

Regulation E

Electronic Fund Transfers

Background

Regulation E (12 CFR 205) implements the Electronic Fund Transfer Act (EFTA) (15 USC 1693 et seq.), which was enacted in November 1978. The EFTA establishes the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. Its primary objective is to protect individual consumers in their dealings with these systems. Examples of EFT services are automated teller machine (ATM) transfers, telephone bill payment services, point-of-sale terminal transfers in retail stores, transfers initiated via the Internet, electronic check conversion transactions, preauthorized transfers to or from a consumer's account (for example, direct deposit of Social Security payments), and debit card transactions whether or not initiated through an electronic terminal.

As defined in the EFTA, the term *electronic fund transfer* refers to a transaction initiated through an electronic terminal or by telephone, computer, or magnetic tape that instructs a financial institution to either credit or debit a consumer's asset account. *Electronic terminals* include point-of-sale terminals, automated teller machines, and cash-dispensing machines. *Asset accounts* include consumer checking, savings, share, and money market accounts held by an institution and established by the consumer primarily for family, personal, or household purposes. Consumers are usually issued an *access device*—a card or a code, or both—that can be used to initiate electronic fund transfers.

Coverage—Section 205.3

Regulation E governs electronic fund transfers to or from an account held primarily for personal, family, or household purposes.

The following are not covered by Regulation E:

- Transfers originated by check
- Check-guarantee and check-authorization services that do not directly result in a debit or credit to a consumer's account
- Any transfer of funds for a consumer through a system that is used primarily to transfer funds between financial institutions or businesses, for example, a wire transfer of funds for a consumer through Fedwire or a similar network
- Any transaction that has as its primary purpose the purchase or sale of securities or commodities regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission

- Intra-institutional automatic transfers
 - Between a consumer's account and the institution itself (except that EFTA sections 913, 915, and 916 are applicable so as to restrict compulsory use)
 - Between two accounts of the consumer within the institution
 - From a consumer's account to a family member's account within the institution
- Telephone-initiated transfers not under a prearranged plan contemplating periodic or recurring transfers
- Preauthorized transfers to or from an account held at a financial institution with assets of \$100 million or less (except that EFTA sections 913, 915, and 916 are applicable)

General Disclosure Requirements; Jointly Offered Services—Section 205.4

Disclosures required by Regulation E must be clear, easily understandable, in writing, and in a form consumers can keep. At the institution's option, disclosures required by other laws (for example, Truth in Lending disclosures) may be made in combination with Regulation E disclosures. In addition, disclosures may be made in a language other than English, provided that disclosures in English are made available at the consumer's request.

If a consumer holds two or more accounts at an institution, the institution may combine the required disclosures into a single statement. Thus, a single periodic statement or error resolution notice is sufficient for multiple accounts. Also, an institution need provide only one set of disclosures for accounts held jointly by two or more consumers.

Two or more institutions that jointly provide EFT services may contract among themselves to fulfill the requirements that the regulation imposes on any or all of them. When making disclosures under section 205.7 (initial disclosures) and section 205.8 (change-in-terms and error resolution notices), each institution that makes its own disclosures in a shared system need make only those required disclosures that are within its knowledge and the purview of its relationship with the consumer for whom it holds an account.

Issuance of Access Devices— Section 205.5

In general, an institution may issue an access device to a consumer only if it has been

- Requested (in writing or orally) or applied for
- Issued as a renewal of, or in substitution for, an accepted access device (as defined in section 205.2(a))

An institution may issue an access device to each account holder (on a joint account) for whom the requesting holder specifically requests an access device.

An institution may issue an unsolicited access device only if the following four conditions are satisfied:

- The access device is not validated, that is, it cannot be used to initiate an electronic fund transfer.
- The access device is validated only upon oral or written request from the consumer and after verification of the consumer's identity by some reasonable means.
- The access device is accompanied by the explanation that it is not validated and of how it can be disposed of if the consumer does not wish to keep it.
- The access device is accompanied by a complete disclosure, in accordance with section 205.7, of the rights and liabilities that will apply if the access device is validated.

These conditions are intended to reduce the potential for unauthorized use if the access device is lost or stolen en route to the consumer and to ensure that the consumer is informed of account terms and conditions before deciding whether to accept the responsibilities of having an access device.

