control of such State or district attorney, operates the pretrial diversion program described in subparagraph (A); and

(C) in the course of performing duties delegated to it by a State or district attorney under the contract, the private entity referred to in subparagraph (B)—

(i) complies with the penal laws of the State;

(ii) conforms with the terms of the contract and directives of the State or district attorney;

(iii) does not exercise independent prosecutorial discretion;

(iv) contacts any alleged offender referred to in subparagraph (A) for purposes of participating in a program referred to in such paragraph—

(I) only as a result of any determination by the State or district attorney that probable cause of a bad check violation under State penal law exists, and that contact with the alleged offender for purposes of participation in the program is appropriate; and

(II) the alleged offender has failed to pay the bad check after demand for payment, pursuant to State law, is made for payment of the check amount;

(v) includes as part of an initial written communication with an alleged offender a clear and conspicuous statement that—

(I) the alleged offender may dispute the validity of any alleged bad check violation;

(II) where the alleged offender knows, or has reasonable cause to believe, that the alleged bad check violation is the result of theft or forgery of the check, identity theft, or other fraud that is not the result of the conduct of the alleged offender, the alleged offender may file a crime report with the appropriate law enforcement agency; and

(III) if the alleged offender notifies the private entity or the district attorney in writing, not later than 30 days after being contacted for the first time pursuant to clause (iv), that there is a dispute pursuant to this subsection, before further restitution efforts are pursued, the district attorney or an employee of the district attorney authorized to make such a determination makes a determination that there is probable cause to believe that a crime has been committed; and

(vi) charges only fees in connection with services under the contract that have been authorized by the contract with the State or district attorney.

(b) Certain checks excluded

A check is described in this subsection if the check involves, or is subsequently found to involve—

(1) a postdated check presented in connection with a payday loan, or other similar transaction, where the payee of the check knew that the issuer had insufficient funds at the time the check was made, drawn, or delivered;

(2) a stop payment order where the issuer acted in good faith and with reasonable cause in stopping payment on the check;

(3) a check dishonored because of an adjustment to the issuer’s account by the financial institution holding such account without providing notice to the person at the time the check was made, drawn, or delivered;

(4) a check for partial payment of a debt where the payee had previously accepted partial payment for such debt;

(5) a check issued by a person who was not competent, or was not of legal age, to enter into a legal contractual obligation at the time the check was made, drawn, or delivered; or

(6) a check issued to pay an obligation arising from a transaction that was illegal in the jurisdiction of the State or district attorney at the time the check was made, drawn, or delivered.

(c) Definitions

For purposes of this section, the following definitions shall apply:

(1) State or district attorney

The term “State or district attorney” means the chief elected or appointed prosecuting attorney in a district, county (as defined in section 2 of title 1), municipality, or comparable jurisdiction, including State attorneys general who act as chief elected or appointed prosecuting attorneys in a district, county (as defined), municipality or comparable jurisdiction, who may be referred to by a variety of titles such as district attorneys, prosecuting attorneys, commonwealth’s attorneys, solicitors, county attorneys, and state’s attorneys, and who are responsible for the prosecution of State crimes and violations of jurisdiction-specific local ordinances.

(2) Check

The term “check” has the same meaning as in section 5002(6) of title 12.

(3) Bad check violation

The term “bad check violation” means a violation of the applicable State criminal law relating to the writing of dishonored checks.

§ 1693. Congressional findings and declaration of purpose

(a) Rights and liabilities undefined

The Congress finds that the use of electronic systems to transfer funds provides the potential for substantial benefits to consumers. However, due to the unique characteristics of such systems, the application of existing consumer protection legislation is unclear, leaving the rights and liabilities of consumers, financial institutions, and intermediaries in electronic fund transfers undefined.
(b) Purposes

It is the purpose of this subchapter to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems. The primary objective of this subchapter, however, is the provision of individual consumer rights.


AMENDMENTS


EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE


(Pub. L. 111–203, § 1073(a)(3), which directed renumbering of section 922 of Pub. L. 90–321 as section 923 effective 1 day after July 21, 2010, was executed after the renumbering of section 921 of Pub. L. 90–321 as section 922 by Pub. L. 111–24, § 401(1), effective 15 months after May 22, 2009, to reflect the probable intent of Congress.)

SHORT TITLE

This subchapter known as the “Electronic Fund Transfer Act”, see Short Title note set out under section 1601 of this title.

§ 1693a. Definitions

As used in this subchapter—

(1) the term “accepted card or other means of access” means a card, code, or other means of access to a consumer's account for the purpose of initiating electronic fund transfers when the person to whom such card or other means of access was issued has requested and received or has signed or has used, or authorized another to use, such card or other means of access for the purpose of transferring money between accounts or obtaining money, property, labor, or services;

(2) the term “account” means a demand deposit, savings deposit, or other asset account (other than an occasional or incidental credit balance in an open end credit plan as defined in section 1602(i) of this title), as described in regulations of the Board, established primarily for personal, family, or household purposes, but such term does not include an account held by a financial institution pursuant to a prearranged plan and under which periodic or recurring transfers are not contemplated; as determined under regulations of the Board;

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

(8) the term “financial institution” means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer;

(9) the term “preauthorized electronic fund transfer” means an electronic fund transfer authorized in advance to recur at substantially regular intervals;

(10) the term “State” means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of

1 So in original. The colon probably should be a semicolon.
Puerto Rico, or any political subdivision of any of the foregoing; and

(11) the term “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 such transfer and from which the consumer receives no benefit, but the term does not include any electronic fund transfer (A) initiated by a person other than the consumer who was furnished with the card, code, or other means of access to such consumer’s account by such consumer, unless the consumer has notified the financial institution involved that transfers by such other person are no longer authorized, (B) initiated with fraudulent intent by the consumer or any person acting in concert with the consumer, or (C) which constitutes an error committed by a financial institution.


§ 1693b. Regulations

(a) Prescription by Board

The Board shall prescribe regulations to carry out the purposes of this subchapter. In prescribing such regulations, the Board shall:

(1) consult with the other agencies referred to in section 1693o–1 of this title and take into account, and allow for, the continuing evolution of electronic banking services and the technology utilized in such services,

(2) prepare an analysis of economic impact which considers the costs and benefits to financial institutions, consumers, and other users of electronic fund transfers, including the extent to which additional documentation, reports, records, or other paper work would be required, and the effects upon competition in the provision of electronic banking services among large and small financial institutions and the availability of such services to different classes of consumers, particularly low income consumers,

(3) to the extent practicable, the Board shall demonstrate that the consumer protections of the proposed regulations outweigh the compliance costs imposed upon consumers and financial institutions, and

(4) any proposed regulations and accompanying analyses shall be sent promptly to Congress by the Board.

(b) Issuance of model clauses

The Board shall issue model clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of section 1699c of this title and to aid consumers in understanding the rights and responsibilities of participants in electronic fund transfers by utilizing readily understandable language. Such model clauses shall be adopted after notice duly given in the Federal Register and opportunity for public comment in accordance with section 553 of title 5. With respect to the disclosures required by section 1699c(a)(3) and (4) of this title, the Board shall take account of variations in the services and charges under different electronic fund transfer systems and, as appropriate, shall issue alternative model clauses for disclosure of these differing account terms.

(c) Criteria; modification of requirements

Regulations prescribed hereunder may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of electronic fund transfers or remittance transfers, as in the judgment of the Board are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. The Board shall by regulation modify the requirements imposed by this subchapter on small financial institutions if the Board determines that such modifications are necessary to alleviate any undue compliance burden on small financial institutions and such modifications are consistent with the purpose and objective of this subchapter.

(d) Applicability to service providers other than certain financial institutions

(1) In general

If electronic fund transfer services are made available to consumers by a person other than a financial institution holding a consumer’s account, the Board shall by regulation assure that the disclosures, protections, responsibilities, and remedies created by this subchapter are made applicable to such persons and services.

(2) State and local government electronic benefit transfer systems

(A) “Electronic benefit transfer system” defined

In this paragraph, the term “electronic benefit transfer system” means a system under which a government agency distributes needs-tested benefits by establishing accounts that may be accessed by recipients electronically, such as through automated teller machines or point-of-sale terminals; and

1 See References in Text note below.
(ii) does not include employment-related payments, including salaries and pension, retirement, or unemployment benefits established by a Federal, State, or local government agency.

(B) Exemption generally

The disclosures, protections, responsibilities, and remedies established under this subchapter, and any regulation prescribed or order issued by the Board in accordance with this subchapter, shall not apply to any electronic benefit transfer system established under State or local law or administered by a State or local government.

(C) Exception for direct deposit into recipient's account

Subparagraph (B) shall not apply with respect to any electronic funds transfer under an electronic benefit transfer system established by a State or local government agency.

(D) Rule of construction

No provision of this paragraph—
(i) affects or alters the protections otherwise applicable with respect to benefits established by any other provision of Federal, State, or local law; or
(ii) otherwise supersedes the application of any State or local law.

(3) Fee disclosures at automated teller machines

(A) In general

The regulations prescribed under paragraph (1) shall require any automated teller machine operator who imposes a fee on any consumer for providing host transfer services to such consumer to provide notice in accordance with subparagraph (B) to the consumer (at the time the service is provided) of—
(i) the fact that a fee is imposed by such operator for providing the service; and
(ii) the amount of any such fee.

(B) Notice requirements

(i) On the machine

The notice required under clause (i) of subparagraph (A) with respect to any fee described in such subparagraph shall be posted in a prominent and conspicuous location on or at the automated teller machine at which the electronic fund transfer is initiated by the consumer.

