extent of investigation*

Paragraph 11(c) combines former paragraphs 11(c) and 11(d)(2) concerning investigation of errors. The regulation requires a financial institution to provide the consumer with a written explanation, within the prescribed time period (either 10 business days or 45 calendar days), if an error occurred. If an error did not occur and the financial institution is operating under the 45-day rule, the institution has three additional days to notify the consumer of its findings. Section 908 of the EFTA makes clear the extra time is available when no error occurred, but is silent on the availability of extra time when an error is found.

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

Commenters requested that the Board consider extending the time periods for investigations of errors on new accounts based on concerns about fraud and misrepresentation. The Board has published a proposed rule elsewhere in today's Federal Register that would change the timing for error resolution on new accounts.

*11(d) Procedures if financial institution determines no error or different error occurred*

This paragraph simplifies and replaces former paragraph 11(f).

*Section 205.12—Relation to other laws*

This section contains the various references to the Truth in Lending Act (TILA) and Regulation Z formerly dispersed throughout Regulation E. The section also includes the standards applied by the Board in granting a state law preemption or in making an exemption determination.

*12(a) Relation to Truth in Lending*

All references from §§ 205.5, 205.6, and 205.11 to compliance with both the TILA and the EFTA are consolidated in this paragraph to facilitate compliance.

*12(b) Preemption of inconsistent state laws*

Former § 205.12 (a) and (b) are incorporated in paragraph (b). Former § 205.12(c), which establishes procedures for preemption, has been deleted from the regulation. The procedures for requesting a preemption determination are available from the Board upon request.

*12(c) State exemptions*

Paragraph (c) (formerly (d)) contains the rules the Board applies in granting a state exemption.

*Section 205.13—Administrative enforcement; record retention*

Former § 205.13 contained information about administrative enforcement, issuance of staff interpretations, and record retention. Much of this information has been moved to the appendices, with the exception of the provision on record retention. Specifically, former paragraph (a) listed the federal agencies charged with administrative enforcement of the act and regulation; revised paragraph (a) merely cross-references Appendix B, which lists the federal enforcement agencies in greater detail. Former paragraph (b) dealt with issuance of staff interpretations; this material has been updated to describe the staff commentary process that replaced the old interpretation letters, and has been moved to new Appendix C. Former paragraph (c), record retention, has been redesignated paragraph (b).

*13(b) Record retention*

Only certain provisions of the act and regulation apply to persons other than financial institutions (for example, the compulsory use provisions of section 913, which apply to employers, creditors, and government agencies). The proposal would have limited the record retention requirements to financial institutions, rather than covering "any person subject to the act and regulation." The majority of the commenters addressing this issue opposed the proposed change, arguing that the same record retention requirement should apply to all persons subject to the regulation, and that the proposed change could adversely affect enforcement. The Board has retained the current rule; the record retention requirements continue to apply to all persons subject to the act and regulation.

*Section 205.14—Electronic fund transfer service provider not holding consumer's account*

Substantial editorial revisions have been made to this section to simplify the text.

*14(a) Electronic fund transfer service providers subject to regulation*

Revised paragraph (a) deals expressly with the entities subject to section 205.14, and identifies entities more clearly by setting forth the conditions for coverage under section 205.14 in separate subparagraphs.

*14(b) Compliance by electronic fund transfer service provider*

This paragraph contains much of the material that appeared in former paragraph (a), and sets forth the compliance responsibilities of a non-account-holding service provider. The material has been revised and reorganized for greater clarity, without substantive change.

*14(c) Compliance by account-holding institution*

This paragraph sets forth the compliance responsibilities of the account-holding institution, and is substantively unchanged from former paragraph (b). Former footnote 13, regarding delayed effective dates, has been deleted as obsolete. The substance of former paragraph (c), providing guidance on when there is an agreement between a service provider and an account-holding institution, has been moved to the commentary.

*Section 205.15—Electronic fund transfer of government benefits*

In March 1994, the Board issued a final rule relating to the coverage by the EFTA and Regulation E of government benefits that federal, state, and local governments disburse to recipients by means of electronic benefit transfer (EBT) programs, adding a new section 205.15 to Regulation E (59 FR 10678, March 7, 1994). This section is unchanged from the one originally issued.

*Appendix A—Model Disclosure Clauses and Forms*

The model forms contained in the former regulation have been consolidated in Appendix A. As noted earlier, the error resolution notices in former §§ 205.7(a)(10) and 205.8(b) have been moved from the regulation to Appendix A to streamline the regulation (see Model Form A-3).