Consumer Liability for Unauthorized Transfers—Section 205.6

A consumer may be held liable for unauthorized electronic fund transfers (EFTs) (as defined in section 205.2(m)) only if all the following conditions have been met:

- The access device is “accepted” (as defined in section 205.2(a)).
- The institution has provided a means of identifying the consumer to whom the access device was issued.
- The institution has provided 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, and
 - The institution's business days.

The table shows the relationship between the time when a consumer notifies the institution of the theft or loss of an access device and his or her maximum liability.

Event	Timing of consumer notification to institution	Maximum liability
Loss or theft of access device ¹	Within 2 business days after learning of the loss or theft	Lesser of \$50 or total amount of unauthorized transfers
Loss or theft of access device ¹	More than 2 business days after learning of the loss or theft	Lesser of \$500 or the sum of <ul style="list-style-type: none"> • \$50 or the total amount of unauthorized transfers occurring in the first 2 business days, whichever is less, and • the amount of unauthorized transfers occurring after 2 business days and before notice to the institution²
	More than 60 calendar days after transmittal of the statement showing the first unauthorized transfer made with the access device	For transfers occurring within the 60-day period, the lesser of \$500 or the sum of <ul style="list-style-type: none"> • the lesser of \$50 or the amount of unauthorized transfers in the first 2 business days and • the amount of unauthorized transfers occurring after 2 business days For transfers occurring after the 60-day period, unlimited liability (until the institution is notified) ³

1. Includes, for example, a personal identification number (PIN) if used without a card in a telephone transaction.
 2. Provided the financial institution demonstrates that these transfers would not have occurred had notice been given within the two-business-day period.
 3. Provided the financial institution demonstrates that these transfers would not have occurred had notice been given within the sixty-day period.

If a consumer's delay in notifying an institution was due to extenuating circumstances, such as extended travel or hospitalization, the institution must extend the time periods for notification to a reasonable time (section 205.6(b)(4)). Also, if any lesser liability limits are imposed by applicable state law or by agreement with the consumer, those limits apply, rather than the limits set by section 205.6(b)(5).

Notice of unauthorized use is considered given to an institution when the consumer takes whatever steps are reasonably necessary to provide the institution with the pertinent information, whether or not any particular employee, in fact, receives the information. At the consumer's option, notice may be given in person, by telephone, or in writing. Notice in writing is considered given at the time the consumer deposits the notice in the mail or delivers the notice for transmission by any other usual means to the institution. Notice is also considered given when the institution becomes aware of circumstances that indicate that an unauthorized transfer has been or may be made.

Initial Disclosure—Section 205.7

An institution must provide a consumer with the following disclosures, in written, retainable form, before the first electronic fund transfer is made or at the time the consumer contracts for an EFT service:

- A summary of the consumer's liability under section 205.6 or other applicable law or agreement
- The telephone number and address of the person or office to notify in the event of loss or unauthorized use
- The institution's business days
- The types of EFTs the consumer may make and any limitations on the frequency and dollar amount of transfers (the details of the limitations may be withheld if the security of the system requires confidentiality)
- Any charges for EFTs or for the right to make EFTs
- A summary of the consumer's right to receive documentation of EFTs as provided in sections 205.9, 205.10(a), and 205.10(d)
- A summary of the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure for initiating a stop-payment order
- A summary of the institution's liability for its failure to make or stop certain transfers
- The circumstances under which the institution in the ordinary course of business will disclose

information to third parties concerning the consumer's account

- An error resolution notice substantially similar to the notice in appendix A to Regulation E
- A notice that a fee may be imposed by another institution if the consumer uses an ATM owned and operated by that other institution

Change in Terms and Error Resolution Notices—Section 205.8

If an institution changes a term or condition required to be disclosed under section 205.7(b), the institution must mail or deliver a written notice to the consumer at least twenty-one days before the effective date of the change if the change would result in any of the following:

- Increased fees or charges for the consumer
- Increased liability for the consumer
- Fewer types of available EFTs
- Stricter limitations on the frequency or dollar amounts of transfers

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

An error resolution notice as set forth in appendix A to the regulation—the same form included with the initial disclosures—must be mailed or delivered to the consumer at least once each calendar year. Alternatively, an error resolution notice substantially similar to the notice set forth in appendix A—the short-form notice—may be included with each periodic statement.

