

This document and any attachments are superseded by Comptroller's Handbook - Consumer Compliance - Electronic Fund Transfer Act.

Electronic Fund Transfer Act

The Electronic Fund Transfer Act (EFTA) (15 USC 1693 et seq.) of 1978 is intended to protect individual consumers engaging in electronic fund transfers (EFTs). EFT services include transfers through automated teller machines, point-of-sale terminals, automated clearinghouse systems, telephone bill-payment plans in which periodic or recurring transfers are contemplated, and remote banking programs. The Federal Reserve Board (Board) implements EFTA through Regulation E, which includes an official staff commentary.

The Board amended Regulation E to add § 205.17, prohibiting institutions from charging overdraft fees for ATM and point of sale (POS) transactions unless the consumer affirmatively consents (74 Fed. Reg. 59033 (Nov. 17, 2009) and 75 Fed. Reg. 31665 June 4, 2010). The Board also added § 205.20 to restrict fees and expiration dates on gift cards, and to require that gift card terms be clearly stated (75 Fed. Reg. 16580 (April 1, 2010)).¹

LINKS

 [Program](#)

 [Questionnaire](#)

To help clarify the requirements of Regulation E, the following background information does not strictly follow the order of the regulatory text, but rather it is presented in the following order:

- I. Scope and Key Definitions (§§ 205.2, 205.3, 205.17, 205.20)
- II. Disclosures (§ 205.4, §§ 205.7, 205.8, 205.16, 205.17, 205.20)
- III. Electronic transaction overdraft service opt in (§ 205.17)
- IV. Issuance of access devices (§§ 205.5, 205.18)
- V. Consumer liability and error resolution (§§ 205.6, 205.11)
- VI. Receipts and periodic statements (§§ 205.9, 205.18)
- VII. Gift cards (§ 205.20)
- VIII. Other requirements (§§ 205.10, 205.14, 205.15)
- IX. Relation to other laws (§ 205.12)
- X. Administrative enforcement and record retention (§ 205.13)
- XI. Miscellaneous (EFTA provisions not reflected in Regulation E)

For ease of use by the examiner, however, the examination procedures and checklist follow the order of the regulation.

¹ The Board also implemented a legislative extension of time for complying with the gift card disclosure requirements until January 31, 2011 (75 Fed. Reg. 50683 (August 17, 2010)).

I. SCOPE

Key Definitions

Access device is a card, code, or other means of access to a consumer's account or a combination of these used by the consumer to initiate EFTs. Access devices include debit cards, personal identification numbers (PINs), telephone transfer and telephone bill payment codes, and other means to initiate an EFT to or from a consumer account (§ 205.2(a)(1) and Staff Commentary 205.2(a)-1).

Access devices do not include either of the following:

- Magnetic tape or other devices used internally by a financial institution to initiate electronic transfers.
- A check or draft used to capture the MICR (Magnetic Ink Character Recognition) encoding or routing, account, and serial numbers to initiate a one-time ACH debit (Staff Commentary 205.2(a)-1 and -2).

Accepted access device is an access device that a consumer:

- Requests and receives, signs, or uses (or authorizes another to use) to transfer money between accounts or to obtain money, property, or services.
- Requests to be validated even if it was issued on an unsolicited basis.
- Receives as a renewal or substitute for an accepted access device from either the financial institution that initially issued the device or a successor (§ 205.2(a)(2)).

Account includes the following:

- Checking, savings, or other consumer asset account held by a financial institution (directly or indirectly), including certain club accounts, established primarily for personal, family, or household purposes.
- **Payroll card account**, established through an employer (directly or indirectly), to which EFTs of the consumer's wages, salary, or other employee compensation (such as commissions), are made on a recurring basis. The payroll card account can be operated or managed by the employer, a third-party processor, a depository institution, or any other person. All transactions involving the transfer of funds to or from a payroll card account are covered by the regulation (§ 205.2(b)(2) and Staff Commentary 205.2(b)-2).

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An account does not include:

- An account held by a financial institution under a bona fide trust agreement.
- An occasional or incidental credit balance in a credit plan.
- Profit-sharing and pension accounts established under a bona fide trust agreement.
- Escrow accounts such as for payments of real estate taxes, insurance premiums, or completion of repairs.
- Accounts for purchasing U.S. savings bonds (§ 205.2(b)(3) and Staff Commentary 205.2(b)-3).

A payroll card account does not include a card used:

- Solely to disburse incentive-based payments (other than commissions when they represent the primary means through which a consumer is paid) that are unlikely to be a consumer's primary source of salary or other compensation;
- Solely to make disbursements unrelated to compensation, such as petty cash reimbursements or travel per diem payments; or
- In isolated instances to which an employer typically does not make recurring payments (Staff Commentary 205.2(b)-2).

Activity means any action that results in an increase or decrease of the funds underlying a certificate or card, other than the imposition of a fee, or an adjustment due to an error or a reversal of a prior transaction (§ 205.20(a)(7)).

ATM operator is any person that operates an ATM at which a consumer initiates an EFT or a balance inquiry and that does not hold the account to or from which the transfer is made or about which the inquiry is made (§ 205.16(a)).

Dormancy fee and inactivity fee mean a fee for non-use of or inactivity on a gift certificate, store gift card, or general-use prepaid card (§ 205.20(a)(5)).

Electronic check conversion (ECK) transactions are transactions where a check, draft, or similar paper instrument is used as a source of information to initiate a one-time electronic fund transfer from a consumer's account. The consumer must authorize the transfer (§ 205.3(b)(2)).

Electronic fund transfer (EFT) is a transfer of funds initiated through an electronic terminal, telephone, computer (including on-line banking) or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer's account. EFTs include,

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but are not limited to, point-of-sale (POS) transfers; automated teller machine (ATM) transfers; direct deposits or withdrawals of funds; transfers initiated by telephone; and transfers resulting from debit card transactions, whether or not initiated through an electronic terminal (§ 205.3(b)).

Electronic terminal is an electronic device, other than a telephone call by a consumer, through which a consumer may initiate an EFT. The term includes, but is not limited to, point-of-sale terminals, automated teller machines, and cash-dispensing machines (§ 205.2(h)).

Exclusions from gift card definition. The following cards, codes, or other devices are excluded and not subject to the substantive restrictions on imposing dormancy, inactivity, or service fees, or on expiration dates if they are (§ 205.20(b)):

- Useable solely for telephone services;
- Reloadable and not marketed or labeled as a gift card or gift certificate. For purposes of this exception, the term “reloadable” includes a temporary non-reloadable card issued solely in connection with a reloadable card, code, or other device;
- A loyalty, award, or promotional gift card (except that these must disclose on the card or device itself, information such as the date the funds expire, fee information and a toll free number) (§§ 205.20(a)(4) and (c)(4));
- Not marketed to the general public;
- Issued in paper form only; or
- Redeemable solely for admission to events or venues at a particular location or group of affiliated locations, or to obtain goods or services in conjunction with admission to such events or venues, at the event or venue or at specific locations affiliated with and in geographic proximity to the event or venue.

General-use prepaid card is a card, code, or other device:

- Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and
- That is redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or that may be usable at automated teller machines (§ 205.20(a)(3)). See “*Exclusions from gift card definition.*”

Gift certificate is a card, code, or other device issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount that may not be increased or reloaded in

exchange for payment and redeemable upon presentation at a single merchant or an affiliated group of merchants for goods or services (§ 205.20(a)(1)). See “*Exclusions from gift card definition.*”

Loyalty, award, or promotional gift card is a card, code, or other device (1) issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in connection with a loyalty, award, or promotional program; (2) that is redeemable upon presentation at one or more merchants for goods or services, or usable at automated teller machines; and (3) that sets forth certain disclosures, including a statement indicating that the card, code, or other device is issued for loyalty, award, or promotional purposes (§ 205.20(a)(4)). See “*Exclusions from gift card definition.*”

Overdraft Services. A financial institution provides an overdraft service if it assesses a fee or charge for paying a transaction (including a check or other item) when the consumer has insufficient or unavailable funds in the account to pay the transaction. However, an overdraft service does not include payments made from the following:

- A line of credit subject to Regulation Z, such as a credit card account, a home equity line of credit, or an overdraft line of credit;
- Funds transferred from another account held individually or jointly by the consumer; or
- A line of credit or other transaction from a securities or commodities account held by a broker-dealer registered with the SEC or the CFTC (§ 205.17(a)).

Preauthorized electronic fund transfer is an EFT authorized in advance to recur at substantially regular intervals (§ 205.2(k)).

Service fee means a periodic fee for holding or use of a gift certificate, store gift card, or general-use prepaid card. A periodic fee includes any fee that may be imposed on a gift certificate, store gift card, or general-use prepaid card from time to time for holding or using the certificate or card (§ 205.20(a)(6)). For example, a service fee may include a monthly maintenance fee, a transaction fee, an ATM fee, a reload fee, a foreign currency transaction fee, or a balance inquiry fee, whether or not the fee is waived for a certain period of time or is only imposed after a certain period of time. However, a service fee does not include a one-time fee or a fee that is unlikely to be imposed more than once while the underlying funds are still valid, such as an initial issuance fee, a cash-out fee, a supplemental card fee, or a lost or stolen certificate or card replacement fee (Commentary 20(a)(6)-1).

