

**Federal Credit Unions**

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

**Air Carriers**

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

**Brokers and Dealers**

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

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

Federal Trade Commission, Electronic Fund Transfers, Washington, D.C. 20580.

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

**Official Staff Interpretations**

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

**Requests for Issuance of Official Staff Interpretations**

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

**Scope of Interpretations**

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

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

*Secretary of the Board.*

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

BILLING CODE 6210-01-P

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

[Regulation E; Docket No. R-0831]

**Electronic Fund Transfers**

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

**ACTION:** Official Staff Interpretation.

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

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

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

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

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

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

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

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

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

**II. Section-by-Section Analysis**

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

**Section 205.2—Definitions**

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

New	Old
(d)-4 .....	Q2-7
(h)-1 .....	Q2-25.5, Q2-23
(h)-2 .....	Q2-24
(h)-3 .....	Q2-25
(m)-1 .....	Q2-26
(m)-2 .....	Q2-27
(m)-3 .....	Q2-27
(m)-4 .....	Q2-28

*Comment deleted*

Q2-22: Electronic terminal—telephone bill payment

*Comments moved*

Comments relating to the definition of an EFT have been moved to the commentary to § 205.3

*Paragraph 2(b)(2)*

In the regulation, the exemption for trust accounts has been incorporated into the definition of account. The substance of Q3-20 (custodial agreements) and Q3-21 (trust accounts) is included in this section as comments (b)(2)-2 and (b)(2)-1. The change mirrors the statutory definition of account.

*2(d) Business Day*

The regulatory proposal included a new definition of business day. The Board has retained the current definition of business day; accordingly, comments Q2-6, Q2-7, and Q2-9, which provide guidance on interpreting "substantially all business functions," have been retained and included in comments (d)(2)-(d)(4).

*2(m) Unauthorized Electronic Fund Transfer*

Comment (m)-2, which incorporates Q2-27, provides that when the consumer furnishes an access device and grants actual authority to make transfers to another person (a family member or co-worker, for example) who then exceeds that authority, the consumer is liable for the transfers unless the consumer has notified the financial institution that transfers by that person are no longer authorized. While institutions are required to provide a summary of the consumer's liability under § 205.6 in the initial disclosures, the model clauses do not require financial institutions to disclose this potential liability as part of the initial disclosures of § 205.7.

*Section 205.3—Coverage*

Section 205.3 of the regulation is a new section on the regulation's coverage, including the scope of Regulation E, the definition of an EFT, and the exemptions from the regulation. To correspond with these regulatory amendments, the commentary

consolidates existing and new comments on the regulation's coverage.

New	Old
(a)-1 .....	Q9-15 in part
(a)-2 .....	Q9-15 in part
(a)-2 .....	new
(b)-1 .....	Q2-11, broadens and reverses Q2-16, Q2-18, Q2-19, Q2-21.5
(b)-2 .....	Q2-10, Q2-12, Q2-21
(c)(2)-1 .....	Q3-1
(c)(3)-1 .....	Q3-3
(c)(3)-2 .....	new
(c)(3)-3 .....	new
(c)(4)-1 .....	new
(c)(4)-2 .....	new
(c)(4)-3 .....	Q3-3.5, Q3-3.6
(c)(5)-1 .....	Q3-8, Q3-9, Q3-10, Q3-11, Q3-12
(c)(5)-2 .....	Q3-13
(c)(6)-1 .....	Q3-14, Q3-15, Q3-16, Q3-19.5
(c)(6)-2 .....	Q3-17, Q3-18, Q3-19, new (facsimile machine)
(c)(7)-1 .....	new

*Comments deleted*

Q2-12.5: Fund transfer—withholding of income tax on interest

Q2-12.6: Fund transfer—EBT

Q2-13: Fund transfer—withdrawal at another institution

Q2-14: Fund transfer—check truncation

Q2-15: Fund transfer—payee information, non-electronic form

Q2-17: Fund transfer—ACH

Q2-20: Fund transfer—preauthorized debits by paper drafts, ACH

Q3-2: Wire transfer—instructions on magnetic tape

Q3-4: Telephone transfer plans—applicability of intrainstitutional exemption

Q3-5: Compulsory use—preauthorized loan payments

*Comments moved*

Q3-6, Q3-7, and Q3-7.5 (see commentary to § 205.10(e))

Q3-20 and Q3-21 (see commentary to § 205.2)

*3(a) General*

Comments 3(a)-1 and -2 incorporate the part of Q9-15 that details the types of accounts subject to the requirements of the regulation.

Comment 3(a)-2 is new. Language for this comment is modeled on the commentary to Regulation Z on foreign applicability (12 CFR part 226, Supp. I, comment 1(c)-1).

*3(b) Electronic Fund Transfer*

In the revised regulation, the definition of "electronic fund transfer" is referenced in § 205.2(g) but is included in § 205.3 as the definition is central to determining coverage. The commentary consolidates in this section

the questions pertaining to EFTs. A number of comments were deleted because of a change in Board interpretations. For example, Q2-12.6 dealt with the electronic payment of government benefits, stating that such transfers were not subject to Regulation E. As the Board has adopted amendments to Regulation E extending coverage to electronic benefit transfer programs established by federal, state, or local government agencies, the substance of Q2-12.6 has been deleted.

Comment 3(b)-1 (iii) broadens and reverses Q2-16 to achieve consistency with other sections of Regulation E. The comment states that debits or credits to a consumer's account according to billing information contained on magnetic tape are EFTs even if the financial institution receives or sends a composite check. Previously, *credits* to consumers' accounts made by a composite check accompanied by a magnetic tape containing payee information were not EFTs for purposes of Regulation E.

*3(c) Exclusions From Coverage*

The regulation's exemptions are incorporated in § 205.3.

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

Comment 3(c)(3)-2 addresses the relationship of Regulation E to Article 4A of the Uniform Commercial Code (UCC). Article 4A provides comprehensive rules governing rights and responsibilities arising from wire transfers. It applies primarily to large-dollar, commercial wire transfers made via Fedwire, Clearing House Interbank Payments Systems (CHIPS), Society for Worldwide Interbank Payments Systems (SWIFT), and Telex.

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

covered by Regulation E, is made via Fedwire.

In 1990, the Board adopted a comprehensive revision of subpart B to Regulation J (55 FR 40791, October 5, 1990). Regulation J (12 CFR Part 210) specifies the rules applicable to funds transfers handled by Federal Reserve Banks. To ensure that the rules for all funds transfers through Fedwire are consistent, the Board used its preemptive authority under UCC § 4A-107 to determine that subpart B, 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. Even so, the Board has continued to receive questions about the effect of dual coverage. For example, if an institution offers consumers the ability to initiate Fedwire transfers pursuant to a telephone transfer agreement, the transfer could be covered by both Regulation E and Article 4A. UCC § 4A-202 encourages verification of the authenticity of a Fedwire payment order pursuant to a "security procedure" established by agreement between a customer and a receiving bank. Putting such an agreement in writing could be deemed to constitute a telephone transfer plan for purposes of Regulation E. The Board believes that if an institution makes Fedwire payments available to consumers, but does not make the service available in conjunction with a telephone plan that is subject to Regulation E, then the protections of Article 4A are applicable to the transfer.