*Appendix B—Administrative enforcement*

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

*Appendix C—Issuance of staff interpretations*

The final rule adds a new appendix C to replace former § 205.13(b) pertaining to staff interpretations of Regulation E. The Board will continue to rely on the publication of interpretations in the official staff commentary as the primary means of interpreting the regulation. In keeping with the practice that has been in place for years, the final rule deletes any reference to unofficial staff interpretations that are in writing, limiting written interpretations to those that appear in the staff commentary, as revised. The Board believes this to be the most efficient and useful way to facilitate compliance.

*III. Regulatory Flexibility Analysis*

The Board's Office of the Secretary has prepared an economic impact statement on the amendment to Regulation E. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452-3245.

*IV. Paperwork Reduction Act*

In accordance with section 3506 of the Paperwork Reduction Act of 1995 (44 U.S.C. Ch. 35; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget. No comments specifically addressing the burden estimate were received.

The collection of information requirements in this regulation are found in 12 CFR Part 205. This information is mandatory (15 U.S.C. 1693 *et seq.*) to ensure adequate disclosure of basic terms, costs, and rights relating to electronic fund transfer (EFT) services provided to consumers. The respondents/recordkeepers are for-profit financial institutions, including small businesses. Records must be retained for twenty-four months. Regulation E applies to all types of financial institutions, not just state member banks. However, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the Regulation E paperwork burden on their respective constituencies. Please contact the appropriate agency



for an estimate of this proposed regulation's affect on other institutions.

The revisions are expected to decrease the associated paperwork burden on state member banks. It is estimated that 25 percent of small state member banks have no covered activities other than preauthorized transfers. Thus the Federal Reserve estimates that raising the asset-size cutoff from \$25 million to \$100 million will decrease the number of covered state member banks from 1,000 to 873. The estimated burden per response ranges from fifteen seconds (for an ATM receipt) to 30 minutes (for notice of revised error resolution rules). The Federal Reserve estimates the average frequency of response to be 85,800 responses per respondent each year. Thus, the total amount of annual burden is estimated to be 474,804 hours, a decrease of 13 percent from 543,447 hours.

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

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board amends 12 CFR part 205 as set forth below:

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

1. The authority citation for part 205 continues to read as follows:

Authority: 15 U.S.C. 1693.

2. The table of contents for part 205 is revised to read as follows:

Sec.	
205.1	Authority and purpose.
205.2	Definitions.
205.3	Coverage.
205.4	General disclosure requirements; jointly offered services.
205.5	Issuance of access devices.
205.6	Liability of consumer for unauthorized transfers.
205.7	Initial disclosures.
205.8	Change in terms notice; error resolution notice.
205.9	Receipts at electronic terminals; periodic statements.
205.10	Preauthorized transfers.
205.11	Procedures for resolving errors.
205.12	Relation to other laws.
205.13	Administrative enforcement; record retention.
205.14	Electronic fund transfer service provider not holding consumer's account.
205.15	Electronic fund transfer of government benefits.
Appendix A to Part 205—	Model Disclosure Clauses and Forms
Appendix B to Part 205—	Federal Enforcement Agencies
Appendix C to Part 205—	Issuance of Staff Interpretations

#### Supplement 1 to Part 205—Official Staff Interpretations

3. Sections 205.1 through 205.15 are revised to read as follows:

##### § 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) *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.

(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) [Reserved]

(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.

#### § 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.

#### § 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 applicable time periods in this paragraph (c)(3) are 20 business days in place of 10 business days, and 90 days in place of 45 days, if a notice of error involves an electronic fund transfer that:

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

(4) *Investigation*. With the exception of transfers covered by § 205.14, 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.

#### § 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. 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.

(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.

4. Appendices A and B are revised and Appendix C is added to read as follows:

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

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A-5—MODEL FORMS FOR GOVERNMENT AGENCIES (§ 205.15(d) (1) and (2))

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.

#### 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] or Write us at [insert address] as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

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

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

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

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

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

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

##### (b) Error resolution notice on periodic statements § 205.8(b)

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

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

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

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

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

#### A-4—MODEL FORM FOR SERVICE-PROVIDING INSTITUTIONS (§ 205.14(b)(1)(ii))

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

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

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

#### A-5—MODEL FORMS FOR GOVERNMENT AGENCIES (§ 205.15(d) (1) and (2))

##### (1) 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.]

##### (2) Disclosure of error resolution procedures for government agencies that do not provide periodic statements (§ 205.15 (d)(1)(iii) and (d)(2))

In Case of Errors or Questions About Your Electronic Transfers Telephone us at [telephone number] or Write us at [address] as soon as you can, if you think an error has occurred in your [EBT] [agency's name for program] account. We must hear from you no later than 60 days after you learn of the error. You will need to tell us:

- Your name and [case] [file] number.
- Why you believe there is an error, and the dollar amount involved.

- Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days. We will generally complete our investigation within 10 business days and correct any error promptly. In some cases, an investigation may take longer, but you will have the use of the funds in question after the 10 business days. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account during the investigation.

For errors involving transactions at point-of-sale terminals in food stores, the periods referred to above are 20 business days instead of 10 business days.

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

If you need more information about our error resolution procedures, call us at [telephone number] [the telephone number shown above].

#### 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.

By order of the Board of Governors of the Federal Reserve System, April 19, 1996.  
William W. Wiles,

*Secretary of the Board.*

[FR Doc. 96-10179 Filed 5-1-96; 8:45 am]

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**FEDERAL RESERVE SYSTEM**

**12 CFR Part 205**

[Regulation E; Docket No. R-0831]

**Electronic Fund Transfers**

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

**ACTION:** Official Staff Interpretation.

**SUMMARY:** The Board is publishing final revisions to its official staff commentary to Regulation E (which implements the Electronic Fund Transfer Act), as part of the Board’s review of the regulation. The commentary applies and interprets the requirements of Regulation E to facilitate compliance by financial institutions that offer electronic fund transfer services to consumers. The revisions change the question-and-answer format to a narrative one to make the commentary easier to use and to conform it with the format of the Board’s other staff commentaries. In conjunction with revisions to Regulation E adopted by the Board and published elsewhere in today’s Federal Register, the revised commentary also includes interpretative provisions previously contained in the regulation that were more explanatory in nature and additional interpretations on matters not previously addressed.

**DATES:** *Effective date.* May 2, 1996.

*Compliance date.* Mandatory compliance January 1, 1997.

**FOR FURTHER INFORMATION CONTACT:** Jane Jensen Gell, Kyung Cho-Miller, Michael Hentrel, or Natalie E. Taylor, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452-2412 or (202) 452-3667. For the hearing impaired *only*, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452-3544.

**SUPPLEMENTARY INFORMATION:**

I. Background

The Electronic Fund Transfer Act (EFTA) (15 U.S.C. 1693), enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The EFTA is implemented by the Board’s Regulation E (12 CFR part 205). The Board has revised Regulation E under its Regulatory Planning and Review Program, which calls for the periodic review of all Board regulations. In 1981, the Board published an official staff commentary to Regulation E. The commentary substitutes for individual staff interpretations and is designed to

facilitate compliance and provide protection from civil liability, under section 915(d)(1) of the act, for financial institutions that act in conformity with it.

The question-and-answer format of the former commentary was designed to make compliance easier by providing specific answers, in nontechnical language, to frequently asked questions. However, that format usually relied on specific factual situations and often restricted the scope of an interpretation. The Board has adopted a narrative format, similar to other commentaries issued by the Board, to provide more general applicability.

The order of comments in the final commentary corresponds with the new sections in the revised regulation. Throughout the commentary, reference to “this section” or “this paragraph” means the section or paragraph in the regulation that is the subject of the comment. Each comment in the commentary is identified by a number and the regulatory section or paragraph that it interprets. The commentary incorporates text that was moved from the regulation because it is more explanatory than regulatory in nature. A number of comments have been deleted as obsolete.

II. Section-by-Section Analysis

The section-by-section descriptions highlight certain provisions that differ from the former commentary and certain portions of the former regulation that have been moved to the commentary. Comments in the former commentary are referred to as “questions” and are cited by the section number and the number of the question. For example, Q2-11 is the citation for question number 11 in the commentary to § 205.2. As the substance of many questions does not change in the new format, those comments are not specifically discussed. A summary at the beginning of the section-by-section analysis matches the old question to the new commentary provisions. The summary also lists questions that have been deleted from the commentary, comments that are new, and comments that have been moved to other sections.

*Section 205.2—Definitions*

New	Old
(a)-1 .....	Q2-1
(b)(1)-1 .....	Q2-2, Q2-3, Q2-4, Q2-5, Q2-5.5
(b)(2)-1 .....	Q3-21
(b)(2)-2 .....	Q3-20
(d)-1 .....	Q2-8
(d)-2 .....	Q2-6
(d)-3 .....	Q2-9