ELECTRONIC FUNDS TRANSFER ACT (REGULATION E) OVERVIEW

Overview

Regulation E implements the provisions of the Electronic Funds Transfer Act (EFTA). The regulation establishes the basic rights, liabilities, and responsibilities of consumers who use electronic fund transfer services and of credit unions that offer these services. The primary objective of the regulation is the protection of individual consumers engaging in electronic fund transfers.

The term electronic fund transfer (EFT) means any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a credit union to debit or credit an account. The term includes, but is not limited to:

- Point-of-sale transfers;
- Automated teller machine 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.

The term electronic fund transfer does not include:

- Checks - Any transfer of funds originated by check, draft, or similar paper instrument; or any payment made by check, draft, or similar paper instrument at an electronic terminal.
- Check guarantee or authorization – Any transfer of funds that guarantees payment or authorizes acceptance of a check, draft, or similar paper instrument but that does not directly result in a debit or credit to a member's account.
- Wire or other similar transfers - Any transfer of funds through Fedwire or through a similar wire transfer system that is used primarily for transfers between financial institutions or between businesses.
- Securities and commodities transfers – Any transfer of funds the primary purpose of which is the purchase or sale of a security or commodity under certain conditions.
- Automatic transfers by account-holding institution - Any transfer of funds under an agreement between a member and a credit union which provides that the credit union will initiate individual transfers without a specific request from the member.
- Telephone-initiated transfers - Any transfer of funds that is initiated by a telephone communication between a member and a credit union making the

transfer; and does not take place under a telephone bill-payment or other written plan in which periodic or recurring transfers are contemplated.
- Small institutions – Any preauthorized transfer to or from an account if the assets of the account-holding credit union were $100 million or less on the preceding December 31. Preauthorized transfers exempt remain subject to Section 205.10 (e) regarding compulsory use and Sections 915 and 916 of the Act regarding civil and criminal liability.

Access Devices

An access device is a card, code, or other means of access to a member's account, or any combination thereof, that may be used by the member to initiate electronic fund transfers.

A credit union may issue a solicited access device:

- In response to an oral or written request for the device; or
- As a renewal of, or in substitution for, an accepted access device whether issued by the institution or a successor.

A credit union may only issue an unsolicited access device if it is:

- Not validated, meaning that the credit union has not yet performed all the procedures that would enable a member to initiate an electronic fund transfer using the access device;
- Accompanied by a clear explanation that the access device is not validated and how the consumer may dispose of it if validation is not desired;
- Accompanied by the initial disclosures of the member's rights and liabilities that will apply if the access device is validated; and
- Validated only in response to the member's oral or written request for validation, after the credit union has verified the member's identity by a reasonable means.

Disclosures

Regulation E requires credit unions to provide members with an initial disclosure at the time the member contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving the member's account. The disclosure must contain the following information:

- Liability of the member;
- Telephone number and address of the office to be notified in the case of an unauthorized electronic fund transfer;
- Business days;
- Types of transfers and limitations;
- Fees;
- Summary of the member's right to receipts and periodic statements;

- Stop payment rights;
- Liability of the credit union;
- Circumstances in which the credit union may provide information about the member's account to third parties;
- Error resolution; and
- ATM fees.

If there are adverse changes in fees, the member's liability, types of transfers available, or limits on transfers, the credit union must provide a change-in-terms notice at least 21 days before the changes take effect. The credit union must periodically send a reminder of the error-resolution procedures. It may send a detailed notice annually or provide an abbreviated notice with each account statement.

Members must receive a receipt when they initiate an electronic transfer and monthly in the form of periodic statements. Both documents must include the type of electronic transfer, the amount and date of the transaction, and the location of the terminal.

Member Liability for Unauthorized Transfers

Loss or Theft

- If a member gives notice within two business days of learning of loss or theft, the member's liability will not exceed the lesser of $50 or the amount of unauthorized transfers that occur before notifying the credit union.
- If member fails to notify credit union within two business days of learning of loss or theft, members liability will not exceed the lesser of $500 or the sum of $50 or the amount of unauthorized transfers that occurred during the two business days, whichever is less, plus the amount of unauthorized transfers that occurred after the first two business days that the credit union can establish would not have occurred if the member had given notice within two business days.

Periodic statement

- A member must notify credit union within 60 days of the credit union's transmittal of a periodic statement that shows an unauthorized transfer to avoid liability for subsequent transfers.
- If the member fails to notify the credit union within 60 days, the member will be liable up to the amount of the unauthorized transfers that occur after the close of the 60 days and before notice is given to the credit union, as long as the credit union can establish that the transfers would not have occurred had the member given notice within 60 days. Notice may be considered constructively given if the credit union becomes aware of circumstances leading to a reasonable belief that an unauthorized transfer has been made.

Associated Risks

- Compliance risk can occur when the credit union fails to implement the necessary controls to comply with Regulation E.