Documentation of Transfers—Section 205.9

Receipts at Electronic Terminals (§ 205.9(a))

A receipt must be given to a consumer at the time the consumer initiates an electronic fund transfer at an electronic terminal. The receipt must include, as applicable,

- The amount of the transfer—A charge for making the transfer may be included in the amount, provided that the charge is (1) disclosed on the receipt and (2) displayed either on a sign posted on or at the terminal or on the terminal screen

(Note, however, that section 205.16 requires disclosure of the fee on *both* the sign and the screen.)

- The calendar date of the transfer
- The type of transfer and type of account—Descriptions such as “withdrawal from checking” and “transfer from savings to checking” are appropriate, even if the account is only *similar* in function to a checking account (for example, a share draft or NOW account) or a savings account (for example, a share account). If the access device used can access only one account at that terminal, the type-of-account requirement does not apply.
- A number or code identifying the consumer, the consumer’s account, or the access device used for the transfer—An institution is in compliance with this account-identification requirement even if numbers or codes are truncated to four or more digits or letters.
- The location of the terminal—The location may be given in the form of a code or terminal number.
- The name of any third party to or from whom funds are transferred—A code may be used to identify the party, but only 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.

Periodic Statements (§ 205.9(b))

Periodic statements generally must be sent monthly if an electronic fund transfer has occurred, or quarterly if no EFT has occurred. For each EFT made during the cycle, the statement must include, as applicable,

- The 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.
- The date the transfer was posted to the account
- The type of transfer and type of account to or from which the funds were transferred
- For transfers (except deposits to the consumer’s account) initiated at electronic terminals, the location of the terminal, using one of the following descriptions:
 - The street address of the terminal, including the city and state, or foreign country
 - A generally accepted name for the location of the terminal (such as an airport, shopping center, or branch of an institution), including the city and state, or foreign country

- The name of the entity (except the institution providing the statement) that owns or operates the terminal, such as a store, along with the city and state, or foreign country
- The name of any third-party payee or payor
- The account number(s) for which the statement is being issued
- The total amount of any fees and charges, other than a finance charge as defined by Regulation Z, assessed during the period for making EFTs, for the right to make EFTs, or for account maintenance
- The balances of each account at the beginning and the close of the statement period
- The address and telephone number to be used by the consumer to make inquiries or give notice of errors—If the institution has elected to send the shorter error notice with every periodic statement, the address and telephone number may appear on that document.
- If the institution has provided a telephone number that the consumer can call to find out whether or not a preauthorized transfer has taken place, that telephone number (see section 205.10(a))

If a consumer’s passbook cannot be accessed by an electronic fund transfer, other than a preauthorized transfer 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. Passbook updates must list the amount and date of each EFT made since the passbook was last presented.

If the consumer has a non-passbook account that cannot be accessed by an EFT, other than a preauthorized transfer to the account, a periodic statement need be sent only quarterly.

Preauthorized Transfers— Section 205.10

Notice Requirements

If an account is scheduled to be credited by a preauthorized electronic fund transfer from the same payor at least once every sixty days, some form of notice must be provided to the consumer so that the consumer can determine whether or not the transfer occurred.

The notice requirement is satisfied if the payor notifies the consumer that the transfer has been initiated. If the payor does not notify the consumer, the burden is on the institution to do so. The

institution may provide the notice in one of three ways:

- Positive notice—Provide an oral or written notice to the consumer every time a preauthorized transfer occurs, within two business days after the transfer occurred
- Negative notice—Provide an oral or written notice to the consumer, within two business days after the date on which a transfer was scheduled to occur, that the transfer did not occur
- Notice by telephone—Establish a telephone line that the consumer may access to determine whether a preauthorized transfer has occurred. The telephone number must be disclosed on the initial disclosures and on each periodic statement. The telephone line must be “readily available” so that consumers calling to inquire about their transfers are able to have their calls answered with little difficulty. In addition, it is expected that these telephone notice systems will be designed so that consumers within the institution’s primary service area do not have to bear the cost of long-distance calls to inquire about transfers. Therefore, a multibranch institution with a statewide customer base could either provide consumers with a toll-free number or designate local numbers for different communities within the state.

Preauthorized transfers must be credited to a consumer’s account as of the day the funds are received. The institution need not, however, make the funds available as of the day they are credited.