Store gift card is a card, code, or other device issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment, and redeemable upon presentation at a single merchant or an affiliated group of merchants for goods or services (§ 205.20(a)(2)). See “*Exclusions from gift card definition.*”

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Unauthorized electronic fund transfer is an EFT from a consumer's account initiated by a person other than the consumer without authority to initiate the transfer and from which the consumer receives no benefit. This does not include an EFT initiated in any of the following ways:

- By a person who was furnished the access device to the consumer's account by the consumer, unless the consumer has notified the financial institution that transfers by that person are no longer authorized;
- With fraudulent intent by the consumer or any person acting in concert with the consumer; or
- By the financial institution or its employee (§ 205.2(m)).

COVERAGE – § 205.3

The requirements of Regulation E apply only to accounts for which there is an agreement for EFT services to or from the account between (i) the consumer and the financial institution or (ii) the consumer and a third party, when the account-holding financial institution has received notice of the agreement and the fund transfers have begun (Staff Commentary 205.3(a)-1).

Regulation E applies to all persons, including offices of foreign financial institutions in the United States, that offer EFT services to residents of any state² and it covers any account located in the United States through which EFTs are offered to a resident of a state, no matter where a particular transfer occurs or where the financial institution is chartered (Staff Commentary 205.3(a)-3). Regulation E does not apply to a foreign branch of a U.S. financial institution unless the EFT services are offered in connection with an account in a state, as defined in § 205.2(l) (Staff Commentary 205.3(a)-3).

Exclusions from Coverage – § 205.3(c) describes transfers that are not EFTs and are therefore not covered by the EFTA and Regulation E:

- Transfers of funds originated by check, draft, or similar paper instrument;
- Check guarantee or authorization services that do not directly result in a debit or credit to a consumer's account;
- Any transfer of funds for a consumer within a system that is used primarily to transfer funds between financial institutions or businesses, *e.g.*, Fedwire or other similar network;
- Any transfer of funds which has as its primary purpose the purchase or sale of securities or commodities regulated by the Securities and Exchange Commission (SEC) or the Commodity Futures Trading Commission (CFTC), purchased or sold through a broker-dealer regulated by

² *State* means any state, territory, or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; or any of their political subdivisions (12 CFR 205.2(l)).

the SEC or through a futures commission merchant regulated by the CFTC, or held in book-entry form by a Federal Reserve Bank or federal agency;

- Intra-institutional automatic transfers under an agreement between a consumer and a financial institution;
- Transfers initiated by telephone between a consumer and a financial institution provided the transfer is not a function of a written plan contemplating periodic or recurring transfers. A written statement available to the public, such as a brochure, that describes a service allowing a consumer to initiate transfers by telephone constitutes a written plan; or
- Preauthorized transfers to or from accounts at financial institutions with assets of less than \$100 million on the preceding December 31. Such preauthorized transfers, however, remain subject to the compulsory use prohibition under Section 913 of the EFTA and 12 CFR 205.10(e), as well as the civil and criminal liability provisions of Sections 915 and 916 of the EFTA. A small financial institution that provides EFT services besides preauthorized transfers must comply with the Regulation E requirements for those *other* services (Staff Commentary 205.3(c)(7)-1). For example, a small financial institution that offers ATM services must comply with Regulation E in regard to the issuance of debit cards, terminal receipts, periodic statements, and other requirements.

Electronic Check Conversion (ECK) and Collection of Returned-Item Fees

Regulation E covers electronic check conversion (ECK) transactions. In an ECK transaction, a consumer provides a check to a payee and information from the check is used to initiate a one-time EFT from the consumer's account. Although transfers originated by checks are not covered by Regulation E, an ECK is treated as an EFT and not a payment originated by check. Payees must obtain the consumer's authorization for each ECK transaction. A consumer authorizes a one-time EFT for an ECK transaction when the consumer receives notice that the transaction will or may be processed as an EFT and goes forward with the underlying transaction³ (§§ 205.3(b)(2)(i) and (ii) and Staff Commentary 205.3(b)(2)-3).

Prior to December 31, 2009, a person using the check to initiate the EFT had to include a notice that funds may be withdrawn from the consumer's account as soon as the same day payment is received, and, as applicable, that the consumer's check will not be returned by the financial institution (§ 205.3(b)(2)(iii) and Appendix A-6). This requirement is no longer in effect.

If a payee re-presents electronically a check that has been returned unpaid, the transaction is not an EFT, and Regulation E does not apply because the transaction originated by check (Staff Commentary 205.3(c)(1)-1)).

³ For POS transactions, the notice must be posted in a prominent and conspicuous location and a copy of the notice must be provided to the consumer at the time of the transaction (Sections 205.3(b)(2)(i) and (ii) and Staff Commentary 205.3(b)(2)-3).

However, Regulation E applies to a fee collected electronically from a consumer's account for a check or EFT returned unpaid. A consumer authorizes a one-time EFT from the consumer's account to pay the fee for the returned item or transfer if the person collecting the fee provides notice to the consumer stating the amount of the fee and that the person may electronically collect the fee, and the consumer goes forward with the underlying transaction⁴ (§ 205.3(b)(3)). These authorization requirements do not apply to fees imposed by the account-holding financial institution for returning the check or EFT or paying the amount of an overdraft (Staff Commentary 205.3(b)(3)-1).

II. DISCLOSURES

Disclosures Generally – § 205.4

Required disclosures must be clear and readily understandable, in writing, and in a form the consumer may keep. The required disclosures may be provided to the consumer in electronic form, if the consumer affirmatively consents after receiving a notice that complies with the E-Sign Act (§ 205.4(a)(1)).

Disclosures may be made in a language other than English, if the disclosures are made available in English upon the consumer's request (§ 205.4(a)(2)).

A financial institution has the option of disclosing additional information and combining disclosures required by other laws (for example, Truth in Lending disclosures) with Regulation E disclosures (§ 205.4(b)).

A financial institution may combine required disclosures into a single statement if a consumer holds two or more accounts at the financial institution. Thus, a single periodic statement or error resolution notice is sufficient for multiple accounts. In addition, it is only necessary for a financial institution to provide one set of disclosures for a joint account (§ 205.4(c)(1) and (2)).

Two or more financial institutions that jointly provide EFT services may contract among themselves to meet the requirements that the regulation imposes on any or all of them. When making initial disclosures (§ 205.7) and disclosures of a change in terms or an error resolution notice (see § 205.8), a financial institution in a shared system only needs to make disclosures that are within its knowledge and apply to its relationship with the consumer for whom it holds an account (§ 205.4(d)).

Initial Disclosure of Terms and Conditions – § 205.7

Financial institutions must provide initial disclosures of the terms and conditions of EFT services before the first EFT is made or at the time the consumer contracts for an EFT service. They must give a summary of various consumer rights under the regulation, including the consumer's liability for

⁴ For POS transactions, the notice must be posted in a prominent and conspicuous location and a copy of the notice must either be provided to the consumer at the time of the transaction or mailed to the consumer's address as soon as reasonably practicable after the person initiates the EFT to collect the fee (§ 205.3(b)(3)).

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unauthorized EFTs, the types of EFTs the consumer may make, limits on the frequency or dollar amount, fees charged by the financial institution, and the error-resolution procedures. Appendix A to Part 205 provides model clauses that financial institutions may use to provide the disclosures.

Timing of Disclosures. Financial institutions must make the required disclosures at the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving the consumer's account (§ 205.7(a)).

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 authorizes an electronic check conversion or agrees with a third party to initiate preauthorized transfers to or from the consumer's account, unless the terms and conditions differ from the previously disclosed term. This interpretation also applies to any notice provided about one-time EFTs from a consumer's account initiated using information from the consumer's check. On the other hand, if an agreement for EFT services to be provided by an account-holding financial institution is directly between the consumer and the account-holding financial institution, disclosures must be given in close proximity to the event requiring disclosure, for example, when the consumer contracts for a new service (Staff Commentary 205.7(a)-1).

Where a consumer authorizes a third party to debit or credit the consumer's account, an account-holding financial institution that has not received advance notice of the transfer or transfers must provide the required disclosures as soon as reasonably possible after the first debit or credit is made, unless the financial institution has previously given the disclosures (Staff Commentary 205.7(a)-2).

If a consumer opens a new account permitting EFTs at a financial institution, and the consumer has already received Regulation E disclosures for another account at that financial institution, the financial institution need only disclose terms and conditions that differ from those previously given (Staff Commentary 205.7(a)-3).

If a financial institution joins an interchange or shared network system (which provides access to terminals operated by other financial institutions), disclosures are required for additional EFT services not previously available to consumers if the terms and conditions differ from those previously disclosed (Staff Commentary 205.7(a)-4).

A financial institution may provide disclosures covering all EFT services that it offers, even if some consumers have not arranged to use all services (Staff Commentary 205.7(a)-5).

Addition of EFT Services. A financial institution must make disclosures for any new EFT service added to a consumer's account if the terms and conditions are different from those described in the initial disclosures. ECK transactions may be a new type of transfer requiring new disclosures (See Appendix A-2 and Staff Commentary 205.7(c)-1).