The wire transfer exemption extends to any transfer of funds through Fedwire or through a similar fund transfer system. Comment 3(c)(3)-3 provides examples of such systems. The Board was asked also to exempt transfers made on the books or "in book-entry form" by the financial institution. The commentary clarifies that such transfers are exempt from Regulation E.

#### *Paragraph 3(c)(4)—Securities and Commodities Transfers*

The Board has revised the exemption for certain securities and commodities transfers contained in § 205.3(c). The exemption applies to a transfer for the purchase or sale of securities or commodities, even if the security or commodity is not regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission, so long as the security or commodity is sold by a registered broker-dealer or futures commission merchant (for example, municipal securities). Comment 3(c)(4)-1 provides added clarification on this point.

Comments 3(c)(4)-2 and -3 provide examples of covered and exempt securities transfers. Comment 3(c)(4)-2 also contains a new example of an exempt transfer, that of a telephone order to exercise a margin call. The Board believes that the exercise of a margin call is so closely linked to the purchase or sale of securities as to come within the purview of the exemption.

Several commenters requested clarification on Q3-3.5, which stated that the exemption applied only if a transfer's primary purpose is the purchase or sale of securities and which provided an example of a money market mutual fund transfer. The Board believes that all securities transfers must meet the primary purpose test—transfers must be to purchase or sell securities—set forth in Q3-3.5 to qualify for the exemption. If a transfer results from the use of a debit card to access any securities account (including a money market mutual fund account) for the purchase of goods or services or to obtain cash, the transfer is not exempt from Regulation E.

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

Comment 3(c)(6)-2 incorporates examples contained in the former commentary of covered transfers under a written plan (see Q3-17, Q3-18, and Q3-19). The comment also contains a new example regarding the use of a facsimile machine to initiate a transfer. The Board has received questions about plans in which the consumer uses facsimile paper designed to look like a paper "draft" to initiate a transfer sent via facsimile machine. The EFTA's definition of EFT includes any transfer through a "telephonic instrument." The Board considers a facsimile machine to be the functional equivalent of a telephone; it is inconsequential whether information about the transfer is transmitted orally or by facsimile.

#### *Paragraph 3(c)(7)—Small Institutions*

Comment 3(c)(7)-1 makes clear the Board's view that Article 4A is not applicable to transfers exempt from Regulation E under the small-institution exemption. As noted above, the drafters of Article 4A considered the EFTA and Regulation E to be mutually exclusive. The Board has been asked whether preauthorized transfers by small institutions (now, institutions with assets under \$100 million), which are largely exempt from Regulations E, are subject to the requirements of Article 4A by virtue of that exemption (for example, a direct deposit to a consumer's account at a small bank). The Board regards the transfers as

generally subject to the EFTA, and therefore not subject to Article 4A.

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

Section 205.4 of the revised regulation sets forth general and special requirements for the various disclosures. Corresponding changes have been made in the commentary.

New	Old
(a)-1 .....	Q7-3, Q9-4 in part new (revises and broadens Q7-4)
(a)-2 .....	

#### *Comments deleted*

Q4-3: Multiple accounts and account holders (clarified in § 205.4(d)(1) of the regulation)

#### *Section 205.5—Issuance of Access Devices*

New	Old
5-1 .....	Q5-1.5
(a)(1)-1 .....	new (footnote 1b to former § 205.5(a)(1))
(a)(1)-2 .....	new
(a)(2)-1 .....	Q5-1, Q5-2
(a)(2)-2 .....	Q5-3
(b)-1 .....	Q5-6, Q5-7
(b)-2 .....	Q5-4.5
(b)-3 .....	Q5-5
(b)-4 .....	Q5-8 (including examples from former § 205.5(b))

#### *Comment deleted*

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

#### *Comments moved*

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

#### *5(a) Solicited Issuance*

##### *Paragraph 5(a)(1)*

Comment (a)(1)-2 has been added to clarify the permissible forms of a consumer's request for an access device. Section 205.6—Liability of Consumer for Unauthorized Transfers

New	Old
(a)-1 .....	Q6-4, new (former § 205.6(a)(2))
(a)-2 .....	Q6-3
(b)-1 .....	Q6-5 (revised)
(b)-2 .....	Q6-6.5 (with cross-reference to comment 2(k)-2 added)
(b)-3 .....	Q6-6.5
(b)(1)-1 .....	Q6-5 (revised)
(b)(1)-2 .....	Q6-6 (revised)
(b)(2)-1 .....	Q6-5 (revised)
(b)(3)-1 .....	Q6-5 (revised)
(b)(3)-2 .....	Q6-5 (revised)
(b)(4)-1 .....	new (former § 205.6(b)(4))
(b)(5)-1 .....	Q6-7
(b)(5)-2 .....	new

New	Old
(b)(5)-3 .....	Q6-8

*Comments deleted*

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

*Comments moved*

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

*6(a) Conditions for Liability*

The Board had proposed amending the regulation to require that a financial institution provide all of the initial disclosures required by § 205.7 in order to impose liability on the consumer. Based on comment and further analysis, the Board has instead retained the current rule.

The former regulation implicitly conditioned consumer liability on the issuance of an accepted access device (§ 205.6(a)). The commentary, on the other hand, stated that if the consumer failed to report an unauthorized EFT within 60 days of transmittal of the periodic statement reflecting the transfer, the consumer could be subject to liability for subsequent transfers, even if the unauthorized EFT did not involve an access device. This commentary position was based on the Board's interpretation of section 909 of the EFTA as precluding consumer liability for unauthorized transfers not involving an access device until 60 days after transmittal of the periodic statement reflecting the transfer. The Board has incorporated that clarification into the § 205.6(a)(3) of the regulation.

Commenters generally supported the revision, although some believed that a 60-day period is unreasonable. The latter suggested an alternative time period ranging from 30 to 45 days; this change, however, would require a statutory amendment. Upon further analysis, the Board adopted the regulatory revision as proposed and has incorporated Q6-1 into § 205.6(b)(3). Comment 6(b)(3)-2 provides further clarification.

*6(b) Limitations on Amount of Liability*

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

*Paragraph 6(b)(4)—Extension of Time Limits*

Former § 205.6(b)(4) provided examples of extenuating circumstances when a consumer delays notification to the institution that an access device has been lost or stolen. The examples have

been deleted from the revised regulation and moved to comment (b)(4)-1.