Additional Information

Additional information is available on the Federal Reserve Board's website at http://www.federalreserve.gov .

ELECTRONIC FUNDS TRANSFER ACT

(REGULATION E)

OPERATIONAL REQUIREMENTS

Disclosures / Notices

Initial Disclosures [Section 205.7]

At the time a member contracts for an electronic fund transfer (EFT) service or before the first EFT is made involving a member's account, a credit union must provide certain initial disclosures to the member concerning the terms, conditions, charges, liability, and other matters outlined in Section 205.7(b) relating to the use of EFT service. The disclosures must be clear and readily understandable, in writing, and in a form the member may keep. See Appendix A of Regulation E for model disclosure forms.

Change in Terms Notice [Section 205.8(a)]

A credit union must provide members with written notice at least 21 days before the effective date of any change in a term or condition required to be disclosed under Section 205.7(b) if the change would result in (1) increased member fees, (2) increased member liability, (3) fewer types of available EFTs, or (4) stricter limits on the frequency or dollar amount of transfers. Prior notice need not be given if an immediate change is needed for security reasons.

Error Resolution Notice [Section 205.8(b)]

For each account to or from which EFTs can be made, a credit union must provide the member annually (or in abbreviated form with each periodic statement), a description of the manner for resolving errors in connection with EFT services. See Appendix A of Regulation E for model forms.

Electronic Terminal Receipts [Section 205.9(a)]

At the time a member initiates an electronic transfer at an electronic terminal by a member, the credit union shall provide the member a written receipt showing the amount of the transfer, date of transfer, type of transfer and account(s) accessed, location of terminal, and other information outlined in Section 205.9(a). Note: the amount of the transfer may include a transaction fee if the amount of the fee is disclosed on the receipt and displayed on or at the terminal.

Periodic Statements [Section 205.9(b) & (c)]

For any account to or from which electronic fund transfers can be made, the credit union

shall provide a monthly statement (quarterly, if no transfers have occurred or access is limited to receipt of preauthorized transfers) including a record of each transfer made in the period with date, accounts accessed, location and other information.

Passbook Entries [Section 205.9(c)]

For passbook accounts that only receive preauthorized transfers, the credit union may substitute entry of information on presentation of the passbook by the member in place of providing a periodic statement.

Notice for Preauthorized Transfers [Section 205.10]

Except where the payor provides positive notice to the member that a transfer has been made to his account, the credit union shall provide oral or written notice within two days or a readily available telephone line that the member may call to confirm the status of a preauthorized transfer, as described in Section 205.10(a).

Preauthorized electronic fund transfers (EFTs) from a member's account may be authorized only by a writing signed or similarly authenticated by the member. Members may stop payment of a preauthorized EFT from their account by notifying the credit union orally or in writing at least three business days before the scheduled date of the transfer (and a credit union may require written confirmation of a stop payment order within 14 days of oral notification).

Error Investigation Results and Correction [Section 205.11]

Within 10 days (or 45 days if provisional credit has been given), a credit union must notify the member of the results of the investigation of an alleged error and any required correction that was made. If the credit union determines that no error occurred or that an error occurred in a manner or amount that is different from that described by the member, the credit union must include a written explanation of its findings and note the member's right to request the documents relied upon in making its decision. Upon debiting a provisionally credited amount, the credit union must (i) notify the member of the date and amount of the debiting and (ii) notify the member that the credit union will honor checks and preauthorized transfers for five business days after the notification.

Recordkeeping

Record Retention [Section 205.13(b)]

The credit union must retain evidence of compliance with the requirements of the Regulation for a period of not less than two years from the date disclosures are required to be made or action is required to be taken. The period may be extended in the event of an investigation, action, or proceeding.

Advertising

Unsolicited Distribution of Access Devices [Section 205.5(b)]

A credit union may distribute an access device to a member on an unsolicited basis provided that the device is not validated, required disclosures are made and the device may be validated only in response to the member's oral or written request, which is verified by the credit union. In addition, the access device must be accompanied by a clear explanation that the device is not validated and how the member may dispose of it if validation is not desired.

Enforcement / Liability

Administrative Enforcement Authority

The National Credit Union Administration Board has responsibility for enforcement among federal credit unions, while the Federal Trade Commission enforces Regulation E for state-chartered credit unions.

Civil Liability [15 U.S.C. §1693m]

A credit union may be liable under the Act for (1) actual damages and statutory damages between $100 and $1,000 in the case of individual actions or (2) actual damages and statutory damages up to the lesser of $500,000 or one percent of the credit union's net worth in the case of class action suits. In successful individual and class actions, the member may also recover court costs and reasonable attorney fees.

Criminal Liability [15 U.S.C. §1693n]

Criminal penalties run from a $5,000 fine and one year's imprisonment for knowing and willful failures to comply with the EFTA, to a $10,000 fine and 10 years imprisonment for the fraudulent use of a debit instrument.