Content of Disclosures. Section 205.7(b) requires a financial institution to provide the following disclosures as they apply:

- **Liability of consumers for unauthorized electronic fund transfers.** The financial institution must include a summary of the consumer's liability (under § 205.6, state law, or other applicable law or agreement) for unauthorized transfers (§ 205.7(b)(1)). A financial institution does not need to provide the liability disclosures if it imposes no liability. If it later decides to impose liability, it must first provide the disclosures (Staff Commentary 205.7(b)(1)-1). The financial institution can choose to include advice on promptly reporting unauthorized transfers or the loss or theft of the access device (Staff Commentary 205.7(b)(1)-3).
- **Telephone number and address.** A financial 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 (Staff Commentary 205.7(b)(2)-2). Except for the telephone number and address for reporting a lost or stolen access device or a possible unauthorized transfer, the disclosure may 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." (Staff Commentary 205.7(b)(2)-2).
- **Business days.** The financial institution's business days (§ 205.7(b)(3)).
- **Types of transfers; limitations on frequency or dollar amount.** Limitations on the frequency and dollar amount of transfers generally must be disclosed in detail (§ 205.7(b)(4)). 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)⁵ 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 non-electronic means.⁶ Financial institutions are not required to list preauthorized transfers among the types of transfers that a consumer can make (Staff Commentary 205.7(b)(4)-3). Financial institutions must disclose the fact that one-time EFTs initiated using information from a consumer's check are among the types of transfers that a consumer can make (See Appendix A-2 and Staff Commentary 205.7(b)(4)-4).
- **Fees.** A financial institution must disclose all fees for EFTs or for the right to make EFTs (§ 205.7(b)(5)). Other fees, for example, minimum-balance fees, stop-payment fees, account overdrafts, or ATM inquiry fees, may, but need not, be disclosed under Regulation E (see Regulation DD, 12 CFR Part 230) (Staff Commentary 205.7(b)(5)-1). A per-item fee for EFTs must be disclosed even if the same fee is imposed on non-electronic 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 on

⁵ For example, if a financial institution limits cash ATM withdrawals to \$100 per day, the financial 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) (Staff Commentary 205.7(b)(4)-1).

⁶ For example, Regulation D (12 CFR 204) restricts the number of payments to third parties that may be made from a money market deposit account; a financial institution that does not execute fund transfers in excess of those limits must disclose the restriction as a limitation on the frequency of EFTs (Staff Commentary 205.7(b)(4)-2).

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the disclosure statement or on an accompanying document referenced in the statement (Staff Commentary 205.7(b)(5)-2).

A financial institution must disclose that networks used to complete the EFT as well as an ATM operator, may charge a fee for an EFT or for balance inquiries (§ 205.7(b)(11)).

- **Documentation.** A summary of the consumer's right to receipts and periodic statements, as provided in § 205.9, and notices regarding preauthorized transfers as provided in Sections 205.10(a) and 205.10(d) (§ 205.7(b)(6)).
- **Stop payment.** A summary of the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure for placing a stop-payment order, as provided in § 205.10(c) (§ 205.7(b)(7)).
- **Liability of institution.** A summary of the financial institution's liability to the consumer under Section 910 of the EFTA for failure to make or to stop certain transfers (§ 205.7(b)(8)).
- **Confidentiality.** The circumstances under which, in the ordinary course of business, the financial institution may provide information concerning the consumer's account to third parties (§ 205.7(b)(9)). A financial 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. Third parties include other subsidiaries of the same holding company (Staff Commentary 205.7(b)(9)-1).
- **Error Resolution.** The error-resolution notice must be substantially similar to Model Form A-3 in Appendix A of Part 205. A financial 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 (Staff Commentary 205.7(b)(10)-1). To take advantage of the longer time periods for resolving errors under § 205.11(c)(3) (for new accounts as defined in Regulation CC, transfers initiated outside the United States, or transfers resulting from POS debit card transactions), a financial institution must have disclosed these longer time periods. Similarly, a financial institution relying on the exception from provisional crediting in § 205.11(c)(2) for accounts relating to extensions of credit by securities brokers and dealers (Regulation T, 12 CFR Part 220) must disclose accordingly (Staff Commentary 205.7(b)(10)-2).

Change in Terms; Error Resolution Notice – § 205.8

If a financial institution contemplates a change in terms it must mail or deliver a written or electronic notice to the consumer at least 21 days before the effective date of any change in a term or condition required to be disclosed under § 205.7(b) if the change would result in any of the following:

- Increased fees or charges.
- Increased liability for the consumer;
- Fewer types of available EFTs; or
- Stricter limitations on the frequency or dollar amounts of transfers (§ 205.8(a)(1)).

If an immediate change in terms or conditions is necessary to maintain or restore the security of an EFT system or account, the financial institution does not need to give prior notice. However, if the change is to be permanent, the financial institution must provide notice in writing of the change to the consumer on or with the next regularly scheduled periodic statement or within 30 days, unless disclosures would jeopardize the security of the system or account (§ 205.8(a)(2)).

For accounts to or from which EFTs can be made, the financial institution must mail, deliver, or provide electronically to the consumer at least once each calendar year, the error resolution notice in 12 CFR 205 Appendix A - Model Form A-3, or one substantially similar. Alternatively, the financial institution may include an abbreviated error resolution notice substantially similar to the notice set out in Appendix A (Model Form A-3) with each periodic statement (§ 205.8(b)).

Disclosures at Automated Teller Machines – § 205.16

An ATM operator that charges a fee is required to post notice that a fee will be imposed and disclose the amount of the fee (§ 205.16(b)). Notices must be posted both (1) in a prominent and conspicuous location on or at the machine, and (2) on the screen or on a paper notice before the consumer is committed to paying a fee (§ 205.16(c)(1) and (2)). The fee may be imposed by the ATM operator only if: (1) the consumer is provided the required notices, and (2) the consumer elects to continue the transaction (§ 205.16(e)).

The “prominent and conspicuous notice” standard applies to notice posted on or at the ATM. The “clear and readily understandable standard” applies to the content of the notice. The requirement that the notice be in a retainable format only applies to printed notices (not those on the ATM screen) (§ 205.16(c)).

These fee disclosures are not required where a network owner is not charging a fee directly to the consumer i.e., some network owners charge an interchange fee to financial institutions whose customers use the network) (Staff Commentary 205.7(b)(5)-3). If the network practices change such that the network charges the consumer directly, these fee disclosure requirements would apply to the network (§ 205.7(c)).

Overdraft Service Disclosures – § 205.17

Disclosure requirements for overdraft services are addressed in Section III of this document.

Gift Card Disclosures – § 205.20(c)

Disclosures must be clear and conspicuous and generally in a written or electronic form (except for certain pre-purchase disclosures, which may be given orally) that the consumer may retain. The fees and terms and conditions of expiration that are required to be disclosed prior to purchase may not be changed after purchase.

A number of disclosures must be made on the actual card. Making such disclosures in an accompanying terms and conditions document, on packaging surrounding a certificate or card, or on a sticker or other label affixed to the certificate or card does not constitute a disclosure on the certificate or card. Those disclosures include the following:

- The existence, amount, and frequency of any dormancy, inactivity, or service fee;
- The expiration date for the underlying funds (or the fact that the funds do not expire);
- A toll-free telephone number and (if any) a Web site that the consumer may use to obtain a replacement certificate or card if the certificate or card expires while underlying funds are still available;
- A statement that the certificate or card expires, but the underlying funds do not expire or expire later than the certificate or card, as well as a statement that the consumer may contact the issuer for a replacement card;⁷ and
- A toll-free telephone number and (if any) a Web site that the consumer may use to obtain information about fees.

Additional Disclosure Requirements Regarding Fees. In addition to the disclosure requirements related to dormancy, inactivity, or service fees, all other fees must be disclosed as well. These disclosures must be provided on or with the certificate or card and disclosed prior to purchase. The certificate or card must also disclose a toll-free telephone number and Web site, if one is maintained, that a consumer may use to obtain fee information or replacement certificates or cards (§ 205.20(f)).

Disclosure Requirements for Loyalty, Award, or Promotional Gift Cards § 205.20(a)(4)

To qualify for the exclusion for loyalty, award, or promotional gift cards, the following must be disclosed:

- A statement indicating that the card, code, or other device is issued for loyalty, award, or promotional purposes, which must be included on the front of the card, code, or other device;

⁷ This requirement does not apply to non-reloadable certificates or cards that expire seven years or more after the date of manufacture.

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- The expiration date for the underlying funds, which must be included on the front of the card, code, or other device;
- The amount of any fees that may be imposed in connection with the card, code, or other device, and the conditions under which they may be imposed, which must be provided on or with the card, code, or other device; and
- A toll-free telephone number and, if one is maintained, a Web site, that a consumer may use to obtain fee information, which must be included on the card, code, or other device.

Amendments to Regulation E were issued on August 17, 2010. The amendments implemented legislation that modified the effective date of certain disclosure and card expiration requirements in the gift card provisions of the Credit Card Accountability Responsibility and Disclosure Act of 2009 for cards produced prior to April 1, 2010.

The disclosures and card expiration requirements that may be delayed, until January 31, 2011, are:

- 1) Disclosures required to be made prior to purchase (§ 205.20(c)(3));
- 2) Disclosures that must be stated on the certificate or card regarding the fees and expiration dates (§ 205.20(d)(2), (e)(1) & (e)(3)); and
- 3) Disclosures that may be provided on or with the certificate or card (§ 205.20(f)).

Gift cards must comply with all other provisions of the gift card rule.

Issuers must make the following disclosures on in-store signs, messages during customer service calls, Web sites, and general advertising:

- The funds underlying the gift card do not expire;
- Consumers have the right to receive a free replacement card, along with the packaging and materials that typically accompany the gift card; and
- The issuer will charge dormancy, inactivity, or service fees only if the fee is permitted by the gift card rule.

The issuer must make the disclosures on in-store signs and via general advertising until January 31, 2011, and via customer service call center and Web site disclosures until January 31, 2013 (§ 205.20(h)).