*Paragraph 6(b)(5)—Notice to Financial Institution*

The Board has received questions about whether notice from a third party is sufficient to limit a consumer's liability under § 205.6. Proposed comment (b)(5)-2 indicated that such notice is valid if it is communicated by a third party on the consumer's behalf. Commenters generally supported this interpretation. Several commenters asked the Board to clarify that a financial institution may require adequate documentation of the authority of the person who claims to represent the consumer. Others requested that the Board address the potential liability of financial institutions arising from reliance on the claims of a third party. In response, the Board has clarified that a financial institution should have a reasonable belief that a third party is acting on the consumer's behalf.

*Section 205.7—Initial Disclosures*

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

*Comment deleted*

- Q7-9: Summary disclosure of rights

*Comments moved*

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

*7(a) Timing of Disclosures*

Comment (a)-4 expands on Q7-6, which discussed the addition of new EFT services and required financial institutions to provide disclosures for the additional service if it was subject to terms and conditions different from those previously described in the initial disclosures; the commentary was silent, however, as to when such disclosures should be provided. Comment (a)-4 provides that the disclosures be given

either when the consumer contracts for the new service or before the first EFT is made using the new service.

*7(b) Content of Disclosures*

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

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

New	Old
(a)-1 .....	Q8-6
(a)-2 .....	Q8-3, Q8-5
(a)-3 .....	Q8-4
(a)-4 .....	Q8-2
(b)-1 .....	Q8-8

*Comments deleted*

- Q8-1: Terms requiring change in terms notice

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

*8(a) Change-in-Terms Notice**Paragraph 8(a)(2)—Prior Notice Exception*

Proposed comment (a)(2)-1, which addressed circumstances when financial institutions include with the periodic statement a subsequent notice upon making a permanent change in terms related to security has not been adopted, as the Board did not adopt its proposal revising the regulation to extend to 45 days the time period in which financial institutions must send such notice.

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

New	Old
(a)-1 .....	Q9-1
(a)-2 .....	new (footnote 2 to former § 205.9(a)), Q9-2
(a)-3 .....	Q9-3.5
(a)-4 .....	Q9-5
(a)-5 .....	Q9-6
(a)-6 .....	Q9-4 in part
(a)(1)-1 .....	new
(a)(2)-1 .....	Q9-7
(a)(3)-1 .....	new (former § 205.9(a)(3))
(a)(3)-2 .....	new (footnote 3 to former § 205.9(a)(3)), Q-9, 9-10
(a)(3)-3 .....	Q9-8
(a)(3)-4 .....	new (former § 205.9(a)(3)), Q9-37
(a)(3)-5 .....	Q9-36, Q9-27
(a)(5)-1 .....	Q9-38
(a)(5)-2 .....	Q9-40
(a)(5)(i)-1 .....	new (former § 205.9(b)(1)(iv)(A))
(a)(5)(ii)-1 .....	new (former § 205.9(b)(1)(iv)(B))
(a)(5)(iii)-1 .....	new (former § 205.9(b)(1)(iv)(C))

New	Old
(a)(5)(iv)-1	new (former footnote 5 § 205.9(b)(1)(iv))
(a)(5)(iv)-2	new (former footnote 5 § 205.9(b)(1)(iv))
(a)(6)-1 .....	Q9-13, new (former § 205.9(a)(6))
(a)(6)-2 .....	Q9-14
(b)-1 .....	Q9-19, 9-20
(b)-2 .....	new
(b)-3 .....	Q9-17
(b)-4 .....	Q9-18
(b)-5 .....	Q9-21
(b)-6 .....	Q9-23, new (footnote 4 to § 205.9(b)(1))
(b)(1)-1 .....	Q9-25
(b)(1)(i)-1	Q9-35
(b)(1)(iii)-1	Q9-36
(b)(1)(iv)-1	Q9-40.5
(b)(1)(v)-1	Q9-28
(b)(1)(v)-2	Q9-30
(b)(1)(v)-3	Q9-41
(b)(1)(v)-4	Q9-43
(b)(1)(v)-5	Q9-44
(b)(1)(v)-6	new (footnote 9 to former § 205.9(b)(1)(v))
(b)(3)-1 .....	Q9-31
(b)(3)-2 .....	Q9-31.5
(b)(3)-3 .....	new (former § 205.9(b)(3))
(b)(4)-1 .....	Q9-32
(b)(5)-1 .....	Q9-33
(b)(6)-1 .....	Q9-33
(c)-1 .....	Q9-50
(d)-1 .....	Q9-51

#### Comments deleted

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

#### Comments moved

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

A number of comments have been deleted because they were obsolete or very fact specific and not of general applicability. Proposed comment (a)(4)-1 has been omitted because the Board

deleted the regulatory requirement that a financial institution “uniquely” identify the consumer on a terminal receipt (see 55 FR 15032, March 22, 1995).

#### 9(a) Receipts at Electronic Terminals

Footnote 2 to former § 205.9(a) allowed an account-holding institution to make terminal receipts available through third parties. The footnote has been deleted from the regulation and moved to comment 9(a)-2.

#### Paragraph 9(a)(1)—Amount

Former § 205.9(a)(1) provided that financial institutions other than the account-holding institution may include a fee for a transfer in the amount of the transfer if the fee is disclosed on the receipt and on a sign posted on or at the terminal. The revised regulation modifies these requirements and allows the account-holding institution also to take advantage of the exception. In addition, proposed comment 9(a)(1)-1 provided that the requirement to display the amount of a transaction fee “on or at the terminal” could be met by displaying the fee on the terminal screen before the consumer has initiated the transfer if displayed for a reasonable duration. Commenters generally believed that displaying the fee on a screen provided adequate notice, as long as consumers were given the option to cancel the transaction after receiving notice. The Board has adopted the comment as proposed. The Board believes that providing consumers with the option to cancel the transaction after receiving notice helps ensure compliance with the notice requirements of this paragraph.

#### Paragraph 9(a)(3)—Type

Former § 205.9(a)(3) required disclosure of the type of transfer and the type of consumer’s account to or from which funds are transferred. It also provided examples of descriptions for such accounts. The examples have been deleted from the regulation and moved to comment 9(a)(3)-1. In addition, § 205.9(a)(3) provided generic descriptions for accounts that are similar in function. These examples have been deleted from the regulation and incorporated with the substance of Q9-37 in comment 9(a)(3)-4.

Footnote 3 to former § 205.9(a)(3) provided an exception to the requirement to disclose the type of transfer and account if the consumer can access only one account at a particular time or terminal. The

exception has been deleted from the regulation and the substance moved to comment 9(a)(3)-2.