(ii) On the screen

The notice required under clauses (i) and (ii) of subparagraph (A) with respect to any fee described in such subparagraph shall appear on the screen of the automated teller machine, or on a paper notice issued from such machine, after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction, except that during the period beginning on November 12, 1999, and ending on December 31, 2004, this clause shall not apply to any automated teller machine that lacks the technical capability to disclose the notice on the screen or to issue a paper notice after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

(C) Prohibition on fees not properly disclosed and explicitly assumed by consumer

No fee may be imposed by any automated teller machine operator in connection with any electronic fund transfer initiated by a consumer for which a notice is required under subparagraph (A), unless—
(i) the consumer receives such notice in accordance with subparagraph (B); and
(ii) the consumer elects to continue in the manner necessary to effect the transaction after receiving such notice.

(D) Definitions

For purposes of this paragraph, the following definitions shall apply:

(i) Automated teller machine operator

The term “automated teller machine operator” means any person who—
(I) operates an automated teller machine at which consumers initiate electronic fund transfers; and
(II) is not the financial institution that holds the account of such consumer from which the transfer is made.

(ii) Electronic fund transfer

The term “electronic fund transfer” includes a transaction that involves a balance inquiry initiated by a consumer in the same manner as an electronic fund transfer, whether or not the consumer initiates a transfer of funds in the course of the transaction.

(iii) Host transfer services

The term “host transfer services” means any electronic fund transfer made by an automated teller machine operator in connection with a transaction initiated by a consumer at an automated teller machine operated by such operator.


AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§1084(1), (3), 1100H, July 21, 2010, 124 Stat. 2081, 2113, provided that, effective on the designated transfer date, this section is amended as follows:

(1) by striking “Board” each place that term appears and inserting “Bureau”, except in subsections (a) and (e);

(2) in subsection (a), by striking “(a) Prescription by Board.—The Board shall prescribe regulations to carry out the purposes of this subchapter.” and inserting the following:

So in original. Probably should be followed by “of”.
Fit Transfer Programs

(a) Prescription by the Bureau and the Board

(1) In general

"Except as provided in paragraph (2), the Bureau shall prescribe rules to carry out the purposes of this subchapter.

(2) Authority of the Board

"The Board shall have sole authority to prescribe rules—

(A) to carry out the purposes of this subchapter with respect to a person described in section 5519(a)(1) of title 12; and

(B) to carry out the purposes of section 1693o–2 of this title.

and

(3) by adding at the end the following new subsection:

(e) Deference

"No provision of this subchapter may be construed as altering, limiting, or otherwise affecting the deference that a court affords—

(1) the Bureau in making determinations regarding the meaning or interpretation of any provision of this subchapter for which the Bureau has authority to prescribe regulations; or

(2) the Board in making determinations regarding the meaning or interpretation of section 1693c–2 of this title."

See Effective Date of 2010 Amendment note below.

References in Text

Section 1693o of this title, referred to in subsec. (a)(1), was in the original "section 917", and was translated as meaning section 918 of Pub. L. 90–321 to reflect the probable intent of Congress and the renumbering of section 917 of Pub. L. 90–321 as section 918 by Pub. L. 111–203, title IV, § 401, May 22, 2009, 123 Stat. 1751.

Amendments

2010—Subsec. (c). Pub. L. 111–203, § 1073(a)(2), inserted "or remittance transfers" after "electronic fund transfers".


1996—Subsec. (d). Pub. L. 104–193, § 907, which directed the amendment of subsec. (d), was not executed because of similar amendment by Pub. L. 104–193, § 891. See below. Section 907 of Pub. L. 104–193 provided that subsec. (d) was to be amended by inserting subsec. (d) heading, by designating existing provisions as par. (1) and inserting heading, and by adding a new par. (2) reading as follows:

"(2) STATE AND LOCAL GOVERNMENT ELECTRONIC BENEFIT TRANSFER PROGRAMS.—

(A) EXEMPTION GENERALLY.—The disclosures, protections, responsibilities, and remedies established under this subchapter, and any regulation prescribed or order issued by the Board in accordance with this subchapter, shall not apply to any electronic benefit transfer program established under State or local law or administered by a State or local government.

(B) EXCEPTION FOR DIRECT DEPOSIT INTO RECIPIENT'S ACCOUNT.—Subparagraph (A) shall not apply with respect to any electronic funds transfer under an electronic benefit transfer program for deposits directly into a consumer account held by the recipient of the benefit.

(C) RULE OF CONSTRUCTION.—No provision of this paragraph may be construed as—

(i) affecting or altering the protections otherwise applicable with respect to benefits established by Federal, State, or local law; or

(ii) otherwise superseding the application of any State or local law.

(D) ELECTRONIC BENEFIT TRANSFER PROGRAM DEFINED.—For purposes of this paragraph, the term "electronic benefit transfer program"—

"(1) means a program under which a government agency distributes needs-tested benefits by establishing accounts to be accessed by recipients electronically, such as through automated teller machines, or point-of-sale terminals; and

"(ii) does not include employment-related payments, including salaries and pension, retirement, or unemployment benefits established by Federal, State, or local governments."

Pub. L. 104–193, § 891, designated existing provisions as par. (1), inserted subsec. heading and par. (2), and substituted "it" for "this".

Effective Date of 2010 Amendment

Amendment by section 1073(a)(2) of Pub. L. 111–203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

Amendment by section 1084(1), (3) of Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§ 1693c. Terms and conditions of transfers

(a) Disclosures; time; form; contents

The terms and conditions of electronic fund transfers involving a consumer’s account shall be disclosed to the consumer at the time the consumer contracts for an electronic fund transfer service, in accordance with regulations of the Board. Such disclosures shall be in readily understandable language and shall include, to the extent applicable—

(1) the consumer’s liability for unauthorized electronic fund transfers and, at the financial institution’s option, notice of the advisability of prompt reporting of any loss, theft, or unauthorized use of a card, code, or other means of access;

(2) the telephone number and address of the person or office to be notified in the event the consumer believes that an unauthorized electronic fund transfer has been or may be effected;

(3) the type and nature of electronic fund transfers which the consumer may initiate, including any limitations on the frequency or dollar amount of such transfers, except that the details of such limitations need not be disclosed if their confidentiality is necessary to maintain the security of an electronic fund transfer system, as determined by the Board;

(4) any charges for electronic fund transfers or for the right to make such transfers;

(5) the consumer’s right to stop payment of a preauthorized electronic fund transfer and the procedure to initiate such a stop payment order;

(6) the consumer’s right to receive documentation of electronic fund transfers under section 1693d of this title;

(7) a summary, in a form prescribed by regulations of the Board, of the error resolution provisions of section 1693f of this title and the consumer’s rights thereunder. The financial institution shall thereafter transmit such summary at least once per calendar year;

(8) the financial institution’s liability to the consumer under section 1693h of this title;

1 So in original. Probably should be "that".
(9) under what circumstances the financial institution will in the ordinary course of business disclose information concerning the consumer’s account to third persons; and

(10) a notice to the consumer that a fee may be imposed by—

(A) an automated teller machine operator (as defined in section 1693b(d)(3)(D)(i) of this title) if the consumer initiates a transfer from an automated teller machine that is not operated by the person issuing the card or other means of access; and

(B) any national, regional, or local network utilized to effect the transaction.

(b) Notification of changes to consumer

A financial institution shall notify a consumer in writing at least twenty-one days prior to the effective date of any change in any term or condition of the consumer’s account required to be disclosed under subsection (a) of this section if such change would result in greater cost or liability for such consumer or decreased access to the consumer’s account. A financial institution may, however, implement a change in the terms or conditions of an account without prior notice when such change is immediately necessary to maintain or restore the security of an electronic fund transfer system or a consumer’s account. Subject to subsection (a)(3) of this section, the Board shall require subsequent notification if such a change is made permanent.

(c) Time for disclosures respecting accounts accessible prior to effective date of this subchapter

For any account of a consumer made accessible to electronic fund transfers prior to the effective date of this subchapter, the information required to be disclosed to the consumer under subsection (a) of this section shall be disclosed not later than the earlier of—

(1) the first periodic statement required by section 1693d(c) of this title after the effective date of this subchapter; or

(2) thirty days after the effective date of this subchapter.


AMENDMENT OF SECTION


§ 1693d. Documentation of transfers

(a) Availability of written documentation to consumer; contents

For each electronic fund transfer initiated by a consumer from an electronic terminal, the financial institution holding such consumer’s account shall, directly or indirectly, at the time the transfer is initiated, make available to the consumer written documentation of such transfer. The documentation shall clearly set forth to the extent applicable—

(1) the amount involved and date the transfer is initiated;

(2) the type of transfer;

(3) the identity of the consumer’s account with the financial institution from which or to which funds are transferred;

(4) the identity of any third party to whom or from whom funds are transferred; and

(5) the location or identification of the electronic terminal involved.

(b) Notice of credit to consumer

For a consumer’s account which is scheduled to be credited by a preauthorized electronic fund transfer from the same payor at least once in each successive sixty-day period, except where the payor provides positive notice of the transfer to the consumer, the financial institution shall elect to provide promptly either positive notice to the consumer when the credit is made as scheduled, or negative notice to the consumer when the credit is not made as scheduled, in accordance with regulations of the Board. The means of notice elected shall be disclosed to the consumer in accordance with section 1693c of this title.

(c) Periodic statement; contents

A financial institution shall provide each consumer with a periodic statement for each account of such consumer that may be accessed by means of an electronic fund transfer. Except as provided in subsections (d) and (e) of this section, such statement shall be provided at least monthly for each monthly or shorter cycle in which an electronic fund transfer affecting the account has occurred, or every three months, whichever is more frequent. The statement, which may include information regarding transactions other than electronic fund transfers, shall clearly set forth—

(1) with regard to each electronic fund transfer during the period, the information described in subsection (a) of this section, which may be provided on an accompanying document;

(2) the amount of any fee or charge assessed by the financial institution during the period for electronic fund transfers or for account maintenance;

(3) the balances in the consumer’s account at the beginning of the period and at the close of the period; and

(4) the address and telephone number to be used by the financial institution for the purpose of receiving any statement inquiry or notice of account error from the consumer. Such
address and telephone number shall be pre-
ceded by the caption “Direct Inquiries To:” or
other similar language indicating that the ad-
dress and number are to be used for such in-
quiries or notices.

(d) Consumer passbook accounts

In the case of a consumer’s passbook account
which may not be accessed by electronic fund
transfers other than preauthorized electronic
fund transfers crediting the account, a financial
institute may, in lieu of complying with the
requirements of subsection (c) of this section,
upon presentation of the passbook provide the
consumer in writing with the amount and date
of each such transfer involving the account
since the passbook was last presented.

(e) Accounts other than passbook accounts

In the case of a consumer’s account, other
than a passbook account, which may not be ac-
cessed by electronic fund transfers other than
preauthorized electronic fund transfers crediting
the account, the financial institute may pro-
vide a periodic statement on a quarterly basis
which otherwise complies with the requirements
of subsection (c) of this section.

(f) Documentation as evidence

In any action involving a consumer, any docu-
mentation required by this section to be given
to the consumer which indicates that an elec-
tronic fund transfer was made to another person
shall be admissible as evidence of such transfer
and shall constitute prima facie proof that such
transfer was made.

(Pub. L. 90–321, title IX, § 906, as added Pub. L.
amended Pub. L. 111–203, title X, § 1084(1), July
21, 2010, 124 Stat. 2081.)

AMENDMENT OF SECTION
21, 2010, 124 Stat. 2113, provided that, ef-
fective on the designated transfer date, this sec-
tion is amended by striking “Board” each place
that term appears and inserting “Bureau”. See
Effective Date of 2010 Amendment note below.

EFFECTIVE DATE OF 2010 AMENDMENT
Amendment by Pub. L. 111–203 effective on the
designated transfer date, see section 1100H of Pub. L.
111–203, set out as a note under section 552a of Title 5,
Government Organization and Employees.

§ 1693f. Error resolution

(a) Notification to financial institution of error

If a financial institution, within sixty days
after having transmitted to a consumer docu-
mentation pursuant to section 1693d(a), (c), or
(d) of this title or notification pursuant to sec-
tion 1693d(b) of this title, receives oral or writ-
ten notice in which the consumer—
(1) sets forth or otherwise enables the finan-
cial institution to identify the name and ac-
count number of the consumer;
(2) indicates the consumer’s belief that the
documentation, or, in the case of notification
pursuant to section 1693d(b) of this title, the
consumer’s account, contains an error and the
amount of such error; and
(3) sets forth the reasons for the consumer’s
belief (where applicable) that an error has oc-
curred,
the financial institution shall investigate the al-
leged error, determine whether an error has oc-
curred, and report or mail the results of such in-
vestigation and determination to the consumer
within ten business days. The financial institu-
tion may require written confirmation to be
provided to it within ten business days of an
oral notification of error if, when the oral notifi-
cation is made, the consumer is advised of such
requirement and the address to which such con-
firmation should be sent.

(b) Correction of error; interest

If the financial institution determines that an
error did occur, it shall promptly, but in no
event more than one business day after such de-
termination, correct the error, subject to sec-
tion 1693g of this title, including the crediting of
interest where applicable.
(c) Provisional recredit of consumer’s account

If a financial institution receives notice of an error in the manner and within the time period specified in subsection (a) of this section, it may, in lieu of the requirements of subsections (a) and (b) of this section, within ten business days after receiving such notice provisionally recredit the consumer’s account for the amount alleged to be in error, subject to section 1693g of this title, including interest where applicable, pending the conclusion of its investigation and its determination of whether an error has occurred. Such investigation shall be concluded not later than forty-five days after receipt of notice of the error. During the pendency of the investigation, the consumer shall have full use of the funds provisionally recredited.

(d) Absence of error; finding; explanation

If the financial institution determines after its investigation pursuant to subsection (a) or (c) of this section that an error did not occur, it shall deliver or mail to the consumer an explanation of its findings within 3 business days after the conclusion of its investigation, and upon request of the consumer promptly deliver or mail to the consumer reproductions of all documents which the financial institution relied on to conclude that such error did not occur. The financial institution shall include notice of the right to request reproductions with the explanation of its findings.

(e) Treble damages

If in any action under section 1693m of this title, the court finds that—

(1) the financial institution did not provisionally recredit a consumer’s account within the ten-day period specified in subsection (c) of this section, and the financial institution (A) did not make a good faith investigation of the alleged error, or (B) did not have a reasonable basis for believing that the consumer’s account was not in error; or

(2) the financial institution knowingly and willfully concluded that the consumer’s account was not in error when such conclusion could not reasonably have been drawn from the evidence available to the financial institution at the time of its investigation,

then the consumer shall be entitled to treble damages determined under section 1693m(a)(1)(1) of this title.

(f) Acts constituting error

For the purpose of this section, an error consists of—

(1) an unauthorized electronic fund transfer; or

(2) an incorrect electronic fund transfer from or to the consumer’s account;

(3) the omission from a periodic statement of an electronic fund transfer affecting the consumer’s account which should have been included;

(4) a computational error by the financial institution;

(5) the consumer’s receipt of an incorrect amount of money from an electronic terminal; or

(6) a consumer’s request for additional information or clarification concerning an electronic fund transfer or any documentation required by this subchapter; or

(7) any other error described in regulations of the Board.


AMENDMENT OF SECTION


REFERENCES IN TEXT

Section 1693m of this title, referred to in subsec. (e), was in the original a reference to section 915 of Pub. L. 90–321, and was translated as meaning section 916 of Pub. L. 90–321 to reflect the probable intent of Congress and the renumbering of section 915 of Pub. L. 90–321 as section 916 by Pub. L. 111–24, title IV, §401(1), May 22, 2009, 123 Stat. 1751.

AMENDMENT OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§ 1693g. Consumer liability

(a) Unauthorized electronic fund transfers; limit

A consumer shall be liable for any unauthorized electronic fund transfer involving the account of such consumer only if the card or other means of access utilized for such transfer was an accepted card or other means of access and if the issuer of such card, code, or other means of access has provided a means whereby the user of such card, code, or other means of access can be identified as the person authorized to use it, such as by signature, photograph, or fingerprint or by electronic or mechanical confirmation. In no event, however, shall a consumer’s liability for an unauthorized transfer exceed the lesser of—

(1) $50; or

(2) the amount of money or value of property or services obtained in such unauthorized electronic fund transfer prior to the time the financial institution is notified of, or otherwise becomes aware of, circumstances which lead to the reasonable belief that an unauthorized electronic fund transfer involving the consumer’s account has been or may be effected. Notice under this paragraph is sufficient when such steps have been taken as may be reasonably required in the ordinary course of business to provide the financial institution with the pertinent information, whether or not any particular officer, employee, or agent of the financial institution has in fact receive such information.

Notwithstanding the foregoing, reimbursement need not be made to the consumer for losses the financial institution established would not have occurred but for the failure of the consumer to

1 See References in Text note below.

So in original. Probably should be “means”.

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§ 1693h. Liability of financial institutions

(a) Action or failure to act proximately causing damages

Subject to subsections (b) and (c) of this section, a financial institution shall be liable to a consumer for all damages proximately caused by—

(1) the financial institution’s failure to make an electronic fund transfer, in accordance with the terms and conditions of an account, in the correct amount or in a timely manner when properly instructed to do so by the consumer, except where—

(A) the consumer’s account has insufficient funds;

(B) the funds are subject to legal process or other encumbrance restricting such transfer;

(C) such transfer would exceed an established credit limit;

(D) an electronic terminal has insufficient cash to complete the transaction; or

(E) as otherwise provided in regulations of the Board;

(2) the financial institution’s failure to make an electronic fund transfer due to insufficient funds when the financial institution failed to credit, in accordance with the terms and conditions of an account, a deposit of funds to the consumer’s account which would have provided sufficient funds to make the transfer, and

(3) the financial institution’s failure to stop payment of a preauthorized transfer from a consumer’s account when instructed to do so in accordance with the terms and conditions of the account.

(b) Acts of God and technical malfunctions

A financial institution shall not be liable under subsection (a)(1) or (2) of this section if the financial institution shows by a preponderance of the evidence that its action or failure to act resulted from—

(1) an act of God or other circumstance beyond its control, that it exercised reasonable care to prevent such an occurrence, and that it exercised such diligence as the circumstances required; or

(2) a technical malfunction which was known to the consumer at the time he attempted to initiate an electronic fund transfer or, in the case of a preauthorized transfer, at the time such transfer should have occurred.

(c) Intent

In the case of a failure described in subsection (a) of this section which was not intentional and which resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, the financial institution shall be liable for actual damages proved.

(d) Exception for damaged notices

If the notice required to be posted pursuant to section 1693b(d)(3)(B)(i) of this title by an automated teller machine operator has been posted by such operator in compliance with such sec-

1 So in original. Probably should be “financial”.
tion and the notice is subsequently removed, damaged, or altered by any person other than the operator of the automated teller machine, the operator shall have no liability under this section for failure to comply with section 1089b(d)(5)(B)(i) of this title.


AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§1084(1), 1100H, July 21, 2010, 124 Stat. 2081, 2113, provided that, effective on the designated transfer date, this section is amended by striking ''Board'' each place that term appears and inserting ``Bureau''. See Effective Date of 2010 Amendment note below.

AMENDMENTS


EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§1693i. Issuance of cards or other means of access

(a) Prohibition; proper issuance

No person may issue to a consumer any card, code, or other means of access to such consumer's account for the purpose of initiating an electronic fund transfer other than—

(1) in response to a request or application therefor; or

(2) as a renewal of, or in substitution for, an accepted card, code, or other means of access, whether issued by the initial issuer or a successor.

(b) Exceptions

Notwithstanding the provisions of subsection (a) of this section, a person may distribute to a consumer on an unsolicited basis a card, code, or other means of access for use in initiating an electronic fund transfer from such consumer's account, if—

(1) such card, code, or other means of access is not validated;

(2) such distribution is accompanied by a complete disclosure, in accordance with section 1693c of this title, of the consumer's rights and liabilities which will apply if such card, code, or other means of access is validated;

(3) such distribution is accompanied by a clear explanation, in accordance with regulations of the Board, that such card, code, or other means of access is not validated and how the consumer may dispose of such code, card, or other means of access if validation is not desired; and

(4) such card, code, or other means of access is validated only in response to a request or application from the consumer, upon verification of the consumer's identity.

(c) Validation

For the purpose of subsection (b) of this section, a card, code, or other means of access is validated when it may be used to initiate an electronic fund transfer.


AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§1084(1), 1100H, July 21, 2010, 124 Stat. 2081, 2113, provided that, effective on the designated transfer date, this section is amended by striking "Board" each place that term appears and inserting "Bureau". See Effective Date of 2010 Amendment note below.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§1693j. Suspension of obligations

If a system malfunction prevents the execution of an electronic fund transfer initiated by a consumer to another person, and such other person has agreed to accept payment by such means, the consumer's obligation to the other person shall be suspended until the malfunction is corrected and the electronic fund transfer may be completed, unless such other person has subsequently, by written request, demanded payment by means other than an electronic fund transfer.


§1693k. Compulsory use of electronic fund transfers

No person may—

(1) condition the extension of credit to a consumer on such consumer's repayment by means of preauthorized electronic fund transfers; or

(2) require a consumer to establish an account for receipt of electronic fund transfers with a particular financial institution as a condition of employment or receipt of a government benefit.


§1693l. Waiver of rights

No writing or other agreement between a consumer and any other person may contain any provision which constitutes a waiver of any right conferred or cause of action created by this subchapter. Nothing in this section prohibits, however, any writing or other agreement which grants to a consumer a more extensive right or remedy or greater protection than contained in this subchapter or a waiver given in settlement of a dispute or action.

§ 1693–1. General-use prepaid cards, gift certificates, and store gift cards

(a) Definitions

In this section, the following definitions shall apply:

(1) Dormancy fee; inactivity charge or fee

The terms “dormancy fee” and “inactivity charge or fee” mean a fee, charge, or penalty for non-use or inactivity of a gift certificate, store gift card, or general-use prepaid card.

(2) General use prepaid card, gift certificate, and store gift card

(A) General-use prepaid card

The term “general-use prepaid card” means a card or other payment code or device issued by any person that is—

(i) redeemable at multiple, unaffiliated merchants or service providers, or automated teller machines;

(ii) issued in a requested amount, whether or not that amount may, at the option of the issuer, be increased in value or reloaded if requested by the holder;

(iii) purchased or loaded on a prepaid basis; and

(iv) honored, upon presentation, by merchants for goods or services, or at automated teller machines.

(B) Gift certificate

The term “gift certificate” means an electronic promise that is—

(i) redeemable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo;

(ii) issued in a specified amount that may not be increased or reloaded;

(iii) purchased on a prepaid basis in exchange for payment; and

(iv) honored upon presentation by such single merchant or affiliated group of merchants for goods or services.

(C) Store gift card

The term “store gift card” means an electronic promise, plastic card, or other payment code or device that is—

(i) redeemable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo;

(ii) issued in a specified amount, whether or not that amount may be increased in value or reloaded at the request of the holder;

(iii) purchased on a prepaid basis in exchange for payment; and

(iv) honored upon presentation by such single merchant or affiliated group of merchants for goods or services.

(D) Exclusions

The terms “general-use prepaid card”, “gift certificate”, and “store gift card” do not include a loyalty, award, or promotional gift card, as defined by the Board.

(3) Service fee

(A) In general

The term “service fee” means a periodic fee, charge, or penalty for holding or use of a gift certificate, store gift card, or general-use prepaid card.

(B) Exclusion

With respect to a general-use prepaid card, the term “service fee” does not include a one-time initial issuance fee.

(b) Prohibition on imposition of fees or charges

(1) In general

Except as provided under paragraphs (2) through (4), it shall be unlawful for any person to impose a dormancy fee, an inactivity charge or fee, or a service fee with respect to a gift certificate, store gift card, or general-use prepaid card.

(2) Exceptions

A dormancy fee, inactivity charge or fee, or service fee may be charged with respect to a gift certificate, store gift card, or general-use prepaid card, if—

(A) there has been no activity with respect to the certificate or card in the 12-month period ending on the date on which the charge or fee is imposed;

(B) the disclosure requirements of paragraph (5) have been met;

(C) the service fee does not include a periodic fee, charge, or penalty for holding or use of a gift certificate, store gift card, or general-use prepaid card;

(D) any additional requirements that the Board may establish through rulemaking under subsection (d) have been met.

(3) Disclosure requirements

The disclosure requirements of this paragraph are met if—

(A) the gift certificate, store gift card, or general-use prepaid card clearly and conspicuously states—

(i) that a dormancy fee, inactivity charge or fee, or service fee may be charged;

(ii) the amount of such fee or charge;

(iii) how often such fee or charge may be assessed; and

(iv) that such fee or charge may be assessed for inactivity; and

(B) the issuer or vendor of such certificate or card informs the purchaser of such charge or fee before such certificate or card is purchased, regardless of whether the certificate
or card is purchased in person, over the Internet, or by telephone.

(4) Exclusion

The prohibition under paragraph (1) shall not apply to any gift certificate—

(A) that is distributed pursuant to an award, loyalty, or promotional program, as defined by the Board; and

(B) with respect to which, there is no money or other value exchanged.

(c) Prohibition on sale of gift cards with expiration dates

(1) In general

Except as provided under paragraph (2), it shall be unlawful for any person to sell or issue a gift certificate, store gift card, or general-use prepaid card that is subject to an expiration date.

(2) Exceptions

A gift certificate, store gift card, or general-use prepaid card may contain an expiration date if—

(A) the expiration date is not earlier than 5 years after the date on which the gift certificate was issued, or the date on which card funds were last loaded to a store gift card or general-use prepaid card; and

(B) the terms of expiration are clearly and conspicuously stated.

(d) Additional rulemaking

(1) In general

The Board shall—

(A) prescribe regulations to carry out this section, in addition to any other rules or regulations required by this subchapter, including such additional requirements as appropriate relating to the amount of dormancy fees, inactivity charges or fees, or service fees that may be assessed and the amount of remaining value of a gift certificate, store gift card, or general-use prepaid card below which such charges or fees may be assessed; and

(B) shall determine the extent to which the individual definitions and provisions of this subchapter or Regulation E should apply to general-use prepaid cards, gift certificates, and store gift cards.

(2) Consultation

In prescribing regulations under this subsection, the Board shall consult with the Federal Trade Commission.

(3) Timing; effective date

The regulations required by this subsection shall be issued in final form not later than 9 months after May 22, 2009. [Pub. L. 90-321, title IX, § 915(b)(3), (c)(2)(B) of the Electronic Funds Transfer Act [15 U.S.C. 1693–1(b)(3), (c)(2)(B)] shall be January 31, 2011, provided that an issuer of such a certificate or card shall—

(A) comply with paragraphs (1) and (2) of section 915(b) of such Act [15 U.S.C. 1693–1(b)(1), (2)];

(B) consider any such certificate or card for which funds expire to have no expiration date with respect to the underlying funds;

(C) at a consumer’s request, replace such certificate or card that has funds remaining at no cost to the consumer; and

(D) comply with the disclosure requirements of paragraph (2) of this subsection.

(2) Disclosure requirements.—The disclosure requirements of this subsection are met by providing notice to consumers, via in-store signage, messages during customer service calls, Web sites, and general advertising, that—

(A) any such certificate or card for which funds expire shall be deemed to have no expiration date with respect to the underlying funds;

(B) consumers holding such certificate or card shall have a right to a free replacement certificate or card that includes the packaging and materials, typically associated with such a certificate or card; and

(C) any dormancy fee, inactivity fee, or service fee for such certificates or cards that might otherwise be charged shall not be charged if such fees do not comply with section 915 of the Electronic Funds Transfer Act [15 U.S.C. 1693–1].

(3) Period for disclosure requirements.—The notice requirements in paragraph (2) of this subsection shall continue until January 31, 2013.”

Amendment of Section


“(a) Individual or class action for damages; amount of award

Except as otherwise provided by this section and section 1693h of this title, any person who

§ 1693m. Civil liability

(a) Individual or class action for damages; amount of award

Except as otherwise provided by this section and section 1693h of this title, any person who

So in original. The word “shall” probably should not appear.
fails to comply with any provision of this subchapter with respect to any consumer, except for an error resolved in accordance with section 1693h of this title, is liable to such consumer in an amount equal to the sum of—

(1) any actual damage sustained by such consumer as a result of such failure; or

(2) (A) in the case of an individual action, an amount not less than $100 nor greater than $1,000; or

(B) in the case of a class action, such amount as the court may allow, except that (i) as to each member of the class no minimum recovery shall be applicable, and (ii) the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same person shall not be more than the lesser of $500,000 or 1 per centum of the net worth of the defendant; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court.

(b) Factors determining amount of award

In determining the amount of liability in any action under subsection (a) of this section, the court shall consider, among other relevant factors—

(1) in any individual action under subsection (a) or (2)(A) of this section, the frequency and persistence of noncompliance, the nature of such noncompliance, and the extent to which the noncompliance was intentional; or

(2) in any class action under subsection (a) or (2)(B) of this section, the frequency and persistence of noncompliance, the nature of such noncompliance, the resources of the defendant, the number of persons adversely affected, and the extent to which the noncompliance was intentional.

(c) Unintentional violations; bona fide error

Except as provided in section 1693h of this title, a person may not be held liable in any action brought under this section for a violation of this subchapter if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

(d) Good faith compliance with rule, regulation, or interpretation of Board or approval of duly authorized official or employee of Federal Reserve System

No provision of this section or section 1693n of this title imposing any liability shall apply to—

(1) any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Board or in conformity with any interpretation or approval by an official or employee of the Federal Reserve System duly authorized by the Board to issue such interpretations or approvals under such procedures as the Board may prescribe therefor; or

(2) any failure to make disclosure in proper form if a financial institution utilized an appropriate model clause issued by the Board.

notwithstanding that after such act, omission, or failure has occurred, such rule, regulation, approval, or model clause is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

(e) Notification to consumer prior to action; adjustment of consumer's account

A person has no liability under this section for any failure to comply with any requirement under this subchapter if, prior to the institution of an action under this section, the person notifies the consumer concerned of the failure, complies with the requirements of this subchapter, and makes an appropriate adjustment to the consumer's account and pays actual damages or, where applicable, damages in accordance with section 1693h of this title.

(f) Action in bad faith or for harassment; attorney's fees

On a finding by the court that an unsuccessful action under this section was brought in bad faith or for purposes of harassment, the court shall award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(g) Jurisdiction of courts; time for maintenance of action

Without regard to the amount in controversy, any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.


AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§ 1084(1), (4), 1100H, July 21, 2010, 124 Stat. 2081, 2082, 2113, provided that, effective on the designated transfer date, this section is amended as follows:—

(A) in the subsection heading, by striking “Board” each place that term appears and inserting “Bureau”; and

(B) in subsection (d)—

(1) in the subsection heading, by striking “of Board or approval of duly authorized official or employee of Federal Reserve System”:—

(2) in subsection (d)—

(A) in the subsection heading, by striking “of Board or approval of duly authorized official or employee of Federal Reserve System”:—

(B) by inserting “Bureau or the” before “Board” each place that term appears; and

(C) by inserting “Bureau of Consumer Financial Protection or the” before “Federal Reserve System”.

See Effective Date of 2010 Amendment note below.

REFERENCES IN TEXT

Section 1693n of this title, referred to in subsec. (d), was in the original a reference to section 916 of Pub. L. 90–321, and was translated as meaning section 917 of Pub. L. 90–321 to reflect the probable intent of Congress and the renumbering of section 916 of Pub. L. 90–321 as section 917 by Pub. L. 111–24, title IV, § 401(1), May 22, 2009, 123 Stat. 1751.

PRIOR PROVISIONS

A prior section 916 of Pub. L. 90–321 was renumbered section 917 and is classified to section 1693n of this title.
§ 1693n. Criminal liability

(a) Violations respecting giving of false or inaccurate information, failure to provide information, and failure to comply with provisions of this subchapter

Whoever knowingly and willfully—
(1) gives false or inaccurate information or fails to provide information which he is required to disclose by this subchapter or any regulation issued thereunder; or
(2) otherwise fails to comply with any provision of this subchapter;

shall be fined not more than $5,000 or imprisoned not more than one year, or both.

(b) Violations affecting interstate or foreign commerce

Whoever—
(1) knowingly, in a transaction affecting interstate or foreign commerce, uses or attempts or conspires to use any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument to obtain money, goods, services, or anything else of value which within any one-year period has a value aggregating $1,000 or more; or
(2) with unlawful or fraudulent intent, transports or attempts or conspires to transport in interstate or foreign commerce a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or
(3) with unlawful or fraudulent intent, uses any instrumentality of interstate or foreign commerce to sell or transport a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or
(4) knowingly receives, conceals, uses, or transports money, goods, services, or anything else of value (except tickets for interstate or foreign transportation) which (A) within any one-year period has a value aggregating $1,000 or more, or (B) has moved in or is part of, or which constitutes interstate or foreign commerce, and (C) has been obtained with a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument; or
(5) knowingly receives, conceals, uses, sells, or transports in interstate or foreign commerce one or more tickets for interstate or foreign transportation, which (A) within any one-year period have a value aggregating $500 or more, and (B) have been purchased or obtained with one or more counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument; or
(6) in a transaction affecting interstate or foreign commerce, furnishes money, property, services, or anything else of value, which within any one-year period has a value aggregating $1,000 or more, through the use of any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained—

shall be fined not more than $10,000 or imprisoned not more than ten years, or both.

(c) “Debit instrument” defined

As used in this section, the term “debit instrument” means a card, code, or other device, other than a check, draft, or similar paper instrument, by the use of which a person may initiate an electronic fund transfer.


PRIOR PROVISIONS

A prior section 917 of Pub. L. 90–321 was renumbered section 918 and is classified to section 1693b of this title.

§ 1693o. Administrative enforcement

(a) Enforcing agencies

Compliance with the requirements imposed under this subchapter shall be enforced under—
(1) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], in the case of—
(A) national banks, and Federal branches and Federal agencies of foreign banks, by the Office of the Comptroller of the Currency;
(B) member banks of the Federal Reserve System (other than national 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 [12 U.S.C. 601 et seq., 611 et seq.], by the Board; and
(C) banks insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System) and insured State branches of foreign banks, by the Board of Directors of the Federal Deposit Insurance Corporation;

(2) section 8 of the Federal Deposit Insurance Act [12 U.S.C. 1818], by the Director of the Office of Thrift Supervision, in the case of a savings association the deposits of which are insured by the Federal Deposit Insurance Corporation;

(3) the Federal Credit Union Act [12 U.S.C. 1751 et seq.], by the Administrator of the National Credit Union Administration with respect to any Federal credit union; 1

(4) part A of subtitle VII of title 49, by the Secretary of Transportation, with respect to any air carrier or foreign air carrier subject to that part; and

(5) the Securities Exchange Act of 1934 [15 U.S.C. 78a et seq.], by the Securities and Ex-

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1 See References in Text note below.
2 So in original. The period probably should be a semicolon.
change Commission, with respect to any broker or dealer subject to that Act.

The terms used in paragraph (1) that are not defined in this subchapter or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(b) Violations of subchapter deemed violations of pre-existing statutory requirements; additional powers

For the purpose of the exercise by any agency referred to in subsection (a) of this section of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this subchapter shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in subsection (a) of this section, each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this subchapter, any other authority conferred on it by law.

(c) Overall enforcement authority of Federal Trade Commission

Except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to some other Government agency under subsection (a) of this section, the Federal Trade Commission shall enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act [15 U.S.C. 41 et seq.], a violation of any requirement imposed under this subchapter shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Commission to enforce compliance by any person subject to the jurisdiction of the Commission with the requirements imposed under this subchapter, unless that person is engaged in commerce or meets any other jurisdictional tests in the Federal Trade Commission Act.

(See Effective Date of 2010 Amendment note below.)

AMENDMENT OF SECTION

Pub. L. 111–203, title X, §§1084(5), 1100H, July 21, 2010, 124 Stat. 2082, 2113, provided that, effective on the designated transfer date, this section is amended as follows:

(1) section 8 of the Federal Deposit Insurance Act, by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

(B) member banks of the Federal Reserve System (other than national 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 25A of the Federal Reserve Act; and

(C) banks and State savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), and insured State branches of foreign banks;

(2) in subsection (b), by inserting “any of paragraphs (1) through (4), respectively, and, in paragraph (2) (as so redesignated), by striking the period at the end and inserting a semicolon, in paragraph (3) (as so redesignated), by striking “and” at the end, and in paragraph (4) (as so redesignated), by striking the period at the end and inserting “and”;

(D) by adding at the end the following:

“(5) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to any person subject to this subchapter, except that the Bureau shall not have authority to enforce the requirements of section 1693o–2 of this title or any regulations prescribed by the Board under section 1693o–2 of this title.”;

(3) by striking subsection (c) and inserting the following:

“(c) Overall enforcement authority of the Federal Trade Commission

“Except to the extent that enforcement of the requirements imposed under this subchapter is specifically committed to some other Government agency under any of paragraphs (1) through (4) of subsection (a), and subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall be authorized to enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this subchapter shall be deemed a violation of a requirement imposed under that Act. All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission with the requirements imposed under this subchapter, unless that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act.”

See Effective Date of 2010 Amendment note below.
§ 1693o–1. Remittance transfers

(a) Disclosures required for remittance transfers

(1) In general

Each remittance transfer provider shall make disclosures as required under this section and in accordance with rules prescribed by the Board. Disclosures required under this section shall be in addition to any other disclosures applicable under this subchapter.

(2) Disclosures

Subject to rules prescribed by the Board, a remittance transfer provider shall provide, in writing and in a form that the sender may keep, to each sender requesting a remittance transfer, as applicable to the transaction—

(A) at the time at which the sender requests a remittance transfer to be initiated, and prior to the sender making any payment in connection with the remittance transfer, a disclosure describing—

(i) the amount of currency that will be received by the designated recipient, using the values of the currency into which the funds will be exchanged;

(ii) the amount of transfer and any other fees charged by the remittance transfer provider for the remittance transfer; and

(iii) any exchange rate to be used by the remittance transfer provider for the remittance transfer, to the nearest 1/100th of a point; and

(B) at the time at which the sender makes payment in connection with the remittance transfer—

(i) a receipt showing—

(I) the information described in subparagraph (A);

(II) the promised date of delivery to the designated recipient; and

(III) the name and either the telephone number or the address of the designated recipient, if either the telephone number or the address of the designated recipient is provided by the sender; and

(ii) a statement containing—

(I) information about the rights of the sender under this section regarding the resolution of errors; and

(II) appropriate contact information for—

(aa) the remittance transfer provider; and

(bb) the State agency that regulates the remittance transfer provider and the Board, including the toll-free telephone number established under section 5493 of title 12.

(3) Requirements relating to disclosures

With respect to each disclosure required to be provided under paragraph (2) a remittance transfer provider shall—

(A) provide an initial notice and receipt, as required by subparagraphs (A) and (B) of paragraph (2), and an error resolution statement, as required by subsection (d), that
clearly and conspicuously describe the information required to be disclosed therein; and

(B) with respect to any transaction that a sender conducts electronically, comply with the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.).

(4) Exception for disclosures of amount received

(A) In general

Subject to the rules prescribed by the Board, and except as provided under subparagraph (B), the disclosures required regarding the amount of currency that will be received by the designated recipient shall be deemed to be accurate, so long as the disclosures provide a reasonably accurate estimate of the foreign currency to be received. This paragraph shall apply only to a remittance transfer provider who is an insured depository institution, as defined in section 1813 of title 12, or an insured credit union, as defined in section 1752 of title 12, and if—

(i) a remittance transfer is conducted through a demand deposit, savings deposit, or other asset account that the sender holds with such remittance transfer provider; and

(ii) at the time at which the sender requests the transaction, the remittance transfer provider is unable to know, for reasons beyond its control, the amount of currency that will be made available to the designated recipient.

(B) Deadline

The application of subparagraph (A) shall terminate 5 years after July 21, 2010, unless the Board determines that termination of such provision would negatively affect the ability of remittance transfer providers described in subparagraph (A) to send remittances to locations in foreign countries, in which case, the Board may, by rule, extend the application of subparagraph (A) to not longer than 10 years after July 21, 2010.

(5) Exemption authority

The Board may, by rule, permit a remittance transfer provider to satisfy the requirements of—

(A) paragraph (2)(A) orally, if the transaction is conducted entirely by telephone;

(B) paragraph (2)(B), in the case of a transaction conducted entirely by telephone, by mailing the disclosures required under such subparagraph to the sender, not later than 1 business day after the date on which the transaction is conducted, or by including such documents in the next periodic statement, if the telephone transaction is conducted through a demand deposit, savings deposit, or other asset account that the sender holds with the remittance transfer provider;

(C) subparagraphs (A) and (B) of paragraph (2) together in one written disclosure, but only to the extent that the information provided in accordance with paragraph (3)(A) is accurate at the time at which payment is made in connection with the subject remittance transfer; and

(D) paragraph (2)(A), without compliance with section 101(c) of the Electronic Signatures in Global Commerce Act [15 U.S.C. 7001(c)], if a sender initiates the transaction electronically and the information is displayed electronically in a manner that the sender can keep.

(6) Storefront and Internet notices

(A) In general

(i) Prominent posting

Subject to subparagraph (B), the Board may prescribe rules to require a remittance transfer provider to prominently post, and timely update, a notice describing a model remittance transfer for one or more amounts, as the Board may determine, which notice shall show the amount of currency that will be received by the designated recipient, using the values of the currency into which the funds will be exchanged.

(ii) Onsite displays

The Board may require the notice prescribed under this subparagraph to be displayed in every physical storefront location owned or controlled by the remittance transfer provider.

(iii) Internet notices

Subject to paragraph (3), the Board shall prescribe rules to require a remittance transfer provider that provides remittance transfers via the Internet to provide a notice, comparable to a storefront notice described in this subparagraph, located on the home page or landing page (with respect to such remittance transfer services) owned or controlled by the remittance transfer provider.

(iv) Rulemaking authority

In prescribing rules under this subparagraph, the Board may impose standards or requirements regarding the provision of the storefront and Internet notices required under this subparagraph and the provision of the disclosures required under paragraphs (2) and (3).

(B) Study and analysis

Prior to proposing rules under subparagraph (A), the Board shall undertake appropriate studies and analyses, which shall be consistent with section 1693b(a)(2) of this title, and may include an advanced notice of proposed rulemaking, to determine whether a storefront notice or Internet notice facilitates the ability of a consumer—

(i) to compare prices for remittance transfers; and

(ii) to understand the types and amounts of any fees or costs imposed on remittance transfers.

(b) Foreign language disclosures

The disclosures required under this section shall be made in English and in each of the foreign languages principally used by the remittance transfer provider, or any of its agents, to advertise, solicit, or market, either orally or in writing, at that office.
(c) Regulations regarding transfers to certain nations

If the Board determines that a recipient nation does not legally allow, or the method by which transactions are made in the recipient country do not allow, a remittance transfer provider to know the amount of currency that will be received by the designated recipient, the Board may prescribe rules (not later than 18 months after July 21, 2010) addressing the issue, which rules shall include standards for a remittance transfer provider to provide—

(1) a receipt that is consistent with subsections (a) and (b); and
(2) a reasonably accurate estimate of the foreign currency to be received, based on the rate provided to the sender by the remittance transfer provider at the time at which the transaction was initiated by the sender.

(d) Remittance transfer errors

(1) Error resolution

(A) In general

If a remittance transfer provider receives oral or written notice from the sender within 180 days of the promised date of delivery that an error occurred with respect to a remittance transfer, including the amount of currency designated in subsection (a)(3)(A) that was to be sent to the designated recipient, using the values of the currency into which the funds should have been exchanged, but was not made available to the designated recipient in the foreign country, the remittance transfer provider shall resolve the error pursuant to this subsection and investigate the reason for the error.

(B) Remedies

Not later than 90 days after the date of receipt of a notice from the sender pursuant to subparagraph (A), the remittance transfer provider shall, as applicable to the error and as designated by the sender—

(i) refund to the sender the total amount of funds tendered by the sender in connection with the remittance transfer which was not properly transmitted;
(ii) make available to the designated recipient, without additional cost to the designated recipient or to the sender, the amount appropriate to resolve the error;
(iii) provide such other remedy, as determined appropriate by rule of the Board for the protection of senders; or
(iv) provide written notice to the sender that there was no error with an explanation responding to the specific complaint of the sender.

(2) Rules

The Board shall establish, by rule issued not later than 18 months after July 21, 2010, clear and appropriate standards for remittance transfer providers with respect to error resolution relating to remittance transfers, to protect senders from such errors. Standards prescribed under this paragraph shall include appropriate standards regarding record keeping, as required, including documentation—

(A) of the complaint of the sender;
(B) that the sender provides the remittance transfer provider with respect to the alleged error; and
(C) of the findings of the remittance transfer provider regarding the investigation of the alleged error that the sender brought to their attention.

(3) Cancellation and refund policy rules

Not later than 18 months after July 21, 2010, the Board shall issue final rules regarding appropriate remittance transfer cancellation and refund policies for consumers.

(e) Applicability of this subchapter

(1) In general

A remittance transfer that is not an electronic fund transfer, as defined in section 1693a of this title, shall not be subject to any of the provisions of sections 1693c through 1693k of this title. A remittance transfer that is an electronic fund transfer, as defined in section 1693a of this title, shall be subject to all provisions of this subchapter, except for section 1693f of this title, that are otherwise applicable to electronic fund transfers under this subchapter.

(2) Rule of construction

Nothing in this section shall be construed—

(A) to affect the application to any transaction, to any remittance provider, or to any other person of any of the provisions of subchapter II of chapter 53 of title 31, section 1829b of title 12, or chapter 2 of title I of Public Law 91–508 (12 U.S.C. 1951–1959), or any regulations promulgated thereunder;
(B) to cause any fund transfer that would not otherwise be treated as such under paragraph (1) to be treated as an electronic fund transfer, or as otherwise subject to this subchapter, for the purposes of any of the provisions referred to in subparagraph (A) or any regulations promulgated thereunder.

(f) Acts of agents

(1) In general

A remittance transfer provider shall be liable for any violation of this section by any agent, authorized delegate, or person affiliated with such provider, when such agent, authorized delegate, or affiliate acts for that remittance transfer provider.

(2) Obligations of remittance transfer providers

The Board shall prescribe rules to implement appropriate standards or conditions of, liability of a remittance transfer provider, including a provider who acts through an agent or authorized delegate. An agency charged with enforcing the requirements of this section, or rules prescribed by the Board under this section, may consider, in any action or other proceeding against a remittance transfer provider, the extent to which the provider had established and maintained policies or procedures for compliance, including policies, procedures, or other appropriate oversight measures designed to assure compliance by an agent or authorized delegate acting for such provider.
(g) Definitions

As used in this section—

(1) the term “designated recipient” means any person located in a foreign country and identified by the sender as the authorized recipient of a remittance transfer to be made by a remittance transfer provider, except that a designated recipient shall not be deemed to be a consumer for purposes of this chapter;

(2) the term “remittance transfer”—

(A) means the electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7002(2))) transfer of funds requested by a sender located in any State to a designated recipient that is initiated by a remittance transfer provider, whether or not the sender holds an account with the remittance transfer provider or whether or not the remittance transfer is also an electronic fund transfer, as defined in section 1693a of this title; and

(B) does not include a transfer described in subparagraph (A) in an amount that is equal to or lesser than the amount of a small-value transaction determined, by rule, to be excluded from the requirements under section 1693d(a) of this title;

(3) the term “remittance transfer provider” means any person or financial institution that provides remittance transfers for a consumer in the normal course of its business, whether or not the consumer holds an account with such person or financial institution; and

(4) the term “sender” means a consumer who requests a remittance provider to send a remittance transfer for the consumer to a designated recipient.


AMENDMENT OF SECTION


REFERENCES IN TEXT


Chapter 2 of title I of Public Law 91–508, referred to in subsec. (e)(2)(A), is chapter 21 (§1691 et seq.) of title 12, Banks and Banking. For complete classification of this title

Prior Provisions

A prior section 919 of Pub. L. 90–321 was renumbered section 921 and is classified to section 1693p of this title.

Another prior section 919 of Pub. L. 90–321 was renumbered section 922 and is classified to section 1693q of this title.

Effective Date of 2010 Amendment

Amendment by section 1084(1) of Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

Effective Date

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

§1693e–2. Reasonable fees and rules for payment card transactions

(a) Reasonable interchange transaction fees for electronic debit transactions

(1) Regulatory authority over interchange transaction fees

The Board may prescribe regulations, pursuant to section 553 of title 5, regarding any interchange transaction fee that an issuer may receive or charge with respect to an electronic debit transaction, to implement this subsection (including related definitions), and to prevent circumvention or evasion of this subsection.

(2) Reasonable interchange transaction fees

The amount of any interchange transaction fee that an issuer may receive or charge with respect to an electronic debit transaction shall be reasonable and proportional to the cost incurred by the issuer with respect to the transaction.

(3) Rulemaking required

(A) In general

The Board shall prescribe regulations in final form not later than 9 months after July 21, 2010, to establish standards for assessing whether the amount of any interchange transaction fee described in paragraph (2) is reasonable and proportional to the cost incurred by the issuer with respect to the transaction.

(B) Information collection

The Board may require any issuer (or agent of an issuer) or payment card network to provide the Board with such information as may be necessary to carry out the provisions of this subsection and the Board, in issuing rules under subparagraph (A) and on at least a bi-annual basis thereafter, shall disclose such aggregate or summary information concerning the costs incurred, and interchange transaction fees charged or received, by issuers or payment card networks in connection with the authorization, clearance or settlement of electronic debit transactions as the Board considers appropriate and in the public interest.

(4) Considerations; consultation

In prescribing regulations under paragraph (3)(A), the Board shall—

(A) consider the functional similarity between—

(i) electronic debit transactions; and

(ii) checking transactions that are required within the Federal Reserve bank system to clear at par;
(B) distinguish between—
   (i) the incremental cost incurred by an
       issuer for the role of the issuer in the
       authorization, clearance, or settlement of a
       particular electronic debit transaction,
       which cost shall be considered under para-
       graph (2); and
   (ii) other costs incurred by an issuer
       which are not specific to a particular elec-
       tronic debit transaction, which costs shall
       not be considered under paragraph (2); and

(C) consult, as appropriate, with the Com-
   pany, the Director of the Office of Thrift
   Supervision, the National Credit Union Ad-
   ministration Board, the Administrator of
   the Small Business Administration, and the
   Director of the Bureau of Consumer Finan-
   cial Protection.

(5) Adjustments to interchange transaction
fees for fraud prevention costs
(A) Adjustments
   The Board may allow for an adjustment to
   the fee amount received or charged by an is-
   suer under paragraph (2), if—
   (i) such adjustment is reasonably nec-
       essary to make allowance for costs in-
       curred by the issuer in preventing fraud in
       relation to electronic debit transactions
       involving that issuer; and
   (ii) the issuer complies with the fraud-re-
       lated standards established by the Board
       under subparagraph (B), which standards
       shall—
       (I) be designed to ensure that any
           fraud-related adjustment of the issuer is
           limited to the amount described in clause
           (i) and takes into account any fraud-
           related reimbursements (including
           amounts from charge-backs) received
           from consumers, merchants, or payment
           card networks in relation to electronic
           debit transactions involving the issuer; and
       (II) require issuers to take effective
           steps to reduce the occurrence of, and
           costs from, fraud in relation to elec-
           tronic debit transactions, including
           through the development and implementa-
           tion of cost-effective fraud prevention
           technology.

(B) Rulemaking required
   (i) In general
      The Board shall prescribe regulations in
      final form not later than 9 months after
      July 21, 2010, to establish standards for
      making adjustments under this paragraph.
   (ii) Factors for consideration
      In issuing the standards and prescribing
      regulations under this paragraph, the
      Board shall consider—
      (I) the nature, type, and occurrence of
          fraud in electronic debit transactions;
      (II) the extent to which the occurrence
          of fraud depends on whether authoriza-
          tion in an electronic debit transaction is
          based on signature, PIN, or other means;
      (III) the available and economical
          means by which fraud on electronic debit
          transactions may be reduced;
      (IV) the fraud prevention and data se-
          cURITY costs expended by each party in-
          volved in electronic debit transactions
          (including consumers, persons who ac-
          cept debit cards as a form of payment, fi-
          nancial institutions, retailers and pay-
          ment card networks);
      (V) the costs of fraudulent trans-
          actions absorbed by each party involved
          in such transactions (including consum-
          ers, persons who accept debit cards as a
          form of payment, financial institutions,
          retailers and payment card networks);
      (VI) the extent to which interchange
          transaction fees have in the past reduced
          or increased incentives for parties in-
          volved in electronic debit transactions
          to reduce fraud on such transactions; and
      (VII) such other factors as the Board
          considers appropriate.

(6) Exemption for small issuers
(A) In general
   This subsection shall not apply to any is-
   suer that, together with its affiliates, has
   assets of less than $10,000,000,000, and the Board
   shall exempt such issuers from regulations pres-
  cribed under paragraph (3)(A).

(B) Definition
   For purposes of this paragraph, the term
   "issuerto shall be limited to the person hold-
   ing the asset account that is debited through
   an electronic debit transaction.

(7) Exemption for government-administered
payment programs and reloadable prepaid
cards
(A) In general
   This subsection shall not apply to an
   interchange transaction fee charged or re-
   ceived with respect to an electronic debit
   transaction in which a person uses—
   (i) a debit card or general-use prepaid
       card that has been provided to a person
       pursuant to a Federal, State or local gov-
       ernment-administered payment program,
       in which the person may only use the debit
       card or general-use prepaid card to trans-
       fer or debit funds, monetary value, or
       other assets that have been provided pur-
       suant to such program; or
   (ii) a plastic card, payment code, or de-
       vice that is—
       (I) linked to funds, monetary value, or
           assets which are purchased or loaded on
           a prepaid basis;
       (II) not issued or approved for use to
           access or debit any account held by or
           for the benefit of the card holder (other
           than a subaccount or other method of re-
           cording or tracking funds purchased or
           loaded on the card on a prepaid basis);
       (III) redeemable at multiple, unaffili-
           ated merchants or service providers, or
           automated teller machines;
       (IV) used to transfer or debit funds,
           monetary value, or other assets; and
§ 1693e-2

(8) Regulatory authority over network fees

(A) In general

The Board may prescribe regulations, pursuant to section 553 of title 5, regarding any transaction fee charged or received with respect to an electronic debit transaction described in subparagraph (A)(i) in which a person uses a general-use prepaid card, or an electronic debit transaction described in subparagraph (A)(ii), if any of the following fees may be charged to a person with respect to the card:

(i) A fee for an overdraft, including a shortage of funds or a transaction processed for an amount exceeding the account balance.

(ii) A fee imposed by the issuer for the first withdrawal per month from an automated teller machine that is part of the issuer’s designated automated teller machine network.

(B) Exception

Notwithstanding subparagraph (A), after the end of the 1-year period beginning on the effective date provided in paragraph (9), this subsection shall apply to an interchange transaction fee charged or received with respect to an electronic debit transaction described in subparagraph (A)(i) in which a person uses a general-use prepaid card, or an electronic debit transaction described in subparagraph (A)(ii), if any of the following fees may be charged to a person with respect to the card:

(i) A fee for an overdraft, including a shortage of funds or a transaction processed for an amount exceeding the account balance.

(ii) A fee imposed by the issuer for the first withdrawal per month from an automated teller machine that is part of the issuer’s designated automated teller machine network.

(C) Definition

For purposes of subparagraph (B), the term “designated automated teller machine network” means either:

(i) all automated teller machines identified in the name of the issuer; or

(ii) any network of automated teller machines identified by the issuer that provides reasonable and convenient access to the issuer’s customers.

(D) Reporting

Beginning 12 months after July 21, 2010, the Board shall annually provide a report to the Congress regarding —

(i) the prevalence of the use of general-use prepaid cards in Federal, State or local government-administered payment programs; and

(ii) the interchange transaction fees and cardholder fees charged with respect to the use of such general-use prepaid cards.

(9) Effective date

This subsection shall take effect at the end of the 12-month period beginning on July 21, 2010.

(b) Limitation on payment card network restrictions

(1) Prohibitions against exclusivity arrangements

(A) No exclusive network

The Board shall, before the end of the 1-year period beginning on July 21, 2010, prescribe regulations providing that an issuer or payment card network shall not directly or through any agent, processor, or licensed member of a payment card network, by contract, requirement, condition, penalty, or otherwise, restrict the number of payment card networks on which an electronic debit transaction may be processed to—

(i) 1 such network; or

(ii) 2 or more such networks which are owned, controlled, or otherwise operated by—

(I) affiliated persons; or

(II) networks affiliated with such issuer.

(B) No routing restrictions

The Board shall, before the end of the 1-year period beginning on July 21, 2010, prescribe regulations providing that an issuer or payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person who accepts debit cards for payments to direct the routing of electronic debit transactions for processing over any payment card network that may process such transactions.

(2) Limitation on restrictions on offering discounts for use of a form of payment

(A) In general

A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability of any person to provide a discount or in-kind incentive for payment by the use of cash, checks, debit cards, or credit cards to the extent that—

(i) in the case of a discount or in-kind incentive for payment by the use of debit cards, the discount or in-kind incentive does not differentiate on the basis of the issuer or the payment card network;

(ii) in the case of a discount or in-kind incentive for payment by the use of credit cards, the discount or in-kind incentive does not differentiate on the basis of the issuer or the payment card network; and

(iii) to the extent required by Federal law and applicable State law, such discount or in-kind incentive is offered to all prospective buyers and disclosed clearly and conspicuously.

(B) Lawful discounts

For purposes of this paragraph, the network may not penalize any person for the
providing of a discount that is in compliance with Federal law and applicable State law.

(3) Limitation on restrictions on setting transaction minimums or maximums

(A) In general
A payment card network shall not, directly or through any agent, processor, or licensed member of the network, by contract, requirement, condition, penalty, or otherwise, inhibit the ability—

(i) of any person to set a minimum dollar value for the acceptance by that person of credit cards, to the extent that—

(I) such minimum dollar value does not differentiate between issuers or between payment card networks; and

(II) such minimum dollar value does not exceed $10.00; or

(ii) of any Federal agency or institution of higher education to set a maximum dollar value for the acceptance by that Federal agency or institution of higher education of credit cards, to the extent that such maximum dollar value does not differentiate between issuers or between payment card networks.

(B) Increase in minimum dollar amount
The Board may, by regulation prescribed pursuant to section 553 of title 5, increase the amount of the dollar value listed in subparagraph (A)(i)(II).

(4) Rule of construction
No provision of this subsection shall be construed to authorize any person—

(A) to discriminate between debit cards within a payment card network on the basis of the issuer that issued the debit card; or

(B) to discriminate between credit cards within a payment card network on the basis of the issuer that issued the credit card.

c) Definitions
For purposes of this section, the following definitions shall apply:

(1) Affiliate
The term “affiliate” means any company that controls, is controlled by, or is under common control with another company.

(2) Debit card
The term “debit card”—

(A) means any card, or other payment code or device, issued or approved for use through a payment card network to debit an asset account (regardless of the purpose for which the account is established), whether authorization is based on signature, PIN, or other means;

(B) includes a general-use prepaid card, as that term is defined in section 1693f–2(1)(2)(A) of this title; and

(C) does not include paper checks.

(3) Credit card
The term “credit card” has the same meaning as in section 1692 of this title.

(4) Discount
The term “discount”—

(A) means a reduction made from the price that customers are informed is the regular price; and

(B) does not include any means of increasing the price that customers are informed is the regular price.

(5) Electronic debit transaction
The term “electronic debit transaction” means a transaction in which a person uses a debit card.

(6) Federal agency
The term “Federal agency” means—

(A) an agency (as defined in section 101 of title 31); and

(B) a Government corporation (as defined in section 103 of title 5).

(7) Institution of higher education
The term “institution of higher education” has the same meaning as in 1001 and 1002 of title 20.

(8) Interchange transaction fee
The term “interchange transaction fee” means any fee established, charged or received by a payment card network for the purpose of compensating an issuer for its involvement in an electronic debit transaction.

(9) Issuer
The term “issuer” means any person who issues a debit card, or credit card, or the agent of such person with respect to such card.

(10) Network fee
The term “network fee” means any fee charged and received by a payment card network with respect to an electronic debit transaction, other than an interchange transaction fee.

(11) Payment card network
The term “payment card network” means an entity that directly, or through licensed members, processors, or agents, provides the proprietary services, infrastructure, and software that route information and data to conduct debit card or credit card transaction authorization, clearance, and settlement, and that a person uses in order to accept as a form of payment a brand of debit card, credit card or other device that may be used to carry out debit or credit transactions.

d) Enforcement

(1) In general
Compliance with the requirements imposed under this section shall be enforced under section 1693o of this title.

(2) Exception
Sections 1693m and 1693n of this title shall not apply with respect to this section or the requirements imposed pursuant to this section.


PRIORITY PROVISIONS
A prior section 920 of Pub. L. 90–321 was renumbered section 921 and is classified to section 1693p of this title.

1So in original. Probably should be preceded by “sections”.
Two other prior sections 920 of Pub. L. 90–321 were renumbered section 922 and are classified to sections 1693q and 1693r of this title.

**Effective Date**

Section effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111–203, set out as a note under section 5301 of Title 12, Banks and Banking.

§ 1693p. Reports to Congress

(a) Not later than twelve months after the effective date of this subchapter and at one-year intervals thereafter, the Board shall make reports to the Congress concerning the administration of its functions under this subchapter, including such recommendations as the Board deems necessary and appropriate. In addition, each report of the Board shall include its assessment of the extent to which compliance with this subchapter is being achieved, and a summary of the enforcement actions taken under section 1693q of this title. In such report, the Board shall particularly address the effects of this subchapter on the costs and benefits to financial institutions and consumers, on competition, on the introduction of new technology, on the operations of financial institutions, and on the adequacy of consumer protection.

(b) In the exercise of its functions under this subchapter, the Board may obtain upon request the views of any other Federal agency which, in the judgment of the Board, exercises regulatory or supervisory functions with respect to any class of persons subject to this subchapter.


**Amendment of Section**


**References in Text**

For effective date of this subchapter, referred to in subsec. (a), see section 921 of Pub. L. 90–321, set out as an Effective Date note under section 1693 of this title.

Section 1693q of this title, referred to in subsec. (a), was in the original “section 917 of this title”, and was translated as meaning section 916 of title I of Pub. L. 90–321 to reflect the probable intent of Congress and the renumbering of section 916 of title I of Pub. L. 90–321 as section 918 by Pub. L. 111–24, title IV, § 401(1), May 22, 2009, 123 Stat. 1751.

**Codification**

Renumbering of section 918 of Pub. L. 90–321 as section 919 by section 401(1) of Pub. L. 111–24 was executed prior to the renumberings of section 919 of Pub. L. 90–321 as section 920 and then as section 921 by sections 1073(a)(3) and 1075(a)(1) of Pub. L. 111–203 as the probable intent of Congress, notwithstanding section 403 of Pub. L. 111–24, set out as an Effective Date note under section 1693–1 of this title and section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking, which provided that the renumbering by Pub. L. 111–24 was effective 15 months after May 22, 2009, and the renumberings by Pub. L. 111–203 were effective 1 day after July 21, 2010.

**Prior Provisions**

Two prior sections 921 of Pub. L. 90–321 were renumbered section 922 and are classified to sections 1693q and 1693r of this title.

Another prior section 921 of Pub. L. 90–321 was renumbered section 923 and is classified as an Effective Date note under section 1693 of this title.

**Amendments**

1982—Subsec. (a). Pub. L. 97–375 struck out requirement that the Attorney General make a report on the same terms as the Board, and that such report also contain an analysis of the impact of this subchapter on the operation, workload, and efficiency of the Federal courts, and substituted “necessary and appropriate” for “necessary or appropriate”.

**Effective Date of 2010 Amendment**

Amendment by section 1084(1) of Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§ 1693q. Relation to State laws

This subchapter does not annul, alter, or affect the laws of any State relating to electronic fund transfers, dormancy fees, inactivity charges or fees, service fees, or expiration dates of gift certificates, store gift cards, or general-use prepaid cards, except to the extent that those laws are inconsistent with the provisions of this subchapter, and then only to the extent of the inconsistency. A State law is not inconsistent with this subchapter if the protection such law affords any consumer is greater than the protection afforded by this subchapter. The Board shall, upon its own motion or upon the request of any financial institution, State, or other interested party, submitted in accordance with procedures prescribed in regulations of the Board, determine whether a State requirement is inconsistent or affords greater protection. If the Board determines that a State requirement is inconsistent, financial institutions shall incur no liability under the law of that State for a good faith failure to comply with that law, notwithstanding that such determination is subsequently amended, rescinded, or determined by judicial or other authority to be invalid for any reason. This subchapter does not extend the applicability of any such law to any class of persons or transactions to which it would not otherwise apply.


**Amendment of Section**

prior to the renumbering of section 921 of Pub. L. 90–321 as section 922 by section 1073(a)(3) of Pub. L. 111–203 as the probable intent of Congress, notwithstanding section 403 of Pub. L. 111–24, set out as an Effective Date note under section 1693–1 of this title and section 4 of Pub. L. 111–203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking, which provided that the renumbering by Pub. L. 111–24 was effective 15 months after May 22, 2009, and the renumbering by Pub. L. 111–203 was effective 1 day after July 21, 2010.

A prior section 922 of Pub. L. 90–321 was renumbered section 923 and is classified as an Effective Date note under section 1693 of this title.

Effective Date of 2010 Amendment
Amendment by section 1084(1) of Pub. L. 111–203 effective on the designated transfer date, see section 1100H of Pub. L. 111–203, set out as a note under section 552a of Title 5, Government Organization and Employees.

CHAPTER 42—INTERSTATE LAND SALES

§ 1701. Definitions
For the purposes of this chapter, the term—
(1) “Secretary” means the Secretary of Housing and Urban Development;
(2) “person” means an individual, or an unincorporated organization, partnership, association, corporation, trust, or estate;
(3) “subdivision” means any land which is located in any State or in a foreign country and is divided or is proposed to be divided into lots, whether contiguous or not, for the purpose of sale or lease as part of a common promotional plan;
(4) “common promotional plan” means a plan, undertaken by a single developer or a group of developers acting in concert, to offer lots for sale or lease; where such land is offered for sale by such a developer or group of developers acting in concert, and such land is contiguous or is known, designated, or advertised as a common unit or by a common name, such land shall be presumed, without regard to the number of lots covered by each individual offering, as being offered for sale or lease as part of a common promotional plan;