III. ELECTRONIC TRANSACTION OVERDRAFT SERVICES OPT IN – § 205.17

Background. In recent years overdraft protection services have been extended to cover overdrafts resulting from non-check transactions, including ATM withdrawals, debit card transactions at point of sale, on-line transactions, preauthorized transfers, and ACH transactions. Generally, institutions charge a flat fee each time an overdraft is paid, although some institutions have a tiered fee structure and charge higher fees based on the amount of the negative balance at the end of the day or as the number of overdrafts increases. Institutions commonly charge the same amount for paying check and ACH overdrafts as they would if they returned the item unpaid. Some institutions also impose a fee for each day the account remains overdrawn. For debit card overdrafts, the dollar amount of the fee and multiple assessments can exceed the dollar amount of the overdrafts.

In 2005, the agencies issued guidance concerning the marketing, disclosure, and implementation of overdraft programs. The guidance also covers safety and soundness considerations, and establishes a number of best practices financial institutions should incorporate into their overdraft programs. The 2009 revisions to Regulation E supersede portions of the guidance related to ATM and one time debit card overdraft transactions. However, in addition to the revised Regulation E requirements, institutions are again advised to incorporate their agency's overdraft guidance into their overdraft protection programs.

Section 205.17 was added in the 2009 revision to Regulation E.⁸ It provides consumers with a choice to opt into their institution's overdraft protection program and be charged a fee for overdrafts for ATM and one-time debit card transactions. It also requires disclosure of the fees and terms associated with the institution's overdraft service. Before an institution may assess overdraft fees, the consumer must opt in, or affirmatively consent, to the overdraft service for ATM and one-time debit card transactions, and the consumer has an ongoing right to revoke consent. Institutions may not require an opt in for ATM and one-time debit transactions as a condition to the payment of overdrafts for checks and other transactions. The account terms, conditions and features must be the same for consumers who opt in and for those who do not.

Opt-In Requirement for Overdraft Services. The financial institution may assess a fee for paying an ATM or one-time debit card transaction pursuant to an overdraft service only if it has met the following requirements:

- The financial institution has provided the consumer with a written (or, if the consumer agrees, electronic) notice, segregated from all other information, describing the overdraft service;
- The financial institution has provided a reasonable opportunity for the consumer to affirmatively consent (opt in) to the overdraft service for ATM and one-time debit card transactions;

⁸ 74 FR 59033, Nov. 17, 2009; 75 FR 31665, June 4, 2010.

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- The financial institution has obtained the consumer's affirmative consent (opt in) for ATM and one-time debit card transactions; and
- The financial institution has mailed or delivered written (or, if the consumer agrees, electronic) confirmation of the consent, including a statement informing the consumer of the right to revoke consent. An institution complies if it adopts reasonable procedures to ensure that it assesses overdraft fees only for transactions paid after mailing or delivering the confirmation to the consumer (§ 205.17(b)(1); Commentary 205.17(b)-7)).

Fee Prohibitions. As a general rule, an institution may not charge overdraft fees for paying an ATM or one-time debit card transaction unless the consumer has opted in. The fee prohibition also applies to an institution that has a policy and practice of not paying an ATM or one-time debit card overdraft when it reasonably believes at the time of the authorization request that the consumer does not have sufficient funds available to pay the transaction, although the institution does not have to comply with the notice and opt-in requirements (Commentary 205.17(b)-1(iv)).

Lack of consent does not prohibit the financial institution from paying ATM or one-time debit card overdrafts. However, the financial institution may charge a fee only if the consumer has consented to the institution's overdraft service for ATM and one-time debit card transactions (Commentary 205.17(b)-2). Conversely, the financial institution is not required to pay an ATM or one-time debit card overdraft even if the consumer has consented to pay a fee (Commentary 205.17(b)-3).

For a consumer who has not opted in, if a fee or charge is based on the amount of the outstanding negative balance, an institution may not charge a fee for a negative balance that is solely attributable to an ATM or one-time debit card transaction. However, an institution may assess a fee if the negative balance is attributable in whole or in part to a check, ACH transaction or other type of transaction not subject to the prohibition on assessing overdraft fees (Commentary 205.17(b)-8).

For a consumer who has not opted in, the institution may not assess daily or sustained negative balance, overdraft, or similar fees for a negative balance, based solely on ATM or one-time debit card transactions. However, if the negative balance is attributable in part to a check, ACH transaction or other type of transaction not subject to the prohibition on assessing overdraft fees, the institution may charge a daily or sustained overdraft or similar fee, even if the consumer has not opted in. The date the fee may be charged is based on the date on which the check, ACH, or other type of transaction is paid into overdraft (Commentary 205.17(b)-9).

Contents and Format of Notice. The notice describing the overdraft service must be substantially similar to Model Form A-9. The notice must include all of the following items, and may not contain any other information not expressly specified or otherwise permitted:

- A brief description of the overdraft service and the types of transactions for which the financial institution may charge a fee;

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- The dollar amount of any fee that may be charged for an ATM or one-time debit card transaction, including any daily or other overdraft fees;⁹
- The maximum number of fees that may be charged per day, or, if applicable, that there is no limit;
- An explanation of the right to affirmatively consent to the overdraft service, including the methods by which the consumer may consent;¹⁰ and
- The availability of a line of credit or a service that transfers funds from another account to cover overdrafts, if the financial institution offers those alternatives¹¹ (§ 205.17(d)(1) through (d)(5)).

The financial institution also may (but is not required to) include the following information, to the extent applicable:

- Disclosure of the right to opt into, or out of, the payment of overdrafts for other types of transactions (*e.g.* checks, ACH transactions, or automatic bill payments) and a means for the consumer to exercise such choices;
- Disclosure of the financial institution's returned item fee, as well as the fact that merchants may charge additional fees;
- Disclosure of the right to revoke consent (§ 205.17(d)(6)).

Reasonable opportunity to consent. The financial institution must provide a reasonable opportunity to consent. Reasonable methods of consent include mail - if the financial institution provides a form for the consumer to fill out and mail, telephone - if the financial institution provides a readily-available telephone line that the consumer may call, electronic means - if the financial institution provides a form that can be accessed and processed at its Web site, where the consumer may click on a box to consent and click on a button to affirm consent, or in person - if the financial institution provides a form for the consumer to complete and present at a branch or office (Commentary 205.17(b)-4). The financial

⁹ If the amount of the fee may vary based on the number of times the consumer has overdrawn the account, the amount of the overdraft, or other factors, the financial institution must disclose the maximum fee.

¹⁰ Institutions may tailor the response portion of Model Form A-9 to the methods offered. For example, a tear-off portion of Model Form A-9 is not necessary if consumers may only opt-in by telephone or electronically (Commentary 205.17(d)-3).

¹¹ If the institution offers both a line of credit subject to the Board's Regulation Z (12 CFR part 226) and a service that transfers funds from another account of the consumer held at the institution to cover overdrafts, the institution must state in its opt-in notice that both alternative plans are offered. If the institution offers one, but not the other, it must state in its opt-in notice the alternative plan that it offers. If the institution does not offer either plan, it should omit the reference to the alternative plans (Commentary 205.17(d)-5). If the financial institution offers additional alternatives for paying overdrafts, it may (but is not required to) disclose those alternatives (§ 205.17(d)(5)).

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institution may provide the opportunity to consent and require the consumer to make a choice as a step to opening an account (Commentary 205.17(b)-5).

Affirmative consent is necessary. An important feature of the opt in is that the consumer's affirmative consent is necessary before the institution may charge overdraft fees for paying an ATM or one-time debit card transaction (§ 205.17(b)(iii)). The consent must be separate from other consents or acknowledgments (including a consent to receive disclosures electronically). Check boxes are allowed, but the check box and the consumer's signature may only apply to the consumer's consent to opt in. Preprinted disclosures about the overdraft service provided with a signature card or contract do not constitute affirmative consent (Commentary 205.17(b)-6).

Confirmation and consumer's right to revoke. Not only must the consumer affirmatively consent, but the institution must mail or deliver to the consumer a written confirmation (or electronic, if the consumer agrees) that the consumer has consented, along with a statement informing the consumer of the right to revoke the consent at any time (§ 205.17(b)(iv) and Commentary 205.17(b)-7)). An institution complies with the confirmation requirement if it has adopted reasonable procedures to ensure that overdraft fees are assessed only on transactions paid after the confirmation is mailed or delivered to the consumer (Commentary 205.17(b)-7)).

Assessing fees. For consumers who have not opted in, institutions are prohibited from charging overdraft fees for paying those transactions. This prohibition applies to daily or sustained overdraft, negative balance or similar fees. However, the rule does not prohibit an institution from assessing these fees if the negative balance is attributable, in whole or part, to a check, ACH or other transaction not subject to the fee prohibition. However, if the negative balance is attributable in part to an ATM transaction, for example, and in part to a check, a fee may be assessed based on the date when the check is paid into overdraft, not the date of the ATM or one-time debit transaction.

Conditioning payment of other overdrafts. The financial institution may not condition the payment of other types of overdraft transactions on the consumer's affirmative consent, and the financial institution may not decline to pay other types of overdraft transactions because the consumer has not affirmatively consented to the payment of ATM and one-time debit card overdrafts (§ 205.17(b)(2)). In other words, the financial institution may not use different criteria for paying other types of overdraft transactions for consumers who have consented and for consumers who have not consented (Commentary 205.17(b)(2)-1)).

Same account terms, conditions and features. In addition, the financial institution must provide to consumers who do not affirmatively consent the same account terms, conditions, and features (except the payment of ATM and one-time debit overdrafts) that are available to consumers who do affirmatively consent (§ 205.17(b)(3)). That requirement includes, but is not limited to:

- Interest rates paid;
- Fees assessed;

- The type of ATM or debit card provided to the depositor;¹²
- Minimum balance requirements; and
- On-line bill payment services (Commentary 205.17(b)(3)-1).