Authorization of Preauthorized Transfers

Preauthorized transfers from a consumer’s account may be authorized only by a writing signed by the consumer or “similarly authenticated” by the consumer (such as an electronic communication with an electronic signature). The party that obtains the authorization from the consumer must provide the consumer with a copy of the authorization.

Right to Stop Payment

A consumer has the right to stop payment of a preauthorized transfer from an account. To exercise this right, the consumer must notify the institution, orally or in writing, at any time up to three business days before the scheduled date of the transfer. An institution may require a consumer to provide a written confirmation of an oral stop-payment order within fourteen days of the consumer’s oral notification. However, the institution may impose this written confirmation requirement only if the consumer was informed of the requirement at the time the oral notice was given and was provided with the address to which the confirmation must be sent. If

the institution requires written confirmation, the oral stop-payment order ceases to be binding fourteen days after the date it was made.

Notice of Preauthorized Transfers Varying in Amount

An institution or designated payee must notify the consumer in writing if a preauthorized transfer from the consumer’s account will vary in amount from the previous transfer under the same authorization or from the preauthorized amount. The notification must be mailed or delivered to the consumer at least ten days before the scheduled transfer date and must specify the amount and scheduled date of the transfer. However, if the institution or the payee informs the consumer of his or her right to receive advance notice of varying transfer amounts, the consumer may elect to receive notice only when the amount varies from the most recent transfer by more than an agreed-upon amount or when it falls outside a specified range.

Prohibition against Required Use of Preauthorized Transfers

A financial institution or other person may not require the repayment of a loan through recurring, preauthorized electronic transfers and may not condition the receipt of a loan on the electronic repayment of that loan. A creditor may, however, make available to consumers a program that offers a reduced annual percentage rate or other cost-related benefit as an incentive to choose automated payment, provided that this program is not the only loan program offered for the type of credit requested.

The regulation also prohibits the compulsory use of an account at a particular institution that receives electronic fund transfers as a condition of employment or receipt of government benefits. For example, a financial institution or other person may not require a consumer to open or establish an account for receipt of EFTs at a particular institution in order to be hired or to receive public assistance payments.

Procedures for Resolving Errors—Section 205.11

Definition of *Error*

Generally, the term *error* means

- An unauthorized electronic fund transfer
- An incorrect EFT to or from a consumer’s account
- The omission of an EFT to or from the consumer’s

account that should have been listed on the periodic statement

- An EFT-related computational or bookkeeping error made by the institution
- A consumer's receipt of an incorrect amount of money from an electronic terminal
- Failure to identify an EFT in accordance with the requirements of section 205.9 or 205.10(a)
- A consumer's request for any documentation required by section 205.9 or 205.10(a), or for additional information or clarification concerning an EFT

The term "error" does not include a routine inquiry about the balance in the consumer's account, a request for duplicate copies of documentation, or a request for information that is made only for tax or other recordkeeping purposes.

Timing and Content of the Error Notice

An *error notice* is an oral or written notice from a consumer and received by an institution no later than sixty days after the institution transmitted the first periodic statement or other documentation that reflects the alleged error. The error notice must enable the institution to identify the consumer's name and account number and, to the extent possible, the type, date, and amount of the error. An institution may require a written confirmation of an oral notice of error within ten business days if the consumer is so advised when the oral notice is given. If written confirmation is not received, the institution must still comply with the error resolution procedures but need not comply with the requirement (discussed below) to provisionally recredit the account if it takes longer than ten business days to resolve the matter.

Investigation of the Error— Time Limits and Actions

After receiving an error notice, an institution is required to investigate the alleged error promptly and to complete its investigation within ten business days. If the institution is unable to complete the investigation within ten business days, it may extend the investigation period to forty-five calendar days from the receipt of the error notice, provided it takes the following actions:

- Provisionally recredits the funds (including interest, if applicable) to the consumer's account within the ten-business-day period
- Advises the consumer within two business days of the provisional recrediting
- Gives the consumer full use of the provisionally recredited funds during the investigation

An institution need not provisionally recredit the account under two circumstances: (1) the institution requires but does not receive timely written confirmation of an oral notice of an error or (2) the notice of error involves an account subject to the margin requirements or other aspects of Regulation T (12 CFR 220).

Extension of Time

Regulation E allows additional time for resolving errors involving certain types of transactions. For example, if an alleged error involves an electronic fund transfer that was not initiated within a state (as defined in section 205.2(l)) or involves an EFT resulting from a point-of-sale debit card transaction, the institution may take up to ninety calendar days from the receipt of the error notice, instead of forty-five calendar days, to resolve the error.