#### Paragraph 9(a)(5)—Terminal Location

Footnotes 5, 6, and 8 have been deleted from the regulation. Footnote 5 allowed institutions to omit the name of the state on terminal receipts for transfers occurring at terminals within 50 miles of the institution’s main office. Footnotes 6 and 8 referred back to the text of footnote 5. Based upon comments and further analysis the Board has retained the substance of footnote 5, incorporating it in comment 9(a)(5)(iv)-1.

The former regulation included detailed guidance for specifying the terminal location on both the receipt and periodic statement (see former § 205.9(b)(1)(iv)). While the substantive requirement to disclose the location remains unchanged, the illustrative text has been moved to comments 9(a)(5)(i)-1, 9(a)(5)(ii)-1, and 9(a)(5)(iii)-1.

#### Paragraph 9(a)(6)—Third Party Transfer

Former § 205.9(a)(6) required that the name of any third party to or from whom funds are transferred be disclosed on the receipt. It also provided guidance on the use of codes and an exception to the disclosure requirement when the name of the payee cannot be provided in a machine-readable form at the terminal. This guidance has been deleted from the regulation and moved to comment 9(a)(6)-1.

#### 9(b) Periodic Statements

Former § 205.9(b) provided that periodic statements must be sent for each monthly or shorter cycle in which an EFT has occurred, but at least quarterly if no transfer has occurred. As the Board believes that few institutions send a statement (for Regulation E purposes) for a cycle shorter than one month, the final regulation has deleted reference to a “shorter cycle.” The reference has been moved to comment 9(b)-1.

Proposed comment 9(b)-2 provided guidance on what is considered a cycle for purposes of Regulation E. The comment required that financial institutions provide relevant information for the cycle or period since the last statement was issued. The Board adopted a similar approach in the proposed commentary to Regulation DD (see 59 FR 5536, February 7, 1994). For example, if an institution may issue quarterly statements in March, June, September, and December and the

consumer initiates an EFT in February, an interim statement would be provided. The comment indicates that the statement should provide information for the months of January and February. The regularly scheduled March statement would provide information only about the month of March. The Regulation DD commentary states that disclosures given on the interim statement cannot be repeated on the regularly scheduled statement. In the example above, the March statement could not repeat information disclosed on the February statement.

Commenters requested clarification on whether an interim Regulation E statement should repeat the information on a regularly scheduled quarterly statement. The Board believes that if Regulation DD is triggered (because the interim statement contains interest or rate information) institutions should comply with Regulation DD and should not repeat information on the quarterly statement. If Regulation DD is not triggered, however, institutions should continue to comply with Regulation E.

Footnote 4 to former § 205.9(b)(1) permitted financial institutions to provide certain periodic statement disclosures on documents that accompany the statement. It also permitted institutions to use codes for the disclosures if they are explained either on the statement or accompanying documents. The footnote has been deleted from the regulation and the substance moved to comment 9(b)-6.

#### *Paragraph 9(b)(1)(v)*

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

#### *Paragraph 9(b)(3)—Fees*

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

#### *Section 205.10—Preauthorized Transfers*

Section 205.10 sets forth the substantive and disclosure requirements

for authorizing preauthorized transfers to and from a consumer's account. The Board has expanded this section to include guidance on the prohibitions against compulsory use, and corresponding commentary has been added.

New	Old
(a)(1)-1 .....	Q10-5, Q10-6
(a)(1)-2 .....	Q10-1
(a)(1)-3 .....	Q10-7
(a)(1)-4 .....	Q10-7
(a)(1)-5 .....	Q10-10
(a)(1)-6 .....	Q10-12
(a)(1)-7 .....	Q10-11
(b)-1 .....	Q10-17
(b)-2 .....	Q10-18
(b)-3 .....	Q10-18.6
(b)-4 .....	Q10-18.5
(b)-5 .....	new
(b)-6 .....	new
(c)-1 .....	Q10-19
(c)-2 .....	Q10-19.5
(d)(1)-1 .....	Q10-21
(d)(2)-1 .....	new (range)
(e)(1)-1 .....	Q3-7, Q3-7.5
(e)(1)-2 .....	new
(e)(2)-1 .....	Q3-6

#### *Comments deleted*

- Q10-2: Notice of credit—when receipt guaranteed
- Q10-3: Notice provided by payor
- Q10-4: Notice provided by payor—form
- Q10-8: Negative notice—timing
- Q10-9: Negative notice—cessation of transfers
- Q10-13: Preauthorized credits—availability of funds
- Q10-14: Preauthorized credits—posting schedule
- Q10-15: Preauthorized credits—funds received prior to agreed crediting date
- Q10-16: Preauthorized debits—preexisting authorizations
- Q10-20: Ten-day notice of varying debits—preexisting authorizations

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

Section 906(b) of the EFTA and former § 205.10(a)(1) of the regulation provide that when a payor credits a consumer's account by preauthorized EFT at least once every 60 days, the account-holding institution must inform the consumer that the transfer has or has not occurred or provide a phone number for the consumer to use to verify the transfer. Q10-7 provided that the absence of a deposit entry on a periodic statement can serve as notice that a preauthorized transfer has not occurred. The Board's proposed comment 10(a)(1)-4 would have reversed that position, stating that the absence of a deposit entry is *not* negative notice.

Of the commenters addressing this issue, the majority opposed placing an affirmative duty on the account-holding institution to provide notice either

positively or negatively. Based on the comments and further analysis resulting from comment 10(a)(1)-4, the Board believes that the regulatory burden on the receiving bank outweighs the potential benefit to the consumer. Therefore, the Board is retaining the substance of Q10-7 in comment 10(a)(1)-4, allowing the absence of the deposit entry (on a periodic statement sent within two business days of the scheduled transfer date) to serve as negative notice.

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

Proposed comment 10(b)-1, which incorporates Q10-17, provided that a financial institution or designated payee does not need to obtain new authorizations before shifting from a paper-based to an electronic debiting system. The proposed comment also provided that a successor payee or institution may rely on a preexisting authorization to debit payments from the consumer's account (for example, when an institution purchases the mortgage servicing rights from a party that previously obtained the consumer's authorization).

Commenters generally supported the proposed language but sought clarification on how broadly the term "successor institution" could be construed in this context. One suggested some minimal requirement for an authorization since it would be difficult for successor financial institutions to ensure that all required disclosures were provided when relying on pre-existing authorizations. The Board believes that "successor institution" should be interpreted broadly to include any successor payee. To do otherwise could be extremely disruptive to consumers who have entered into agreements for automatic debiting and could lead to missed payments and adverse consequences.

The requirement in former § 205.10(b) of the regulation that preauthorized EFTs from a consumer's account be authorized by the consumer only in writing has been revised. The requirement for the authorization to be a signed writing has been expanded to include authorizations which are "similarly authenticated" by the consumer. This enhancement addresses developments in electronic services, such as home banking.