Joint Accounts. Any consumer may consent, or revoke consent, for payment of ATM or one-time debit card transactions from a joint account (§ 205.17(e)).

Continuing Right to Consent or Revoke. A consumer may consent to the payment of ATM and one-time debit card overdrafts at any time. A consumer may also revoke consent at any time. The financial institution must implement a revocation as soon as reasonably practicable (§ 205.17(f)). The financial institution need not waive overdraft fees assessed before it implements the consumer's revocation (Commentary 205.17(f)-1).

Duration of Consent. Consent remains effective until the consumer revokes it, unless the financial institution terminates the overdraft service (§ 205.17(g)). The financial institution may terminate the overdraft service, for example, if the consumer makes excessive use of the service (Commentary 205.17(g)-1).

Effective Date. The overdraft services rule became effective on January 19, 2010, and compliance is mandatory on July 1, 2010. For accounts opened on or after July 1, 2010, the financial institution must obtain consent before charging a fee for payment of any ATM or one-time debit overdraft. However, for accounts opened before July 1, 2010, the financial institution may not charge a fee for paying any ATM or one-time debit overdraft on or after August 15, 2010, unless it has obtained consent (§ 205.17(c)).

IV. ISSUANCE OF ACCESS DEVICES – §§ 205.5 AND 205.18

In general, a financial institution may issue an access device to a consumer only in the following cases:

- The consumer requested it in writing or orally.¹³
- It is a renewal of, or a substitute for, an accepted access device (as defined in § 205.2(a)) (§ 205.5(a)).

¹² For example, the financial institution may not provide a PIN-only debit card to consumers who do not opt in, and a debit card with both PIN and signature-debit features to consumers who do opt in.

¹³ For a joint account, a financial institution may issue an access device to each account holder for whom the requesting holder specifically requests an access device (Staff Commentary 205.5(a)(1)-1).

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Only one renewal or substitute device may replace a previously issued device. A financial institution may provide additional devices at the time it issues the renewal or substitute access device provided the institution complies with the requirements for issuing unsolicited access devices for the additional devices (Staff Commentaries 205.5(a)(2)-1 and 205.5(b)-5).

A financial institution may issue an unsolicited access device only if the access device meets all of the following criteria. The access device is:

- Not validated - that is, it cannot be used to initiate an EFT.
- Accompanied by the explanation that it is not validated and how the consumer may dispose of it if the consumer does not wish to validate it.
- Accompanied by a complete disclosure, in accordance with § 205.7, of the consumer's rights and liabilities that will apply if the access device is validated.
- Validated only upon oral or written request from the consumer and after a verification of the consumer's identity by some reasonable means (§ 205.5(b)).

The financial institution may use any reasonable means of verifying the consumer's identity, but the consumer is not liable for any unauthorized transfers if an imposter succeeds in validating the access device (Staff Commentary 205.5(b)-4).

Payroll Card Access Devices. Consistent with § 205.5(a), a financial institution may issue a payroll card access device only in response to an oral or written request for the device or as a renewal or substitute for an accepted access device. A consumer is deemed to request an access device for a payroll account when the consumer chooses to receive salary or other compensation through a payroll card account (Staff Commentary 205.18(a)-1).

EFT added to credit card. The EFTA and Regulation E apply when the capability to initiate EFTs is added to an accepted credit card (as defined under Regulation Z). The EFTA and Regulation E also apply to the issuance of an access device that permits credit extensions under a preexisting agreement between the consumer and a financial institution to extend credit only to cover overdrafts (or to maintain a specified minimum balance). The Truth in Lending Act and Regulation Z govern the addition of a credit feature to an accepted access device, and except as discussed above, the issuance of a credit card that is also an access device. For information on Regulation E's relationship to other laws, including Truth in Lending, see § 205.12.

V. CONSUMER LIABILITY AND ERROR RESOLUTION

Liability of Consumers for Unauthorized Transfers – § 205.6

A consumer may be liable for an unauthorized EFT (defined in § 205.2(m)) depending on when the consumer notifies the financial institution and whether an access device was used to conduct the transaction. Under the EFTA, there is no bright-line time limit within which consumers must report unauthorized EFTs (71 Fed. Reg. 1638, 1653 (Jan. 10, 2006)).

The extent of the consumer's liability is determined solely by the consumer's promptness in notifying the financial institution (Staff Commentary 205.6(b)-3). Other factors may not be used as a basis to hold consumers liable. Regulation E expressly prohibits the following factors as the basis for imposing greater liability than is permissible under Regulation E: the consumer was negligent (*e.g.*, wrote a PIN on an ATM card); an agreement between the consumer and the financial institution provides for greater liability; or the consumer is liable for a greater amount under state law (Staff Commentaries 205.6(b)-2 and 205.6(b)-3).

A consumer may only be held liable for an unauthorized transaction, within the limitations set forth in § 205.6(b), if:

- The financial institution has provided all of the following written disclosures to the consumer:
 - A summary of the consumer's liability for unauthorized EFTs.
 - The telephone number and address for reporting that an unauthorized EFT has been or may be made.
 - The financial institution's business days.
- Any access device used to effect the EFT was an accepted access device (as defined in § 205.2(a)).
- The financial institution has provided a means to identify the consumer to whom the access device was issued (§ 205.6(a)).

Regulation E allows, but does not require, the financial institution to provide a separate means to identify each consumer of a multiple-user account (Staff Commentary 205.6(a)-2).

The limitations on the amount of consumer liability for unauthorized EFTs, the time limits within which consumers must report unauthorized EFTs, and the liability for failing to adhere to those time limits, are listed in the chart below. The financial institution may impose less consumer liability than is provided by § 205.6 based on state law or the deposit agreement (§ 205.6(b)(6)).

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Consumer Liability for Unauthorized Transfers: Electronic Fund Transfer Act - Regulation E (12 CFR 205.6)

Event	Timing of Consumer Notice to Financial Institution	Maximum liability
Loss or theft of access device ¹⁴	Within two business days after learning of loss or theft	Lesser of \$50, OR total amount of unauthorized transfers.
Loss or theft of access device	More than two business days after learning of loss or theft up to 60 calendar days after transmittal of statement showing first unauthorized transfer made with access device.	Lesser of \$500, OR the sum of: (a) \$50 or the total amount of unauthorized transfers occurring in the first two business days, whichever is less, AND (b) The amount of unauthorized transfers occurring after two business days and before notice to the financial institution. ¹⁵
Loss or theft of access device	More than 60 calendar days after transmittal of statement showing first unauthorized transfer made with access device.	For transfers occurring within the 60-day period, the lesser of \$500, OR the sum of (a) Lesser of \$50 or the amount of unauthorized transfers in first two business days, AND (b) The amount of unauthorized transfers occurring after two business days. For transfers occurring after the 60-day period, unlimited liability (until the financial institution is notified) ¹⁶
Unauthorized transfer(s) not involving loss or theft of an access device	Within 60 calendar days after transmittal of the periodic statement on which the unauthorized transfer first appears.	No liability.
Unauthorized transfer(s) not involving loss or theft of an access device	More than 60 calendar days after transmittal of the periodic statement on which the unauthorized transfer first appears.	Unlimited liability for unauthorized transfers occurring 60 calendar days after the periodic statement and before notice to the financial institution.

¹⁴ Includes a personal identification number (PIN) if used without a card in a telephone transaction, for example.

¹⁵ Provided the financial institution demonstrates that these transfers would not have occurred had notice been given within the two-business-day period.

¹⁶ Provided the financial institution demonstrates that these transfers would not have occurred had notice been given within the 60-day period.

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Knowledge of Loss or Theft. The fact that a consumer has received a periodic statement reflecting an unauthorized transaction is a factor, but not conclusive evidence, in determining whether the consumer had knowledge of a loss or theft of the access device (Staff Commentary 205.6(b)(1)-2).

Timing of Notice. If a consumer's delay in notifying a financial institution was due to extenuating circumstances, such as extended travel or hospitalization, the time periods for notification specified above must be extended to a reasonable time (§ 205.6(b)(4); Staff Commentary 205.6(b)(4)-1).

Notice to the Financial Institution. A consumer gives notice to a financial institution about unauthorized use when the consumer takes reasonable steps to provide the financial institution with the pertinent information, whether or not a particular employee actually receives the information (§ 205.6(b)(5)(i)). Even if the consumer is unable to provide the account number or the card number, the notice effectively limits the consumer's liability if the consumer sufficiently identifies the account in question, for example, by giving the name on the account and the type of account (Staff Commentary 205.6(b)(5)-3). At the consumer's option, notice may be given in person, by telephone, or in writing (§ 205.6(b)(5)(ii)). Notice in writing is considered given at the time the consumer mails the notice or delivers the notice for transmission by any other usual means to the financial institution. Notice may also be considered given when the financial institution becomes aware of circumstances leading to the reasonable belief that an unauthorized transfer has been or may be made (§ 205.6(b)(5)(iii)).