If a notice of an error involves an EFT to or from a new account (that is, an account open no more than thirty days), the institution may take up to twenty business days, instead of ten, to resolve the error. Errors that cannot be resolved within this time frame must be resolved within ninety calendar days of the receipt of the error notice.

Post-Error-Investigation Procedures

If, after investigating the alleged error, the institution determines that an error has been made, it has one business day from the completion of the investigation to correct the error, recredit any interest (if applicable), and refund any fees or other charges imposed as a result of the error. The institution has three business days from the completion of the investigation to notify the customer orally or in writing that a correction has been made to the account or that provisional credit has been made final.

If the institution determines that no error was made or that an error was made in a manner or amount different from that described by the consumer, the 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 right to request the documents on which the institution relied in making its determination.

Upon debiting a provisionally recredited amount, the institution must provide oral or written notice to the consumer of the date and amount of the debit and the fact that the 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. An institution must honor these items,

however, only to the extent that these items would have been honored if the provisionally recredited funds had not been debited. Upon request from the consumer, the institution must promptly mail or deliver to the consumer copies of documents on which it relied in making its determination.

Relation to Other Laws— Section 205.12

Relationship to Truth in Lending Act

The Electronic Fund Transfer Act (EFTA) and the Truth in Lending Act (TILA) have distinct rules governing such areas as liability and error resolution. In general, for access devices that also serve as credit cards, the nature of the transaction determines which rules apply.

For example, the EFTA governs with respect to the

- Addition of a feature enabling an “accepted” credit card to initiate EFTs
- 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
- Issuance of debit cards and other access devices that lack credit features

On the other hand, the TILA, which is implemented by Regulation Z, governs with respect to the

- Issuance of credit cards as defined in Regulation Z, section 226.2(a)(15)
- Addition of a credit feature to a debit card or other access device
- Issuance of a credit card that is also an access device

When an EFT also involves an extension of credit under an agreement between a creditor and an institution to extend credit when the consumer’s account is overdrawn or to maintain a specified minimum balance in the consumer’s account, the institution must comply with the error resolution requirements of Regulation E rather than the requirements of Regulation Z, sections 226.13(a)–(c), (e), (f), and (h). (The institution must also comply with Regulation Z, sections 226.13(d) and (g), which set forth rules protecting consumers pending, and subsequent to, error resolution.)

The consumer liability provisions outlined in section 205.6 of Regulation E also apply to unauthorized EFTs initiated by a combination access device–credit card, including an access device with overdraft privileges. They do not apply, however, to the unauthorized use of a combination access device–credit card when no EFT is involved

(for example, when the card is used to draw cash advances directly from a credit line).

Preemption of State Law

The EFTA and Regulation E preempt state laws that are inconsistent with the act and the regulation, but only to the extent of the inconsistency. The Federal Reserve Board has the authority to determine whether or not a state law is inconsistent. An institution, state, or other interested party may request that the Board 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.

State Exemptions

A state may apply to the Board for an exemption from the requirements of the EFTA or any class of electronic fund transfers within the state. To receive an exemption, the state must have state laws that are substantially similar to the federal law and have adequate provisions for enforcing these laws.

Administrative Enforcement and Record Retention—Section 205.13

Section 917 of the Electronic Fund Transfer Act specifically directs the federal financial institution supervisory agencies to enforce compliance with the provisions of the act.

Institutions are required to maintain evidence of compliance with the EFTA and Regulation E for a period of at least two years. The period may be extended by the agency supervising the institution. It may also be extended if the institution is subject to an action filed under section 910, 915, or 916(a) of the EFTA relating to the liability of institutions for making EFTs and to institutions’ civil and criminal liability for failure to comply with the act and the regulation. Persons subject to the EFTA who have actual notice that they are being investigated or are subject to an enforcement proceeding must retain records until disposition of the proceeding. Records may be stored on microfiche, microfilm, or magnetic tape or in any other manner capable of accurately retaining and reproducing the information.

Services Offered by a Financial Institution Not Holding Consumer’s Account—Section 205.14

Sometimes one institution (a retailer, for example) provides an EFT service for and issues an access device to a consumer whose account is held at a second institution. In such cases, the transfers

initiated by the service-providing institution are often cleared through an automated clearinghouse. Section 205.14 covers instances in which no agreement exists between the institutions. It apportions the compliance responsibilities between the two institutions, placing the greater responsibility on the service-providing institution. The compliance responsibilities of the service-providing institution are set forth in section 205.14(b), and the duties of the account-holding institution are set forth in section 205.14(c).

Electronic Fund Transfer of Government Benefits—Section 205.15

Rules governing accounts established by a government agency for the electronic distribution of government benefits through an ATM or point-of-sale terminal are set forth in section 205.15. Among the topics addressed are the types of accounts excluded from coverage, options for providing alternatives to the periodic statement, and the special rules imposed on the agency if it does not furnish a periodic statement. Also discussed are initial disclosures, requirements for error resolution notices, limits on liability, and error resolution procedures.

Disclosures at Automated Teller Machines (ATMs)—Section 205.16

Any ATM fee charged to a consumer for making an electronic fund transfer or a balance inquiry at an ATM that is not owned or operated by an institution that holds the account of the consumer must be disclosed. The disclosure, including the amount of the fee, must be provided to the consumer prior to completion of the transaction. Moreover, the fee may not be charged unless the consumer elects to continue the transaction after receiving the notice. Notice of the fee must be posted on or at the machine and provided either electronically on the ATM screen or on a paper copy.

Requirements for Electronic Communication—Section 205.17

In accordance with the Electronic Signatures in Global and National Commerce Act (the E-Sign Act), Regulation E allows financial institutions to provide electronic disclosures to a consumer's home computer or electronic address. These electronic disclosures, which are made in lieu of those required to be in writing, may also be available at a location other than the consumer's electronic address, such as an Internet web site. To

use another location, however, a bank must first notify the consumer electronically about the location of the Internet site and make the disclosure available on the site for ninety days.¹

Electronic disclosures are subject to the regulation's format, timing, and retainability rules and the clear-and-readily-understandable standard.

Suspension of Obligations and Waiver of Rights

Under certain circumstances, the Electronic Fund Transfer Act suspends a consumer's obligation to another person in the event a malfunction in an EFT system prevents payment to the person. Generally, this suspension extends until the malfunction is corrected and the funds are transferred. (EFTA, section 912)

The act also states that no writing or other agreement between a consumer and any other person may contain any provision that constitutes a waiver of any right conferred or cause of action created by the act. However, the act does not prohibit any writing or other agreement that grants the consumer greater protection or a more extensive right or remedy than that provided by the act.

Liability

Three sections of the Electronic Fund Transfer Act discuss specific liability provisions.

Liability of Financial Institutions

As provided by section 910 of the act, institutions subject to the act are liable for all damages proximately caused by failure to make an electronic fund transfer in accordance with the terms and conditions of the account, in a timely manner, or in the correct amount, when properly instructed by a consumer to do so. Also discussed in section 910 of the act are the conditions under which an institution is not liable for failing to make an EFT and the circumstances under which an institution is liable for failure to stop payment of preauthorized debits.

Civil Liability

Civil liability is addressed in section 915 of the act. Unless an error is resolved in accordance with the error resolution procedures outlined in the act and implemented by Regulation E, an institution may be liable for civil damages for failure to comply with the law. In a successful individual action, the institution

1. Compliance with the interim rule for electronic delivery of federally mandated disclosures dated March 2001 is optional.

would have to pay actual damages and statutory damages between \$100 and \$1,000, as determined by the court. In a successful class action suit, the institution would have to pay actual damages and statutory damages up to the lesser of \$500,000 or 1 percent of the institution's net worth. In successful individual and class actions, court costs and a reasonable attorney's fee would be recovered by the consumer.

An institution generally is not liable for violations caused by unintentional bona fide errors that occurred despite the maintenance of procedures reasonably adopted to avoid such errors. Also, the institution is not liable if it acted in accordance with an official interpretation issued by the Board of Governors of the Federal Reserve System or its staff. Moreover, an institution cannot be held liable

for improper disclosure if it appropriately used a model clause approved by the Board of Governors. An institution can avoid liability by taking corrective action, including adjustment to a consumer's account and payment of appropriate damages, prior to a court case.