Proposed comment 10(b)-5 provided an example of a consumer's authorization that is "similarly authenticated." The comment provided that for a home banking system to satisfy the requirement, there must be

some means to identify the consumer (such as a security code), and the consumer must have the ability to obtain a printed copy of the authorization (either by printing a copy or obtaining one from the payee). The Board solicited comment on whether additional safeguards are necessary to protect consumers in this situation and on other issues related to the requirements of a written authorization under this section.

The majority of commenters supported the Board's proposal that an electronic system that has some means to identify the consumer such as by a security code satisfies the "similarly authenticated" standard adopted in § 205.10(b). Preauthorized transfers in an electronic system should be authenticated by a method that provides the same assurance as a signature in a paper-based system. Commenters believed that these methods of preauthorizing transfers would benefit consumers by enabling payments to be handled expeditiously.

Several commenters raised concerns about unauthorized transfers that might result because a consumer has written down codes and kept them adjacent to a personal computer, and about the potential for increased liability for institutions arising from unauthorized use.

The Board believes that these concerns are not sufficient to change the liability standard currently in effect. The Board believes that institutions may reduce exposure to liability by reviewing security procedures with the consumer when establishing the home banking relationship. However, for home banking systems, the Board is limiting the use of a code as a means to similarly authenticate an authorization to those where the code originates with the paying institution. The Board believes that this limitation will preserve the "unique status" of a code or PIN similar to a signature. This condition also would not allow the use of a code issued by a third party that the paying institution could not verify.

The majority of commenters opposed the requirement in proposed comment 10(b)-5 that the consumer must have the ability to obtain a printed copy of the authorization (either from the consumer's printer or from the payee). There was concern that such a requirement could inhibit the development of home banking products. Other commenters found the requirement placed unrealistic burdens on the institution to determine whether the consumer possessed a printer and whether it was used to print out a copy. Several commenters urged the Board to

make this requirement an option available to the consumer.

Based on comment and upon further analysis, the comment has been revised. If an authorization is initiated electronically, a copy must be made available to the consumer. The text of an electronic authorization would have to be displayed on a computer screen or other visual display. A consumer is entitled to a hard copy upon request.

The Board solicited comment on two issues that have not been discussed previously in the commentary—telephone-initiated transfers and the appropriate means for obtaining a consumer's authorization for preauthorized transfers.

Regarding the first issue, the Board has received inquiries about one-time transfers usually initiated by telephone when the consumer provides an account number to the caller and authorizes a draft or an ACH debit to be submitted against the consumer's account. Such transfers are EFTs where the consumer's account is debited through the ACH.

The one-time transfers are not "preauthorized transfers," however, and the rules regarding written authorization by the consumer thus are not applicable. The Board solicited comment on whether this type of transfer warranted written authorization. A few commenters believed that telephone-initiated transfers posed sufficient risk to mandate written authorization. Most commenters believed that for such nonrecurring transfers, NACHA rules and the UCC provided the consumers with sufficient protections. At this time, the Board has maintained the current position that written authorizations are not required for non-recurring transfers.

The second issue concerns the appropriate means for obtaining a consumer's authorization for preauthorized transfers. A few commenters discouraged regulation of the format of authorizations. The majority of commenters acknowledged that the Board could not compile a comprehensive list of authorization methods and suggested that an outline of the general requirements, like those under the NACHA rules, would be helpful.

The Board is adding a new comment 10(b)-6, which generally incorporates the requirements of an authorization under NACHA rules. An authorization is valid if it is readily identifiable as such and the terms of the preauthorized transfer are clear and readily understandable.

The Board was asked whether sending the consumer a check that incorporates in the endorsement an authorization for the financial institution to automatically

debit the consumer's account on a monthly basis is a legitimate method for obtaining the consumer's authorization. The Board believes that if the authorization meets the requirements under comment 10(b)-6, an endorsement on a check could satisfy the written authorization requirement of § 10(b).

#### *10(d) Notice of Transfers Varying in Amount*

##### *Paragraph 10(d)(2)—Range*

Proposed comment 10(d)(2)-1 provided guidance on what is an acceptable range for purposes of this section, stating that an acceptable range is one that could plausibly be anticipated by the consumer. For example, if the consumer's monthly payment is approximately \$50, providing a range between zero and \$10,000 is not acceptable.

The majority of commenters suggested that the range should not be so broad as to create uncertainty for consumers about their ability to maintain sufficient balances to avoid overdrafts.

The Board believes that comment (d)(2)-1 does not increase the compliance burden given that it is an option. The language "or designated payee" has been added after "financial institutions" in the first sentence since this option is also available to a designated payee. The Board believes that the example of an acceptable range in the comment provides adequate guidance, and is not adding other examples at this time.

#### *10(e) Compulsory Use*

##### *Paragraph 10(e)(1)—Credit*

The revised regulation incorporates the statutory restrictions against compulsory use of EFTs (as a condition of credit, employment, or receipt of government benefits) into § 205.10(e).

Comment 10(e)(1)-2 would allow an institution to use the exception in § 205.10(e)(1) even if the overdraft extension is charged to an open-end account that may be accessed by the consumer in ways other than by overdrafts. For example, in addition to overdraft protection, a consumer may be able to obtain cash advances directly from the credit line without going through a checking account. The Board believes that it is not practicable for an institution to distinguish between extensions of credit triggered under such plans because of the overdraft mechanism and those advanced to the consumer by some other means.

Several consumers requested clarification on whether the prohibition in comment 10(e)(2)-1 preempted state

laws. A reference to § 205.12, which discusses preemption of state laws and the standards for preemption, has been added.

#### *Section 205.11—Procedures for Resolving Errors*

Section 205.11 sets forth the regulation's procedures for error resolution. The revised regulation reformats the section to facilitate compliance and the commentary provisions have been revised accordingly. Several new comments incorporate provisions that have been removed from the regulation.