Relation of Error Resolution to Truth in Lending. Regulation E's liability and error resolution provisions apply to an extension of credit that occurs under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn, to maintain a specified minimum balance in the consumer's account, or under an overdraft service (§ 205.12(a)(1)(ii)). As provided in § 205.12 and related commentary, for transactions involving access devices that also function as credit cards, the liability and error resolution provisions of Regulation E or Regulation Z will apply depending on the nature of the transaction:

- If the unauthorized use of a combined access device-credit card solely involves an extension of credit, other than an extension of credit described under § 205.12(a)(1)(iii), and does not involve an EFT, for example, when the card is used to draw cash advances directly from a credit line, only the error resolution provisions of Regulation Z will apply.
- If the unauthorized use of a combined access device-credit card involves only an EFT, for example, debit card purchases or cash withdrawals at an ATM from a checking account, only the error resolution provisions of Regulation E will apply.
- If a combined access device-credit card is stolen and unauthorized transactions are made by using the card as both a debit card and a credit card, Regulation E will apply to the unauthorized transactions in which the card was used as a debit card, and Regulation Z will apply to the unauthorized transactions in which the card was used as a credit card.

Procedures for Resolving Errors – § 205.11

This section defines the term **error** and describes the steps the consumer must take when asserting an error in order to receive the protection of the EFTA and Regulation E, and the procedures that a financial institution must follow to resolve an alleged error.

An **error** includes any of the following:

- An unauthorized EFT.
- An incorrect EFT to or from the consumer's account.
- The omission from a periodic statement of an EFT to or from the consumer's account that should have been included.
- A computational or bookkeeping error made by the financial institution relating to an EFT.
- The consumer's receipt of an incorrect amount of money from an electronic terminal;
- An EFT not identified in accordance with the requirements of §§ 205.9 or 205.10(a).
- A consumer's request for any documentation required by §§ 205.9 or 205.10(a) or for additional information or clarification concerning an EFT (§ 205.11(a)(1)).

The term **error** does not include:

- A routine inquiry about the balance in the consumer's account or a request for duplicate copies of documentation or other information that is made only for tax or other record-keeping purposes (§§ 205.11(a)(2)(i), (ii), and (iii)).
- The fact that a financial institution does not make a terminal receipt available for a transfer of \$15 or less in accordance with 205.9(e) (Staff Commentary 205.11(a)-6).

A financial institution must comply with the error resolution procedures in § 205.11 with respect to any oral or written notice of error from the consumer that:

- The financial institution receives not later than 60 days after sending a periodic statement or other documentation first reflecting the alleged error (see § 205.14 and 205.18).
- Enables the financial institution to identify the consumer's name and account number.
- Indicates why the consumer believes the error exists and, to the extent possible, the type, date, and amount of the error (§ 205.11(b)(1)).

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A financial institution may require a consumer to give written confirmation of an error within 10 business days of giving oral notice. The financial institution must provide the address where confirmation must be sent (§ 205.11(b)(2)).

Error Resolution Procedures. After receiving a notice of error, the financial institution must do all of the following:

- Promptly investigate the oral or written allegation of error.
- Complete its investigation within 10 business days (§ 205.11(c)(1)).
- Report the results of its investigation within three business days after completing its investigation.
- Correct the error within one business day after determining that an error has occurred.

The financial institution may take up to 45 calendar days (§ 205.11(c)(2)) to complete its investigation provided it:

- Provisionally credits the funds (including interest, where applicable) to the consumer's account within the 10 business-day period.
- Advises the consumer within 2 business days of the provisional crediting.
- Gives the consumer full use of the funds during the investigation.

A financial institution need not provisionally credit the account to take up to 45 calendar days to complete its investigation if the consumer fails to provide the required written confirmation of an oral notice of error, or if the notice of error involves an account subject to the margin requirements or other aspects of Regulation T (Securities Credit by Brokers and Dealers, 12 CFR part 220) (§ 205.11(c)(2)(i)(B)).

However, where an error involves an unauthorized EFT, the financial institution must comply with the requirements of the provisions relating to unauthorized EFTs before holding the consumer liable, even if the consumer does not provide a notice of error within the time limits in § 205.11(b) (Staff Commentary 205.11(b)(1)-7).

When investigating a claim of error, the financial institution need only review its own records if the alleged error concerns a transfer to or from a third party, and there is no agreement between the financial institution and the third party for the type of EFT involved (§ 205.11(c)(4)). However, the financial institution may not limit its investigation solely to the payment instructions where other information within the financial institution's records pertaining to a particular account may help to resolve a consumer's claim (Staff Commentary 205.11(c)(4)-5).

If, after investigating the alleged error, the financial institution determines that an error has occurred, it must promptly (within one business day after such determination) correct the error, including the crediting of interest if applicable. The financial institution must provide within three business days of the completed investigation an oral or written report of the correction to the consumer and, as applicable, notify the consumer that the provisional credit has been made final (§ 205.11(c)(2)(iii) and (iv)).

If the financial institution determines that no error occurred or that an error occurred in a different manner or amount from that described by the consumer, the financial institution must mail or deliver a written explanation of its findings within three business days after concluding its investigation. The explanation must include a notice of the consumer's rights to request the documents upon which the financial institution relied in making its determination (§ 205.11(d)).

Upon debiting a provisionally credited amount, the financial institution must notify the consumer of the date and amount of the debit and of the fact that the financial institution will honor (without charge) checks, drafts, or similar paper instruments payable to third parties and preauthorized debits for five business days after transmittal of the notice. The financial institution need honor only items that it would have paid if the provisionally credited funds had not been debited. Upon request from the consumer, the financial institution must promptly mail or deliver to the consumer copies of documents upon which it relied in making its determination (§ 205.11(d)(2)).

If a notice involves an error that occurred within 30 days after the first deposit to the account was made, the time periods are extended from 10 and 45 days, to 20 and 90 days, respectively. If the notice of error involves a transaction that was not initiated in a state or resulted from a point-of-sale debit card transaction, the 45-day period is extended to 90 days (§ 205.11(c)(3)).

If a financial institution has fully complied with the investigation requirements, it generally does not need to reinvestigate if a consumer later reasserts the same error. However, it must investigate a claim of error asserted by a consumer following receipt of information provided pursuant to § 205.11(a)(1)(vii) (§ 205.11(e)).

VI. RECEIPTS AND PERIODIC STATEMENTS

Documentation of Transfers – § 205.9

Electronic terminal receipts. Receipts must be made available at the time a consumer initiates an EFT at an electronic terminal (§ 205.9(a)). Financial institutions may provide receipts only to consumers who request one (Staff Commentary 205.9(a)-1). The receipt must include, as applicable:

- *Amount of the transfer* – a charge for making the transfer may be included in the amount, provided the charge is disclosed on the receipt and on a sign posted on or at the terminal.
- *Date* – the date the consumer initiates the transfer.

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- *Type of transfer and type of account* – descriptions such as “withdrawal from checking” or “transfer from savings to checking” are appropriate. This is true even if the accounts are only similar in function to a checking account (such as a share draft or NOW account) or a savings account (such as a share account). If the access device used can only access one account, the type of account may be omitted (Staff Commentaries 205.9(a)(3)-1; 205.9(3)-2; 205.9(3)-4; and 205.9(3)-5).
- *Number or code identifying the consumer’s account(s) or the access device used to initiate the transfer* – the number and code need not exceed four digits or letters.
- *Location of the terminal* – The location of the terminal where the transfer is initiated or an identification, such as a code or terminal number. If the location is disclosed, except in limited circumstances where all terminals are located in the same city or state, the receipt must include the city and state or foreign country and one of the following:
 - Street address of the terminal;
 - Generally accepted name for the location of the terminal (such as an airport, shopping center, or branch of a financial institution); or
 - Name of the entity (if other than the financial institution providing the statement) at whose place of business the terminal is located, such as a store, and the city, state, or foreign country (§ 205.9(a)(5)).

Name of any third party to or from whom funds are transferred – a code may be used to identify the party if the code is explained on the receipt. This requirement does not apply if the name of the party is provided by the consumer in a manner the terminal cannot duplicate on the receipt, such as on a payment stub (§ 205.9(a)(6) and Staff Commentary 205.9(a)(6)-1).

Receipts are not required for electronic EFTs of \$15 or less (§ 205.9(e)).

Periodic statements. Periodic statements must be sent for each monthly cycle in which an EFT has occurred, and at least quarterly if no EFT has occurred (§ 205.9(b)). For each EFT made during the cycle, the statement must include, as applicable:

- Amount of the transfer - if a charge was imposed at an electronic terminal by the owner or operator of the terminal, that charge may be included in the amount.
- Date the transfer was posted to the account.
- Type of transfer(s) and type of account(s) to or from which funds were transferred.

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- For each transfer (except deposits of cash, or a check, draft or similar paper instrument to the consumer's account) initiated at an electronic terminal, the terminal location as required for the receipt under § 205.9(a)(5).
- Name of any third party payee or payor.
- Account number(s).
- Total amount of any fees and charges, other than a finance charge as defined by Regulation Z, assessed during the period for making EFTs, the right to make EFTs, or for account maintenance.
- Balance in the account at the beginning and close of the statement period.
- Address and telephone number to be used by the consumer for inquiries or notice of errors. If the financial institution has elected to send the abbreviated error notice with every periodic statement, the address and telephone number may appear on that document.
- If the financial institution has provided a telephone number which the consumer can use to find out whether or not a preauthorized transfer has taken place, that telephone number.

Exceptions to the Periodic Statement Requirement for Certain Accounts.

Passbook accounts. Where a consumer's passbook may not be accessed by an EFT other than preauthorized transfers to the account, a periodic statement need not be sent, provided that the financial institution updates the consumer's passbook or provides the required information on a separate document at the consumer's request. To update the passbook, the amount and date of each EFT made since the passbook was last presented must be listed (§ 205.9(c)(1)(i)). For other accounts that may be accessed only by preauthorized transfers to the account, the financial institution must send a periodic statement at least quarterly (§ 205.9(c)(1)(ii)).

Transfers between accounts. If a transfer occurs between two accounts of the consumer at the same financial institution, the transfer need only be documented for one of the two accounts (§ 205.9(c)(2)). A preauthorized transfer between two accounts of the consumer at the same financial institution is subject to the § 205.9(c)(1) rule on preauthorized transfers and not the § 205.9(c)(2) rule on intra-institutional transfers (§ 205.9(c)(3)).

Documentation for Foreign-initiated transfers. If an EFT is initiated outside the United States, the financial institution need not provide a receipt or a periodic statement reflecting the transfer if it treats an inquiry for clarification or documentation as a notice of error (§ 205.9(d)).

Alternatives to Periodic Statements for Financial Institutions Offering Payroll Card Accounts – § 205.18

This section provides an alternative to providing periodic statements for payroll card accounts if financial institutions make the account information available to consumers by specific means. In addition, this section clarifies how financial institutions that do not provide periodic statements for payroll card accounts can comply with the Regulation E requirements relating to initial disclosures, the annual error resolution notice, liability limits, and the error resolution procedures.

Typically, employers and third-party service providers do not meet the definition of a “financial institution” subject to the regulation because they neither (i) hold payroll card accounts nor (ii) issue payroll cards and agree with consumers to provide EFT services in connection with payroll card accounts. However, to the extent an employer or a service provider undertakes either of these functions, it would be deemed a financial institution under the regulation (Staff Commentary 205.18(a)-2).

Alternative to Periodic Statements. A financial institution does not need to furnish periodic statements required by § 205.9(b) if the financial institution makes available to the consumer the following:

- The account balance, through a readily available telephone line.
- An electronic history of account transactions covering at least 60 days preceding the date the consumer electronically accesses the account.
- A written history of the account transactions provided promptly in response to an oral or written request and covering at least 60 days preceding the date the financial institution receives the consumer’s request (§ 205.18(b)(1)).

The history of account transactions must include the same type of information required on periodic statements under § 205.9(b) (§ 205.18(b)(2)).

Requirements to Comply with Regulation E. If a financial institution provides an alternative to periodic statements under § 205.18(b), it must comply with the following:

- Modify the initial disclosures under § 205.7(b) by disclosing:
 - A telephone number that the consumer may call to obtain the account balance; the means by which the consumer can obtain an electronic account history, such as the address of an Internet website; and a summary of the consumer’s right to receive a written account history upon request (in place of the summary of the right to receive a periodic statement required by § 205.7(b)(6)), including a telephone number to call to request a history. The disclosure required by § 205.18(c)(1)(i) may be made by providing a notice substantially similar to the notice contained in paragraph A-7(a) in Appendix A of Part 205.

- A notice concerning error resolution that is substantially similar to the notice contained in paragraph A-7(b) in Appendix A, in place of the notice required by § 205.7(b)(10).
- Provide an annual error resolution notice that is substantially similar to the notice contained in paragraph (b) to A-7 - Model Clauses for Financial Institutions Offering Payroll Card Accounts in Appendix A of Part 205, in place of the notice required by § 205.8(b). Alternatively, a financial institution may include on or with each electronic and written history provided in accordance with § 205.18(b)(1), a notice substantially similar to the abbreviated notice for periodic statements contained in paragraph A-3(b) in Appendix A, modified as necessary to reflect the error-resolution provisions set forth in this section.
- Limits on consumer liability.
 - For purposes of § 205.6(b)(3), the 60-day period for reporting any unauthorized transfer begins on the earlier of:
 - ⇒ The date the consumer electronically accesses the consumer's account under § 205.18(b)(1)(ii), provided that the electronic history made available to the consumer reflects the transfer; or
 - ⇒ The date the financial institution sends a written history of the consumer's account transactions requested by the consumer under § 205.18(b)(1)(iii) in which the unauthorized transfer is first reflected.
 - A financial institution may limit the consumer's liability for an unauthorized transfer as provided under § 205.6(b)(3) for transfers reported by the consumer within 120 days after the transfer was credited or debited to the consumer's account.
- Comply with error resolution requirements.
 - An error notice is considered timely, and the financial institution must comply with the requirements of § 205.11, if the financial institution receives notice from the consumer no later than the earlier of:
 - ⇒ 60 days after the date the consumer electronically accesses the consumer's account under § 205.18(b)(1)(ii), provided that the electronic history made available to the consumer reflects the alleged error; or
 - ⇒ 60 days after the date the financial institution sends a written history of the consumer's account transactions requested by the consumer under § 205.18(b)(1)(iii) in which the alleged error is first reflected.

- Alternatively, a financial institution complies with the error resolution requirements in § 205.11 if it investigates any oral or written notice of an error from the consumer that is received by the financial institution within 120 days after the transfer allegedly in error was credited or debited to the consumer's account.

VII. GIFT CARDS – § 205.20

Background

A gift card is a type of prepaid card that is designed to be purchased by one consumer and given to another consumer as a present or expression of appreciation or recognition. When provided in the form of a plastic card, a user of a gift card is able to access and spend the value associated with the device by swiping the card at a POS terminal, much as a person would use a debit card. There are two distinct types of gift cards: closed-loop cards and open-loop cards. Closed-loop gift cards constitute the majority of the gift card market, are typically issued by a merchant, not by a financial institution, and generally can only be used to make purchases at the merchant or group of merchants. Open-loop gift cards are generally issued by financial institutions, typically carry a card network brand logo, can be used at a wide variety of merchants and are more likely to carry fees compared to closed-loop gift cards, including card issuance and transaction-based fees. Open-loop gift cards are more likely to offer the capability of being reloaded with additional value (reloadable) than are closed-loop gift cards.

Concerns have been raised regarding the amount of fees associated with gift cards, the expiration dates of gift cards, and the adequacy of disclosures. Consumers who do not use the value of the card within a short period of time may be surprised to find that the card has expired or that dormancy or service fees have reduced the value of the card. Even where fees or terms are disclosed on or with the card, the disclosures may not be clear and conspicuous. This rule contains restrictions on dormancy, inactivity and service fees and expiration dates.

Scope of the gift card rule. The rule is generally limited to gift certificates, store gift cards, or general-use prepaid cards sold or issued to consumers primarily for personal, family, or household purposes. It generally does not apply to cards, codes, or other devices that are reloadable and not marketed or labeled as a gift card or gift certificate and loyalty, award, and promotional gift cards. See also the exclusions from the gift card definitions, described above.

Restrictions on Dormancy, Inactivity, or Service Fees (§ 205.20(d)).

No person may impose a dormancy, inactivity, or service fee with respect to a gift certificate, store gift card, or general-use prepaid card, unless three conditions are satisfied:

- There has been no activity with respect to the certificate or card within the one-year period prior to the imposition of the fee;
- Only one such fee is assessed in a given calendar month; and

- Disclosures regarding dormancy, inactivity, or service fees are clearly and conspicuously stated on the certificate or card, and the person issuing or selling the certificate or card has provided these disclosures to the purchaser before the certificate or card is purchased. See the disclosure section, above, for additional information.

Expiration Date Restrictions (§ 205.20(e)). A gift certificate, store gift card, or general-use prepaid card may not be sold or issued unless the expiration date of the funds underlying the certificate or card is no less than five years after the date of issuance (in the case of a gift certificate) or five years after the date of last load of funds (in the case of a store gift card or general-use prepaid card). In addition, information regarding whether funds underlying a certificate or card may expire must be clearly and conspicuously stated on the certificate or card and disclosed prior to purchase.

No person may sell or issue a certificate or card with an expiration date unless the person has established policies and procedures to provide consumers with a reasonable opportunity to purchase a certificate or card that has an expiration date that is at least five years from the date of purchase. A person who has established policies and procedures to prevent the sale of a certificate or card with less than five years from the date of purchase satisfies this requirement.

A certificate or card generally must include a disclosure alerting consumers to the difference between the certificate or card expiration date and the funds expiration date, if any, and that the consumer may contact the issuer for a replacement card. This disclosure must be stated with equal prominence and in close proximity to the certificate or card expiration date. Non-reloadable certificates or cards that bear an expiration date on the certificate or card that is at least seven years from the date of manufacture need not include this disclosure. See the disclosure section, above, for additional information.

To ensure that consumers are able to access the underlying funds for the full five-year period, fees may not be imposed for replacing an expired certificate or card if the underlying funds remain valid (unless the card has been lost or stolen). In lieu of sending a replacement certificate or card, issuers may remit, without charge, the remaining balance of funds to the consumer.

Effective Date. The requirements of this section apply to any gift certificate, store gift card, or general-use prepaid card sold to a consumer on or after August 22, 2010 or provided to the consumer as a replacement for such certificate or card.¹⁷

¹⁷ For gift cards produced before April 1, 2010, the mandatory compliance date is extended to January 31, 2011, for several disclosures on the card (12 CFR § 205.20(h)).

VIII. OTHER REQUIREMENTS

Preauthorized Transfers – § 205.10

A preauthorized transfer may be either a credit to, or a debit from, an account.

Preauthorized transfers to a consumer's account. When an account is scheduled to be credited by a preauthorized EFT from the same payor at least once every 60 days, the financial institution must provide some form of notice to the consumer so that the consumer can find out whether or not the transfer occurred (§ 205.10(a)). The notice requirement will be satisfied if the payor provides notice to the consumer that the transfer has been initiated. If the payor does not provide notice, the financial institution must adopt one of three alternative procedures for giving notice.