Criminal Liability

Individuals who knowingly and willfully fail to comply with any provision of the Electronic Fund Transfer Act may be fined up to \$5,000 or imprisoned up to one year, or both. Those who fraudulently use a debit card may be fined up to \$10,000 and imprisoned up to ten years, or both. (EFTA, section 916)

Regulation E

Examination Objectives and Procedures

EXAMINATION OBJECTIVES

1. To determine that the institution has procedures in place to ensure compliance with the Electronic Fund Transfer Act
2. To determine that the institution is in compliance with the provisions of the Electronic Fund Transfer Act

EXAMINATION PROCEDURES

1. Determine if the institution issues any access devices that offer credit privileges and therefore must be evaluated for compliance with applicable portions of Regulation Z (Truth in Lending).
2. Obtain and review copies of the following:
 - a. Disclosure forms
 - b. Account agreements
 - c. Procedural manuals and written policies
 - d. Merchant agreements
 - e. Automated teller machine receipts and periodic statements
 - f. Error resolution statements
 - g. Form letters used in case of errors or questions concerning an account
 - h. Any agreements with third parties allocating compliance responsibilities
 - i. Consumer complaint file
3. While performing these examination procedures, test for compliance with written policies and internal controls.
4. For each type of EFT service provided, review items given to customers at the time accounts are opened, or prior to the first EFT transaction, to determine that all required disclosures are furnished. (§ 205.7)
5. If the institution has, since the last examination, made any changes in the terms or conditions that require that a written notice be sent to customers, determine that the proper notice was provided in a timely manner. (§ 205.8(a))
6. Review a sample of periodic statements to determine that they contain sufficient information for consumers to adequately identify transactions and that they otherwise comply. (§ 205.9)
7. Review consumer complaints regarding EFT transactions to determine compliance with error resolution procedures and to isolate any apparent deficiencies in the institution's operations. (§ 205.11)
8. Review the institution's policies regarding liability for unauthorized transfers, verify that the policies comply with the regulation, and determine whether they are applied in practice. (§ 205.6)
9. Review policies regarding issuance of access devices, ascertain whether they comply with the requirements of the regulation, and determine whether they are applied in practice. (§ 205.5)
10. Review policies regarding preauthorized debits and credits, ascertain whether they comply with the requirements of the regulation, and determine whether they are applied in practice. (§ 205.10)
11. Verify that the financial institution does not require compulsory use of EFTs, except as authorized. (§ 205.10(e))
12. Determine that the financial institution is maintaining records of compliance for a period of at least two years from the date disclosures are required to be made or action is required to be taken. (§ 205.13(b))

Regulation E

Examination Checklist

Issuance of Access Devices—Section 205.5

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| 1. Does the institution issue validated access devices only | | |
| a. In response to requests or applications or (§ 205.5(a)(1)) | Yes | No |
| b. As a renewal or substitution for an accepted access device (§ 205.5(a)(2)) | Yes | No |
| 2. Does the institution issue unsolicited access devices only when the devices are | | |
| a. Not validated, (§ 205.5(b)(1)) | Yes | No |
| b. Accompanied by an explanation that the device is not validated, and how to dispose of the device if the customer does not want it, (§§ 205.5(b)(2) and 205.7(a)) | Yes | No |
| c. Accompanied by required disclosures, and (§ 205.5(b)(3)) | Yes | No |
| d. Validated only on consumer request and after proper identification is made (§ 205.5(b)(4)) | Yes | No |
| 3. Does the institution verify the consumer's identity (by means of, for example, a photograph, personal visit, or signature)? (§ 205.5(b)(4)) | Yes | No |

Consumer Liability for Unauthorized Transfers—Section 205.6

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| 1. Does the institution impose liability on the consumer for unauthorized transfer only if | | |
| a. An access device has been accepted, (§ 205.6(a)) | Yes | No |
| b. The institution has provided a means of identifying the consumer to whom it was issued, and | Yes | No |
| c. The institution has provided the disclosures required by sections 205.7(b)(2) and 205.7(b)(3) | Yes | No |
| 2. Does the institution NOT use consumer negligence as a basis for imposing greater liability than is permissible under Regulation E? (Official staff commentary, § 205.6(b)) | Yes | No |
| 3. Is the consumer's liability for unauthorized use of a lost or stolen access device limited to the lesser of \$50 or actual loss if the consumer notifies the institution within two business days of discovery of loss or theft of the access device? (§ 205.6(b)(1)) | