Electronic Fund Transfers Act

UNITED STATES CODE
TITLE 15. COMMERCE AND TRADE
CHAPTER 41. CONSUMER CREDIT PROTECTION
SUBCHAPTER VI. ELECTRONIC FUND TRANSFERS
EFTA 15 USC § 1693  Congressional Findings and Declaration of Purpose

Reference

[Changes effective July 22, 2010]

(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.
EFTA 15 USC § 1693a Definitions

Reference

[Changes effective on a date as designated under 12 USC 5582 (Dodd-Frank) that will be not earlier than 180 days, nor later than 12 months, after the date of enactment of this Act (Dodd-Frank), unless specified in 12 USC 5582 (Dodd-Frank)]

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 Bureau 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 bona fide trust agreement;

(4) the term "Bureau" means the Bureau of Consumer Financial Protection;

(4) the term "Bureau Board" means the Bureau Board of Governors of the Federal Reserve System;

(5) the term "business day" means any day on which the offices of the consumer's financial institution involved in an electronic fund transfer are open to the public for carrying on substantially all of its business functions;

(6) the term "consumer" means a natural person;

(7) the term "electronic fund transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone. Such term does not include:

(A) any check guarantee or authorization service which does not directly result in a
debit or credit to a consumer's account;

(B) any transfer of funds, other than those processed by automated clearinghouse, made by a financial institution on behalf of a consumer by means of a service that transfers funds held at either Federal Reserve banks or other depository institutions and which is not designed primarily to transfer funds on behalf of a consumer;

(C) any transaction the primary purpose of which is the purchase or sale of securities or commodities through a broker-dealer registered with or regulated by the Securities and Exchange Commission;

(D) any automatic transfer from a savings account to a demand deposit account pursuant to an agreement between a consumer and a financial institution for the purpose of covering an overdraft or maintaining an agreed upon minimum balance in the consumer's demand deposit account; or

(E) any transfer of funds which is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution which is not pursuant to a prearranged plan and under which periodic or recurring transfers are not contemplated;

as determined under regulations of the **Bureau** Board;

(8) 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;

(9) 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;

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

(11) the term "State" means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing; and

(12) 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.
EFTA 15 USC § 1693b Regulations

Reference

[Changes effective July 22, 2010, unless otherwise noted]

(a) Prescription by board. -- The Board shall prescribe regulations to carry out the purposes of this title.” and inserting the following:

(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 title.

(2) AUTHORITY OF THE BOARD The Board shall have sole authority to prescribe rules --

(A) to carry out the purposes of this title with respect to a person described in section 1029(a) of the Consumer Financial Protection Act of 2010; and

(B) to carry out the purposes of section 920.

(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 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

[Changes effective on a date as designated under 12 USC 5582 (Dodd-Frank) that will be not earlier than 180 days, nor later than 12 months, after the date of enactment of this Act (Dodd-Frank), unless specified in 12 USC 5582 (Dodd-Frank)] The Bureau Board shall issue model clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of section 1693c of this title and to aid consumers in understanding the rights and responsibilities of participants in electronic fund transfers or remittance 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 1693c(a)(3) and (4) of this title, the Bureau 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, 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

[Changes effective on a date as designated under 12 USC 5582 (Dodd-Frank) that will be not earlier than 180 days, nor later than 12 months, after the date of enactment of this Act (Dodd-Frank), unless specified in 12 USC 5582 (Dodd-Frank)] If electronic fund transfer services are made available to consumers by a person other than a financial institution holding a consumer's account, the Bureau 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" --

(i) 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

(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

[Changes effective on a date as designated under 12 USC 5582 (Dodd-Frank) that will be not earlier than 180 days, nor later than 12 months, after the date of enactment of this Act (Dodd-Frank), unless specified in 12 USC 5582 (Dodd-Frank)] The disclosures, protections, responsibilities, and remedies established under this subchapter, and any regulation prescribed or order issued by the Bureau 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 for a deposit directly into a consumer account held by the recipient of the benefit.

(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 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.

[Changes effective on a date as designated under 12 USC 5582 (Dodd-Frank) that will be not earlier than 180 days, nor later than 12 months, after the date of enactment of this Act (Dodd-Frank), unless specified in 12 USC 5582 (Dodd-Frank)]

(e) DEFERENCE

No provision of this title may be construed as altering, limiting, or otherwise affecting the deference that a court affords to --

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

(2) the Board in making determinations regarding the meaning or interpretation of section 920.
EFTA 15 USC § 1693c Terms and Conditions of Transfers

Reference

[Changes effective on a date as designated under 12 USC 5582 (Dodd-Frank) that will be not earlier than 180 days, nor later than 12 months, after the date of enactment of this Act (Dodd-Frank), unless specified in 12 USC 5582 (Dodd-Frank)]

(a) Disclosures; time; form; contents

The terms and conditions of electronic fund transfers involving a consumer’s account shall be disclosed at the time the consumer contracts for an electronic fund transfer service, in accordance with regulations of the Bureau 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 than 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 Bureau 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 Bureau 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;
(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 Bureau 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.
EFTA 15 USC § 1693d Documentation of Transfers

Reference

[Changes effective on a date as designated under 12 USC 5582 (Dodd-Frank) that will be not earlier than 180 days, nor later than 12 months, after the date of enactment of this Act (Dodd-Frank), unless specified in 12 USC 5582 (Dodd-Frank)]

(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 Bureau 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 preceded by the caption "Direct Inquiries To:"

(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 institution 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 accessed by electronic fund transfers other than preauthorized electronic fund transfers crediting the account, the financial institution may provide 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 documentation required by this section to be given to the consumer which indicates that an electronic 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.
EFTA 15 USC § 1693e Preauthorized Transfers

Reference

[Changes effective on a date as designated under 12 USC 5582 (Dodd-Frank) that will be not earlier than 180 days, nor later than 12 months, after the date of enactment of this Act (Dodd-Frank), unless specified in 12 USC 5582 (Dodd-Frank)]

(a) A preauthorized electronic fund transfer from a consumer's account may be authorized by the consumer only in writing, and a copy of such authorization shall be provided to the consumer when made. A consumer may stop payment of a preauthorized electronic fund transfer by notifying the financial institution orally or in writing at any time up to three business days preceding the scheduled date of such transfer. The financial institution may require written confirmation to be provided to it within fourteen days of an oral notification if, when the oral notification is made, the consumer is advised of such requirement and the address to which such confirmation should be sent.

(b) In the case of preauthorized transfers from a consumer’s account to the same person which may vary in amount, the financial institution or designated payee shall, prior to each transfer, provide reasonable advance notice to the consumer, in accordance with regulations of the Bureau Board, of the amount to be transferred and the scheduled date of the transfer.
EFTA 15 USC § 1693f Error Resolution

Reference

(a) Notification to financial institution of error

If a financial institution, within sixty days after having transmitted to a consumer documentation pursuant to section 1693d(a), (c), or (d) of this title or notification pursuant to section 1693d(b) of this title, receives oral or written notice in which the consumer --

(1) sets forth or otherwise enables the financial institution to identify the name and account 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 occurred, the financial institution shall investigate the alleged error, determine whether an error has occurred, and report or mail the results of such investigation and determination to the consumer within ten business days. The financial institution may require written confirmation to be provided to it within ten business days of an oral notification of error if, when the oral notification is made, the consumer is advised of such requirement and the address to which such confirmation should be sent. A financial institution which requires written confirmation in accordance with the previous sentence need not provisionally recredit a consumer's account in accordance with subsection (c) of this section, nor shall the financial institution be liable under subsection (e) of this section if the written confirmation is not received within the ten-day period referred to in the previous sentence.

(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 determination, correct the error, subject to section 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) of this title.

(f) Acts constituting error

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

(1) an unauthorized electronic fund transfer;

(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;

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

[Changes effective on a date as designated under 12 USC 5582 (Dodd-Frank) that will be not earlier than 180 days, nor later than 12 months, after the date of enactment of this Act (Dodd-Frank), unless specified in 12 USC 5582 (Dodd-Frank)] (7) any other error described in regulations of the Bureau Board.
EFTA 15 USC § 1693g Consumer Liability

Reference

(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 does in fact receive such information. Notwithstanding the foregoing, reimbursement need not be made to the consumer for losses the financial institution establishes would not have occurred but for the failure of the consumer to report within sixty days of transmittal of the statement (or in extenuating circumstances such as extended travel or hospitalization, within a reasonable time under the circumstances) any unauthorized electronic fund transfer or account error which appears on the periodic statement provided to the consumer under section 1693d of this title. In addition, reimbursement need not be made to the consumer for losses which the financial institution establishes would not have occurred but for the failure of the consumer to report any loss or theft of a card or other means of access within two business days after the consumer learns of the loss or theft (or in extenuating circumstances such as extended travel or hospitalization, within a longer period which is reasonable under the circumstances), but the consumer’s liability under this subsection in any such case may not exceed a total of $500, or the amount of unauthorized electronic fund transfers which occur following the close of two business days (or such longer period) after the consumer learns of the loss or theft but
prior to notice to the financial institution under this subsection, whichever is less.

(b) Burden of proof

In any action which involves a consumer's liability for an unauthorized electronic fund transfer, the burden of proof is upon the financial institution to show that the electronic fund transfer was authorized or, if the electronic fund transfer was unauthorized, then the burden of proof is upon the financial institution to establish that the conditions of liability set forth in subsection (a) of this section have been met, and, if the transfer was initiated after the effective date of section 1693c of this title, that the disclosures required to be made to the consumer under section 1693c(a)(1) and (2) of this title were in fact made in accordance with such section.

(c) Determination of limitation on liability

In the event of a transaction which involves both an unauthorized electronic fund transfer and an extension of credit as defined in section 1602(e) of this title pursuant to an agreement between the consumer and the financial institution to extend such credit to the consumer in the event the consumer's account is overdrawn, the limitation on the consumer's liability for such transaction shall be determined solely in accordance with this section.

(d) Restriction on liability

Nothing in this section imposes liability upon a consumer for an unauthorized electronic fund transfer in excess of his liability for such a transfer under other applicable law or under any agreement with the consumer's financial institution.

(e) Scope of liability

Except as provided in this section, a consumer incurs no liability from an unauthorized electronic fund transfer.
EFTA 15 USC § 1693h Liability of Financial Institutions

Reference

(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

[Changes effective on a date as designated under 12 USC 5582 (Dodd-Frank) that will be not earlier than 180 days, nor later than 12 months, after the date of enactment of this Act (Dodd-Frank), unless specified in 12 USC 5582 (Dodd-Frank)] (E) as otherwise provided in regulations of the Bureau 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 section 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 1693b(d)(3)(B)(i) of this title.
EFTA 15 USC § 1693i Issuance of Cards or Other Means of Access

Reference

[Changes effective on a date as designated under 12 USC 5582 (Dodd-Frank) that will be not earlier than 180 days, nor later than 12 months, after the date of enactment of this Act (Dodd-Frank), unless specified in 12 USC 5582 (Dodd-Frank)]

(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 Bureau 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.
EFTA 15 USC § 1693j  Suspension of Obligations

Reference

If a system malfunction prevents the effectuation 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.
EFTA 15 USC § 1693k Compulsory Use of Electronic Fund Transfers

Reference

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.
**EFTA 15 USC § 1693l Waiver of Rights**

**Reference**

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.
EFTA 15 USC § 1693I-1  General-use prepaid cards, gift certificates, and store gift cards

Reference

[Effective June 22, 2010]

(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 an electronic promise, plastic card, or payment code or device that is --

(i) used solely for telephone services;

(ii) reloadable and not marketed or labeled as a gift card or gift certificate;

(iii) a loyalty, award, or promotional gift card, as defined by the Board;

(iv) not marketed to the general public;

(v) issued in paper form only (including for tickets and events); or

(vi) redeemable solely for admission to events or venues at a particular location or group of affiliated locations, which may also include services or goods obtainable --

(I) at the event or venue after admission; or

(II) in conjunction with admission to such events or venues, at specific locations affiliated with and in geographic proximity to the event or venue.

(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 (3) have been met;

(C) not more than one fee may be charged in any given month; and

(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 the Electronic Fund Transfer Act 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.
EFTA 15 USC § 1693m  Civil Liability

Reference

(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 fails to comply with any provision of this subchapter with respect to any consumer, except for an error resolved in accordance with section 1693f 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;

(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 brought under subsection (a) of this section, the court shall consider, among other relevant factors --

(1) in any individual action under subsection (a)(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)(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.

[Changes effective on the date of the OTS transfer - 1 year after enactment [July 22, 2011]] (d) Good faith compliance with rule, regulation, or interpretation of Bureau 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 --

[Changes effective on the date of the OTS transfer - 1 year after enactment [July 22, 2011]] (1) any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Bureau or the Board or in conformity with any interpretation or approval by an official or employee of the Bureau of Consumer Financial Protection or the Board or in conformity with any interpretation or approval by an official or employee of the Bureau of Consumer Financial Protection or the Federal Reserve System duly authorized by the Bureau or the Board to issue such interpretations or approvals under such procedures as the Bureau or the Board may prescribe therefor; or

[Changes effective on the date of the OTS transfer - 1 year after enactment [July 22, 2011]] (2) any failure to make disclosure in proper form if a financial institution utilized an appropriate model clause issued by the Bureau or 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.
EFTA 15 USC § 1693n Criminal Liability

Reference

(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, (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.
EFTA 15 USC § 1693o Administrative Enforcement

Reference

[Changes effective July 22, 2010]

(a) Enforcing agencies

Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements imposed under this subchapter shall be enforced under --

(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;

(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;

(2.3) 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;

(3.4) 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;

(4.5) the Securities Exchange Act of 1934 (15 U.S.C. § 78a et seq.), by the Securities and Exchange Commission, with respect to any broker or dealer subject to that Act;

(5) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to any person subject to this title, except that the Bureau shall not have authority to enforce the requirements of section 920 or any regulations prescribed by the Board under section 920.

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 any of paragraphs (1) through (4) of 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 any of paragraphs (1) through (4) of 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 THE FEDERAL TRADE COMMISSION

Except to the extent that enforcement of the requirements imposed under this title 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 title
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 to enforce
compliance by any person subject to the jurisdiction of the Federal Trade
Commission with the requirements imposed under this title, irrespective of
whether that person is engaged in commerce or meets any other jurisdictional
tests under the Federal Trade Commission Act. (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
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,
irrespective of whether that person is engaged in commerce or meets any other
Remittance transfers

Reference

[Changes effective on the date of the OTS transfer - 1 year after enactment [July 22, 2011]]

(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 Bureau Board. Disclosures required under this section shall be in addition to any other disclosures applicable under this title.

(2) DISCLOSURES Subject to rules prescribed by the Bureau 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 --

(II) the information described in subparagraph (A); and

(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 Bureau Board, including the toll-free telephone number established under section 1013 of the Consumer Financial Protection Act of 2010.

(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 Bureau 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 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), or an insured credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752), 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 the date of enactment of the Consumer Financial Protection Act of 2010, unless the Bureau 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 Bureau Board may,
by rule, extend the application of subparagraph (A) to not longer than 10 years after
the date of enactment of the Consumer Financial Protection Act of 2010.

(5) EXEMPTION AUTHORITY The Bureau 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, 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 Bureau 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 Bureau 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 Bureau 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 Bureau 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
(iv) RULEMAKING AUTHORITY In prescribing rules under this subparagraph, the **Bureau 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 **Bureau Board** shall undertake appropriate studies and analyses, which shall be consistent with section 904(a)(2), 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 **Bureau 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 **Bureau Board** may prescribe rules (not later than 18 months after the date of enactment of the Consumer Financial Protection Act of 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 of the remittance transfer, 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 Bureau 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 Bureau Board shall establish, by rule issued not later than 18 months after the date of enactment of the Consumer Financial Protection Act of 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 the date of enactment of the Consumer Financial Protection Act of 2010, the Bureau Board shall issue final rules regarding appropriate remittance transfer cancellation and refund policies for consumers.

(e) APPLICABILITY OF THIS TITLE

(1) IN GENERAL A remittance transfer that is not an electronic fund transfer, as
defined in section 903, shall not be subject to any of the provisions of sections 905 through 913. A remittance transfer that is an electronic fund transfer, as defined in section 903, shall be subject to all provisions of this title, except for section 908, that are otherwise applicable to electronic fund transfers under this title.

(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, United States Code, section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b), or chapter 2 of title I of Public Law 91-508 (12 U.S.C. 1951-1959), or any regulations promulgated thereunder; or

(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 title, 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 Bureau 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 Bureau 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 Act;

(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. 7006(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 903; 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 906(a);

(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.
(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, United States Code, 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 the date of enactment of the Consumer Financial Protection Act of 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 paragraph (2); and

(ii) other costs incurred by an issuer which are not specific to a particular electronic debit transaction, which costs shall not be considered under paragraph (2); and

(C) consult, as appropriate, with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, the Director of the Office of Thrift Supervision, the National Credit Union Administration Board, the Administrator of the Small Business Administration, and the Director of the Bureau of Consumer Financial 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 issuer under paragraph (2), if --

(i) such adjustment is reasonably necessary to make allowance for costs incurred by the issuer in preventing fraud in relation to electronic debit transactions involving that issuer; and

(ii) the issuer complies with the fraud-related 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 electronic debit transactions, including through the development and implementation 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 the date of enactment of the Consumer Financial Protection Act of 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 authorization 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 security costs expended by each party involved in electronic debit transactions (including consumers, persons who accept debit cards as a form of payment, financial institutions, retailers and payment card networks);

(V) the costs of fraudulent transactions absorbed by each party involved in such transactions (including consumers, 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 involved 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 issuer that, together with its affiliates, has assets of less than $10,000,000,000, and the Board shall exempt such issuers from regulations prescribed under paragraph (3)(A).

(B) DEFINITION For purposes of this paragraph, the term "issuer" shall be limited to the person holding 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 received 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 government-administered payment program, in
which the person may only use the debit card or general-use prepaid card to transfer or debit funds, monetary value, or other assets that have been provided pursuant to such program; or

(ii) a plastic card, payment code, or device 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 recording or tracking funds purchased or loaded on the card on a prepaid basis);

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

(IV) used to transfer or debit funds, monetary value, or other assets; and

(V) reloadable and not marketed or labeled as a gift card or gift certificate.

(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 the date of enactment of the Consumer Financial Protection Act of 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.

(8) REGULATORY AUTHORITY OVER NETWORK FEES

(A) IN GENERAL The Board may prescribe regulations, pursuant to section 553 of title 5, United States Code, regarding any network fee.

(B) LIMITATION The authority under subparagraph (A) to prescribe regulations shall be limited to regulations to ensure that --

(i) a network fee is not used to directly or indirectly compensate an issuer with respect to an electronic debit transaction; and

(ii) a network fee is not used to circumvent or evade the restrictions of this subsection and regulations prescribed under such subsection.

(C) RULEMAKING REQUIRED The Board shall prescribe regulations in final form before the end of the 9-month period beginning on the date of the enactment of the Consumer Financial Protection Act of 2010, to carry out the authorities provided under subparagraph (A).

(9) EFFECTIVE DATE This subsection shall take effect at the end of the 12-month period beginning on the date of the enactment of the Consumer Financial Protection Act of 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 the date of the enactment of the Consumer Financial Protection Act of 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 the date of the enactment of the Consumer Financial Protection Act of 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, United States Code, 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 915(a)(2)(A); and

(C) does not include paper checks.

(3) CREDIT CARD The term "credit card" has the same meaning as in section 103 of the Truth in Lending Act.

(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, United States Code); and

(B) a Government corporation (as defined in section 103 of title 5, United States Code).

(7) INSTITUTION OF HIGHER EDUCATION The term "institution of higher education" has the same meaning as in 101 and 102 of the Higher Education Act of 1965 (20 U.S.C. 1001, 1002).

(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 918.

(2) EXCEPTION Sections 916 and 917 shall not apply with respect to this section or the requirements imposed pursuant to this section."

(b) AMENDMENT TO THE FOOD AND NUTRITION ACT OF 2008 Section 7(h)(10) of the
Food and Nutrition Act of 2008 (7 U.S.C. 2016(h)(10)) is amended to read as follows:

(10) FEDERAL LAW NOT APPLICABLE Section 920 of the Electronic Fund Transfer Act shall not apply to electronic benefit transfer or reimbursement systems under this Act."

(c) AMENDMENT TO THE FARM SECURITY AND RURAL INVESTMENT ACT OF 2002 Section 4402 of the Farm Security and Rural Investment Act of 2002 (7 U.S.C. 3007) is amended by adding at the end the following new subsection:

(f) FEDERAL LAW NOT APPLICABLE Section 920 of the Electronic Fund Transfer Act shall not apply to electronic benefit transfer systems established under this section.".

(d) AMENDMENT TO THE CHILD NUTRITION ACT OF 1966 Section 11 of the Child Nutrition Act of 1966 (42 U.S.C. 1780) is amended by adding at the end the following:

(c) FEDERAL LAW NOT APPLICABLE Section 920 of the Electronic Fund Transfer Act shall not apply to electronic benefit transfer systems established under this Act or the Richard B. Russell National School Lunch Act (42 U.S.C. 1751 et seq.)."
EFTA 15 USC § 1693p Reports to Congress

Reference

[Changes effective on the date of the OTS transfer - 1 year after enactment [July 22, 2011]]

(a) Not later than twelve months after the effective date of this subchapter and at one-year intervals thereafter, the *Bureau Board* shall make reports to the Congress concerning the administration of its functions under this subchapter, including such recommendations as the *Bureau Board* deems necessary and appropriate. In addition, each report of the *Bureau 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 1693o of this title. In such report, the *Bureau 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 *Bureau Board* may obtain upon request the views of any other Federal agency which, in the judgment of the *Bureau Board*, exercises regulatory or supervisory functions with respect to any class of persons subject to this subchapter.
EFTA 15 USC § 1693q Relation to State Laws

Reference

[Changes effective on the date of the OTS transfer - 1 year after enactment [July 22, 2011]]

This subchapter does not annul, alter, or affect the laws of any State relating to electronic fund transfers, 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 Bureau 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 Bureau Board, determine whether a State requirement is inconsistent or affords greater protection. If the Bureau 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.
EFTA 15 USC § 1693r Exemption for state regulation

Reference

[Changes effective June 22, 2010, unless otherwise noted]

The [effective date of transfer] Bureau Board shall by regulation exempt from the requirements of this subchapter any class of 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, within any State if the [effective date of transfer] Bureau Board determines that under the law of that State that class of electronic fund transfers is subject to requirements substantially similar to those imposed by this subchapter, and that there is adequate provision for enforcement.
Official Staff Interpretations

CODE OF FEDERAL REGULATIONS
TITLE 12 C.F.R. BANKS AND BANKING
CHAPTER II. FEDERAL RESERVE SYSTEM
SUBCHAPTER A. BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM
PART 205. ELECTRONIC FUND TRANSFERS (REGULATION E)
Reg E 12 CFR § 205.1 Authority and Purpose

Reference

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

(b) Purpose. This part carries out the purposes of the Electronic Fund Transfer Act, which establishes the basic rights, liabilities, and responsibilities of consumers who use electronic fund transfer services and of financial institutions that offer these services. The primary objective of the act and this part is the protection of individual consumers engaging in electronic fund transfers.
Reg E 12 CFR § 205.2 Definitions

Reference

For purposes of this part, the following definitions apply:

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

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

(b) (1) Account means a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution and established primarily for personal, family, or household purposes.

(2) The term includes a "payroll card account" which is an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation (such as commissions), are made on a recurring basis, whether the account is operated or managed by the employer, a thirdparty payroll processor, a depository institution or any other person. For rules governing payroll card accounts, see § 205.18.

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

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

(d) Business day means any day on which the offices of the consumer's financial institution are open to the public for carrying on substantially all business functions.

(e) Consumer means a natural person.

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

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

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

2. POS terminals. A POS terminal that captures data electronically, for debiting or crediting to a consumer's asset account, is an electronic terminal for purposes of Regulation E even if no access device is used to initiate the transaction. (See § 205.9 for receipt requirements.)

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

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

(k) Preauthorized Electronic Fund Transfer

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

(l) State means any state, territory, or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; or any political subdivision of the above in this paragraph (l).

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

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

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

(3) By the financial institution or its employee.

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

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

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

iii. A credit in the wrong amount (for example, when the amount credited to the consumer's account differs from the amount in the transmittal instructions).
Reg E 12 CFR § 205.5 Issuance of Access Devices

Reference

(a) Solicited issuance. Except as provided in paragraph (b) of this section, a financial institution may issue an access device to a consumer only:

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

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

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

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

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

(3) Accompanied by the disclosures required by § 205.7, of the consumer's rights and liabilities that will apply if the access device is validated; and

(4) Validated only in response to the consumer's oral or written request for validation, after the institution has verified the consumer's identity by a reasonable means.
Reg E 12 CFR § 205.3 Coverage

Reference

Changes effective August 22, 2010

(a) General. This part applies to any electronic fund transfer that authorizes a financial institution to debit or credit a consumer’s account. Generally, this part applies to financial institutions. For purposes of §§ 205.3(b)(2) and (b)(3), 205.10(b), (d), and (e), and 205.13 and 205.20, this part applies to any person.

(b) Electronic fund transfer --

(1) Definition. The term electronic fund transfer means any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer’s account. The term includes, but is not limited to --

(i) Point-of-sale transfers;
(ii) Automated teller machine transfers;
(iii) Direct deposits or withdrawals of funds;
(iv) Transfers initiated by telephone; and
(v) Transfers resulting from debit card transactions, whether or not initiated through an electronic terminal.

(2) Electronic fund transfer using information from a check.

(i) This part applies where a check, draft, or similar paper instrument is used as a source of information to initiate a one-time electronic fund transfer from a consumer’s account. The consumer must authorize the transfer.

(ii) The person initiating an electronic fund transfer using the consumer’s check as a source of information for the transfer must provide a notice that the transaction will or may be processed as an EFT, and obtain a consumer’s authorization for each transfer. A consumer authorizes a one-time electronic fund transfer (in providing a check to a merchant or other payee for the MICR encoding, that is, the routing number of the financial institution, the consumer’s account number and the serial number) when the consumer receives notice and goes forward with the underlying transaction. For point-of-sale transfers, the notice must be posted in a prominent and conspicuous location, and a copy thereof, or a substantially similar notice, must be provided to the consumer at the time of the transaction.
(iii) The person that initiates an electronic fund transfer using the consumer's check as a source of information for the transfer shall also provide a notice to the consumer at the same time it provides the notice required under paragraph (b)(2)(ii) that when a check is used to initiate an electronic fund transfer, funds may be debited from the consumer's account as soon as the same day payment is received, and, as applicable, that the consumer's check will not be returned by the financial institution holding the consumer's account. For point-of-sale transfers, the person initiating the transfer may post the notice required in this paragraph (b)(2)(iii) in a prominent and conspicuous location and need not include this notice on the copy of the notice given to the consumer under paragraph (b)(2)(ii). The requirements in this paragraph (b)(2)(iii) shall remain in effect until December 31, 2009.

(iv) A person may provide notices that are substantially similar to those set forth in Appendix A-6 to comply with the requirements of this paragraph (b)(2).

(3) (i) General. The person initiating an electronic fund transfer to collect a fee for the return to that person of an electronic fund transfer or a check due to insufficient or uncollected funds in the consumer's account must obtain the consumer's authorization for each transfer. A consumer authorizes a onetime electronic fund transfer from his or her account to pay the fee for insufficient or uncollected funds if the person collecting the fee provides notice to the consumer stating that the person may electronically collect the fee, and the consumer goes forward with the transaction. The notice must state that the fee will be collected by means of an electronic fund transfer from the consumer's account if the payment is returned due to insufficient or uncollected funds and must disclose the dollar amount of the fee. If the fee may vary due to the amount of the transaction or due to other factors, then, except as otherwise provided in paragraph (b)(3)(ii), the person collecting the fee may disclose, in place of the dollar amount of the fee, an explanation of how the fee will be determined.

(ii) Point-of-sale transactions. If a fee for insufficient or uncollected funds may be collected electronically in connection with a point-of-sale transaction, the person collecting the fee must post the notice described in paragraph (b)(3)(i) of this section in a prominent and conspicuous location, and also provide the consumer a copy of the posted notice, or a substantially similar notice, at the time of the transaction. If the amount of the fee may vary due to the amount of the transaction or due to other factors, the posted notice may explain how the fee will be determined, but in such cases, the notice provided to each consumer must state the dollar amount of the fee if the amount can be calculated at the time of the transaction.
(iii) Delayed compliance date for fee disclosure. Through December 31, 2007, the copy of the notice given to consumers at point-of-sale under paragraph (b)(3)(ii) of this section need not include either the dollar amount of any fee collected electronically for insufficient or uncollected funds or an explanation of how the fee will be determined.

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

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

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

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

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

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

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

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

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

Re-presented checks. The electronic re-presentation of a returned check is not covered by Regulation E because the transaction originated by check. Regulation E does apply, however, to any fee authorized by the consumer to be debited electronically from the consumer’s account because the check was returned for
insufficient funds. Authorization occurs where the consumer has received notice that a fee imposed for returned checks will be debited electronically from the consumer's account. Check used to capture information for a one-time EFT. See comment 3(b)-1(v).

(5) Automatic transfers by account-holding institution. Any transfer of funds under an agreement between a consumer and a financial institution which provides that the institution will initiate individual transfers without a specific request from the consumer:

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

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

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

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

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

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

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

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

2. Examples of covered transfers.

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

(7) Small institutions. Any preauthorized transfer to or from an account if the
assets of the account-holding financial institution were $100 million or less on the preceding December 31. If assets of the account-holding institution subsequently exceed $100 million, the institution’s exemption for preauthorized transfers terminates one year from the end of the calendar year in which the assets exceed $100 million. Preauthorized transfers exempt under this paragraph (c)(7) remain subject to § 205.10(e) regarding compulsory use and sections 915 and 916 of the act regarding civil and criminal liability.
Reg E 12 CFR § 205.4 General Disclosure Requirements; Jointly Offered Services

Reference

[Changes effective August 22, 2010]

(a)  (1)  Form of disclosures. Disclosures required under this part shall be clear and readily understandable, in writing, and in a form the consumer may keep, except as otherwise provided in this part. The disclosures required by this part may be provided to the consumer in electronic form, subject to compliance with the consumer-consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 U.S.C. § 7001 et seq.). A financial institution may use commonly accepted or readily understandable abbreviations in complying with the disclosure requirements of this part.

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

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

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

(d)  Multiple accounts and account holders --

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

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

(e)  Services offered jointly. Financial institutions that provide electronic fund transfer services jointly may contract among themselves to comply with the requirements that this part imposes on any or all of them. An institution need make only the disclosures required by Secs. 205.7 and 205.8 that are within its knowledge and within the purview of its relationship with the consumer for whom it holds an account.
Reg E 12 CFR § 205.6 Liability of Consumer for Unauthorized Transfers

Reference

(a) Conditions for liability. A consumer may be held liable, within the limitations described in paragraph (b) of this section, for an unauthorized electronic fund transfer involving the consumer's account only if the financial institution has provided the disclosures required by § 205.7(b)(1), (2), and (3). If the unauthorized transfer involved an access device, it must be an accepted access device and the financial institution must have provided a means to identify the consumer to whom it was issued.

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

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

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

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

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

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

   (3) Periodic statement; timely notice not given. A consumer must report an unauthorized electronic fund transfer that appears on a periodic statement within 60 days of the financial institution's transmittal of the statement to avoid liability for subsequent transfers. If the consumer fails to do so, the consumer's liability shall not exceed the amount of the unauthorized transfers that occur after the close of the 60 days and before notice to the institution, and that the institution establishes would not have occurred had the consumer notified the institution within the 60-day period. When an access device is involved in the unauthorized transfer, the consumer may be liable for other amounts set forth in paragraphs (b)(1) or (b)(2) of this section, as applicable.
(4) Extension of time limits. If the consumer's delay in notifying the financial institution was due to extenuating circumstances, the institution shall extend the times specified above to a reasonable period.

(5) Notice to financial institution.
   
   (i) Notice to a financial institution is given when a consumer takes steps reasonably necessary to provide the institution with the pertinent information, whether or not a particular employee or agent of the institution actually receives the information.
   
   (ii) The consumer may notify the institution in person, by telephone, or in writing.
   
   (iii) Written notice is considered given at the time the consumer mails the notice or delivers it for transmission to the institution by any other usual means. Notice may be considered constructively given when the institution becomes aware of circumstances leading to the reasonable belief that an unauthorized transfer to or from the consumer's account has been or may be made.

(6) Liability under state law or agreement. If state law or an agreement between the consumer and the financial institution imposes less liability than is provided by this section, the consumer's liability shall not exceed the amount imposed under the state law or agreement.
Reg E 12 CFR § 205.7 Initial Disclosures

Reference

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

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

(b) Content of disclosures. A financial institution shall provide the following disclosures, as applicable:

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

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

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

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

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

(6) Documentation. A summary of the consumer's right to receipts and periodic statements, as provided in § 205.9, and notices regarding preauthorized transfers as provided in Secs. 205.10(a), and 205.10(d).

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

(8) Liability of institution. A summary of the financial institution's liability to the consumer under section 910 of the act for failure to make or to stop certain transfers.

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

(10) Error resolution. A notice that is substantially similar to Model Form A-3 as set out in Appendix A of this part concerning error resolution.

Extended time-period for certain transactions. To take advantage of the longer time periods
for resolving errors under § 205.11(c)(3) (for new accounts as defined in Regulation CC (12 C.F.R. part 229), transfers initiated outside the United States, or transfers resulting from POS debit-card transactions), a financial institution must have disclosed these longer time periods. Similarly, an institution that relies on the exception from provisional crediting in § 205.11(c)(2) for accounts subject to Regulation T (12 C.F.R. part 220) must have disclosed accordingly.

(c) Addition of electronic fund transfer services. If an electronic fund transfer service is added to a consumer's account and is subject to terms and conditions different from those described in the initial disclosures, disclosures for the new service are required.
Reg E 12 CFR § 205.8 Change in Terms Notice; Error Resolution Notice

Reference

(a) Change in terms notice —

(1) Prior notice required. A financial institution shall mail or deliver a written notice to the consumer, at least 21 days before the effective date, of any change in a term or condition required to be disclosed under § 205.7(b) if the change would result in:

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

(2) Prior notice exception. A financial institution need not give prior notice if an immediate change in terms or conditions is necessary to maintain or restore the security of an account or an electronic fund transfer system. If the institution makes such a change permanent and disclosure would not jeopardize the security of the account or system, the institution shall notify the consumer in writing on or with the next regularly scheduled periodic statement or within 30 days of making the change permanent.

(b) Error resolution notice. For accounts to or from which electronic fund transfers can be made, a financial institution shall mail or deliver to the consumer, at least once each calendar year, an error resolution notice substantially similar to the model form set forth in Appendix A of this part (Model Form A-3). Alternatively, an institution may include an abbreviated notice substantially similar to the model form error resolution notice set forth in Appendix A of this part (Model Form A-3), on or with each periodic statement required by § 205.9(b).

2. Exception for new accounts. For new accounts, disclosure of the longer error resolution time periods under § 205.11(c)(3) is not required in the annual error resolution notice or in the notice that may be provided with each periodic statement as an alternative to the annual notice.
Reg E 12 CFR § 205.9 Receipts at Electronic Terminals; Periodic Statements

Reference

(a) Receipts at electronic terminals -- General. Except as provided in paragraph (e) of this section, financial institution shall make a receipt available to a consumer at the time the consumer initiates an electronic fund transfer at an electronic terminal. The receipt shall set forth the following information, as applicable:

(1) Amount. The amount of the transfer. A transaction fee may be included in this amount, provided the amount of the fee is disclosed on the receipt and displayed on or at the terminal.

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

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

(4) Identification. A number or code that identifies the consumer's account or accounts, or the access device used to initiate the transfer. The number or code need not exceed four digits or letters to comply with the requirements of this paragraph (a)(4).

(5) Terminal location.
   1. Options for identifying terminal. The institution may provide either:
      i. The city, state or foreign country, and the information in §§ 205.9(a)(5) (i), (ii), or (iii), or
      ii. A number or a code identifying the terminal. If the institution chooses the second option, the code or terminal number identifying the terminal where the transfer is initiated may be given as part of a transaction code.
   3. Omission of state. The state may be omitted from the location information on the receipt if:
      i. All the terminals owned or operated by the financial institution providing the statement (or by the system in which it participates) are located in that state, or
      ii. All transfers occur at terminals located within 50 miles of the financial institution's main office.
   4. Omission of city and state. The city and state may be omitted if all the terminals owned or operated by the financial institution providing the statement (or by the system in which it participates) are located in the same city.

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

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

(i) The amount of the transfer;

(ii) The date the transfer was credited or debited to the consumer's account;

(iii) The type of transfer and type of account to or from which funds were transferred;

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

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

(2) Account number. The number of the account.

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

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

(5) Address and telephone number for inquiries. The address and telephone number to be used for inquiries or notice of errors, preceded by "Direct inquiries to" or similar language. The address and telephone number provided on an error resolution notice under § 205.8(b) given on or with the statement satisfies this requirement.

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

(c) Exceptions to the periodic statement requirement for certain accounts — Preauthorized transfers to accounts.

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

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

(i) Passbook accounts. For passbook accounts, the financial institution need not provide a periodic statement if the institution updates the passbook upon presentation or enters on a separate document the amount and date of each electronic fund transfer since the passbook was
(ii) Other accounts. For accounts other than passbook accounts, the financial institution must send a periodic statement at least quarterly.

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

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

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

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

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

(e) Exception for receipts in small-value transfers. A financial institution is not subject to the requirement to make available a receipt under paragraph (a) of this section if the amount of the transfer is $15 or less.
Reg E 12 CFR § 205.10 Preauthorized Transfers

Reference

(a) Preauthorized transfers to consumer's account —

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

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

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

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

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

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

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

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

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

(c) Consumer's right to stop payment —

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

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

(d) Notice of transfers varying in amount —

(1) Notice. When a preauthorized electronic fund transfer from the consumer's account will vary in amount from the previous transfer under the same authorization or from the preauthorized amount, the designated payee or the financial institution shall send the consumer written notice of the amount and date of the transfer at least 10 days before the scheduled date of transfer.

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

(e) Compulsory use —

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

(2) Employment or government benefit. Payroll. An employer (including a financial institution) may not require its employees to receive their salary by direct deposit to any particular institution. An employer may require direct deposit of salary by electronic means if employees are allowed to choose the institution that will receive the direct deposit. Alternatively, an employer may give employees the choice of having their salary deposited at a particular institution (designated by the employer) or receiving their salary by another means, such as by check or cash.
Reg E 12 CFR § 205.11 Procedures for Resolving Errors

Reference

(a) Definition of error —

(1) Types of transfers or inquiries covered. The term error means:

(i) An unauthorized electronic fund transfer;
(ii) An incorrect electronic fund transfer to or from the consumer's account;
(iii) The omission of an electronic fund transfer from a periodic statement;
(iv) A computational or bookkeeping error made by the financial institution relating to an electronic fund transfer;
(v) The consumer's receipt of an incorrect amount of money from an electronic terminal;
(vi) An electronic fund transfer not identified in accordance with Secs. 205.9 or 205.10(a); or
(vii) The consumer's request for documentation required by Secs. 205.9 or 205.10(a) or for additional information or clarification concerning an electronic fund transfer, including a request the consumer makes to determine whether an error exists under paragraphs (a)(1) (i) through (vi) of this section.

(2) Types of inquiries not covered. The term error does not include:

(i) A routine inquiry about the consumer's account balance;
(ii) A request for information for tax or other recordkeeping purposes; or
(iii) A request for duplicate copies of documentation.

(b) Notice of error from consumer —

(1) Timing; contents. A financial institution shall comply with the requirements of this section with respect to any oral or written notice of error from the consumer that:

(i) Is received by the institution no later than 60 days after the institution sends the periodic statement or provides the passbook documentation, required by § 205.9, on which the alleged error is first reflected;
(ii) Enables the institution to identify the consumer's name and account number; and
(iii) Indicates why the consumer believes an error exists and includes to the extent possible the type, date, and amount of the error, except for requests described in paragraph (a)(1)(vii) of this section.

2. Verifying an account debit or credit. If the consumer contacts the financial institution to ascertain whether a payment (for example, in a home-banking or bill-payment program) or any other type of EFT was debited to the account, or whether a deposit made via ATM, preauthorized transfer, or any other type of EFT was credited to the account, without asserting an error, the error resolution procedures do not apply.
(3) Request for documentation or clarifications. When a notice of error is based on documentation or clarification that the consumer requested under paragraph (a)(1)(vii) of this section, the consumer's notice of error is timely if received by the financial institution no later than 60 days after the institution sends the information requested.

(c) Time limits and extent of investigation —

(1) Ten-day period. A financial institution shall investigate promptly and, except as otherwise provided in this paragraph (c), shall determine whether an error occurred within 10 business days of receiving a notice of error. The institution shall report the results to the consumer within three business days after completing its investigation. The institution shall correct the error within one business day after determining that an error occurred.

(2) Forty-five day period. If the financial institution is unable to complete its investigation within 10 business days, the institution may take up to 45 days from receipt of a notice of error to investigate and determine whether an error occurred, provided the institution does the following:

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

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

(B) The alleged error involves an account that is subject to Regulation T (Securities Credit by Brokers and Dealers, 12 C.F.R. part 220);

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

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

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

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

(i) The applicable time is 20 business days in place of 10 business days under paragraphs (c)(1) and (c)(2) of this section if the notice of error involves an electronic fund transfer to or from the account within 30 days after the first deposit to the account was made.
(ii) The applicable time is 90 days in place of 45 days under paragraph (c)(2) of this section, for completing an investigation, if a notice of error involves an electronic fund transfer that:

(A) Was not initiated within a state;
(B) Resulted from a point-of-sale debit card transaction; or
(C) Occurred within 30 days after the first deposit to the account was made.

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

(i) The alleged error concerns a transfer to or from a third party; and

(ii) There is no agreement between the institution and the third party for the type of electronic fund transfer involved.

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

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

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

(i) Notify the consumer of the date and amount of the debiting;

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

(e) Reassertion of error. A financial institution that has fully complied with the error resolution requirements has no further responsibilities under this section should the consumer later reassert the same error, except in the case of an error asserted by the consumer following receipt of information provided under paragraph (a)(1)(vii) of this section.
Reg E 12 CFR § 205.12  
Relation to other laws

Reference

[Changes effective January 19, 2010 -- mandatory compliance date July 1, 2010]

(a) Relation to Truth in Lending --

(1) The Electronic Fund Transfer Act and this part govern--

(i) The addition to an accepted credit card as defined in Regulation Z (12 CFR 226.12, comment 12-2), of the capability to initiate electronic fund transfers;

(ii) The issuance of an access device that permits credit extensions (under a preexisting agreement between a consumer and a financial institution) only when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, or under an overdraft service, as defined in Sec. 205.17(a);

(iii) The addition of an overdraft service, as defined in Sec. 205.17(a), to an accepted access device; and

(iv) A consumer's liability for an unauthorized electronic fund transfer and the investigation of errors involving an extension of credit that occurs under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, or under an overdraft service, as defined in Sec. 205.17(a).

(2) The Truth in Lending Act and Regulation Z (12 CFR part 226), which prohibit the unsolicited issuance of credit cards, govern --

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

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

1. Determining applicable regulation.

i. For transactions involving access devices that also function as credit cards, whether Regulation E or Regulation Z (12 C.F.R. part 226) applies depends on the nature of the transaction. For example, if the transaction solely involves an extension of credit, and does not include a debit to a checking account (or other consumer asset account), the liability limitations and error resolution requirements of Regulation Z apply. If the transaction debits a checking account
only (with no credit extended), the provisions of Regulation E apply. If the
transaction debits a checking account but also draws on an overdraft line of credit
attached to the account, Regulation E's liability limitations apply, in addition to §§
226.13 (d) and (g) of Regulation Z (which apply because of the extension of credit
associated with the overdraft feature on the checking account). If a consumer’s
access device is also a credit card and the device is used to make unauthorized
withdrawals from a checking account, but also is used to obtain unauthorized cash
advances directly from a line of credit that is separate from the checking account,
both Regulation E and Regulation Z apply.

ii. The following examples illustrate these principles:

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

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

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

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

(2) The Truth in Lending Act and Regulation Z (12 C.F.R. part 226), which
prohibit the unsolicited issuance of credit cards, govern:

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

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

(b) Preemption of inconsistent state laws --

[Changes effective August 22, 2010] (1) Inconsistent requirements -- The Board shall determine, upon its own motion or upon the request of a state, financial institution, or other interested party, whether the act and this part preempt state law relating to electronic fund transfers, or dormancy, inactivity, or service fees, or expiration dates in the case of gift certificates, store gift cards, or general-use prepaid cards. Only state laws that are inconsistent with the act and this part are preempted and then only to the extent of the inconsistency. A state law is not inconsistent with the act and this part if it is more protective of consumers.

(2) Standards for determination -- State law is inconsistent with the requirements of the act and this part if it:

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

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

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

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

(c) State exemptions --

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

(i) Under state law the class of electronic fund transfers is subject to requirements substantially similar to those imposed by the federal law; and

(ii) There is adequate provision for state enforcement.
(2) Exception -- To assure that the federal and state courts continue to have concurrent jurisdiction, and to aid in implementing the act:

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

(ii) When the Board grants an exemption, the state law requirements shall constitute the requirements of the federal law for purposes of section 915 of the act, except for state law requirements not imposed by the federal law.
Reg E 12 CFR § 205.13  Administrative Enforcement; Record Retention

Reference

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

(b) Record retention.

(1) Any person subject to the act and this part shall retain evidence of compliance with the requirements imposed by the act and this part for a period of not less than two years from the date disclosures are required to be made or action is required to be taken.

(2) Any person subject to the act and this part having actual notice that it is the subject of an investigation or an enforcement proceeding by its enforcement agency, or having been served with notice of an action filed under sections 910, 915, or 916(a) of the act, shall retain the records that pertain to the investigation, action, or proceeding until final disposition of the matter unless an earlier time is allowed by court or agency order.
Reg E 12 CFR § 205.14  Electronic Fund Transfer Service Provider not Holding Consumer's Account

Reference

(a) Provider of electronic fund transfer service. A person that provides an electronic fund transfer service to a consumer but that does not hold the consumer's account is subject to all requirements of this part if the person:

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

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

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

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

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

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

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

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

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

(2) Error resolution.

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

(ii) The service provider shall disclose to the consumer the date on which it initiates a transfer to effect a provisional credit in accordance with § 205.11(c)(2)(ii).
(iii) If the service provider determines an error occurred, it shall transfer funds to or from the consumer's account, in the appropriate amount and within the applicable time period, in accordance with § 205.11(c)(2)(i).

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

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

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

(2) Error resolution. Upon request, the account-holding institution shall provide information or copies of documents needed by the service provider to investigate errors or to furnish copies of documents to the consumer. The account-holding institution shall also honor debits to the account in accordance with § 205.11(d)(2)(ii).
Reg E 12 CFR § 205.15 Electronic Fund Transfer of Government Benefits

Reference

(a) Government agency subject to regulation.
   (1) A government agency is deemed to be a financial institution for purposes of the act and this part if directly or indirectly it issues an access device to a consumer for use in initiating an electronic fund transfer of government benefits from an account, other than needs-tested benefits in a program established under state or local law or administered by a state or local agency. The agency shall comply with all applicable requirements of the act and this part, except as provided in this section.
   (2) For purposes of this section, the term account means an account established by a government agency for distributing government benefits to a consumer electronically, such as through automated teller machines or point-of-sale terminals, but does not include an account for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency.

(b) Issuance of access devices. For purposes of this section, a consumer is deemed to request an access device when the consumer applies for government benefits that the agency disburses or will disburse by means of an electronic fund transfer. The agency shall verify the identity of the consumer receiving the device by reasonable means before the device is activated.

(c) Alternative to periodic statement. A government agency need not furnish the periodic statement required by § 205.9(b) if the agency makes available to the consumer:
   (1) The consumer's account balance, through a readily available telephone line and at a terminal (such as by providing balance information at a balance-inquiry terminal or providing it, routinely or upon request, on a terminal receipt at the time of an electronic fund transfer); and
   (2) A written history of the consumer's account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days preceding the date of a request by the consumer.

(d) Modified requirements. A government agency that does not furnish periodic statements, in accordance with paragraph (c) of this section, shall comply with the following special rules:
   (1) Initial disclosures. The agency shall modify the disclosures under § 205.7(b) by disclosing:
      (i) Account balance. The means by which the consumer may obtain information concerning the account balance, including a telephone number. The agency provides a notice substantially similar to the notice contained in paragraph A-5 in Appendix A of this part.
      (ii) Written account history. A summary of the consumer's right to receive a written account history upon request, in place of the periodic statement required by § 205.7(b)(6), and the telephone number to call to request an account history. This disclosure may be made by providing a notice substantially similar to the notice.
(iii) Error resolution. A notice concerning error resolution that is substantially similar to the notice contained in paragraph A-5 in Appendix A of this part, in place of the notice required by § 205.7(b)(10).

(2) Annual error resolution notice. The agency shall provide an annual notice concerning error resolution that is substantially similar to the notice contained in paragraph A-5 in appendix A, in place of the notice required by § 205.8(b).

(3) Limitations on liability. For purposes of § 205.6(b)(3), regarding a 60-day period for reporting any unauthorized transfer that appears on a periodic statement, the 60-day period shall begin with transmittal of a written account history or other account information provided to the consumer under paragraph (c) of this section.

(4) Error resolution. The agency shall comply with the requirements of § 205.11 in response to an oral or written notice of an error from the consumer that is received no later than 60 days after the consumer obtains the written account history or other account information, under paragraph (c) of this section, in which the error is first reflected.
Reg E 12 CFR § 205.16  
Disclosures at Automated Teller Machines

Reference

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

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

1. Provide notice that a fee will be imposed for providing electronic fund transfer services or a balance inquiry; and
2. Disclose the amount of the fee.

(c) Notice requirement. To meet the requirements of paragraph (b) of this section, an automated teller machine operator must comply with the following:

1. On the machine. Post in a prominent and conspicuous location on or at the automated teller machine a notice that:
   
   i. A fee will be imposed for providing electronic fund transfer services or for a balance inquiry; or
   
   ii. A fee may be imposed for providing electronic fund transfer services or for a balance inquiry, but the notice in this paragraph (c)(1)(ii) may be substituted for the notice in paragraph (c)(1)(i) only if there are circumstances under which a fee will not be imposed for such services; and

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

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

(e) Imposition of fee. An automated teller machine operator may impose a fee on a consumer for initiating an electronic fund transfer or a balance inquiry only if (1) The consumer is provided the notices required under paragraph (c) of this section, and (2) The consumer elects to continue the transaction or inquiry after receiving such notices.
Reg E 12 CFR § 205.17  

Requirements for overdraft services

Reference

[Effective January 19, 2010 -- mandatory compliance date July 1, 2010]

(a) Definition. For purposes of this section, the term "overdraft service" means a service under which a financial institution assesses a fee or charge on a consumer's account held by the institution for paying a transaction (including a check or other item) when the consumer has insufficient or unavailable funds in the account. The term "overdraft service" does not include any payment of overdrafts pursuant to --

(1) A line of credit subject to the Federal Reserve Board's Regulation Z (12 CFR part 226), including transfers from a credit card account, home equity line of credit, or overdraft line of credit;

(2) A service that transfers funds from another account held individually or jointly by a consumer, such as a savings account; or

(3) A line of credit or other transaction exempt from the Federal Reserve Board's Regulation Z (12 CFR part 226) pursuant to 12 CFR 226.3(d).

(b) Opt-in requirement --

(1) General -- Except as provided under paragraphs (b)(4) and (c) of this section, a financial institution holding a consumer's account shall not assess a fee or charge on a consumer's account for paying an ATM or one-time debit card transaction pursuant to the institution's overdraft service, unless the institution:

(i) Provides the consumer with a notice in writing, or if the consumer agrees, electronically, segregated from all other information, describing the institution's overdraft service;

(ii) Provides a reasonable opportunity for the consumer to affirmatively consent, or opt in, to the service for ATM and one-time debit card transactions;

(iii) Obtains the consumer's affirmative consent, or opt-in, to the institution's payment of ATM or one-time debit card transactions; and

(iv) Provides the consumer with confirmation of the consumer's consent in writing, or if the consumer agrees, electronically, which includes a statement informing the consumer of the right to revoke such consent.

(2) Conditioning payment of other overdrafts on consumer's affirmative consent -- A financial institution shall not:

(i) Condition the payment of any overdrafts for checks, ACH transactions, and other types of transactions on the consumer affirmatively consenting to the institution's payment of ATM
and one-time debit card transactions pursuant to the institution's overdraft service; or

(ii) Decline to pay checks, ACH transactions, and other types of transactions that overdraw the consumer's account because the consumer has not affirmatively consented to the institution's overdraft service for ATM and one-time debit card transactions.

(3) Same account terms, conditions, and features -- A financial institution shall provide to consumers who do not affirmatively consent to the institution's overdraft service for ATM and one-time debit card transactions the same account terms, conditions, and features that it provides to consumers who affirmatively consent, except for the overdraft service for ATM and one-time debit card transactions.

(4) Exception to the notice and opt-in requirements -- The requirements of Sec. 205.17(b)(1) do not apply to an institution that has a policy and practice of declining to authorize and pay any ATM or one-time debit card transactions when the institution has a reasonable belief at the time of the authorization request that the consumer does not have sufficient funds available to cover the transaction. Financial institutions may apply this exception on an account-by-account basis.

(c) Timing --

(1) Existing account holders -- For accounts opened prior to July 1, 2010, the financial institution must not assess any fees or charges on a consumer's account on or after August 15, 2010 for paying an ATM or one-time debit card transaction pursuant to the overdraft service, unless the institution has complied with Sec. 205.17(b)(1) and obtained the consumer's affirmative consent.

(2) New account holders -- For accounts opened on or after July 1, 2010, the financial institution must comply with Sec. 205.17(b)(1) and obtain the consumer's affirmative consent before the institution assesses any fee or charge on the consumer's account for paying an ATM or one-time debit card transaction pursuant to the institution's overdraft service.

(d) Content and format -- The notice required by paragraph (b)(1)(i) of this section shall be substantially similar to Model Form A-9 set forth in Appendix A of this part, include all applicable items in this paragraph, and may not contain any information not specified in or otherwise permitted by this paragraph.

(1) Overdraft service -- A brief description of the financial institution's overdraft service and the types of transactions for which a fee or charge for paying an overdraft may be imposed, including ATM and one-time debit card transactions.

(2) Fees imposed -- The dollar amount of any fees or charges assessed by the financial institution for paying an ATM or one-time debit card transaction pursuant to the institution's overdraft service, including any daily or other overdraft fees. If the amount of the fee is determined on the basis of the number of times the consumer has overdrawn the account, the
amount of the overdraft, or other factors, the institution must disclose the maximum fee that may be imposed.

(3) Limits on fees charged -- The maximum number of overdraft fees or charges that may be assessed per day, or, if applicable, that there is no limit.

(4) Disclosure of opt-in right -- An explanation of the consumer's right to affirmatively consent to the financial institution's payment of overdrafts for ATM and one-time debit card transactions pursuant to the institution's overdraft service, including the methods by which the consumer may consent to the service; and

(5) Alternative plans for covering overdrafts -- If the institution offers a line of credit subject to the Board's Regulation Z (12 CFR part 226) or a service that transfers funds from another account of the consumer held at the institution to cover overdrafts, the institution must state that fact. An institution may, but is not required to, list additional alternatives for the payment of overdrafts.

(6) Permitted modifications and additional content -- If applicable, the institution may modify the content required by Sec. 205.17(d) to indicate that the consumer has the right to opt into, or opt out of, the payment of overdrafts under the institution's overdraft service for other types of transactions, such as checks, ACH transactions, or automatic bill payments; to provide a means for the consumer to exercise this choice; and to disclose the associated returned item fee and that additional merchant fees may apply. The institution may also disclose the consumer's right to revoke consent. For notices provided to consumers who have opened accounts prior to July 1, 2010, the financial institution may describe the institution's overdraft service with respect to ATM and one-time debit card transactions with a statement such as "After August 15, 2010, we will not authorize and pay overdrafts for the following types of transactions unless you ask us to (see below)."

(e) Joint relationships -- If two or more consumers jointly hold an account, the financial institution shall treat the affirmative consent of any of the joint consumers as affirmative consent for that account. Similarly, the financial institution shall treat a revocation of affirmative consent by any of the joint consumers as revocation of consent for that account.

(f) Continuing right to opt in or to revoke the opt-in -- A consumer may affirmatively consent to the financial institution's overdraft service at any time in the manner described in the notice required by paragraph (b)(1)(i) of this section. A consumer may also revoke consent at any time in the manner made available to the consumer for providing consent. A financial institution must implement a consumer's revocation of consent as soon as reasonably practicable.

(g) Duration and revocation of opt-in -- A consumer's affirmative consent to the institution's overdraft service is effective until revoked by the consumer, or unless the financial institution terminates the service.
Reg E 12 CFR § 205.18  Requirements for Financial Institutions Offering Payroll Card Accounts

Reference

(a) Coverage. A financial institution shall comply with all applicable requirements of the act and this part with respect to payroll card accounts except as provided in this section.

(b) Alternative to periodic statements.

(1) A financial institution need not furnish periodic statements required by § 205.9(b) if the institution makes available to the consumer-

(i) The consumer's account balance, through a readily available telephone line;

(ii) An electronic history of the consumer's account transactions, such as through an Internet Web site, that covers at least 60 days preceding the date the consumer electronically accesses the account; and

(iii) A written history of the consumer's account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days preceding the date the financial institution receives the consumer's request.

(2) The history of account transactions provided under paragraphs (b)(1)(ii) and (iii) of this section must include the information set forth in § 205.9(b).

(c) Modified requirements. A financial institution that provides information under paragraph (b) of this section, shall comply with the following:

(1) Initial disclosures. The financial institution shall modify the disclosures under § 205.7(b) by disclosing-

(i) Account information. A telephone number that the consumer may call to obtain the account balance, the means by which the consumer can obtain an electronic account history, such as the address of an Internet Web site, and a summary of the consumer's right to receive a written account history upon request (in place of the summary of the right to receive a periodic statement required by § 205.7(b)(6)), including a telephone number to call to request a history. The disclosure required by this paragraph (c)(1)(i) may be made by providing a notice substantially similar to the notice contained in paragraph A-7(a) in appendix A of this part.

(ii) Error resolution. A notice concerning error resolution that is substantially similar to the notice contained in paragraph A-7(b) in appendix A of this part, in place of the notice required by § 205.7(b)(10).

(2) Annual error resolution notice. The financial institution shall provide an annual notice concerning error resolution that is substantially similar to the notice contained in paragraph A-7(b) in appendix A of this part, in place of the notice required by § 205.8(b).

Alternatively, a financial institution may include on or with each electronic and written history provided in accordance with § 205.18(b)(1), a notice substantially similar to the abbreviated notice for periodic statements contained in paragraph A-3(b) in appendix A of
this part, modified as necessary to reflect the error resolution provisions set forth in this section.

(3) Limitations on liability.
   (i) For purposes of § 205.6(b)(3), the 60-day period for reporting any unauthorized transfer shall begin on the earlier of:
      (A) The date the consumer electronically accessed the consumer's account under paragraph (b)(1)(ii) of this section, provided that the electronic history made available to the consumer reflects the transfer; or
      (B) The date the financial institution sends a written history of the consumer's account transactions requested by the consumer under paragraph (b)(1)(iii) of this section in which the unauthorized transfer is first reflected.
   (ii) A financial institution may comply with paragraph (c)(3)(i) of this section by limiting the consumer's liability for an unauthorized transfer as provided under § 205.6(b)(3) for any transfer reported by the consumer within 120 days after the transfer was credited or debited to the consumer's account.

(4) Error resolution.
   (i) The financial institution shall comply with the requirements of § 205.11 in response to an oral or written notice of an error from the consumer that is received by the earlier of:
      (A) Sixty days after the date the consumer electronically accesses the consumer's account under paragraph (b)(1)(ii) of this section, provided that the electronic history made available to the consumer reflects the alleged error; or
      (B) Sixty days after the date the financial institution sends a written history of the consumer's account transactions requested by the consumer under paragraph (b)(1)(iii) of this section in which the alleged error is first reflected.
   (ii) In lieu of following the procedures in paragraph (c)(4)(i) of this section, a financial institution complies with the requirements for resolving errors in § 205.11 if it investigates any oral or written notice of an error from the consumer that is received by the institution within 120 days after the transfer allegedly in error was credited or debited to the consumer's account.
Reg E 12 CFR § 205.20     Requirements for gift cards and gift certificates

Reference

[Effective August 22, 2010]

(a) Definitions. For purposes of this section, except as excluded under paragraph (b), the following definitions apply:

(1) Gift certificate means a card, code, or other device that is:

(i) Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount that may not be increased or reloaded in exchange for payment; and

(ii) Redeemable upon presentation at a single merchant or an affiliated group of merchants for goods or services.

(2) Store gift card means a card, code, or other device that is:

(i) Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and

(ii) Redeemable upon presentation at a single merchant or an affiliated group of merchants for goods or services.

(3) General-use prepaid card means a card, code, or other device that is:

(i) Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and

(ii) Redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or usable at automated teller machines.

(4) Loyalty, award, or promotional gift card means a card, code, or other device that:

(i) Is issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in connection with a loyalty, award, or promotional program;

(ii) Is redeemable upon presentation at one or more merchants for goods or services, or usable at automated teller machines; and

(iii) Sets forth the following disclosures, as applicable:
(A) A statement indicating that the card, code, or other device is issued for loyalty, award, or promotional purposes, which must be included on the front of the card, code, or other device;

(B) The expiration date for the underlying funds, which must be included on the front of the card, code, or other device;

(C) The amount of any fees that may be imposed in connection with the card, code, or other device, and the conditions under which they may be imposed, which must be provided on or with the card, code, or other device; and

(D) A toll-free telephone number and, if one is maintained, a Web site, that a consumer may use to obtain fee information, which must be included on the card, code, or other device.

(5) Dormancy or inactivity fee. The terms “dormancy fee” and “inactivity fee” mean a fee for non-use of or inactivity on a gift certificate, store gift card, or general-use prepaid card.

(6) Service fee. The term “service fee” means a periodic fee for holding or use of a gift certificate, store gift card, or general-use prepaid card. A periodic fee includes any fee that may be imposed on a gift certificate, store gift card, or general-use prepaid card from time to time for holding or using the certificate or card.

(7) Activity. The term “activity” means any action that results in an increase or decrease of the funds underlying a certificate or card, other than the imposition of a fee, or an adjustment due to an error or a reversal of a prior transaction.

(b) Exclusions. The terms “gift certificate,” “store gift card,” and “general-use prepaid card”, as defined in paragraph (a) of this section, do not include any card, code, or other device that is:

(1) Useable solely for telephone services;

(2) Reloadable and not marketed or labeled as a gift card or gift certificate. For purposes of this paragraph (b)(2), the term “reloadable” includes a temporary non-reloadable card issued solely in connection with a reloadable card, code, or other device;

(3) A loyalty, award, or promotional gift card;

(4) Not marketed to the general public;

(5) Issued in paper form only; or
(6) Redeemable solely for admission to events or venues at a particular location or group of affiliated locations, or to obtain goods or services in conjunction with admission to such events or venues, at the event or venue or at specific locations affiliated with and in geographic proximity to the event or venue.

(c) Form of disclosures --

(1) Clear and conspicuous. Disclosures made under this section must be clear and conspicuous. The disclosures may contain commonly accepted or readily understandable abbreviations or symbols.

(2) Format. Disclosures made under this section generally must be provided to the consumer in written or electronic form. Except for the disclosures in paragraphs (c)(3) and (h)(2), written and electronic disclosures made under this section must be in a retainable form. Only disclosures provided under paragraph (c)(3) and (h)(2) of this section may be given orally.

(3) Disclosures prior to purchase. Before a gift certificate, store gift card, or general-use prepaid card is purchased, a person that issues or sells such certificate or card must disclose to the consumer the information required by paragraphs (d)(2), (e)(3), and (f)(1) of this section. The fees and terms and conditions of expiration that are required to be disclosed prior to purchase may not be changed after purchase.

(4) Disclosures on the certificate or card. Disclosures required by paragraphs (a)(4)(iii), (d)(2), (e)(3), and (f)(2) of this section must be made on the certificate or card, or in the case of a loyalty, award, or promotional gift card, on the card, code, or other device. A disclosure made in an accompanying terms and conditions document, on packaging surrounding a certificate or card, or on a sticker or other label affixed to the certificate or card does not constitute a disclosure on the certificate or card. For an electronic certificate or card, disclosures must be provided electronically on the certificate or card provided to the consumer. An issuer that provides a code or confirmation to a consumer orally must provide to the consumer a written or electronic copy of the code or confirmation promptly, and the applicable disclosures must be provided on the written copy of the code or confirmation.

(d) Prohibition on imposition of fees or charges. No person may impose a dormancy, inactivity, or service fee with respect to a gift certificate, store gift card, or general-use prepaid card, unless:

(1) There has been no activity with respect to the certificate or card, in the one-year period ending on the date on which the fee is imposed;
(2) The following are stated, as applicable, clearly and conspicuously on the gift certificate, store gift card, or general-use prepaid card:

(i) The amount of any dormancy, inactivity, or service fee that may be charged;
(ii) How often such fee may be assessed; and
(iii) That such fee may be assessed for inactivity; and

(3) Not more than one dormancy, inactivity, or service fee is imposed in any given calendar month.

(e) Prohibition on sale of gift certificates or cards with expiration dates. No person may sell or issue a gift certificate, store gift card, or general-use prepaid card with an expiration date, unless:

(1) The person has established policies and procedures to provide consumers with a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expiration date;

(2) The expiration date for the underlying funds is at least the later of:

(i) Five years after the date the gift certificate was initially issued, or the date on which funds were last loaded to a store gift card or general-use prepaid card; or
(ii) The certificate or card expiration date, if any;

(3) The following disclosures are provided on the certificate or card, as applicable:

(i) The expiration date for the underlying funds or, if the underlying funds do not expire, that fact;

(ii) A toll-free telephone number and, if one is maintained, a Web site that a consumer may use to obtain a replacement certificate or card after the certificate or card expires if the underlying funds may be available; and

(iii) Except where a non-reloadable certificate or card bears an expiration date that is at least seven years from the date of manufacture, a statement, disclosed with equal prominence and in close proximity to the certificate or card expiration date, that:

(A) The certificate or card expires, but the underlying funds either do not expire or expire later than the certificate or card, and;

(B) The consumer may contact the issuer for a replacement card; and

(4) No fee or charge is imposed on the cardholder for replacing the gift certificate,
store gift card, or general-use prepaid card or for providing the certificate or card holder with the remaining balance in some other manner prior to the funds expiration date, unless such certificate or card has been lost or stolen.

(f) Additional disclosure requirements for gift certificates or cards. The following disclosures must be provided in connection with a gift certificate, store gift card, or general-use prepaid card, as applicable:

(1) Fee disclosures. For each type of fee that may be imposed in connection with the certificate or card (other than a dormancy, inactivity, or service fee subject to the disclosure requirements under paragraph (d)(2) of this section), the following information must be provided on or with the certificate or card:

(i) The type of fee;

(ii) The amount of the fee (or an explanation of how the fee will be determined); and

(iii) The conditions under which the fee may be imposed.

(2) Telephone number for fee information. A toll-free telephone number and, if one is maintained, a Web site, that a consumer may use to obtain information about fees described in paragraphs (d)(2) and (f)(1) of this section must be disclosed on the certificate or card.

(g) Compliance dates. --

(1) Effective date for gift certificates, store gift cards, and general-use prepaid cards. Except as provided in paragraph (h), the requirements of this section apply to any gift certificate, store gift card, or general-use prepaid card sold to a consumer on or after August 22, 2010, or provided to a consumer as a replacement for such certificate or card. The requirements of this section apply to any gift certificate, store gift card, or general-use prepaid card sold to a consumer on or after August 22, 2010, or provided to the consumer as a replacement for such certificate or card.

(2) Effective date for loyalty, award, or promotional gift cards. The requirements in paragraph (a)(4)(iii) apply to any card, code, or other device provided to a consumer in connection with a loyalty, award, or promotional program if the period of eligibility for such program began on or after August 22, 2010.

(h) Temporary exemption-

(1) Delayed effective date. For any gift certificate, store gift card, or general-use prepaid card produced prior to April 1, 2010, the effective date of the requirements
of paragraphs (c)(3), (d)(2), (e)(1), (e)(3), and (f) of this section is January 31, 2011, provided that an issuer of such certificate or card:

(i) Complies with all other provisions of this section;

(ii) Does not impose an expiration date with respect to the funds underlying such certificate or card;

(iii) At the consumer’s request, replaces such certificate or card if it has funds remaining at no cost to the consumer; and

(iv) Satisfies the requirements of paragraph (h)(2) of this section.

(2) Additional disclosures. Issuers relying on the delayed effective date in §205.20(h)(1) must disclose through instore signage, messages during customer service calls, Web sites, and general advertising, that:

(i) The underlying funds of such certificate or card do not expire;

(ii) Consumers holding such certificate or card have a right to a free replacement certificate or card, accompanied by the packaging and materials typically associated with such certificate or card; and

(iii) Any dormancy, inactivity, or service fee for such certificate or card that might otherwise be charged will not with Section 915 of the Electronic Fund Transfer Act.

(3) Expiration of additional disclosure requirements. The disclosures in paragraph (h)(2) of this section:

(i) Are not required to be provided on or after January 31, 2011, with respect to in-store signage and general advertising.

(ii) Are not required to be provided on or after January 31, 2013, with respect to messages during customer service calls and Web sites.
Reg E Appendix A to Part 205  Model Disclosure Clauses and Forms

Reference

[Changes effective January 19, 2010 -- mandatory compliance date July 1, 2010]

Table of Contents

A-1 -- Model Clauses for unsolicited issuance (§ 205.5(b)(2))
A-2 -- Model clauses for initial disclosures (§ 205.7(b))
A-3 -- Model forms for error resolution notice (§§ 205.7(b)(10) and 205.8(b))
A-4 -- Model form for service-providing institutions (§ 205.14(b)(1)(ii))
A-5 -- Model forms for government agencies (§ 205.15(d)(1) and (2))
A-6 -- Model Clauses for Authorizing One-Time Electronic Fund Transfers Using Information From a Check (§ 205.3(b)(2))
A-7 -- Model Clauses for Financial Institutions Offering Payroll Card Accounts (§ 205.18(c))
A-8 -- Model Clause for Electronic Collection of Returned Item Fees

A-9 -- Model Consent Form for Overdraft Services (Sec. 205.17)

A-1 Model Clauses For Unsolicited Issuance (§ 205.5(b)(2))

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

[Financial institution may add validation instructions here.]

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

[Financial institution may add validation instructions here.]

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

(a) Consumer Liability (§ 205.7(b)(1)).

(Tell us AT ONCE if you believe your [card] [code] has been lost or stolen, or if you believe that an electronic fund transfer has been made without your permission using information from your check. Telephoning in the best way of keeping your possible losses down. You could lose all the money in your account (plus your maximum overdraft line of credit). If you tell us within 2 business days after you learn of the loss or theft of your [card] [code], you can lose no more than $50 if someone used your [card] [code] without your permission.)

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

Also, if your statement shows transfers that you did not make, including those made by card, code or other means, tell us at once. If you do not tell us within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

(b) Contact in event of unauthorized transfer (§ 205.7(b)(2)). If you believe your [card] [code] has been lost or stolen, call: [Telephone number] or write: [Name of person or office to be notified] [Address]

You should also call the number or write to the address listed above if you believe a transfer has been made using the information from your check without your permission.

(c) Business days (§ 205.7(b)(3)). For purposes of these disclosures, our business days are (Monday through Friday) (Monday through Saturday) (any day including Saturdays and Sundays). Holidays are (not) included.

(d) Transfer types and limitations (§ 205.7(b)(4)) --

(1) Account access. You may use your [card][code] to:

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

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

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

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

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

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

(2) Electronic check conversion. You may authorize a merchant or other payee to make a one-time electronic payment from your checking account using information from your check to:

(i) Pay for purchases.

(ii) Pay bills.

(3) Limitations on frequency of transfers --

(i) You may make only [insert number, e.g., 3] cash withdrawals from our terminals each [insert time period, e.g., week].
(ii) You can use your telephone bill-payment service to pay [insert number] bills each [insert time period] [telephone call].

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

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

(4) Limitations on dollar amounts of transfers --

(i) You may withdraw up to [insert dollar amount] from our terminals each [insert time period] time you use the [card] [code].

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

(e) Fees (§ 205.7(b)(5)) --

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

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

(3) Average or minimum balance charge. We will only charge you for using our [automated teller machines] [telephone bill-payment service] [point-of-sale transfer service] if the [average] [minimum] balance in your [checking account] [savings account] [accounts] falls below [insert dollar amount]. If it does, we will charge you [insert dollar amount] each [transfer] [insert time period].

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

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

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

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

(iv) If you give us your written permission.

(g) Documentation (§ 205.7(b)(6)) --

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

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

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

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

(h) Preauthorized payments (§ 205.7(b) (6), (7) and (8); § 205.10(d)) --

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

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

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

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

(i) Financial institution's liability (§ 205.7(b)(8)). If we do not complete a transfer to or from your account on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

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

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

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

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

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

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

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

A-3 Model Forms for Error Resolution Notice (§§ 205.7(b)(10) and 205.8(b))

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

A-4 -- Model Form For Service-providing Institutions (§ 205.14(b)(1)(ii))

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

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

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

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

(a) Disclosure by government agencies of information about obtaining account balances and
account histories (§ 205.15(d)(1)(i) and (ii)).

You may obtain information about the amount of benefits you have remaining by calling
Electronic Fund Transfers Act; Regulation E; Official Staff Interpretations 1/31/2010
2:11:33 PM

[telephone number]. That information is also available [on the receipt you get when you make a transfer with your card at (an ATM) (a POS terminal)] [when you make a balance inquiry at an ATM] [when you make a balance inquiry at specified locations]. You also have the right to receive a written summary of transactions for the 60 days preceding your request by calling [telephone number]. [Optional: Or you may request the summary by contacting your caseworker.]

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

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

• Your name and [case] [file] number.

• Why you believe there is an error, and the dollar amount involved.

• Approximately when the error took place.

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

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

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

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

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

A-6 Model Clauses for Authorizing One-Time Electronic Fund Transfers Using Information From a Check (§ 205.3(b)(2))
(a) Notice About Electronic Check Conversion
When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.

(b) Alternative Notice About Electronic Check Conversion (Optional)
When you provide a check as payment, you authorize us to use information from your check to make a one-time electronic fund transfer from your account. In certain circumstances, such as for technical or processing reasons, we may process your payment as a check transaction.

[Specify other circumstances (at payee's option).]

(c) Notice For Providing Additional Information About Electronic Check Conversion
When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day [you make] [we receive] your payment[, and you will not receive your check back from your financial institution].

A-7-Model Clauses for Financial Institutions Offering Payroll Card Accounts (§ 205.18(c))

(a) Disclosure by financial institutions of information about obtaining account information for payroll card accounts. § 205.18(c)(1).
You may obtain information about the amount of money you have remaining in your payroll card account by calling [telephone number]. This information, along with a 60-day history of account transactions, is also available on-line at [Internet address].

You also have the right to obtain a 60-day written history of account transactions by calling [telephone number], or by writing us at [address].

(b) Disclosure of error-resolution procedures for financial institutions that provide alternative means of obtaining payroll card account information (§ 205.18(c)(1)(ii) and (c)(2)).

In Case of Errors or Questions About Your Payroll Card Account Telephone us at [telephone number] or Write us at [address] [or E-mail us at [electronic mail address]] as soon as you can, if you think an error has occurred in your payroll card account. We must allow you to report an error until 60 days after the earlier of the date you electronically access your account, if the error could be viewed in your electronic history, or the date we sent the FIRST written history on which the error appeared. You may request a written history of your transactions at any time by calling us at [telephone number] or writing us at [address]. You will need to tell us:

Your name and [payroll card account] number.

Why you believe there is an error, and the dollar amount involved.
Approximately when the error took place.

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

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

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

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

You may ask for copies of the documents that we used in our investigation.

If you need more information about our error-resolution procedures, call us at [telephone number] [the telephone number shown above] [or visit [Internet address]]

A–8 Model Clause for Electronic Collection of Returned Item Fees (§ 205.3(b)(3))

If your payment is returned unpaid, you authorize [us/ name of person collecting the fee electronically] to make a one-time electronic fund transfer from your account to collect a fee of [$ _______ ]. [If your payment is returned unpaid, you authorize [us/ name of person collecting the fee electronically] to make a one-time electronic fund transfer from your account to collect a fee. The fee will be determined [by]/ [as follows]: [ _______ ].]

A–9 — Model Consent Form for Overdraft Services (Sec. 205.17)

Click to view Form (pdf format).
Reg E Appendix B to Part 205  Federal Enforcement Agencies

Reference

The following list indicates which Federal agency enforces Regulation E (12 C.F.R. part 205) for particular classes of institutions. Any questions concerning compliance by a particular institution should be directed to the appropriate enforcing agency. Terms that are not defined in the Federal Deposit Insurance Act (12 U.S.C. § 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 U.S.C. § 3101).

National banks, and Federal branches and Federal agencies of foreign banks
District office of the Office of the Comptroller of the Currency where the institution is located.

State member banks, branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25(a) of the Federal Reserve Act
Federal Reserve Bank serving the District in which the institution is located.

Nonmember insured banks and insured state branches of foreign banks
Federal Deposit Insurance Corporation regional director for the region in which the institution is located.

Savings institutions insured under the Savings Association Insurance Fund of the FDIC and federally-chartered savings banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund)
Office of Thrift Supervision Regional Director for the region in which the institution is located.

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

Air Carriers
Assistant General Counsel for Aviation Enforcement and Proceedings, Department of Transportation, 400 Seventh Street, S.W., Washington, D.C. 20590.

Brokers and Dealers

Retailers, Consumer Finance Companies, Certain Other Financial Institutions, and all others not covered above
Reg E Appendix C to Part 205  Issuance of Staff Interpretations

Reference

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

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

Scope of Interpretations
No staff interpretations will be issued approving financial institutions' forms or statements. This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.
Reg E Supplement I to Part 205 Official Staff Interpretations

Reference

Section 205.2 -- Definitions

2(a) Access Device

1. Examples. The term access device includes debit cards, personal identification numbers (PINs), telephone transfer and telephone bill payment codes, and other means that may be used by a consumer to initiate an electronic fund transfer (EFT) to or from a consumer account. The term does not include magnetic tape or other devices used internally by a financial institution to initiate electronic transfers.

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

2(b) Account

1. Consumer asset account. The term consumer asset account includes:
   i. Club accounts, such as vacation clubs. In many cases, however, these accounts are exempt from the regulation under § 205.3(c)(5) because all electronic transfers to or from the account have been preauthorized by the consumer and involve another account of the consumer at the same institution.
   ii. A retail repurchase agreement (repo), which is a loan made to a financial institution by a consumer that is collateralized by government or government-insured securities.

2. Certain employment-related cards not covered. The term "payroll card account" does not include a card used solely to disburse incentive-based payments (other than commissions which can represent the primary means through which a consumer is paid), such as bonuses, which are unlikely to be a consumer’s primary source of salary or other compensation. The term also does not include a card used solely to make disbursements unrelated to compensation, such as petty cash reimbursements or travel per diem payments. Similarly, a payroll card account does not include a card
that is used in isolated instances to which an employer typically does not make recurring payments, such as when providing final payments or in emergency situations when other payment methods are unavailable. However, all transactions involving the transfer of funds to or from a payroll card account are covered by the regulation, even if a particular transaction involves payment of a bonus, other incentive based payment, or reimbursement, or the transaction does not represent a transfer of wages, salary, or other employee compensation.

3. Examples of accounts not covered by Regulation E (12 C.F.R. part 205) include:

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

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

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

Paragraph 2(b)(2)

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

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

2(d) Business Day

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

2. Substantially all business functions. "Substantially all business functions" include both the public and the back-office operations of the institution. For example, if the offices of an institution are open on Saturdays for handling some consumer transactions (such as deposits, withdrawals, and other teller transactions), but not for performing internal functions (such as investigating account errors), then Saturday is not a business day for that institution. In this case, Saturday does not count toward the business-day standard set by the regulation for reporting lost or stolen access devices, resolving errors, etc.
3. Short hours. A financial institution may determine, at its election, whether an abbreviated day is a business day. For example, if an institution engages in substantially all business functions until noon on Saturdays instead of its usual 3:00 p.m. closing, it may consider Saturday a business day.

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

2(h) Electronic Terminal

1. Point-of-sale (POS) payments initiated by telephone. Because the term electronic terminal excludes a telephone operated by a consumer, a financial institution need not provide a terminal receipt when:
   i. A consumer uses a debit card at a public telephone to pay for the call.
   ii. A consumer initiates a transfer by a means analogous in function to a telephone, such as by home banking equipment or a facsimile machine.

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

3. Teller-operated terminals. A terminal or other computer equipment operated by an employee of a financial institution is not an electronic terminal for purposes of the regulation. However, transfers initiated at such terminals by means of a consumer's access device (using the consumer's PIN, for example) are EFTs and are subject to other requirements of the regulation. If an access device is used only for identification purposes or for determining the account balance, the transfers are not EFTs for purposes of the regulation.

2(k) Preauthorized Electronic Fund Transfer

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

2(m) Unauthorized Electronic Fund Transfer

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

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

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

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

5. Reversal of direct deposits. The reversal of a direct deposit made in error is not an unauthorized EFT when it involves:
   i. A credit made to the wrong consumer’s account;
   ii. A duplicate credit made to a consumer’s account; or
   iii. A credit in the wrong amount (for example, when the amount credited to the consumer’s account differs from the amount in the transmittal instructions).

Section 205.3 -- Coverage

3(a) General

1. Accounts covered. The requirements of the regulation apply only to an account for which an agreement for EFT services to or from the account has been entered into between:
   i. The consumer and the financial institution (including an account for which an access device has been issued to the consumer, for example);
   ii. The consumer and a third party (for preauthorized debits or credits, for example), when the account-holding institution has received notice of the agreement and the fund transfers have begun.
2. Automated clearing house (ACH) membership. The fact that membership in an ACH requires a financial institution to accept EFTs to accounts at the institution does not make every account of that institution subject to the regulation.

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

3(b) Electronic Fund Transfer

Paragraph 3(b)(1) -- Definition

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

i. A deposit made at an ATM or other electronic terminal (including a deposit in cash or by check) provided a specific agreement exists between the financial institution and the consumer for EFTs to or from the account to which the deposit is made.

ii. A transfer sent via ACH. For example, social security benefits under the U.S. Treasury’s direct-deposit program are covered, even if the listing of payees and payment amounts reaches the account-holding institution by means of a computer printout from a correspondent bank.

iii. A preauthorized transfer credited or debited to an account in accordance with instructions contained on magnetic tape, even if the financial institution holding the account sends or receives a composite check.

iv. A transfer from the consumer’s account resulting from a debit-card transaction at a merchant location, even if no electronic terminal is involved at the time of the transaction, if the consumer’s asset account is subsequently debited for the amount of the transfer.

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

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

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

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

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

iii. A preauthorized check drawn by the financial institution on the consumer's account (such as an interest or other recurring payment to the consumer or another party), even if the check is computer-generated.

iv. Transactions arising from the electronic collection, presentment, or return of checks through the check collection system, such as through transmission of electronic check images.

Paragraph 3(b)(2) -- Electronic Fund Transfer Using Information From a Check

1. Notice at POS not furnished due to inadvertent error. If the copy of the notice under section 205.3(b)(2)(ii) for ECK transactions is not provided to the consumer at POS because of a bona fide unintentional error, such as when a terminal printing mechanism jams, no violation results if the payee maintains procedures reasonably adapted to avoid such occurrences.

2. Authorization to process a transaction as an EFT or as a check. In order to process a transaction as an EFT or alternatively as a check, the payee must obtain the consumer's authorization to do so. A payee may, at its option, specify the circumstances under which a check may not be converted to an EFT. (See model clauses in Appendix A-6.)

3. Notice for each transfer. Generally, a notice to authorize an electronic check conversion transaction must be provided for each transaction. For example, a consumer must receive a notice that the transaction will be processed as an EFT for each transaction at POS or each time a consumer mails a check in an accounts
receivable (ARC) transaction to pay a bill, such as a utility bill, if the payee intends to convert a check received as payment. Similarly, the consumer must receive notice if the payee intends to collect a service fee for insufficient or uncollected funds via an EFT for each transaction whether at POS or if the consumer mails a check to pay a bill. The notice about when funds may be debited from a consumer's account and the non-return of consumer checks by the consumer's financial institution must also be provided for each transaction. However, if in an ARC transaction, a payee provides a coupon book to a consumer, for example, for mortgage loan payments, and the payment dates and amounts are set out in the coupon book, the payee may provide a single notice on the coupon book stating all of the required disclosures under paragraph (b)(2) of this section in order to obtain authorization for each conversion of a check and any debits via EFT to the consumer's account to collect any service fees imposed by the payee for insufficient or uncollected funds in the consumer's account. The notice must be placed on a conspicuous location of the coupon book that a consumer can retain—for example, on the first page, or inside the front cover.

4. Multiple payments/multiple consumers. If a merchant or other payee will use information from a consumer's check to initiate an EFT from the consumer's account, notice to a consumer listed on the billing account that a check provided as payment during a single billing cycle or after receiving an invoice or statement will be processed as a one-time EFT or as a check transaction constitutes notice for all checks provided in payment for the billing cycle or the invoice for which notice has been provided, whether the check(s) is submitted by the consumer or someone else. The notice applies to all checks provided in payment for the billing cycle or invoice until the provision of notice on or with the next invoice or statement. Thus, if a merchant or other payee receives a check as payment for the consumer listed on the billing account after providing notice that the check will be processed as a one-time EFT, the authorization from that consumer constitutes authorization to convert any other checks provided for that invoice or statement. Other notices required under this paragraph (b)(2) (for example, to collect a service fee for insufficient or uncollected funds via an EFT) provided to the consumer listed on the billing account also constitutes notice to any other consumer who may provide a check for the billing cycle or invoice.

5. Additional disclosures about ECK transactions at POS. When a payee initiates an EFT at POS using information from the consumer's check, and returns the check to the consumer at POS, the payee need not provide a notice to the consumer that the check will not be returned by the consumer's financial institution.

Paragraph 3(b)(3) -- Collection of Insufficient Funds Fees via Electronic Fund Transfer
1. The requirement to obtain a consumer’s authorization to collect a fee via EFT for the return of an EFT or check unpaid due to insufficient or uncollected funds in the consumer’s account applies only to the person to whom the EFT or check was returned and that intends to collect the service fee by means of an EFT from the consumer’s account. The authorization requirement does not apply to any fees assessed by the consumer’s account-holding financial institution when it returns the unpaid underlying EFT or check or pays the amount of the overdraft.

2. Accounts receivable transactions. In an accounts receivable (ARC) transaction where a consumer sends in a payment for amounts owed, a person seeking to electronically collect a fee for returned items due to insufficient or uncollected funds in a consumer’s account must obtain the consumer’s authorization to collect the fee. A consumer authorizes a person to electronically collect an insufficient funds fee when the consumer receives notice, typically on an invoice or statement, that the person may collect the fee through an EFT to the consumer’s account, and the consumer goes forward with the underlying transaction by sending payment. The notice must also state the dollar amount of the fee. However, an explanation of how that fee will be determined may be provided in place of the dollar amount of the fee if the fee may vary due to the amount of the transaction or due to other factors. For example, if a state law permits a maximum fee of $30 or 10% of the underlying transaction, whichever is greater, a payee may explain how the fee is determined, rather than state a specific dollar amount for the fee.

3. Disclosure of dollar amount of fee at POS. The notice provided to the consumer at POS under § 205.3(b)(3)(ii) must state the amount of the fee for insufficient or uncollected funds if the dollar amount of the fee can be calculated at the time of the transaction. For example, if a state sets a maximum fee that may be collected due to insufficient or uncollected funds in a consumer’s account based on the amount of the underlying transaction (such as where the amount of the fee is expressed as a percentage of the underlying transaction), the person collecting the fee must provide the actual dollar amount of the fee on the notice provided to the consumer. Alternatively, in a state where the amount of the insufficient funds fee a person may collect cannot be calculated at the time of the transaction (for example, where the amount of the fee will depend on the number of days a debt continues to be owed), the person collecting the fee may provide a description of how the fee will be determined on both the posted notice as well as on the notice provided to the consumer.

3(c) Exclusions From Coverage
Paragraph 3(c)(1) -- Checks

1. Re-presented checks. The electronic re-presentment of a returned check is not covered by Regulation E because the transaction originated by check. Regulation E does apply, however, to any fee debited via an EFT from a consumer's account by the payee because the check was returned for insufficient or uncollected funds. The person debiting the fee electronically must obtain the consumer's authorization.

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

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

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

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

1. Fedwire and ACH. If a financial institution makes a fund transfer to a consumer's account after receiving funds through Fedwire or a similar network, the transfer by ACH is covered by the regulation even though the Fedwire or network transfer is exempt.

2. Article 4A. Financial institutions that offer telephone-initiated Fedwire payments are subject to the requirements of UCC section 4A-202, which encourages verification of Fedwire payment orders pursuant to a security procedure established by agreement between the consumer and the receiving bank. These transfers are not subject to Regulation E and the agreement is not considered a telephone plan if the service is offered separately from a telephone bill-payment or other prearranged plan subject to Regulation E. The Board's Regulation J (12 C.F.R. part 210) specifies the rules applicable to funds handled by Federal Reserve Banks. To ensure that the rules for all fund transfers through Fedwire are consistent, the Board used its preemptive authority under UCC section 4A-107 to determine that subpart B of Regulation J (12 C.F.R. part 210), including the provisions of Article 4A, applies to all fund transfers through Fedwire, even if a portion of the fund transfer is governed by the EFTA. The portion of the fund transfer that is governed by the EFTA is not governed by subpart B of Regulation J (12 C.F.R. part 210).

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

Paragraph 3(c)(4) -- Securities and Commodities Transfers

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

2. Example of exempt transfer. The exemption applies to a transfer involving a transfer initiated by a telephone order to a stockbroker to buy or sell securities or to exercise a margin call.

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

i. A debit card or other access device that accesses a securities or commodities account such as a money market mutual fund and that the consumer uses for purchasing goods or services or for obtaining cash.

ii. A payment of interest or dividends into the consumer's account (for example, from a brokerage firm or from a Federal Reserve Bank for government securities).

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

1. Automatic transfers exempted. The exemption applies to:

i. Electronic debits or credits to consumer accounts for check charges, stop-payment charges, NSF charges, overdraft charges, provisional credits, error adjustments, and similar items that are initiated automatically on the occurrence of certain events.

ii. Debits to consumer accounts for group insurance available only through the financial institution and payable only by means of an aggregate payment from the institution to the insurer.

iii. EFTs between a thrift institution and its paired commercial bank in the state of Rhode Island, which are deemed under state law to be intra-institutional.

iv. Automatic transfers between a consumer's accounts within the same financial institution, even if the account holders on the two accounts are not identical.

2. Automatic transfers not exempted. Transfers between accounts of the consumer at affiliated institutions (such as between a bank and its subsidiary or within a holding company) are not intra-institutional transfers, and thus do not qualify for the exemption.
Electronic Fund Transfers Act; Regulation E; Official Staff Interpretations

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

1. Written plan or agreement. A transfer that the consumer initiates by telephone is covered only if the transfer is made under a written plan or agreement between the consumer and the financial institution making the transfer. The following do not, by themselves, constitute a written plan or agreement:
   
i. A hold-harmless agreement on a signature card that protects the institution if the consumer requests a transfer.
   
ii. A legend on a signature card, periodic statement, or passbook that limits the number of telephone-initiated transfers the consumer can make from a savings account because of reserve requirements under Regulation D (12 C.F.R. part 204).
   
iii. An agreement permitting the consumer to approve by telephone the rollover of funds at the maturity of an instrument.

2. Examples of covered transfers. When a written plan or agreement has been entered into, a transfer initiated by a telephone call from a consumer is covered even though:
   
i. An employee of the financial institution completes the transfer manually (for example, by means of a debit memo or deposit slip).
   
ii. The consumer is required to make a separate request for each transfer.
   
iii. The consumer uses the plan infrequently.
   
iv. The consumer initiates the transfer via a facsimile machine.

Paragraph 3(c)(7) -- Small Institutions

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

Section 205.4 -- General Disclosure Requirements; Jointly Offered Services

4(a) Form of Disclosures

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

2. Foreign language disclosures. Disclosures may be made in languages other than
Section 205.5 -- Issuance of Access Devices

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

5(a) Solicited Issuance

Paragraph 5(a)(1)

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

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

Paragraph 5(a)(2)

1. One-for-one rule. In issuing a renewal or substitute access device, only one renewal or substitute device may replace a previously issued device. For example, only one new card and PIN may replace a card and PIN previously issued. A financial institution may provide additional devices at the time it issues the renewal or substitute access device, however, provided the institution complies with § 205.5(b). (See comment 5(b)-5.) If the replacement device or the additional device permits either fewer or additional types of electronic fund transfer services, a change-in-terms notice or new disclosures are required.

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

5(b) Unsolicited Issuance

1. Compliance. A financial institution may issue an unsolicited access device (such as the combination of a debit card and PIN) if the institution’s ATM system has been programmed not to accept the access device until after the consumer requests and the institution validates the device. Merely instructing a consumer not to use an unsolicited debit card and PIN until after the institution verifies the consumer’s identity does not comply with the regulation.
2. PINS. A financial institution may impose no liability on a consumer for unauthorized transfers involving an unsolicited access device until the device becomes an "accepted access device" under the regulation. A card and PIN combination may be treated as an accepted access device once the consumer has used it to make a transfer.

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

4. Verification of identity. To verify the consumer's identity, a financial institution may use any reasonable means, such as a photograph, fingerprint, personal visit, signature comparison, or personal information about the consumer. However, even if reasonable means were used, if an institution fails to verify correctly the consumer's identity and an imposter succeeds in having the device validated, the consumer is not liable for any unauthorized transfers from the account.

5. Additional access devices in a renewal or substitution. A financial institution may issue more than one access device in connection with the renewal or substitution of a previously issued accepted access device, provided that any additional access device (beyond the device replacing the accepted access device) is not validated at the time it is issued, and the institution complies with the other requirements of § 205.5(b). The institution may, if it chooses, set up the validation procedure such that both the device replacing the previously issued device and the additional device are not validated at the time they are issued, and validation will apply to both devices. If the institution sets up the validation procedure in this way, the institution should provide a clear and readily understandable disclosure to the consumer that both devices are unvalidated and that validation will apply to both devices.

Section 205.6 -- Liability of Consumer for Unauthorized Transfers

6(a) Conditions for Liability

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

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

   ii. Comparison of the consumer's signature, fingerprint, or photograph.

2. Multiple users. When more than one access device is issued for an account, the
6(b) Limitations on Amount of Liability

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

2. Consumer negligence. Negligence by the consumer cannot be used as the basis for imposing greater liability than is permissible under Regulation E. Thus, consumer behavior that may constitute negligence under state law, such as writing the PIN on a debit card or on a piece of paper kept with the card, does not affect the consumer's liability for unauthorized transfers. (However, refer to comment 2(m)-2 regarding termination of the authority of given by the consumer to another person.)

3. Limits on liability. The extent of the consumer's liability is determined solely by the consumer's promptness in reporting the loss or theft of an access device. Similarly, no agreement between the consumer and an institution may impose greater liability on the consumer for an unauthorized transfer than the limits provided in Regulation E.

Paragraph 6(b)(1) -- Timely Notice Given

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

2. Knowledge of loss or theft of access device. The fact that a consumer has received a periodic statement that reflects unauthorized transfers may be a factor in determining whether the consumer had knowledge of the loss or theft, but cannot be deemed to represent conclusive evidence that the consumer had such knowledge.

Paragraph 6(b)(2) -- Timely Notice Not Given

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

Paragraph 6(b)(3) -- Periodic Statement; Timely Notice Not Given

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

2. Transfers not involving access device. The first two tiers of liability do not apply to unauthorized transfers from a consumer’s account made without an access device. If, however, the consumer fails to report such unauthorized transfers within 60 calendar days of the financial institution’s transmittal of the periodic statement, the consumer may be liable for any transfers occurring after the close of the 60 days and before notice is given to the institution. For example, a consumer’s account is electronically debited for $200 without the consumer’s authorization and by means other than the consumer’s access device. If the consumer notifies the institution within 60 days of the transmittal of the periodic statement that shows the unauthorized transfer, the consumer has no liability. However, if in addition to the $200, the consumer’s account is debited for a $400 unauthorized transfer on the 61st day and the consumer fails to notify the institution of the first unauthorized transfer until the 62nd day, the consumer may be liable for he full $400.
Paragraph 6(b)(4) -- Extension of Time Limits

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

Paragraph 6(b)(5) -- Notice to Financial Institution

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

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

3. Content of notice. Notice to a financial institution is considered given when a consumer takes reasonable steps to provide the institution with the pertinent account information. Even when the consumer is unable to provide the account number or the card number in reporting a lost or stolen access device or an unauthorized transfer, the notice effectively limits the consumer's liability if the consumer otherwise identifies sufficiently the account in question. For example, the consumer may identify the account by the name on the account and the type of account in question.

Section 205.7 -- Initial Disclosures

7(a) Timing of Disclosures

1. Early disclosures. Disclosures given by a financial institution earlier than the regulation requires (for example, when the consumer opens a checking account) need not be repeated when the consumer later enters into an agreement with a third party to initiate preauthorized transfers to or from the consumer's account, unless the terms and conditions differ from those that the institution previously disclosed. This interpretation also applies to any notice provided about one-time EFTs from a consumer’s account initiated using information from the consumer’s check. On the other hand, if an agreement for EFT services to be provided by an account-holding institution is directly between the consumer and the account-holding institution,
disclosures must be given in close proximity to the event requiring disclosure, for example, when the consumer contracts for a new service.

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

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

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

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

7(b) Content of Disclosures

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

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

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

3. Additional information. At the institution’s option, the summary of the consumer’s liability may include advice on promptly reporting unauthorized transfers or the loss or theft of the access device.
Paragraph 7(b)(2) -- Telephone Number and Address

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

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

ii. Inquiring about the receipt of a preauthorized credit;

iii. Stopping payment of a preauthorized debit;


2. Location of telephone number. The telephone number need not be incorporated into the text of the disclosure; for example, the institution may instead insert a reference to a telephone number that is readily available to the consumer, such as "Call your branch office. The number is shown on your periodic statement." However, an institution must provide a specific telephone number and address, on or with the disclosure statement, for reporting a lost or stolen access device or a possible unauthorized transfer.

Paragraph 7(b)(4) -- Types of Transfers; Limitations

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

2. Restrictions on certain deposit accounts. A limitation on account activity that restricts the consumer's ability to make EFTs must be disclosed even if the restriction also applies to transfers made by nonelectronic means. For example, Regulation D (12 C.F.R. Part 204) restricts the number of payments to third parties that may be made from a money market deposit account; an institution that does not execute fund transfers in excess of those limits must disclose the restriction as a limitation on the frequency of EFTs.

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

4. One-time EFTs initiated using information from a check. Financial institutions must
disclose the fact that one-time EFTs initiated using information from a consumer's check are among the types of transfers that a consumer can make. (See Appendix A-2.)

Paragraph 7(b)(5) -- Fees

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

2. Fees also applicable to non-EFT. A per-item fee for EFTs must be disclosed even if the same fee is imposed on nonelectronic transfers. If a per-item fee is imposed only under certain conditions, such as when the transactions in the cycle exceed a certain number, those conditions must be disclosed. Itemization of the various fees may be provided on the disclosure statement or on an accompanying document that is referenced in the statement.

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

Paragraph 7(b)(9) -- Confidentiality

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

Paragraph 7(b)(10) -- Error Resolution

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

2. Exception from provisional crediting. To take advantage of the longer time periods for resolving errors under § 205.11(c)(3) (for transfers initiated outside the United States, or resulting from POS debit-card transactions), a financial institution must have disclosed these longer time periods. Similarly, an institution that relies on the exception from provisional crediting in § 205.11(c)(2) for accounts subject to Regulation T (12 C.F.R. part 220) must disclose accordingly.

7(c) Addition of Electronic Fund Transfer Services

1. Addition of electronic check conversion services. One-time EFTs initiated using information from a consumer's check are a new type of transfer requiring new disclosures, as applicable. (See Appendix A-2.)

Section 205.8 -- Change-in-Terms Notice; Error Resolution Notice

8(a) Change-in-Terms Notice

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

2. Changes not requiring notice. The following changes do not require disclosure:
   i. Closing some of an institution's ATMs;
   ii. Cancellation of an access device.

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

4. Change in telephone number or address. When a financial institution changes the telephone number or address used for reporting possible unauthorized transfers, a change-in-terms notice is required only if the institution will impose liability on the consumer for unauthorized transfers under § 205.6. (See also § 205.6(a) and the related commentary.)

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

Section 205.9 -- Receipts at Electronic Terminals; Periodic Statements

9(a) Receipts at Electronic Terminals

1. Disclosure of transaction fee. The required display of a fee amount on or at the terminal may be accomplished by displaying the fee on a sign at the terminal or on the terminal screen for a reasonable duration. Displaying the fee on a screen provides adequate notice, as long as a consumer is given the option to cancel the transaction after receiving notice of a fee. (See § 205.16 for the notice requirements applicable to ATM operators that impose a fee for providing EFT services.)

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

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

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

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

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

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

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

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

Paragraph 9(a)(1) -- Amount

1. Disclosure of transaction fee. The required display of a fee amount on or at the terminal may be accomplished by displaying the fee on a sign at the terminal or on the terminal screen for a reasonable duration. Displaying the fee on a screen provides adequate notice, as long as consumers are given the option to cancel the transaction after receiving notice of a fee.

Paragraph 9(a)(2) -- Date

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

Paragraph 9(a)(3) -- Type

1. Identifying transfer and account. Examples identifying the type of transfer and the type of the consumer’s account include “withdrawal from checking,” “transfer from savings to checking,” or “payment from savings.”

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

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

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

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

Paragraph 9(a)(5) -- Terminal Location

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

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

Paragraph 9(a)(5)(i)

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

Paragraph 9(a)(5)(ii)

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

Paragraph 9(a)(5)(iii)

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

Paragraph 9(a)(5)(iv)

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

i. All the terminals owned or operated by the financial institution providing the statement (or by the system in which it participates) are located in that state, or
ii. All transfers occur at terminals located within 50 miles of the financial institutions main office.

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

Paragraph 9(a)(6) -- Third Party Transfer

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

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

9(b) Periodic Statements

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

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

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

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

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

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

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

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

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

Paragraph 9(b)(1) -- Transaction Information

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

Paragraph 9(b)(1)(i)

1. Incorrect deposit amount. If a financial institution determines that the amount actually deposited at an ATM is different from the amount entered by the consumer, the institution need not immediately notify the consumer of the discrepancy. The periodic statement reflecting the deposit may show either the correct amount of the deposit or the amount entered by the consumer along with the institution’s adjustment.

Paragraph 9(b)(1)(iii)

1. Type of transfer. There is no prescribed terminology for describing a type of transfer. Placement of the amount of the transfer in the debit or the credit column is sufficient if other information on the statement, such as a terminal location or third-party name, enables the consumer to identify the type of transfer.
1. Nonproprietary terminal in network. An institution need not reflect on the periodic statement the street addresses, identification codes, or terminal numbers for transfers initiated in a shared or interchange system at a terminal operated by an institution other than the account-holding institution. The statement must, however, specify the entity that owns or operates the terminal, plus the city and state.

Paragraph 9(b)(1)(v)

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

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

3. Terminal location/third party. A single entry may be used to identify both the terminal location and the name of the third party to or from whom funds are transferred. For example, if a consumer purchases goods from a merchant, the name of the party to whom funds are transferred (the merchant) and the location of the terminal where the transfer is initiated will be satisfied by a disclosure such as "XYZ Store, Anytown, Ohio."

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

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

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

Paragraph 9(b)(3) -- Fees

1. Disclosure of fees. The fees disclosed may include fees for EFTs and for other nonelectronic services, and both fixed fees and per-item fees; they may be given as a total or may be itemized in part or in full.

2. Fees in interchange system. An account-holding institution must disclose any fees it
imposes on the consumer for EFTs, including fees for ATM transactions in an interchange or shared ATM system. Fees for use of an ATM imposed on the consumer by an institution other than the account-holding institution and included in the amount of the transfer by the terminal-operating institution need not be separately disclosed on the periodic statement.

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

Paragraph 9(b)(4) -- Account Balances

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

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

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

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

1. Telephone number. See comment 9(b)(5)-1.

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

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

9(d) Documentation for Foreign-Initiated Transfers

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

Section 205.10 -- Preauthorized Transfers

10(a) Preauthorized Transfers to Consumer's Account

Paragraph 10(a)(1) -- Notice by Financial Institution
1. Content. No specific language is required for notice regarding receipt of a preauthorized transfer. Identifying the deposit is sufficient; however, simply providing the current account balance is not.

2. Notice of credit. A financial institution may use different methods of notice for various types or series of preauthorized transfers, and the institution need not offer consumers a choice of notice methods.

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

4. Negative notice. The absence of a deposit entry (on a periodic statement sent within two business days of the scheduled transfer date) will serve as negative notice.

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

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

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

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

1. Preexisting authorizations. The financial institution need not require a new authorization before changing from paper-based to electronic debiting when the existing authorization does not specify that debiting is to occur electronically or specifies that the debiting will occur by paper means. A new authorization also is not required when a successor institution begins collecting payments.

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

3. Written authorization for preauthorized transfers. The requirement that preauthorized EFTs be authorized by the consumer “only by a writing” cannot be met by a payee’s signing a written authorization on the consumer’s behalf with only an oral authorization from the consumer.

4. Use of a confirmation form. A financial institution or designated payee may comply with the requirements of this section in various ways. For example, a payee may provide the consumer with two copies of a preauthorization form, and ask the consumer to sign and return one and to retain the second copy.

5. Similarly authenticated. An example of a consumer’s authorization that is not in the form of a signed writing but is instead “similarly authenticated” is a consumer’s authorization via a home banking system. To satisfy the requirements of this section, there must be some means to identify the consumer (such as a security code) and to make available a paper copy of the authorization (automatically or upon request). The text of the electronic authorization would have to be displayed on a computer screen or other visual display which enables the consumer to read the communication. Only the consumer may authorize the transfer and not, for example, a third-party merchant on behalf of the consumer.

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

7. Bona fide error. Consumers sometimes authorize third-party payees, by telephone or on-line, to submit recurring charges against a credit card account. If the consumer indicates use of a credit card account when in fact a debit card is being used, the payee does not violate the requirement to obtain a written authorization if the failure to obtain written authorization was not intentional and resulted from a bona fide error, and if the payee maintains procedures reasonably adapted to avoid any such error. Procedures reasonably adapted to avoid error will depend upon the circumstances. Generally, requesting the consumer to specify whether the card to be used for the authorization is a debit (or check) card or a credit card is a reasonable procedure. Where the consumer has indicated that the card is a credit card (or that the card is not a debit or check card), the payee may rely on the consumer’s statement without seeking further information about the type of card. If the payee believes, at the time of the authorization, that a credit card is involved, and later finds that the card used is a debit card (for example, because the consumer later
brings the matter to the payee's attention), the payee must obtain a written and signed or (where appropriate) a similarly authenticated authorization as soon as reasonably possible, or cease debiting the consumer's account.

10(c) Consumer's Right To Stop Payment

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

2. Revocation of authorization. Once a financial institution has been notified that the consumer's authorization is no longer valid, it must block all future payments for the particular debit transmitted by the designated payee-originator. (However, see comment 10(c)-3.) The institution may not wait for the payee-originator to terminate the automatic debits. The institution may confirm that the consumer has informed the payee-originator of the revocation (for example, by requiring a copy of the consumer's revocation as written confirmation to be provided within 14 days of an oral notification). If the institution does not receive the required written confirmation within the 14-day period, it may honor subsequent debits to the account.

3. Alternative procedure for processing a stop-payment request. If an institution does not have the capability to block a preauthorized debit from being posted to the consumer's account—as in the case of a preauthorized debit made through a debit card network or other system, for example—the institution may instead comply with the stop-payment requirements by using a third party to block the transfer(s), as long as the consumer's account is not debited for the payment.

10(d) Notice of Transfers Varying in Amount

Paragraph 10(d)(1) -- Notice

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

Paragraph 10(d)(2) -- Range

1. Range. A financial institution or designated payee that elects to offer the consumer a specified range of amounts for debiting (in lieu of providing the notice of transfers varying in amount) must provide an acceptable range that could be anticipated by the consumer. For example, if the transfer is for payment of a gas bill, an appropriate
range might be based on the highest bill in winter and the lowest bill in summer.

2. Transfers to an account of the consumer held at another institution. A financial institution need not provide a consumer the option of receiving notice with each varying transfer, and may instead provide notice only when a debit to an account of the consumer falls outside a specified range or differs by more than a specified amount from the most recent transfer, if the funds are transferred and credited to an account of the consumer held at another financial institution. The specified range or amount, however, must be one that reasonably could be anticipated by the consumer, and the institution must notify the consumer of the range or amount at the time the consumer provides authorization for the preauthorized transfers. For example, if the transfer is for payment of interest for a fixed-rate certificate of deposit account, an appropriate range might be based on a month containing 28 days and a month containing 31 days.

10(e) Compulsory Use

Paragraph 10(e)(1) -- Credit

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

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

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

2. Overdraft. A financial institution may require the automatic repayment of an overdraft credit plan even if the overdraft extension is charged to an open-end account that may be accessed by the consumer in ways other than by overdrafts.

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

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

Section 205.11 -- Procedures for Resolving Errors

11(a) Definition of Error

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

2. Verifying account deposit. If the consumer merely calls to ascertain whether a deposit made via ATM, preauthorized transfer, or any other type of EFT was credited to the account, without asserting an error, the error resolution procedures do not apply.

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

4. Error asserted after account closed. The financial institution must comply with the error resolution procedures when a consumer properly asserts an error, even if the account has been closed.

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

6. Terminal receipts for transfers of $15 or less. The fact that an institution does not make a terminal receipt available for a transfer of $15 or less in accordance with § 205.9(e) is not an error for purposes of §§ 205.11(a)(1)(vi) or (vii).

11(b) Notice of Error From Consumer

Paragraph 11(b)(1) -- Timing; Contents

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

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

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

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

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

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

7. Effect of late notice. An institution is not required to comply with the requirements of this section for any notice of error from the consumer that is received by the institution later than 60 days from the date on which the periodic statement first reflecting the error is sent. Where the consumer's assertion of error involves an unauthorized EFT, however, the institution must comply with § 205.6 before it may impose any liability on the consumer.

Paragraph 11(b)(2) -- Written Confirmation

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

11(c) Time Limits and Extent of Investigation

1. Notice to consumer. Unless otherwise indicated in this section, the financial institution may provide the required notices to the consumer either orally or in writing.
2. Written confirmation of oral notice. A financial institution must begin its investigation promptly upon receipt of an oral notice. It may not delay until it has received a written confirmation.

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

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

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

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

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

Paragraph 11(c)(2)(i)
1. Compliance with all requirements. Financial institutions exempted from provisionally crediting a consumer's account under § 205.11(c)(2)(i) (A) and (B) must still comply with all other requirements of § 205.11.

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

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

Paragraph 11(c)(4) -- Investigation

1. Third parties. When information or documentation requested by the consumer is in the possession of a third party with whom the financial institution does not have an agreement, the institution satisfies the error resolution requirement by so advising the consumer within the specified time period.

2. Scope of investigation. When an alleged error involves a payment to a third party under the financial institution's telephone bill-payment plan, a review of the institution's own records is sufficient, assuming no agreement exists between the institution and the third party concerning the bill-payment service.

3. POS transfers. When a consumer alleges an error involving a transfer to a merchant via a POS terminal, the institution must verify the information previously transmitted when executing the transfer. For example, the financial institution may request a copy of the sales receipt to verify that the amount of the transfer correctly corresponds to the amount of the consumer's purchase.

4. Agreement. An agreement that a third party will honor an access device is an agreement for purposes of this paragraph. A financial institution does not have an agreement for purposes of § 205.11(c)(4)(ii) solely because it participates in transactions that occur under the federal recurring payments programs, or that are cleared through an ACH or similar arrangement for the clearing and settlement of fund transfers generally, or because it agrees to be bound by the rules of such an arrangement.

5. No EFT agreement. When there is no agreement between the institution and the third party for the type of EFT involved, the financial institution must review any relevant information within the institution's own records for the particular account to resolve the consumer's claim. The extent of the investigation required may vary.
depending on the facts and circumstances. However, a financial institution may not limit its investigation solely to the payment instructions where additional information within its own records pertaining to the particular account in question could help to resolve a consumer’s claim. Information that may be reviewed as part of an investigation might include:

i. The ACH transaction records for the transfer;

ii. The transaction history of the particular account for a reasonable period of time immediately preceding the allegation of error;

iii. Whether the check number of the transaction in question is notably out-of-sequence;

iv. The location of either the transaction or the payee in question relative to the consumer’s place of residence and habitual transaction area;

v. Information relative to the account in question within the control of the institution’s third-party service providers if the financial institution reasonably believes that it may have records or other information that could be dispositive; or

vi. Any other information appropriate to resolve the claim.

11(d) Procedures if Financial Institution Determines No Error or Different Error Occurred

1. Error different from that alleged. When a financial institution determines that an error occurred in a manner or amount different from that described by the consumer, it must comply with the requirements of both § 205.11 (c) and (d), as relevant. The institution may give the notice of correction and the explanation separately or in a combined form.

Paragraph 11(d)(1) -- Written Explanation

1. Request for documentation. When a consumer requests copies of documents, the financial institution must provide the copies in an understandable form. If an institution relied on magnetic tape it must convert the applicable data into readable form, for example, by printing it and explaining any codes.

Paragraph 11(d)(2) -- Debiting Provisional Credit

1. Alternative procedure for debiting of credited funds. The financial institution may comply with the requirements of this section by notifying the consumer that the consumer’s account will be debited five business days from the transmittal of the notification, specifying the calendar date on which the debiting will occur.
2. Fees for overdrafts. The financial institution may not impose fees for items it is required to honor under § 205.11. It may, however, impose any normal transaction or item fee that is unrelated to an overdraft resulting from the debiting. If the account is still overdrawn after five business days, the institution may impose the fees or finance charges to which it is entitled, if any, under an overdraft credit plan.

11(e) Reassertion of Error

1. Withdrawal of error; right to reassert. The financial institution has no further error resolution responsibilities if the consumer voluntarily withdraws the notice alleging an error. A consumer who has withdrawn an allegation of error has the right to reassert the allegation unless the financial institution had already complied with all of the error resolution requirements before the allegation was withdrawn. The consumer must do so, however, within the original 60-day period.

Section 205.12 -- Relation to Other Laws

12(a) Relation to Truth in Lending

1. Determining applicable regulation. For transactions involving access devices that also constitute credit cards, whether Regulation E or Regulation Z (12 C.F.R. part 226) applies, depends on the nature of the transaction. For example, if the transaction is purely an extension of credit, and does not include a debit to a checking account (or other consumer asset account), the liability limitations and error resolution requirements of Regulation Z (12 C.F.R. part 226) apply. If the transaction only debits a checking account (with no credit extended), the provisions of Regulation E apply. Finally, if the transaction debits a checking account but also draws on an overdraft line of credit, the Regulation E provisions apply, as well as §§ 226.13 (d) and (g) of Regulation Z. In such a transaction, the consumer might be liable for up to $50 under Regulation Z (12 C.F.R. part 226) and, in addition, for $50, $500, or an unlimited amount under Regulation E.

[Changes effective January 19, 2010 -- mandatory compliance date July 1, 2010] 2. Issuance rules. For access devices that also constitute credit cards, the issuance rules of Regulation E apply if the only credit feature is a preexisting credit line attached to the asset account to cover overdrafts (or to maintain a specified minimum balance) or an overdraft service, as defined in Sec. 205.17(a). Regulation Z (12 CFR part 226) rules apply if there is another type of credit feature; for example, one permitting direct extensions of credit that do not involve the asset account.
3. Overdraft service. The addition of an overdraft service, as that term is defined in Sec. 205.17(a), to an accepted access device does not constitute the addition of a credit feature subject to Regulation Z. Instead, the provisions of Regulation E apply, including the liability limitations (Sec. 205.6) and the requirement to obtain consumer consent to the service before any fees or charges for paying an overdraft may be assessed on the account (Sec. 205.17).

2. Issuance rules. For access devices that also constitute credit cards, the issuance rules of Regulation E apply if the only credit feature is a preexisting credit line attached to the asset account to cover overdrafts (or to maintain a specified minimum balance). Regulation Z (12 C.F.R. part 226) rules apply if there is another type of credit feature, for example, one permitting direct extensions of credit that do not involve the asset account.

12(b) Preemption of Inconsistent State Laws

[Changes effective August 22, 2010] 1. Specific determinations. The regulation prescribes standards for determining whether state laws that govern EFTs and state laws regarding gift certificates, store gift cards, or general-use prepaid cards that govern dormancy, inactivity, or service fees, or expiration dates, are preempted by the act and the regulation. A state law that is inconsistent may be preempted even if the Board has not issued a determination. However, nothing in §205.12(b) provides a financial institution with immunity for violations of state law if the institution chooses not to make state disclosures and the Board later determines that the state law is not preempted.

2. Preemption determination. The Board determined that certain provisions in the state law of Michigan are preempted by the federal law, effective March 30, 1981:

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

ii. Consumer liability for unauthorized use of an account. Section 14 is inconsistent with §205.6 and is less protective of the consumer than the federal law. The state law places liability on the consumer for the unauthorized use of an account in cases involving the consumer's negligence. Under the federal law, a consumer's liability for unauthorized use is not related to the consumer's negligence and depends instead on the consumer's promptness in reporting the loss or theft of the access device.
iii. Error resolution. Section 15 is preempted because it is inconsistent with § 205.11 and is less protective of the consumer than the federal law. The state law allows financial institutions up to 70 days to resolve errors, whereas the federal law generally requires errors to be resolved within 45 days.

iv. Receipts and periodic statements. Sections 17 and 18 are preempted because they are inconsistent with § 205.9. The state provisions require a different disclosure of information than does the federal law. The receipt provision is also preempted because it allows the consumer to be charged for receiving a receipt if a machine cannot furnish one at the time of a transfer.

Section 205.13 -- Administrative Enforcement; Record Retention

13(b) Record Retention

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

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

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

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

2. ACH agreements. The ACH rules generally do not constitute an agreement for purposes of this section. However, an ACH agreement under which members specifically agree to honor each other's debit cards is an "agreement," and thus this section does not apply.
14(b) Compliance by Electronic Fund Transfer Service Provider

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

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

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

Paragraph 14(b)(2) -- Error Resolution

1. Error resolution. When a consumer notifies the service provider of an error, the EFT service provider must investigate and resolve the error in compliance with § 205.11 as modified by § 205.14(b)(2). If an error occurred, any fees or charges imposed as a result of the error, either by the service provider or by the account-holding institution (for example, overdraft or dishonor fees) must be reimbursed to the consumer by the service provider.

14(c) Compliance by Account-Holding Institution

Paragraph 14(c)(1)

1. Periodic statements from account-holding institution. The periodic statement provided by the account-holding institution need only contain the information required by § 205.9(b)(1).

Section 205.16 -- Disclosures at Automated Teller Machines

16(b) General

Paragraph 16(b)(1)

1. Specific notices. An ATM operator that imposes a fee for a specific type of transaction—such as for a cash withdrawal, but not for a balance inquiry, or for some cash withdrawals, but not for others (such as where the card was issued by a foreign bank or by a card issuer that has entered into a special contractual relationship with the ATM operator regarding surcharges)—may provide a notice on or at the ATM that a fee will be imposed or a notice that a fee may be imposed for providing EFT services or may specify the type of EFT for which a fee is imposed. If, however, a fee will be imposed in all instances, the notice must state that a fee will be imposed.
[Changes effective January 19, 2010 -- mandatory compliance date July 1, 2010]

Section 205.17 Requirements for Overdraft Services [Reserved]

17(a) Definition

1. Exempt securities and commodities-related lines of credit. Section 205.17(a)(3) does not apply to transactions in a securities or commodities account pursuant to which credit is extended by a broker-dealer registered with the Securities and Exchange Commission or the Commodity Futures Trading Commission.

17(b) Opt-in requirement

1. Scope.

i. Account-holding institutions. Section 205.17(b) applies to ATM and one-time debit card transactions made with a debit card issued by or on behalf of the account-holding institution. Section 205.17(b) does not apply to ATM and one-time debit card transactions made with a debit card issued by or through a third party unless the debit card is issued on behalf of the account-holding institution.

ii. Coding of transactions. A financial institution complies with the rule if it adapts its systems to identify debit card transactions as either one-time or recurring. If it does so, the financial institution may rely on the transaction’s coding by merchants, other institutions, and other third parties as a one-time or a preauthorized or recurring debit card transaction.

iii. One-time debit card transactions. The opt-in applies to any one-time debit card transaction, whether the card is used, for example, at a point-of-sale, in an on-line transaction, or in a telephone transaction.

2. No affirmative consent. A financial institution may pay overdrafts for ATM and one-time debit card transactions even if a consumer has not affirmatively consented or opted in to the institution’s overdraft service. If the institution pays such an overdraft without the consumer’s affirmative consent, however, it may not impose a fee or charge for doing so. These provisions do not limit the institution’s ability to debit the consumer’s account for the amount overdrawn if the institution is permitted to do so under applicable law.

3. Overdraft transactions not required to be authorized or paid. Section 205.17 does not require a financial institution to authorize or pay an overdraft on an
ATM or one-time debit card transaction even if the consumer has affirmatively consented to an institution’s overdraft service for such transactions.

4. Reasonable opportunity to provide affirmative consent. A financial institution provides a consumer with a reasonable opportunity to provide affirmative consent when, among other things, it provides reasonable methods by which the consumer may affirmatively consent. A financial institution provides such reasonable methods, if -

i. By mail. The institution provides a form for the consumer to fill out and mail to affirmatively consent to the service.

ii. By telephone. The institution provides a readily-available telephone line that consumers may call to provide affirmative consent.

iii. By electronic means. The institution provides an electronic means for the consumer to affirmatively consent. For example, the institution could provide a form that can be accessed and processed at its web site, where the consumer may click on a check box to provide consent and confirm that choice by clicking on a button that affirms the consumer’s consent.

iv. In person. The institution provides a form for the consumer to complete and present at a branch or office to affirmatively consent to the service.

5. Implementing opt-in at account-opening. A financial institution may provide notice regarding the institution’s overdraft service prior to or at account-opening. A financial institution may require a consumer, as a necessary step to opening an account, to choose whether or not to opt into the payment of ATM or one-time debit card transactions pursuant to the institution’s overdraft service. For example, the institution could require the consumer, at account opening, to sign a signature line or check a box on a form (consistent with comment 17(b)-6) indicating whether or not the consumer affirmatively consents at account opening. If the consumer does not check any box or provide a signature, the institution must assume that the consumer does not opt in. Or, the institution could require the consumer to choose between an account that does not permit the payment of ATM or one-time debit card transactions pursuant to the institution’s overdraft service and an account that permits the payment of such overdrafts, provided that the accounts comply with § 205.17(b)(2) and § 205.17(b)(3).

6. Affirmative consent required. A consumer’s affirmative consent, or opt-in, to a financial institution’s overdraft service must be obtained separately from
other consents or acknowledgements obtained by the institution, including a consent to receive disclosures electronically. An institution may obtain a consumer’s affirmative consent by providing a blank signature line or check box that the consumer could sign or select to affirmatively consent, provided that the signature line or check box is used solely for purposes of evidencing the consumer’s choice whether or not to opt into the overdraft service and not for other purposes. An institution does not obtain a consumer’s affirmative consent by including preprinted language about the overdraft service in an account disclosure provided with a signature card or contract that the consumer must sign to open the account and that acknowledges the consumer’s acceptance of the account terms. Nor does an institution obtain a consumer’s affirmative consent by providing a signature card that contains a pre-selected check box indicating that the consumer is requesting the service.

7. Written confirmation. A financial institution may comply with the requirement in §205.17(b)(1)(iv) by providing to the consumer a copy of the consumer’s completed opt-in form or by sending a letter or notice to the consumer acknowledging that the consumer has elected to opt into the institution’s service. The written confirmation notice must include a statement informing the consumer of his or her right to revoke the opt-in at any time. To the extent the institution complies with the written confirmation requirement by providing a copy of the completed opt-in form, the institution may include the statement about revocation on the initial opt-in notice.

Paragraph 17(b)(2) - Conditioning Payment of Other Overdrafts on Consumer’s Affirmative Consent

1. Application of the same criteria. The prohibitions on conditioning in §205.17(b)(2) generally require an institution to apply the same criteria for deciding when to pay overdrafts for checks, ACH transactions, and other types of transactions, whether or not the consumer has affirmatively consented to the institution’s overdraft service with respect to ATM and one-time debit card overdrafts. For example, if an institution’s internal criteria would lead the institution to pay a check overdraft if the consumer had affirmatively consented to the institution’s overdraft service for ATM and one-time debit card transactions, it must also apply the same criteria in a consistent manner in determining whether to pay the check overdraft if the consumer has not opted in.

2. No requirement to pay overdrafts on checks, ACH transactions, or other types of transactions. The prohibition on conditioning in §205.17(b)(2) does not
require an institution to pay overdrafts on checks, ACH transactions, or other types of transactions in all circumstances. Rather, the rule simply prohibits institutions from considering the consumer’s decision not to opt in when deciding whether to pay overdrafts for checks, ACH transactions, or other types of transactions.

Paragraph 17(b)(3) - Same Account Terms, Conditions, and Features

1. Variations in terms, conditions, or features. A financial institution may not vary the terms, conditions, or features of an account provided to a consumer who does not affirmatively consent to the payment of ATM or one-time debit card transactions pursuant to the institution’s overdraft service. This includes, but is not limited to:

i. Interest rates paid and fees assessed;

ii. The type of ATM or debit card provided to the consumer. For instance, an institution may not provide consumers who do not opt in a PIN-only card while providing a debit card with both PIN and signature-debit functionality to consumers who opt in;

iii. Minimum balance requirements; or

iv. Account features such as on-line bill payment services.

2. Limited-feature bank accounts. Section 205.17(b)(3) does not prohibit institutions from offering deposit account products with limited features, provided that a consumer is not required to open such an account because the consumer did not opt in (see comment 17(b)(3)-2). For example, § 205.17(b)(3) does not prohibit an institution from offering a checking account designed to comply with state basic banking laws, or designed for consumers who are not eligible for a checking account because of their credit or checking account history, which may include features limiting the payment of overdrafts. However, a consumer who applies, and is otherwise eligible, for a full-service or other particular deposit account product may not be provided instead with the account with more limited features because the consumer has declined to opt in.

Paragraph 17(b)(4) - Exception to the Notice and Opt-In Requirement

1. Account-by-account exception. If a financial institution has a policy and practice of declining to authorize and pay any ATM or one-time debit card transactions with respect to one type of deposit account offered by the institution, when the institution has a reasonable belief at the time of the
authorization request that the consumer does not have sufficient funds available
to cover the transaction, that account is not subject to § 205.17(b)(1), even if
other accounts that the institution offers are subject to the rule. For example, if
the institution offers three types of checking accounts, and the institution has
such a policy and practice with respect to only one of the three types of
accounts, that one type of account is not subject to the notice requirement.
However, the other two types of accounts offered by the institution remain
subject to the notice requirement.

17(c) Timing

1. Early compliance. A financial institution may provide the notice required by §
205(b)(1)(i) and obtain the consumer’s affirmative consent to the financial
institution’s overdraft service for ATM and one-time debit card transactions
prior to July 1, 2010, provided that the financial institution complies with all of
the requirements of this section.

2. Permitted fees or charges. Fees or charges for ATM and one-time debit card
overdrafts may be assessed only for overdrafts paid by the institution on or
after the date the financial institution receives the consumer’s affirmative
consent to the institution’s overdraft service.

17(d) Content and Format

1. Overdraft service. The description of the institution’s overdraft service
should indicate that the consumer has the right to affirmatively consent, or opt
into payment of overdrafts for ATM and one-time debit card transactions. The
description should also disclose the institution’s policies regarding the payment
of overdrafts for other transactions, including checks, ACH transactions, and
automatic bill payments, provided that this content is not more prominent than
the description of the consumer’s right to opt into payment of overdrafts for
ATM and one-time debit card transactions. As applicable, the institution also
should indicate that it pays overdrafts at its discretion, and should briefly
explain that if the institution does not authorize and pay an overdraft, it may
decline the transaction.

2. Maximum fee. If the amount of a fee may vary from transaction to
transaction, the financial institution may indicate that the consumer may be
assessed a fee "up to" the maximum fee. The financial institution must disclose
all applicable overdraft fees, including but not limited to:

i. Per item or per transaction fees;
ii. Daily overdraft fees:

iii. Sustained overdraft fees, where fees are assessed when the consumer has not repaid the amount of the overdraft after some period of time (for example, if an account remains overdrawn for five or more business days); or

iv. Negative balance fees.

17(f) Continuing right to opt in or to revoke the opt-in.

1. Fees or charges for overdrafts incurred prior to revocation. Section 205.17(f)(1) provides that a consumer may revoke his or her prior consent at any time. If a consumer does so, this provision does not require the financial institution to waive or reverse any overdraft fees assessed on the consumer’s account prior to the institution’s implementation of the consumer’s revocation request.

17(g) Duration of opt-in.

1. Termination of overdraft service. A financial institution may, for example, terminate the overdraft service when the consumer makes excessive use of the service.

Section 205.18 -- Requirements for Institutions Offering Payroll Card Accounts

18(a) Coverage

1. Issuance of access device. Consistent with § 205.5(a), a financial institution may issue an access device only in response to an oral or written request for the device, or as a renewal or substitute for an accepted access device. A consumer is deemed to request an access device for a payroll card account when the consumer chooses to receive salary or other compensation through a payroll card account.

2. Application to employers and service providers. Typically, employers and third-party service providers do not meet the definition of a “financial institution” subject to the regulation because they neither hold payroll card accounts nor issue payroll cards and agree with consumers to provide EFT services in connection with payroll card accounts. However, to the extent an employer or a service provider undertakes either of these functions, it would be deemed a financial institution under the regulation.

18(b) Alternative to Periodic Statements

1. Posted transactions. A history of transactions provided under §§ 205.18(b)(1)(ii) and
(iii) shall reflect transfers once they have been posted to the account. Thus, an institution does not need to include transactions that have been authorized, but that have not yet posted to the account.

2. Electronic history. The electronic history required under § 205.18(b)(1)(iii) must be provided in a form that the consumer may keep, as required under § 205.4(a)(1). Financial institutions may satisfy this requirement if they make the electronic history available in a format that is capable of being retained. For example, an institution satisfies the requirement if it provides a history at an Internet Web site in a format that is capable of being printed or stored electronically using an Internet web browser.

18(c) Modified Requirements

1. Error resolution safe harbor provision. Institutions that choose to investigate notices of error provided up to 120 days from the date a transaction has posted to a consumer's account may still disclose the error resolution time period required by the regulation (as set forth in the Model Form in Appendix A-7). Specifically, an institution may disclose to payroll card account holders that the institution will investigate any notice of error provided within 60 days of the consumer electronically accessing an account or receiving a written history upon request that reflects the error, even if, for some or all transactions, the institution investigates any notice of error provided up to 120 days from the date that the transaction alleged to be in error has posted to the consumer's account. Similarly, an institution's summary of the consumer's liability (as required under § 205.7(b)(1)) may disclose that liability is based on the consumer providing notice of error within 60 days of the consumer electronically accessing an account or receiving a written history reflecting the error, even if, for some or all transactions, the institution allows a consumer to assert a notice of error up to 120 days from the date of posting of the alleged error.

2. Electronic access. A consumer is deemed to have accessed a payroll card account electronically when the consumer enters a user identification code or password or otherwise complies with a security procedure used by an institution to verify the consumer’s identity. An institution is not required to determine whether a consumer has in fact accessed information about specific transactions to trigger the beginning of the 60-day periods for liability limits and error resolution under §§ 205.6 and 205.11.

3. Untimely notice of error. An institution that provides a transaction history under § 205.18(b)(1) is not required to comply with the requirements of § 205.11 for any notice of error from the consumer pertaining to a transfer that occurred more than 60 days prior to the earlier of the date the consumer electronically accesses the account.
or the date the financial institution sends a written history upon the consumer's request. (Alternatively, as provided in § 205.18(c)(4)(ii), an institution need not comply with the requirements of § 205.11 with respect to any notice of error received from the consumer more than 120 days after the date of posting of the transfer allegedly in error.) Where the consumer's assertion of error involves an unauthorized EFT, however, the institution must comply with § 205.6 before it may impose any liability on the consumer.

[Effective August 22, 2010]

20(a) Definitions

1. Form of card, code, or device. Section 205.20 applies to any card, code, or other device that meets one of the definitions in Sec. 205.20(a)(1) through (a)(3) (and is not otherwise excluded by Sec. 205.20(b)), even if it is not issued in card form. Section 205.20 applies, for example, to an account number or bar code that can be used to access underlying funds. Similarly, Sec. 205.20 applies to a device with a chip or other embedded mechanism that links the device to stored funds, such as a mobile phone or sticker containing a contactless chip that enables the consumer to access the stored funds. A card, code, or other device that meets the definition in Sec. 205.20(a)(1) through (a)(3) includes an electronic promise (see comment 20(a)-2) as well as a promise that is not electronic. See, however, Sec. 205.20(b)(5). In addition, Sec. 205.20 applies if a merchant issues a code that entitles a consumer to redeem the code for goods or services, regardless of the medium in which the code is issued (see, however, Sec. 205.20(b)(5)), and whether or not it may be redeemed electronically or in the merchant's store. Thus, for example, if a merchant e-mails a code that a consumer may redeem in a specified amount either online or in the merchant's store, that code is covered under Sec. 205.20, unless one of the exclusions in Sec. 205.20(b) apply.

2. Electronic promise. The term "electronic promise" as used in EFTA Sections 915(a)(2)(B), (a)(2)(C), and (a)(2)(D) means a person's commitment or obligation communicated or stored in electronic form made to a consumer to provide payment for goods or services for transactions initiated by the consumer. The electronic promise is itself represented by a card, code or other device that is issued or honored by the person, reflecting the person's commitment or obligation to pay. For example, if a merchant issues a code that can be given as a gift and that entitles the recipient to redeem the code in an on-line transaction for goods or services, that code represents an electronic promise by the
3. Cards, codes, or other devices redeemable for specific goods or services. Certain cards, codes, or other devices may be redeemable upon presentation for a specific good or service, or "experience," such as a spa treatment, hotel stay, or airline flight. In other cases, a card, code, or other device may entitle the consumer to a certain percentage off the purchase of a good or service, such as 20% off of any purchase in a store. Such cards, codes, or other devices generally are not subject to the requirements of this section because they are not issued to a consumer "in a specified amount" as required under the definitions of "gift certificate," "store gift card," or "general-use prepaid card." However, if the card, code, or other device is issued in a specified or denominated amount that can be applied toward the purchase of a specific good or service, such as a certificate or card redeemable for a spa treatment up to $50, the card, code, or other device is subject to this section, unless one of the exceptions in Sec. 205.20(b) apply. See, e.g., Sec. 205.20(b)(3). Similarly, if the card, code, or other device states a specific monetary value, such as "a $50 value," the card, code, or other device is subject to this section, unless an exclusion in Sec. 205.20(b) applies.

4. Issued primarily for personal, family, or household purposes. Section 205.20 only applies to cards, codes, or other devices that are sold or issued to a consumer primarily for personal, family, or household purposes. A card, code, or other device initially purchased by a business is subject to this section if the card, code, or other device is purchased for redistribution or resale to consumers primarily for personal, family, or household purposes. Moreover, the fact that a card, code, or other device may be primarily funded by a business, for example, in the case of certain rewards or incentive cards, does not mean the card, code, or other device is outside the scope of Sec. 205.20, if the card, code, or other device will be provided to a consumer primarily for personal, family, or household purposes. But see Sec. 205.20(b)(3). Whether a card, code, or other device is issued to a consumer primarily for personal, family, or household purposes will depend on the facts and circumstances. For example, if a program manager purchases store gift cards directly from an issuing merchant and sells those cards through the program manager's retail outlets, such gift cards are subject to the requirements of Sec. 205.20 because the store gift cards are sold to consumers primarily for personal, family, or household purposes. In contrast, a card, code, or other device generally would not be issued to consumers primarily for personal, family, or household purposes, and therefore would fall...
outside the scope of Sec. 205.20, if the purchaser of the card, code, or device is contractually prohibited from reselling or redistributing the card, code, or device to consumers primarily for personal, family, or household purposes, and reasonable policies and procedures are maintained to avoid such sale or distribution for such purposes. However, if an entity that has purchased cards, codes, or other devices for business purposes sells or distributes such cards, codes, or other devices to consumers primarily for personal, family, or household purposes, that entity does not comply with Sec. 205.20 if it has not otherwise met the substantive and disclosure requirements of the rule or unless an exclusion in Sec. 205.20(b) applies.

5. Examples of cards, codes, or other devices issued for business purposes.
Examples of cards, codes, or other devices that are issued and used for business purposes and therefore excluded from the definitions of "gift certificate," "store gift card," or "general-use prepaid card" include:

i. Cards, codes, or other devices to reimburse employees for travel or moving expenses.

ii. Cards, codes, or other devices for employees to use to purchase office supplies and other business-related items.

Paragraph 20(a)(2)--Store Gift Card

1. Relationship between "gift certificate" and "store gift card". The term "store gift card" in Sec. 205.20(a)(2) includes "gift certificate" as defined in Sec. 205.20(a)(1). For example, a numeric or alphanumerical code representing a specified dollar amount or value that is electronically sent to a consumer as a gift which can be redeemed or exchanged by the recipient to obtain goods or services may be both a "gift certificate" and a "store gift card" if the specified amount or value cannot be increased.

2. Affiliated group of merchants. The term "affiliated group of merchants" means two or more affiliated merchants or other persons that are related by common ownership or common corporate control (see, e.g., 12 CFR 227.3(b) and 12 CFR 223.2) and that share the same name, mark, or logo. For example, the term includes franchisees that are subject to a common set of corporate policies or practices under the terms of their franchise licenses. The term also applies to two or more merchants or other persons that agree among themselves, by contract or otherwise, to redeem cards, codes, or other devices bearing the same name, mark, or logo (other than the mark, logo, or brand of a payment network),
for the purchase of goods or services solely at such merchants or persons. For example, assume a movie theatre chain and a restaurant chain jointly agree to issue cards that share the same “Flix and Food” logo that can be redeemed solely towards the purchase of movie tickets or concessions at any of the participating movie theatres, or towards the purchase of food or beverages at any of the participating restaurants. For purposes of Sec. 205.20, the movie theatre chain and the restaurant chain would be considered to be an affiliated group of merchants, and the cards are considered to be “store gift cards.” However, merchants or other persons are not considered to be affiliated merely because they agree to accept a card that bears the mark, logo, or brand of a payment network.


Paragraph 20(a)(3)--General-Use Prepaid Card

1. Redeemable upon presentation at multiple, unaffiliated merchants. A card, code, or other device is redeemable upon presentation at multiple, unaffiliated merchants if, for example, such merchants agree to honor the card, code, or device if it bears the mark, logo, or brand of a payment network, pursuant to the rules of the payment network.

2. Mall gift cards. Mall gift cards that are intended to be used or redeemed for goods or services at participating retailers within a shopping mall may be considered store gift cards or general-use prepaid cards depending on the merchants with which the cards may be redeemed. For example, if a mall card may only be redeemed at merchants within the mall itself, the card is more likely to be redeemable at an affiliated group of merchants and considered a store gift card. However, certain mall cards also carry the brand of a payment network and can be used at any retailer that accepts that card brand, including retailers located outside of the mall. Such cards are considered general-use prepaid cards.

Paragraph 20(a)(4)--Loyalty, Award, or Promotional Gift Card

1. Examples of loyalty, award, or promotional programs. Examples of loyalty, award or promotional programs under Sec. 205.20(a)(4) include, but are not limited to:

i. Consumer retention programs operated or administered by a merchant or other person that provide to consumers cards or coupons redeemable for or towards goods or services or other monetary value as a reward for purchases made or for visits to the participating merchant;
ii. Sales promotions operated or administered by a merchant or product manufacturer that provide coupons or discounts redeemable for or towards goods or services or other monetary value.

iii. Rebate programs operated or administered by a merchant or product manufacturer that provide cards redeemable for or towards goods or services or other monetary value to consumers in connection with the consumer’s purchase of a product or service and the consumer’s completion of the rebate submission process.

iv. Sweepstakes or contests that distribute cards redeemable for or towards goods or services or other monetary value to consumers as an invitation to enter into the promotion for a chance to win a prize.

v. Referral programs that provide cards redeemable for or towards goods or services or other monetary value to consumers in exchange for referring other potential consumers to a merchant.

vi. Incentive programs through which an employer provides cards redeemable for or towards goods or services or other monetary value to employees, for example, to recognize job performance, such as increased sales, or to encourage employee wellness and safety.

vii. Charitable or community relations programs through which a company provides cards redeemable for or towards goods or services or other monetary value to a charity or community group for their fundraising purposes, for example, as a reward for a donation or as a prize in a charitable event.

2. Issued for loyalty, award, or promotional purposes. To indicate that a card, code, or other device is issued for loyalty, award, or promotional purposes as required by Sec. 205.20(a)(4)(iii), it is sufficient for the card, code, or other device to state on the front, for example, “Reward” or “Promotional.”

3. Reference to toll-free number and Web site. If a card, code, or other device issued in connection with a loyalty, award, or promotional program does not have any fees, the disclosure under Sec. 205.20(a)(4)(iii)(D) is not required on the card, code, or other device.

Paragraph 20(a)(6)--Service Fee

1. Service fees. Under Sec. 205.20(a)(6), a service fee includes a periodic fee for holding or use of a gift certificate, store gift card, or general-use prepaid card. A
periodic fee includes any fee that may be imposed on a gift certificate, store gift card, or general-use prepaid card from time to time for holding or using the certificate or card, such as a monthly maintenance fee, a transaction fee, an ATM fee, a reload fee, a foreign currency transaction fee, or a balance inquiry fee, whether or not the fee is waived for a certain period of time or is only imposed after a certain period of time. A service fee does not include a one-time fee or a fee that is unlikely to be imposed more than once while the underlying funds are still valid, such as an initial issuance fee, a cash-out fee, a supplemental card fee, or a lost or stolen certificate or card replacement fee.

Paragraph 20(a)(7)--Activity

1. Activity. Under Sec. 205.20(a)(7), any action that results in an increase or decrease of the funds underlying a gift certificate, store gift card, or general-use prepaid card, other than the imposition of a fee, or an adjustment due to an error or a reversal of a prior transaction, constitutes activity for purposes of Sec. 205.20. For example, the purchase and activation of a certificate or card, the use of the certificate or card to purchase a good or service, or the reloading of funds onto a store gift card or general-use prepaid card constitutes activity. However, the imposition of a fee, the replacement of an expired, lost, or stolen certificate or card, and a balance inquiry do not constitute activity. In addition, if a consumer attempts to engage in a transaction with a gift certificate, store gift card, or general-use prepaid card, but the transaction cannot be completed due to technical or other reasons, such attempt does not constitute activity. Furthermore, if the funds underlying a gift certificate, store gift card, or general-use prepaid card are adjusted because there was an error or the consumer has returned a previously purchased good, the adjustment also does not constitute activity with respect to the certificate or card.

20(b) Exclusions

1. Application of exclusion. A card, code, or other device is excluded from the definition of “gift certificate,” “store gift card,” or “general-use prepaid card” if it meets any of the exclusions in Sec. 205.20(b). An excluded card, code, or other device generally is not subject to any of the requirements of this section. (See, however, Sec. 205.20(a)(4)(iii), requiring certain disclosures for loyalty, award, or promotional gift cards.)

2. Eligibility for multiple exclusions. A card, code, or other device may qualify for one or more exclusions. For example, a corporation may give its employees a gift card that is marketed solely to businesses for incentive-related purposes.
such as to reward job performance or promote employee safety. In this case, the card may qualify for the exclusion for loyalty, award, or promotional gift cards under Sec. 205.20(b)(3), or for the exclusion for cards, codes, or other devices not marketed to the general public under Sec. 205.20(b)(4). In addition, as long as any one of the exclusions applies, a card, code, or other device is not covered by Sec. 205.20, even if other exclusions do not apply. In the above example, the corporation may give its employees a type of gift card that can also be purchased by a consumer directly from a merchant. Under these circumstances, while the card does not qualify for the exclusion for cards, codes, or other devices not marketed to the general public under Sec. 205.20(b)(4) because the card can also be obtained through retail channels, it is nevertheless exempt from the substantive requirements of Sec. 205.20 because it is a loyalty, award, or promotional gift card. (See, however, Sec. 205.20(a)(4)(iii), requiring certain disclosures for loyalty, award, or promotional gift cards.) Similarly, a person may market a reloadable card to teenagers for occasional expenses that enables parents to monitor spending. Although the card does not qualify for the exclusion for cards, codes, or other devices not marketed to the general public under Sec. 205.20(b)(4), it may nevertheless be exempt from the requirements of Sec. 205.20 under Sec. 205.20(b)(2) if it is reloadable and not marketed or labeled as a gift card or gift certificate.

Paragraph 20(b)(1)--Usable Solely for Telephone Services

1. Examples of excluded products. The exclusion for products usable solely for telephone services applies to prepaid cards for long-distance telephone service, prepaid cards for wireless telephone service and prepaid cards for other services that function similar to telephone services, such as prepaid cards for voice over internet protocol (VoIP) access time.

Paragraph 20(b)(2)--Reloadable and Not Marketed or Labeled as a Gift Card or Gift Certificate

1. Reloadable. A card, code, or other device is "reloadable" if the terms and conditions of the agreement permit funds to be added to the card, code, or other device after the initial purchase or issuance. A card, code, or other device is not "reloadable" merely because the issuer or processor is technically able to add functionality that would otherwise enable the card, code, or other device to be reloaded.

2. Marketed or labeled as a gift card or gift certificate. The term "marketed or labeled as a gift card or gift certificate" means directly or indirectly offering.
advertising or otherwise suggesting the potential use of a card, code or other
device, as a gift for another person. Whether the exclusion applies generally
does not depend on the type of entity that makes the promotional message. For
example, a card may be marketed or labeled as a gift card or gift certificate if
anyone (other than the purchaser of the card), including the issuer, the retailer,
the program manager that may distribute the card, or the payment network on
which a card is used, promotes the use of the card as a gift card or gift
certificate. A card, code, or other device, including a general-purpose reloadable
card, is marketed or labeled as a gift card or gift certificate even if it is only
occasionally marketed as a gift card or gift certificate. For example, a
network-branded general purpose reloadable card would be marketed or labeled
as a gift card or gift certificate if the issuer principally advertises the card as a
less costly alternative to a bank account but promotes the card in a television,
radio, newspaper, or Internet advertisement, or on signage as “the perfect gift”
during the holiday season. However, the mere mention of the availability of gift
cards or gift certificates in an advertisement or on a sign that also indicates the
availability of other excluded prepaid cards does not by itself cause the
excluded prepaid cards to be marketed as a gift card or a gift certificate. For
example, the posting of a sign in a store that refers to the availability of gift
cards does not by itself constitute the marketing of otherwise excluded prepaid
cards that may also be sold in the store as gift cards or gift certificates,
provided that a consumer acting reasonably under the circumstances would not
be led to believe that the sign applies to all prepaid cards sold in the store. (See,
however, comment 20(b)(2)-4.ii.)

3. Examples of marketed or labeled as a gift card or gift certificate.

i. Examples of marketed or labeled as a gift card or gift certificate include:

A. Using the word “gift” or “present” on a card, certificate, or accompanying
material, including documentation, packaging and promotional displays;

B. Representing or suggesting that a certificate or card can be given to another
person, for example, as a “token of appreciation” or a “stocking stuffer,” or
displaying a congratulatory message on the card, certificate or accompanying
material;

C. Incorporating gift-giving or celebratory imagery or motifs, such as a bow,
ribbon, wrapped present, candle, or congratulatory message, on a card,
certificate, accompanying documentation, or promotional material;
ii. The term does not include:

A. Representing that a card or certificate can be used as a substitute for a checking, savings, or deposit account;

B. Representing that a card or certificate can be used to pay for a consumer’s health-related expenses—for example, a card tied to a health savings account;

C. Representing that a card or certificate can be used as a substitute for travelers checks or cash;

D. Representing that a card or certificate can be used as a budgetary tool, for example, by teenagers, or to cover emergency expenses.

4. Reasonable policies and procedures to avoid marketing as a gift card. The exclusion for a card, code, or other device that is reloadable and not marketed or labeled as a gift card or gift certificate in Sec. 205.20(b)(2) applies if a reloadable card, code, or other device is not marketed or labeled as a gift card or gift certificate and if persons subject to the rule, including issuers, program managers, and retailers, maintain policies and procedures reasonably designed to avoid such marketing. Such policies and procedures may include contractual provisions prohibiting a reloadable card, code, or other device from being marketed or labeled as a gift card or gift certificate, merchandising guidelines or plans regarding how the product must be displayed in a retail outlet, and controls to regularly monitor or otherwise verify that the card, code, or other device is not being marketed as a gift card. Whether a reloadable card, code, or other device has been marketed as a gift card or gift certificate will depend on the facts and circumstances, including whether a reasonable consumer would be led to believe that the card, code, or other device is a gift card or gift certificate. The following examples illustrate the application of Sec. 205.20(b)(2):

i. An issuer or program manager of prepaid cards agrees to sell general-purpose reloadable cards through a retailer. The contract between the issuer or program manager and the retailer establishes the terms and conditions under which the cards may be sold and marketed at the retailer. The terms and conditions prohibit the general-purpose reloadable cards from being marketed as a gift card or gift certificate, and require policies and procedures to regularly monitor or otherwise verify that the cards are not being marketed as such. The issuer or program manager sets up one promotional display at the retailer for gift cards and another physically separated display for excluded products under Sec.
205.20(b), including general-purpose reloadable cards and wireless telephone cards, such that a reasonable consumer would not believe that the excluded cards are gift cards. The exclusion in Sec. 205.20(b)(2) applies because policies and procedures reasonably designed to avoid the marketing of the general-purpose reloadable cards as gift cards or gift certificates are maintained, even if a retail clerk inadvertently stocks or a consumer inadvertently places a general-purpose reloadable card on the gift card display.

ii. Same facts as in i., except that the issuer or program manager sets up a single promotional display at the retailer on which a variety of prepaid cards are sold, including store gift cards and general-purpose reloadable cards. A sign stating “Gift Cards” appears prominently at the top of the display. The exclusion in Sec. 205.20(b)(2) does not apply with respect to the general-purpose reloadable cards because policies and procedures reasonably designed to avoid the marketing of excluded cards as gift cards or gift certificates are not maintained.

iii. Same facts as in i., except that the issuer or program manager sets up a single promotional multi-sided display at the retailer on which a variety of prepaid card products, including store gift cards and general-purpose reloadable cards are sold. Gift cards are segregated from excluded cards, with gift cards on one side of the display and excluded cards on a different side of a display. Signs of equal prominence at the top of each side of the display clearly differentiate between gift cards and the other types of prepaid cards that are available for sale. The retailer does not use any more conspicuous signage suggesting the general availability of gift cards, such as a large sign stating “Gift Cards” at the top of the display or located near the display. The exclusion in Sec. 205.20(b)(2) applies because policies and procedures reasonably designed to avoid the marketing of the general-purpose reloadable cards as gift cards or gift certificates are maintained, even if a retail clerk inadvertently stocks or a consumer inadvertently places a general-purpose reloadable card on the gift card display.

iv. Same facts as in i., except that the retailer sells a variety of prepaid card products, including store gift cards and general-purpose reloadable cards, arranged side-by-side in the same checkout lane. The retailer does not affirmatively indicate or represent that gift cards are available, such as by displaying any signage or other indicia at the checkout lane suggesting the general availability of gift cards. The exclusion in Sec. 205.20(b)(2) applies because policies and procedures reasonably designed to avoid marketing the
general-purpose reloadable cards as gift cards or gift certificates are maintained.

5. On-line sales of prepaid cards. Some Web sites may prominently advertise or promote the availability of gift cards or gift certificates in a manner that suggests to a consumer that the Web site exclusively sells gift cards or gift certificates. For example, a Web site may display a banner advertisement or a graphic on the home page that prominently states “Gift Cards,” “Gift Giving,” or similar language without mention of other available products, or use a Web address that includes only a reference to gift cards or gift certificates in the address. In such a case, a consumer acting reasonably under the circumstances could be led to believe that all prepaid products sold on the Web site are gift cards or gift certificates. Under these facts, the Web site has marketed all such products, including general-purpose reloadable cards, as gift cards or gift certificates, and the exclusion in Sec. 205.20(b)(2) does not apply.

6. Temporary non-reloadable cards issued in connection with a general-purpose reloadable card. Certain general-purpose reloadable cards that are typically marketed as an account substitute initially may be sold or issued in the form of a temporary non-reloadable card. After the card is purchased, the cardholder is typically required to call the issuer to register the card and to provide identifying information in order to obtain a reloadable replacement card. In most cases, the temporary non-reloadable card can be used for purchases until the replacement reloadable card arrives and is activated by the cardholder. Because the temporary non-reloadable card may only be obtained in connection with the general-purpose reloadable card, the exclusion in Sec. 205.20(b)(2) applies so long as the card is not marketed as a gift card or gift certificate.

Paragraph 20(b)(4)--Not Marketed to the General Public

1. Marketed to the general public. A card, code, or other device is marketed to the general public if the potential use of the card, code, or other device is directly or indirectly offered, advertised, or otherwise promoted to the general public. A card, code, or other device may be marketed to the general public through any advertising medium, including television, radio, newspaper, the Internet, or signage. However, the posting of a company policy that funds may be disbursed by prepaid card (such as a sign posted at a cash register or customer service center stating that store credit will be issued by prepaid card) does not constitute the marketing of a card, code, or other device to the general public. In addition, the method of distribution by itself is not dispositive in determining
whether a card, code, or other device is marketed to the general public. Factors that may be considered in determining whether the exclusion applies to a particular card, code, or other device include the means or channel through which the card, code, or device may be obtained by a consumer, the subset of consumers that are eligible to obtain the card, code, or device, and whether the availability of the card, code, or device is advertised or otherwise promoted in the marketplace.

2. Examples. The following examples illustrate the application of the exclusion in Sec. 205.20(b)(4):

i. A merchant sells its gift cards at a discount to a business which may give them to employees or loyal consumers as incentives or rewards. In determining whether the gift card falls within the exclusion in Sec. 205.20(b)(4), the merchant must consider whether the card is of a type that is advertised or made available to consumers generally or can be obtained elsewhere. If the card can also be purchased through retail channels, the exclusion in Sec. 205.20(b)(4) does not apply, even if the consumer obtained the card from the business as an incentive or reward. See, however, Sec. 205.20(b)(3).

ii. A national retail chain decides to market its gift cards only to members of its frequent buyer program. Similarly, a bank may decide to sell gift cards only to its customers. If a member of the general public may become a member of the program or a customer of the bank, the card does not fall within the exclusion in Sec. 205.20(b)(4) because the general public has the ability to obtain the cards. See, however, Sec. 205.20(b)(3).

iii. A card issuer advertises a reloadable card to teenagers and their parents promoting the card for use by teenagers for occasional expenses, schoolbooks and emergencies and by parents to monitor spending. Because the card is marketed to and may be sold to any member of the general public, the exclusion in Sec. 205.20(b)(4) does not apply. See, however, Sec. 205.20(b)(2).

iv. An insurance company settles a policyholder’s claim and distributes the insurance proceeds to the consumer by means of a prepaid card. Because the prepaid card is simply the means for providing the insurance proceeds to the consumer and the availability of the card is not advertised to the general public, the exclusion in Sec. 205.20(b)(4) applies.

v. A merchant provides store credit to a consumer following a merchandise return by issuing a prepaid card that clearly indicates that the card contains
funds for store credit. Because the prepaid card is issued for the stated purpose of providing store credit to the consumer and the ability to receive refunds by a prepaid card is not advertised to the general public, the exclusion in Sec. 205.20(b)(4) applies.

vi. A tax preparation company elects to distribute tax refunds to its clients by issuing prepaid cards, but does not advertise or otherwise promote the ability to receive proceeds in this manner. Because the prepaid card is simply the mechanism for providing the tax refund to the consumer, and the tax preparer does not advertise the ability to obtain tax refunds by a prepaid card, the exclusion in Sec. 205.20(b)(4) applies. However, if the tax preparer promotes the ability to receive tax refund proceeds through a prepaid card as a way to obtain "faster" access to the proceeds, the exclusion in Sec. 205.20(b)(4) does not apply.

Paragraph 20(b)(5)--Issued in Paper Form Only

1. Exclusion explained. To qualify for the exclusion in Sec. 205.20(b)(5), the sole means of issuing the card, code, or other device must be in a paper form. Thus, the exclusion generally applies to certificates issued in paper form where solely the paper itself may be used to purchase goods or services. A card, code or other device is not issued solely in paper form simply because it may be reproduced or printed on paper. For example, a bar code, card or certificate number, or certificate or coupon electronically provided to a consumer and redeemable for goods and services is not issued in paper form, even if it may be reproduced or otherwise printed on paper by the consumer. In this circumstance, although the consumer might hold a paper facsimile of the card, code, or other device, the exclusion does not apply because the information necessary to redeem the value was initially issued in electronic form. A paper certificate is within the exclusion regardless of whether it may be redeemed electronically. For example, a paper certificate or receipt that bears a bar code, code, or account number falls within the exclusion in Sec. 205.20(b)(5) if the bar code, code, or account number is not issued in any form other than on the paper. In addition, the exclusion in Sec. 205.20(b)(5) continues to apply in circumstances where an issuer replaces a gift certificate that was initially issued in paper form with a card or electronic code (for example, to replace a lost paper certificate).

2. Examples. The following examples illustrate the application of the exclusion in Sec. 205.20(b)(5):

i. A merchant issues a paper gift certificate that entitles the bearer to a specified dollar amount that can be applied towards a future meal. The
merchant fills in the certificate with the name of the certificate holder and the amount of the certificate. The certificate falls within the exclusion in Sec. 205.20(b)(5) because it is issued in paper form only.

ii. A merchant allows a consumer to prepay for a good or service, such as a car wash or time at a parking meter, and issues a paper receipt bearing a numerical or bar code that the consumer may redeem to obtain the good or service. The exclusion in Sec. 205.20(b)(5) applies because the code is issued in paper form only.

iii. A merchant issues a paper certificate or receipt bearing a bar code or certificate number that can later be scanned or entered into the merchant’s system and redeemed by the certificate or receipt holder towards the purchase of goods or services. The bar code or certificate number is not issued by the merchant in any form other than paper. The exclusion in Sec. 205.20(b)(5) applies because the bar code or certificate number is issued in paper form only.

iv. An on-line merchant electronically provides a bar code, card or certificate number, or certificate or coupon to a consumer that the consumer may print on a home printer and later redeem towards the purchase of goods or services. The exclusion in Sec. 205.20(b)(5) does not apply because the bar code or card or certificate number was issued to the consumer in electronic form, even though it can be reproduced or otherwise printed on paper by the consumer.

Paragraph 20(b)(6)--Redeemable Solely for Admission to Events or Venues

1. Exclusion explained. The exclusion for cards, codes, or other devices that are redeemable solely for admission to events or venues at a particular location or group of affiliated locations generally applies to cards, codes, or other devices that are not redeemed for a specified monetary value, but rather solely for admission or entry to an event or venue. The exclusion also covers a card, code, or other device that is usable to purchase goods or services in addition to entry into the event or the venue, either at the event or venue or at an affiliated location or location in geographic proximity to the event or venue.

2. Examples. The following examples illustrate the application of the exclusion in Sec. 205.20(b)(6):

i. A consumer purchases a prepaid card that entitles the holder to a ticket for entry to an amusement park. The prepaid card may only be used for entry to the park. The card qualifies for the exclusion in Sec. 205.20(b)(6) because it is redeemable for admission or entry and for goods or services in conjunction with
that admission. In addition, if the prepaid card does not have a monetary value, and therefore is not “issued in a specified amount,” the card does not meet the definitions of “gift certificate,” “store gift card,” or “general-use prepaid card” in Sec. 205.20(a). See comment 20(a)-3.

ii. Same facts as in i., except that the gift card also entitles the holder of the gift card to a dollar amount that can be applied towards the purchase of food and beverages or goods or services at the park or at nearby affiliated locations. The card qualifies for the exclusion in Sec. 205.20(b)(6) because it is redeemable for admission or entry and for goods or services in conjunction with that admission.

iii. A consumer purchases a $25 gift card that the holder of the gift card can use to make purchases at a merchant, or, alternatively, can apply towards the cost of admission to the merchant’s affiliated amusement park. The card is not eligible for the exclusion in Sec. 205.20(b)(6) because it is not redeemable solely for the admission or ticket itself (or for goods and services purchased in conjunction with such admission). The card meets the definition of “store gift card” and is therefore subject to Sec. 205.20, unless a different exclusion applies.

20(c) Form of Disclosures

Paragraph 20(c)(1)--Clear and Conspicuous

1. Clear and conspicuous standard. All disclosures required by this section must be clear and conspicuous. Disclosures are clear and conspicuous for purposes of this section if they are readily understandable and, in the case of written and electronic disclosures, the location and type size are readily noticeable to consumers. Disclosures need not be located on the front of the certificate or card, except where otherwise required, to be considered clear and conspicuous. Disclosures are clear and conspicuous for the purposes of this section if they are in a print that contrasts with and is otherwise not obstructed by the background on which they are printed. For example, disclosures on a card or computer screen are not likely to be conspicuous if obscured by a logo printed in the background. Similarly, disclosures on the back of a card that are printed on top of indentations from embossed type on the front of the card are not likely to be conspicuous if the indentations obstruct the readability of the disclosures. To the extent permitted, oral disclosures meet the standard when they are given at a volume and speed sufficient for a consumer to hear and comprehend them.
2. Abbreviations and symbols. Disclosures may contain commonly accepted or readily understandable abbreviations or symbols, such as "mo." for month or a "/" to indicate "per." Under the clear and conspicuous standard, it is sufficient to state, for example, that a particular fee is charged "$2.50/mo. after 12 mos."

Paragraph 20(c)(2)--Format

1. Electronic disclosures. Disclosures provided electronically pursuant to this section are not subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 USC 7001 et seq.). Electronic disclosures must be in a retainable form. For example, a person may satisfy the requirement if it provides an online disclosure in a format that is capable of being printed. Electronic disclosures may not be provided through a hyperlink or in another manner by which the purchaser can bypass the disclosure. A person is not required to confirm that the consumer has read the electronic disclosures.

Paragraph 20(c)(3)--Disclosure Prior to Purchase

1. Method of purchase. The disclosures required by this paragraph must be provided before a certificate or card is purchased regardless of whether the certificate or card is purchased in person, online, by telephone, or by other means.

2. Electronic disclosures. Section 205.20(c)(3) provides that the disclosures required by this section must be provided to the consumer prior to purchase. For certificates or cards purchased electronically, disclosures made to the consumer after a consumer has initiated an online purchase of a certificate or card, but prior to completing the purchase of the certificate or card, would satisfy the prior-to-purchase requirement. However, electronic disclosures made available on a person’s Web site that may or may not be accessed by the consumer are not provided to the consumer and therefore would not satisfy the prior-to-purchase requirement.

3. Non-physical certificates and cards. If no physical certificate or card is issued, the disclosures must be provided to the consumer before the certificate or card is purchased. For example, where a gift certificate or card is a code that is provided by telephone, the required disclosures may be provided orally prior to purchase. See also Sec. 205.20(c)(2).

Paragraph 20(c)(4)--Disclosures on the Certificate or Card
1. Non-physical certificates and cards. If no physical certificate or card is issued, the disclosures required by this paragraph must be disclosed on the code, confirmation, or other written or electronic document provided to the consumer. For example, where a gift certificate or card is a code or confirmation that is provided to a consumer on-line or sent to a consumer’s e-mail address, the required disclosures may be provided electronically on the same document as the code or confirmation.

2. No disclosures on a certificate or card. Disclosures required by Sec. 205.20(c)(4) need not be made on a certificate or card if it is accompanied by a certificate or card that complies with this section. For example, a person may issue or sell a supplemental gift card that is smaller than a standard size and that does not bear the applicable disclosures if it is accompanied by a fully compliant certificate or card. See also comment 20(c)(2)-2.

20(d) Prohibition on Imposition of Fees or Charges

1. One-year period. Section 205.20(d) provides that a person may impose a dormancy, inactivity, or service fee only if there has been no activity with respect to a certificate or card for one year. The following examples illustrate this rule:

   i. A certificate or card is purchased on January 15 of year one. If there has been no activity on the certificate or card since the certificate or card was purchased, a dormancy, inactivity, or service fee may be imposed on the certificate or card on January 15 of year two.

   ii. Same facts as i., and a fee was imposed on January 15 of year two. Because no more than one dormancy, inactivity, or service fee may be imposed in any given calendar month, the earliest date that another dormancy, inactivity, or service fee may be imposed, assuming there continues to be no activity on the certificate or card, is February 1 of year two. A dormancy, inactivity, or service fee is permitted to be imposed on February 1 of year two because there has been no activity on the certificate or card for the preceding year (February 1 of year one through January 31 of year two), and February is a new calendar month. The imposition of a fee on January 15 of year two is not activity for purposes of Sec. 205.20(d). See comment 20(a)(7)-1.

   iii. Same facts as i., and a fee was imposed on January 15 of year two. On January 31 of year two, the consumer uses the card to make a purchase. Another dormancy, inactivity, or service fee could not be imposed until January 31 of year three.
year three, assuming there has been no activity on the certificate or card since January 31 of year two.

2. Relationship between Sec. Sec. 205.20(d)(2) and (c)(3). Sections 205.20(d)(2) and (c)(3) contain similar, but not identical, disclosure requirements. Section 205.20(d)(2) requires the disclosure of dormancy, inactivity, and service fees on a certificate or card. Section 205.20(c)(3) requires that vendor person that issues or sells such certificate or card disclose to a consumer any dormancy, inactivity, and service fees associated with the certificate or card before such certificate or card may be purchased. Depending on the context, a single disclosure that meets the clear and conspicuous requirements of both Sec. Sec. 205.20(d)(2) and (c)(3) may be used to disclose a dormancy, inactivity, or service fee. For example, if the disclosures on a certificate or card, required by Sec. 205.20(d)(2), are visible to the consumer without having to remove packaging or other materials sold with the certificate or card, for a purchase made in person, the disclosures also meet the requirements of Sec. 205.20(c)(3). Otherwise, a dormancy, inactivity, or service fee may need to be disclosed multiple times to satisfy the requirements of Sec. Sec. 205.20(d)(2) and (c)(3). For example, if the disclosures on a certificate or card, required by Sec. 205.20(d)(2), are obstructed by packaging sold with the certificate or card, for a purchase made in person, they also must be disclosed on the packaging sold with the certificate or card to meet the requirements of Sec. 205.20(c)(3).

3. Relationship between Sec. Sec. 205.20(d)(2), (e)(3), and (f)(2). In addition to any disclosures required under Sec. 205.20(d)(2), any applicable disclosures under Sec. Sec. 205.20(e)(3) and (f)(2) of this section must also be provided on the certificate or card.

4. One fee per month. Under Sec. 205.20(d)(3), no more than one dormancy, inactivity, or service fee may be imposed in any given calendar month. For example, if a dormancy fee is imposed on January 1, following a year of inactivity, and a consumer makes a balance inquiry on January 15, a balance inquiry fee may not be imposed at that time because a dormancy fee was already imposed earlier that month and a balance inquiry fee is a type of service fee. If, however, the dormancy fee could be imposed on January 1, following a year of inactivity, and the consumer makes a balance inquiry on the same date, the person assessing the fees may choose whether to impose the dormancy fee or the balance inquiry fee on January 1. The restriction in Sec. 205.20(d)(3) does not apply to any fee that is not a dormancy, inactivity, or service fee. For example, assume a service fee is imposed on a general-use prepaid card on January 1,
following a year of inactivity. If a consumer cashes out the remaining funds by check on January 15, a cash-out fee, to the extent such cash-out fee is permitted under Sec. 205.20(e)(4), may be imposed at that time because a cash-out fee is not a dormancy, inactivity, or service fee.

5. Accumulation of fees. Section 205.20(d) prohibits the accumulation of dormancy, inactivity, or service fees for previous periods into a single fee because such a practice would circumvent the limitation in Sec. 205.20(d)(3) that only one fee may be charged per month. For example, if a consumer purchases and activates a store gift card on January 1 but never uses the card, a monthly maintenance fee of $2.00 a month may not be accumulated such that a fee of $24 is imposed on January 1 the following year.

20(e) Prohibition on Sale of Gift Certificates or Cards With Expiration Dates

1. Reasonable opportunity. Under Sec. 205.20(e)(1), no person may sell or issue a gift certificate, store gift card, or general-use prepaid card with an expiration date, unless there are policies and procedures in place to provide consumers with a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expiration date. Consumers are deemed to have a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expiration date if:

i. There are policies and procedures established to prevent the sale of a certificate or card unless the certificate or card expiration date is at least five years after the date the certificate or card was sold or initially issued to a consumer; or

ii. A certificate or card is available to consumers to purchase five years and six months before the certificate or card expiration date.

2. Applicability to replacement certificates or cards. Section 205.20(e)(1) applies solely to the purchase of a certificate or card. Therefore, Sec. 205.20(e)(1) does not apply to the replacement of such certificates or cards. Certificates or cards issued as a replacement may bear a certificate or card expiration date of less than five years from the date of issuance of the replacement certificate or card. If the certificate or card expiration date for a replacement certificate or card is later than the date set forth in Sec. 205.20(e)(2)(i), then pursuant to Sec. 205.20(e)(2), the expiration date for the underlying funds at the time the replacement certificate or card is issued must be no earlier than the expiration date for the replacement certificate or card.
For purposes of Sec. 205.20(e)(2), funds are not considered to be loaded to a store gift card or general-use prepaid card solely because a replacement card has been issued or activated for use.

3. Disclosure of funds expiration--date not required. Section 205.20(e)(3)(i) does not require disclosure of the precise date the funds will expire. It is sufficient to disclose, for example, "Funds expire 5 years from the date funds last loaded to the card."; "Funds can be used 5 years from the date money was last added to the card."; or "Funds do not expire."

4. Disclosure not required if no expiration date. If the certificate or card and underlying funds do not expire, the disclosure required by Sec. 205.20(e)(3)(i) need not be stated on the certificate or card. If the certificate or card and underlying funds expire at the same time, only one expiration date need be disclosed on the certificate or card.

5. Reference to toll-free telephone number and Web site. If a certificate or card does not expire, or if the underlying funds are not available after the certificate or card expires, the disclosure required by Sec. 205.20(e)(3)(ii) need not be stated on the certificate or card. See, however, Sec. 205.20(f)(2).

6. Relationship to Sec. 226.20(f)(2). The same toll-free telephone number and Web site may be used to comply with Sec. Sec. 205.20(e)(3)(ii) and (f)(2). Neither a toll-free number nor a Web site must be maintained or disclosed if no fees are imposed in connection with a certificate or card, and the certificate or card and the underlying funds do not expire.

7. Distinguishing between certificate or card expiration and funds expiration. If applicable, a disclosure must be made on the certificate or card that notifies a consumer that the certificate or card expires, but the funds either do not expire or expire later than the certificate or card, and that the consumer may contact the issuer for a replacement card. The disclosure must be made with equal prominence and in close proximity to the certificate or card expiration date. The close proximity requirement does not apply to oral disclosures. In the case of a certificate or card, close proximity means that the disclosure must be on the same side as the certificate or card expiration date. For example, if the disclosure is the same type size and is located immediately next to or directly above or below the certificate or card expiration date, without any intervening text or graphical displays, the disclosures would be deemed to be equally prominent and in close proximity. The disclosure need not be embossed on the certificate or card to be deemed equally prominent, even if the expiration date
is embossed on the certificate or card. The disclosure may state on the front of the card, for example, “Funds expire after card. Call for replacement card.” or “Funds do not expire. Call for new card after 09/2016.” Disclosures made pursuant to Sec. 205.20(e)(3)(iii)(A) may also fulfill the requirements of Sec. 205.20(e)(3)(i). For example, making a disclosure that “Funds do not expire” to comply with Sec. 205.20(e)(3)(iii)(A) also fulfills the requirements of Sec. 205.20(e)(3)(i).

8. Expiration date safe harbor. A non-reloadable certificate or card that bears an expiration date that is at least seven years from the date of manufacture need not state the disclosure required by Sec. 205.20(e)(3)(iii). However, Sec. 205.20(e)(1) still prohibits the sale or issuance of such certificate or card unless there are policies and procedures in place to provide a consumer with a reasonable opportunity to purchase the certificate or card with at least five years remaining until the certificate or card expiration date. In addition, under Sec. 205.20(e)(2), the funds may not expire before the certificate or card expiration date, even if the expiration date of the certificate or card bears an expiration date that is more than five years at the date of purchase. For purposes of this safe harbor, the date of manufacture is the date on which the certificate or card expiration date is printed on the certificate or card.

9. Relationship between Sec. Sec. 205.20(d)(2), (e)(3), and (f)(2). In addition to any disclosures required to be made under Sec. 205.20(e)(3), any applicable disclosures under Sec. Sec. 205.20(d)(2) and (f)(2) must also be provided on the certificate or card.

10. Replacement or remaining balance of an expired certificate or card. When a certificate or card expires, but the underlying funds have not expired, an issuer, at its option in accordance with applicable state law, may provide either a replacement certificate or card or otherwise provide the certificate or card holder, for example, by check, with the remaining balance on the certificate or card. In either case, the issuer may not charge a fee for the service.

11. Replacement of a lost or stolen certificate or card not required. Section 205.20(e)(4) does not require the replacement of a certificate or card that has been lost or stolen.

12. Date of issuance or loading. For purposes of Sec. 205.20(e)(2)(i), a certificate or card is not issued or loaded with funds until the certificate or card is activated for use.
13. Application of expiration date provisions after redemption of certificate or card. The requirement that funds underlying a certificate or card must not expire for at least five years from the date of issuance or date of last load ceases to apply once the certificate or card has been fully redeemed, even if the underlying funds are not used to contemporaneously purchase a specific good or service. For example, some certificates or cards can be used to purchase music, media, or virtual goods. Once redeemed by a consumer, the entire balance on the certificate or card is debited from the certificate or card and credited or transferred to another “account” established by the merchant of such goods or services. The consumer can then make purchases of songs, media, or virtual goods from the merchant using that “account” either at the time the value is transferred from the certificate or card or at a later time. Under these circumstances, once the card has been fully redeemed and the “account” credited with the amount of the underlying funds, the five-year minimum expiration term no longer applies to the underlying funds. However, if the consumer only partially redeems the value of the certificate or card, the five-year minimum expiration term requirement continues to apply to the funds remaining on the certificate or card.

20(f) Additional Disclosure Requirements for Gift Certificates or Cards

1. Reference to toll-free telephone number and Web site. If a certificate or card does not have any fees, the disclosure under Sec. 205.20(f)(2) is not required on the certificate or card. See, however, Sec. 205.20(e)(3)(ii).

2. Relationship to Sec. 226.20(e)(3)(ii). The same toll-free telephone number and Web site may be used to comply with Sec. Sec. 226.20(e)(3)(ii) and (f)(2). Neither a toll-free number nor a Web site must be maintained or disclosed if no fees are imposed in connection with a certificate or card, and both the certificate or card and underlying funds do not expire.

3. Relationship between Sec. Sec. 205.20(d)(2), (e)(3), and (f)(2). In addition to any disclosures required pursuant to Sec. 205.20(f)(2), any applicable disclosures under Sec. Sec. 205.20(d)(2) and (e)(3) must also be provided on the certificate or card.

20(g) Compliance Dates

1. Period of eligibility for loyalty, award, or promotional programs. For purposes of Sec. 205.20(g)(2), the period of eligibility is the time period during which a consumer must engage in a certain action or actions to meet the terms of
eligibility for a loyalty, award, or promotional program and obtain the card, code, or other device. Under Sec. 205.20(g)(2), a gift card issued pursuant to a loyalty, award, or promotional program that began prior to August 22, 2010 need not state the disclosures in Sec. 205.20(a)(4)(iii) regardless of whether the consumer became eligible to receive the gift card prior to August 22, 2010, or after that date. For example, a product manufacturer may provide a $20 rebate card to a consumer if the consumer purchases a particular product and submits a fully completed entry between January 1, 2010 and December 31, 2010. Similarly, a merchant may provide a $20 gift card to a consumer if the consumer makes $200 worth of qualifying purchases between June 1, 2010 and October 30, 2010. Under both examples, gift cards provided pursuant to these loyalty, award, or promotional programs need not state the disclosures in Sec. 205.20(a)(4)(iii) to qualify for the exclusion in Sec. 205.20(b)(3) for loyalty, award, or promotional gift cards because the period of eligibility for each program began prior to August 22, 2010.

20(h) Temporary Exemption

Paragraph 20(h)(1)-Delayed Effective Date

1. Application to certificates or cards produced prior to April 1, 2010. Certificates or cards produced prior to April 1, 2010 may be sold to a consumer on or after August 22, 2010 without satisfying the requirements of § 205.20(c)(3), (d)(2), (e)(1), (e)(3), and (f) through January 30, 2011, provided that issuers of such certificates or cards comply with the additional substantive and disclosure requirements of §§ 205.20(h)(1)(i) through (iv). In contrast, issuers of certificates or cards produced prior to April 1, 2010 need not satisfy these additional requirements if the certificates or cards fully comply with the rule (§§ 205.20(a) through (f)). For example, for gift cards produced prior to April 1, 2010 that do not have fees and do not expire, and which otherwise comply with the rule, the in-store signage and other disclosures required by § 205.20(h)(2) are not required with respect to those gift cards because those cards satisfy the requirements of the rule.

2. Expiration of temporary exemption. Certificates or cards produced prior to April 1, 2010 that do not fully comply with §§ 205.20(a) through (f) may not be issued or sold to consumers on or after January 31, 2011.

1. Disclosures through third parties. Issuers may make the disclosures required by § 205.20(h)(2) through a third party, such as a retailer or merchant. For example, an issuer may have a merchant install in-store signage with the
disclosures required by § 205.20(h)(2) on the issuer’s behalf.

2. General advertising disclosures. Section 205.20(h)(2) does not impose an obligation on the issuer to advertise gift cards.

Paragraph 20(h)(2)-Additional Disclosures
Reg E Supplement I Appendix A  Model Disclosure Clauses and Forms

Reference

1. Review of forms. The Board will not review or approve disclosure forms or statements for financial institutions. However, the Board has issued model clauses for institutions to use in designing their disclosures. If an institution uses these clauses accurately to reflect its service, the institution is protected from liability for failure to make disclosures in proper form.

2. Use of the forms. The appendix contains model disclosure clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of sections 205.5(b)(2) and (b)(3), 205.6(a), 205.7, 205.8(b), 205.14(b)(1)(ii), 205.15(d)(1) and (d)(2), and 205.18(c)(1) and (c)(2). The use of appropriate clauses in making disclosures will protect a financial institution from liability under sections 915 and 916 of the act provided the clauses accurately reflect the institution's EFT services.

3. Altering the clauses. Financial institutions may use clauses of their own design in conjunction with the Board's model clauses. The inapplicable words or portions of phrases in parentheses should be deleted. The catchlines are not part of the clauses and need not be used. Financial institutions may make alterations, substitutions, or additions in the clauses to reflect the services offered, such as technical changes (including the substitution of a trade name for the word "card," deletion of inapplicable services, or substitution of lesser liability limits). Several of the model clauses include references to a telephone number and address. Where two or more of these clauses are used in a disclosure, the telephone number and address may be referenced and need not be repeated.