- The financial institution may give the consumer oral or written notice within two business days after a preauthorized transfer occurs.
- The financial institution may give the consumer oral or written notice, within two business days after the preauthorized transfer was scheduled to occur, that the transfer did not occur.
- The financial institution may establish a readily available telephone line¹⁸ that the consumer may call to find out whether a preauthorized transfer has occurred. If the financial institution selects this option, the telephone number must be disclosed on the initial disclosures and on each periodic statement.

The financial institution need not use any specific language to give notice but may not simply provide the current account balance (Staff Commentary 205.10(a)(1)-1). The financial institution may use different methods of notice for different types of preauthorized transfers and need not offer consumers a choice of notice methods (Staff Commentary 205.10(a)(1)-2).

The financial institution that receives a preauthorized transfer must credit the consumer's account as of the day the funds are received (§ 205.10(a)(3)).

Preauthorized transfers from a customer's account. Preauthorized transfers from a consumer's account may only be authorized by the consumer in writing and signed or similarly authenticated by the consumer (§ 205.10(b)). Signed, written authorizations may be provided electronically, subject to the E-Sign Act (Staff Commentary 205.10(b)-5). In all cases, the party that obtains the authorization from the consumer must provide a copy to the consumer. If a third party payee fails to obtain an authorization in

¹⁸ The telephone line must be "readily available" so that consumers calling to inquire about transfers are able to have their calls answered reasonably promptly during normal business hours. During the initial call in most cases and within two business days after the initial call in all cases, the financial institution should be able to verify whether the transfer was received (Staff Commentary 205.10(a)(1)-5). Within its primary service area, a financial institution must provide a local or toll-free telephone number (Staff Commentary 205.10(a)(1)-7).

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writing or fails to provide a copy to the consumer, the third party payee and not the financial institution has violated Regulation E (Staff Commentary 205.10(b)-2).

Stop payments. Consumers have the right to stop payment of preauthorized transfers from accounts. The consumer must notify the financial institution orally or in writing at any time up to three business days before the scheduled date of the transfer (§ 205.10(c)(1)). If the debit item is resubmitted, the institution must continue to honor the stop-payment order. (Staff commentary 205.10(c)(1)) The financial institution may require written confirmation of an oral stop payment order to be made within 14 days of the consumer's oral notification. If the financial institution requires a written confirmation, it must inform the consumer at the time of the oral stop payment order that written confirmation is required and provide the address to which the confirmation should be sent. If the consumer fails to provide written confirmation, the oral stop payment order ceases to be binding after 14 days (§ 205.10(c)(2)).

Notice of transfers varying in amount. If a preauthorized transfer from a consumer's account varies in amount from the previous transfer under the same authorization or the preauthorized amount, either the financial institution or the designated payee must send to the consumer a written notice, at least 10 days before the scheduled transfer date, of the amount and scheduled date of the transfer (§ 205.10(d)(1)). The consumer may elect to receive notice only when the amount varies by more than an agreed amount or falls outside a specified range (§ 205.10(d)(2)). The range must be an acceptable range that the consumer could reasonably anticipate (Staff Commentary 205.10(d)(2)-1). The financial institution does not violate Regulation E if the payee fails to provide sufficient notice (Staff Commentary 205.10(d)-1).

Compulsory use. The financial institution may not make it a condition for an extension of credit that repayment will be by means of preauthorized EFT, except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account (§ 205.10(e)(1)). The financial institution may offer a reduced APR or other cost-related incentive for an automatic payment feature as long as the creditor offers other loan programs for the type of credit involved (Staff Commentary 205.10(e)(1)-1).¹⁹

Services Offered by Provider Not Holding Consumer's Account – § 205.14

A person who provides EFT services to a consumer but does not hold the consumer's account is a service provider subject to § 205.14 if the person issues an access device that the consumer can use to access the account and no agreement exists between the person and the account-holding financial institution. Transfers initiated by a service provider are often cleared through an automated clearinghouse (ACH).

¹⁹ This section also prohibits anyone from requiring the establishment of an account for receipt of EFTs with a particular financial institution either as a condition of employment or the receipt of a government benefit (§ 205.10(e)(2)). However, the employer may require direct deposit of salary, as long as the employee may choose the financial institution that will accept the direct deposit, or limit direct deposits to one financial institution as long as the employee may choose to receive salary by other means (*e.g.*, check or cash) (Staff Commentary 205.10(e)(2)-1).

The responsibilities of the service provider are set forth in §§ 205.14(b)(1) and (2). The duties of the account-holding financial institution with respect to the service provider are found in §§ 205.14(c)(1) and (2).

Electronic Fund Transfer of Government Benefits – § 205.15

Section 205.15 contains the rules that apply to electronic benefit transfer (EBT) programs. It provides that government agencies must comply with modified rules on the issuance of access devices, periodic statements, initial disclosures, liability for unauthorized use, and error resolution notices.

IX. RELATION TO OTHER LAWS – § 205.12

This section describes the relationship between the EFTA and the Truth in Lending Act (TILA). The section also provides procedures for states to apply for exemptions from the requirements of the EFTA or Regulation E for any class of EFTs within the state.

The EFTA governs the following:

- The issuance of debit cards and other access devices with EFT capabilities.
- The addition of EFT features to credit cards.
- The issuance of access devices whose only credit feature is a pre-existing agreement to extend credit to cover account overdrafts or to maintain a minimum account balance, or is an overdraft service.

The TILA governs all of the following:

- The issuance of credit cards as defined in Regulation Z.
- The addition of a credit feature to a debit card or other access device, other than an overdraft service.
- The issuance of dual debit/credit cards, except for access devices whose only credit feature is a pre-existing agreement to cover account overdrafts or to maintain a minimum account balance, or is an overdraft service.

The EFTA and Regulation E preempt inconsistent state laws, but only to the extent of the inconsistency. The Board is given the authority to determine whether or not a state law is inconsistent. A financial institution, state, or other interested party may request the Board to make such a determination. A state law will not be deemed inconsistent if it is more protective of the consumer than the EFTA or Regulation E. Upon application, the Board has the authority to exempt any state from the

requirements of the Act or the regulation for any class of EFTs within a state, with the exception of the civil liability provision.

X. ADMINISTRATIVE ENFORCEMENT, RECORD RETENTION – § 205.13

Section 917 of the EFTA sets forth the federal agencies responsible for enforcing compliance with the provisions of the Act.

Record retention. Financial institutions must maintain evidence of compliance with the EFTA and Regulation E for at least two years. The agency supervising the financial institution may extend this period. The period may also be extended if the financial institution is subject to an action filed under Sections 910, 915 or 916(a) of the EFTA, which generally apply to the financial institution's liability under the EFTA and Regulation E. Persons subject to the EFTA who have actual notice that they are being investigated or subject to an enforcement proceeding must retain records until disposition of the proceeding.

Records may be stored on microfiche, microfilm, magnetic tape, or in any other manner capable of accurately retaining and reproducing the information.

XI. MISCELLANEOUS

EFTA contains several additional provisions that are not directly reflected in the language of Regulation E. Most significantly, 15 USC 1693j provides that the consumer may not waive by agreement any right conferred, or cause of action created, by the EFTA. However, the consumer and another person may provide by agreement greater consumer protections or additional rights or remedies than those provided by EFTA. In addition, the consumer may sign a waiver in settlement of a dispute.

If a third party payee has agreed to accept payment by EFT, the consumer's obligation to pay is suspended during any period in which a system malfunction prevents an EFT from occurring (15 USC 1693j). However, the payee may avoid that suspension by making a written request for payment by means other than EFT.

Failure to comply with the requirements of EFTA can result in civil and criminal liability, as outlined in 15 USC 1693m and 15 USC 1693n. Financial institutions may also be liable for damages under 15 USC 1693h due to failure to complete an EFT or failure to stop a preauthorized transfer when instructed to do so.

Model disclosure clauses and forms (12 CFR 205, Appendix A) Appendix A of Regulation E contains model clauses and forms that financial institutions may use to comply with the requirement disclosure requirements of Regulation E. Use of the model forms is optional and a financial institution may make

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certain changes to the language or format of the model forms without losing the protection from civil and criminal liability under Sections 915 and 916 of the EFTA. The model forms are:

- A-1 Model Clauses for Unsolicited Issuance (§ 205.5(b)(2))
- A-2 Model Clauses for Initial Disclosures (§ 205.5(b)(2))
- A-3 Model Forms for Error Resolution Notice (§ 205.7(b)(10) and 205.8(b))
- A-4 Model Form for Service-Providing Institutions (§ 205.14(b)(1)(ii))
- A-5 Model Forms for Government Agencies (§ 205.15(d)(1) and(2))
- A-6 Model Clauses for Authorizing One-Time Electronic Fund Transfers Using Information from a Check (§ 205.3(b)(2))
- A-7 Model Clauses for Financial Institutions Offering Payroll Card Accounts (§ 205.18(c))
- A-8 Model Clause for Electronic Collection of Returned Item Fees (§ 205.3(b)(3))
- A-9 Model Consent Form for Overdraft Services (§ 205.17)

REFERENCES

Laws

- 15 USC 1693 et seq. Electronic Fund Transfer Act
- 15 USC 7001 et seq. Electronic Signatures in Global and National Commerce

Regulations

- 12 CFR Part 205 Electronic Fund Transfers

OTS Transmittals

- No. 459 FRB amends Reg E, Electronic Fund Transfer Act (8/31/2010)
 - No. 455 FRB amends Reg DD to conform with Reg E (6/14/2010)
 - No. 454 FRB published final clarification to Reg E (6/14/2010)
 - No. 449 FRB issued final rule amending Reg E (4/27/2010)
 - No. 441 Electronic Fund Transfers, Final Rule (12/3/2009)
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