New	Old
(a)-1 .....	Q9-26
(a)-2 .....	Q9-26
(a)-3 .....	Q11-2
(a)-4 .....	Q11-3
(a)-5 .....	Q11-4
(b)(1)-1 .....	Q11-8, new (example added)
(b)(1)-2 .....	new
(b)(1)-3 .....	Q11-5
(b)(1)-4 .....	Q11-6
(b)(1)-5 .....	Q11-7
(b)(1)-6 .....	new (footnote 10 to former § 205.11(b)(1)(i))
(b)(2)-1 .....	Q11-9
(c)-1 .....	new
(c)-2 .....	Q11-10
(c)-3 .....	new (revised Q11-31)
(c)-4 .....	new (former § 205.11(d)(3))
(c)-5 .....	Q11-20, new (footnote 12 to former § 205.11(e)(2))
(c)-6 .....	Q11-19, new (former § 205.11(e)(1))
(c)-7 .....	new former § 205.11(d)(1)
(c)(2)(i)-1 .....	new (former § 205.11(c)(3))
(c)(3)-1 .....	Q11-11.5
(c)(4)-1 .....	Q11-13
(c)(4)-2 .....	Q11-14
(c)(4)-3 .....	Q11-16
(c)(4)-4 .....	new (footnote 11 to former § 205.11(d)(1))
(d)-1 .....	Q11-17
(d)(1)-1 .....	Q11-25
(d)(2)-1 .....	Q11-23
(d)(2)-1 .....	Q11-24
(e)-1 .....	Q11-30

#### *Comments deleted*

- Q11-1: Transfers—initiated by institution
- Q11-11: Deadlines for investigation of error
- Q11-12: Request for documentation—facsimile or photocopy
- Q11-15: Scope of investigation—preauthorized credits
- Q11-18: Crediting of interest
- Q11-21: Written explanation—timing
- Q11-22: Debiting of recredited funds—items to be honored

Q11-26: Documents relied on—privacy issue

Q11-27: Documents relied on—no information on relevant tapes

Q11-28: Withdrawal of error notice

Q11-29: Withdrawal of error notice  
*Comments moved*

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

#### *11(b) Notice of Error From Consumer*

##### *Paragraph 11(b)(1)—Timing; Contents*

Section 205.11 requires institutions to investigate and make a final determination as to a consumer's allegation of an error within either 10 business days or 45 calendar days. Financial institutions have asked whether they can delay initiating or completing an investigation pending receipt of an affidavit related to the alleged error. Comment (b)(1)-2 prohibits institutions from delaying their investigation until a consumer has produced a written, signed statement relating to an error. The Board believes that permitting delay would allow institutions to circumvent the investigation procedures currently mandated by the act and regulation. The language of the comment has been revised to more closely parallel Regulation Z, substituting "written, signed statement" for "affidavit."

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

##### *Paragraph 11(b)(2)—Written Confirmation*

Comment 11(b)(2)-1 incorporates Q11-9 and further provides that institutions operating under the 45-calendar-day rule need not provisionally credit the consumer's account when the written confirmation is delayed beyond 10 business days because it was sent to the wrong address.

##### *11(c) Time Limits and Extent of Investigation*

Q11-31 articulated the Board's concern that charging consumers for the financial institution's compliance with the regulation's error resolution procedures might have a chilling effect on the good-faith assertion of errors. Proposed comment (c)-3, based on Q11-31, explicitly prohibited institutions from charging consumers for error resolution. The Board solicited comment on the impact of such a prohibition on institutions and consumers. Based on comment and

further analysis, the comment has been revised; it parallels a similar provision in the commentary to Regulation Z.

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

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

Former § 205.11(e)(1) provided that in correcting an error, a financial institution must, where applicable, credit interest and refund any fees or charges imposed. This language has been deleted from the regulation and combined with the substance of Q11-19 in comment (c)-6. The comment also clarifies that the requirement only applies to fees imposed by the institution and not to those imposed by third parties.

##### *Paragraph 11(c)(2)(i)*

Former § 205.11(c)(3) provided examples of when a financial institution must comply with all requirements of § 205.11 except the provisional crediting requirements. While the examples have been retained in the final regulation, the language requiring compliance with other requirements of the section has been deleted and moved to comment (c)(2)(i)-1.

##### *Paragraph 11(c)(4)—Investigation*

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

#### *Section 205.12—Relation to Other Laws*

The revised regulation consolidates the references to a number of provisions dealing with the relationship of Regulation E and the Truth in Lending Act and Regulation Z formerly in §§ 205.5, 205.6, and 205.11, in § 205.12. The section also contains the rules the Board applies in determining the preemption of inconsistent state laws or in granting a state exemption. The commentary provisions for these rules and references are similarly consolidated in this section.



New	Old
(a)-1 .....	Q6-9, Q6-10, Q6-11, Q11-32, Q11-33
(a)-2 .....	Q5-9, Q5-10
(b)-1 .....	Q12-1, new
(b)-2 .....	new

### 12(b) Preemption of Inconsistent State Laws

Comment 12(b)-1 incorporates Q12-1, which provides that state law may be preempted even if the Board has not issued a determination. The comment also notes that financial institutions are not protected from liability for failing to comply with state law in the absence of a preemption determination by the Board.

Comment 12(b)-2 incorporates into the commentary an official staff interpretation preempting certain provisions of Michigan's EFT statute. Future preemption determinations will also be included in the commentary.

### Section 205.13—Administrative Enforcement; Record Retention

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

#### Comments moved

Q13-1 (see commentary to appendix A)

Proposed comment 13(b)-1 has been revised, based on public comment, to indicate that records of disclosures and documentation given to individual consumers need not be retained.

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

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

#### Comment deleted

Q14-5: Periodic statement—issuance of card

### 14(a) Provider of Electronic Fund Transfer Service

Proposed comments 14(a)-1 and 14(a)-2 have been revised to make clear that transactions cleared and settled through the ACH are not excluded from coverage by this section on the basis of an "agreement" between the two institutions involved.

### 14(b) Compliance by Service Provider

Former § 205.14(a)(1) provided that the service-providing institution must reimburse the consumer for unauthorized EFTs in excess of the limits set by § 205.6. This provision has been deleted from the regulation and moved to comment 14(b)-1.

### Appendix A—Model Disclosure Clauses and Forms

New	Old
App. A-1 .....	Q13-1
App. A-2 .....	new (former introductory language in Appendix A)
App. A-3 .....	new (former introductory language in Appendix A)

### List of Subjects in 12 CFR Part 205

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

#### Text of Revisions

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

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

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

Authority: 15 U.S.C. 1693.

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

### SUPPLEMENT I TO PART 205—OFFICIAL STAFF INTERPRETATIONS

#### Section 205.2—Definitions.

##### 2(a) Access Device

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

##### 2(b) Account

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

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

ii. A retail repurchase agreement (repo), which is a loan made to a financial institution by a consumer that is

collateralized by government or government-insured securities.

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

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

#### Paragraph 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:

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

### Section 205.3—Coverage

#### 3(a) General

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

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

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

3. *Foreign applicability.* Regulation E applies to all persons (including branches and other offices of foreign banks located in the United States) that offer EFT services to residents of any state, including resident aliens. It covers any account located in the United States through which EFTs are offered to a resident of a state. This is the case

whether or not a particular transfer takes place in the United States and whether or not the financial institution is chartered in the United States or a foreign country. The regulation does not apply to a foreign branch of a U.S. bank unless the EFT services are offered in connection with an account in a state as defined in § 205.2(l).

#### 3(b) Electronic Fund Transfer

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

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

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

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

#### 3(c) Exclusions From Coverage

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

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

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

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

2. *Article 4A.* Financial institutions that offer telephone-initiated Fedwire payments

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

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

##### Paragraph 3(c)(4)—Securities and Commodities Transfers

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

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

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

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

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

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

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

- i. Electronic debits or credits to consumer accounts for check charges, stop-payment charges, NSF charges, overdraft charges, provisional credits, error adjustments, and similar items that are initiated automatically on the occurrence of certain events.
- ii. Debits to consumer accounts for group insurance available only through the financial institution and payable only by means of an aggregate payment from the institution to the insurer.

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

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

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

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

1. *Written plan or agreement.* A transfer that the consumer initiates by telephone is covered 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 CFR part 204).

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

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

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

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

iii. The consumer uses the plan infrequently.

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

#### Paragraph 3(c)(7)—Small Institutions

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

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

##### 4(a) Form of Disclosures

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

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

#### Section 205.5—Issuance of Access Devices

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

##### 5(a) Solicited Issuance

###### Paragraph 5(a)(1)

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

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

###### Paragraph 5(a)(2)

1. *One-for-one rule.* In issuing a renewal or substitute access device, a financial institution may not provide additional devices. For example, only one new card and PIN may replace a card and PIN previously issued. If the replacement device permits either additional or fewer types of electronic fund transfer services, a change-in-terms notice or new disclosures are required.

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

##### 5(b) Unsolicited Issuance

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

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

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

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

succeeds in having the device validated, the consumer is not liable for any unauthorized transfers from the account.

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

##### 6(a) Conditions for Liability

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

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

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

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

##### 6(b) Limitations on Amount of Liability

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

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

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

##### Paragraph 6(b)(1)—Timely Notice Given

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

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

##### Paragraph 6(b)(2)—Timely Notice Not Given

1. *\$500 limit applies.* The second tier of liability is \$500. For example, the consumer's

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

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

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

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

**Paragraph 6(b)(4)—Extension of Time Limits**

1. *Extenuating circumstances.* Examples of circumstances that require extension of the

notification periods under this section include the consumer's extended travel or hospitalization.

**Paragraph 6(b)(5)—Notice to Financial Institution**

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

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

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

**Section 205.7—Initial Disclosures**

**7(a) Timing of Disclosures**

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

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

3. *Addition of new accounts.* If a consumer opens a new account permitting EFTs at a

financial institution, and the consumer already has received Regulation E disclosures for another account at that institution, the institution need only disclose terms and conditions that differ from those previously given.

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

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

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

**7(b) Content of Disclosures**

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

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

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

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

**Paragraph 7(b)(2)—Telephone Number and Address**

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

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

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

and address, on or with the disclosure statement, for reporting a lost or stolen access device or a possible unauthorized transfer.

**Paragraph 7(b)(4)—Types of Transfers; Limitations**

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

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

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

**Paragraph 7(b)(5)—Fees**

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

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

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

**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 CFR part 220) must disclose accordingly.

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

**8(a) Change-in-Terms Notice**

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

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

- i. Closing some of an institution's ATMs;
- ii. Cancellation of an access device.

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

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

**8(b) Error Resolution Notice**

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

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

**9(a) Receipts at Electronic Terminals**

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

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

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

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

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

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

**Paragraph 9(a)(1)—Amount**

1. *Disclosure of transaction fee.* The required display of a fee amount on or at the terminal may be accomplished by displaying the fee on a sign at the terminal or on the terminal screen for a reasonable duration. Displaying the fee on a screen provides adequate notice, as long as 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's 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 CFR 230.6.

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

4. *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.

#### Paragraph 9(b)(1)(iv)

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

#### Paragraph 9(b)(1)(v)

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

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

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

4. *Account-holding institution as third party.* Transfers to the account-holding institution (by ATM, for example) must show

the institution as the recipient, unless other information on the statement (such as, "loan payment from checking") clearly indicates that the payment was to the account-holding institution.

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

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

#### Paragraph 9(b)(3)—Fees

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

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

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

#### Paragraph 9(b)(4)—Account Balances

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

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

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

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

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

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

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

#### 9(d) Documentation for Foreign-Initiated Transfers

1. *Foreign-initiated transfers.* An institution must make a good faith effort to

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

#### Section 205.10—Preauthorized Transfers

##### 10(a) Preauthorized Transfers to Consumer's Account

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

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

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

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

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

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

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

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

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

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

2. *Authorization obtained by third party.* The account-holding financial institution does not violate the regulation when a third-

party payee fails to obtain the authorization in writing or fails to give a copy to the consumer; rather, it is the third-party payee that is in violation of the regulation.

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

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

5. *Similarly authenticated.* 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.

##### 10(c) Consumer's Right To Stop Payment

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

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



**10(d) Notice of Transfers Varying in Amount****Paragraph 10(d)(1)—Notice**

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

**Paragraph 10(d)(2)—Range**

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

**10(e) Compulsory Use****Paragraph 10(e)(1)—Credit**

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

- i. Mortgages with graduated payments in which a pledged savings account is automatically debited during an initial period to supplement the monthly payments made by the borrower.
- ii. Mortgage plans calling for preauthorized biweekly payments that are debited electronically to the consumer's account and produce a lower total finance charge.

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

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

1. *Payroll.* 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.

**11(b) Notice of Error From Consumer****Paragraph 11(b)(1)—Timing; Contents**

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

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

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

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

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

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

**Paragraph 11(b)(2)—Written Confirmation**

1. *Written confirmation-of-error notice.* If the consumer sends a written confirmation of error to the wrong address, the financial institution must process the confirmation

through normal procedures. But the institution need not provisionally credit the consumer's account if the written confirmation is delayed beyond 10 business days in getting to the right place because it was sent to the wrong address.

**11(c) Time Limits and Extent of Investigation**

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

2. *Written confirmation of oral notice.* A financial institution must begin its investigation promptly upon receipt of an oral notice. It may not delay until it has received a written confirmation.

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

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

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

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

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

**Paragraph 11(c)(2)(i)**

1. *Compliance with all requirements.* Financial institutions exempted from provisionally crediting a consumer's account



under § 205.11(c)(2)(i) (A) and (B) must still comply with all other requirements of § 205.11.

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

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

**Paragraph 11(c)(4)—Investigation**

1. *Third parties.* When information or documentation requested by the consumer is in the possession of a third party with whom the financial institution does not have an agreement, the institution satisfies the error resolution requirement by so advising the consumer within the specified time period.

2. *Scope of investigation.* When an alleged error involves a payment to a third party under the financial institution's telephone bill-payment plan, a review of the institution's own records is sufficient, assuming no agreement exists between the institution and the third party concerning the bill-payment service.

3. *POS transfers.* When a consumer alleges an error involving a transfer to a merchant via a POS terminal, the institution must verify the information previously transmitted when executing the transfer. For example, the financial institution may request a copy of the sales receipt to verify that the amount of the transfer correctly corresponds to the amount of the consumer's purchase.

4. *Agreement.* An agreement that a third party will honor an access device is an agreement for purposes of this paragraph. A financial institution does not have an agreement for purposes of § 205.11(c)(4)(ii) solely because it participates in transactions that occur under the federal recurring payments programs, or that are cleared through an ACH or similar arrangement for the clearing and settlement of fund transfers generally, or because it agrees to be bound by the rules of such an arrangement.

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

1. *Error different from that alleged.* When a financial institution determines that an error occurred in a manner or amount different from that described by the consumer, it must comply with the requirements of both § 205.11 (c) and (d), as relevant. The institution may give the notice of correction and the explanation separately or in a combined form.

**Paragraph 11(d)(1)—Written Explanation**

1. *Request for documentation.* When a consumer requests copies of documents, the financial institution must provide the copies in an understandable form. If an institution relied on magnetic tape it must convert the applicable data into readable form, for example, by printing it and explaining any codes.

**Paragraph 11(d)(2)—Debiting Provisional Credit**

1. *Alternative procedure for debiting of credited funds.* The financial institution may comply with the requirements of this section by notifying the consumer that the consumer's account will be debited five business days from the transmittal of the notification, specifying the calendar date on which the debiting will occur.

2. *Fees for overdrafts.* The financial institution may not impose fees for items it is required to honor under § 205.11. It may, however, impose any normal transaction or item fee that is unrelated to an overdraft resulting from the debiting. If the account is still overdrawn after five business days, the institution may impose the fees or finance charges to which it is entitled, if any, under an overdraft credit plan.

**11(e) Reassertion of Error**

1. *Withdrawal of error; right to reassert.* The financial institution has no further error resolution responsibilities if the consumer voluntarily withdraws the notice alleging an error. A consumer who has withdrawn an allegation of error has the right to reassert the allegation unless the financial institution had already complied with all of the error resolution requirements before the allegation was withdrawn. The consumer must do so, however, within the original 60-day period.

**Section 205.12—Relation to Other Laws**

**12(a) Relation to Truth in Lending**

1. *Determining applicable regulation.* For transactions involving access devices that also constitute credit cards, whether Regulation E or Regulation Z (12 CFR part 226) applies, depends on the nature of the transaction. For example, if the transaction 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 CFR 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 CFR part 226) and, in addition, for \$50, \$500, or an unlimited amount under Regulation E.

2. *Issuance rules.* For access devices that also constitute credit cards, the issuance rules of Regulation E apply if the only credit feature is a preexisting credit line attached to the asset account to cover overdrafts (or to maintain a specified minimum balance). Regulation Z (12 CFR part 226) rules apply if there is another type of credit feature, for example, one permitting direct extensions of credit that do not involve the asset account.

**12(b) Preemption of Inconsistent State Laws**

1. *Specific determinations.* The regulation prescribes standards for determining whether state laws that govern EFTs are preempted by the act and the regulation. A state law that is inconsistent may be preempted even if the Board has not issued a determination.

However, nothing in § 205.12(b) provides a financial institution with immunity for violations of state law if the institution chooses not to make state disclosures and the Board later determines that the state law is not preempted.

2. *Preemption determination.* The Board determined that certain provisions in the state law of Michigan are preempted by the federal law, effective March 30, 1981:

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

ii. Consumer liability for unauthorized use of an account. Section 14 is inconsistent with § 205.6 and is less protective of the consumer than the federal law. The state law places liability on the consumer for the unauthorized use of an account in cases involving the consumer's negligence. Under the federal law, a consumer's liability for unauthorized use is not related to the consumer's negligence and depends instead on the consumer's promptness in reporting the loss or theft of the access device.

iii. Error resolution. Section 15 is preempted because it is inconsistent with § 205.11 and is less protective of the consumer than the federal law. The state law allows financial institutions up to 70 days to resolve errors, whereas the federal law generally requires errors to be resolved within 45 days.

iv. Receipts and periodic statements. Sections 17 and 18 are preempted because they are inconsistent with § 205.9. The state provisions require a different disclosure of information than does the federal law. The receipt provision is also preempted because it allows the consumer to be charged for receiving a receipt if a machine cannot furnish one at the time of a transfer.

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

**13(b) Record Retention**

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

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

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

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

contrast, § 205.14 can apply to an institution that issues a code for initiating telephone transfers to be carried out through the ACH from a consumer's account at another institution. This is the case even if the consumer has accounts at both institutions.

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

**14(b) Compliance by Electronic Fund Transfer Service Provider**

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

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

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

Paragraph 14(b)(2)—Error Resolution

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

occurred, any fees or charges imposed as a result of the error, either by the service provider or by the account-holding institution (for example, overdraft or dishonor fees) must be reimbursed to the consumer by the service provider.

**14(c) Compliance by Account-Holding Institution**

Paragraph 14(c)(1)

1. *Periodic statements from account-holding institution.* The periodic statement provided by the account-holding institution need only contain the information required by § 205.9(b)(1).

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

1. *Review of forms.* The Board will not review or approve disclosure forms or statements for financial institutions. However, the Board has issued model clauses for institutions to use in designing their disclosures. If an institution uses these clauses accurately to reflect its service, the institution is protected from liability for failure to make disclosures in proper form.

2. *Use of the forms.* The appendix contains model disclosure clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of §§ 205.5(b)(2) and (b)(3), 205.6(a), 205.7, 205.8(b), 205.14(b)(1)(ii) and 205.15(d)(7) and (d)(2). The use of appropriate clauses in making disclosures will protect a financial institution from liability under sections 915

and 916 of the act provided the clauses accurately reflect the institution's EFT services.

3. *Altering the clauses.* Financial institutions may use clauses of their own design in conjunction with the Board's model clauses. The inapplicable words or portions of phrases in parentheses should be deleted. The catchlines are not part of the clauses and need not be used. Financial institutions may make alterations, substitutions, or additions in the clauses to reflect the services offered, such as technical changes (including the substitution of a trade name for the word "card," deletion of inapplicable services, or substitution of lesser liability limits). Several of the model clauses include references to a telephone number and address. Where two or more of these clauses are used in a disclosure, the telephone number and address may be referenced and need not be repeated.

Supplement II to Part 205 [Removed]

3. Supplement II to Part 205 is removed.

By order of the Board of Governors of the Federal Reserve System, acting through the Secretary of the Board under delegated authority, April 19, 1996.

William W. Wiles,

*Secretary of the Board.*

[FR Doc. 96-10180 Filed 5-1-96; 8:45 am]

BILLING CODE 6210-01-P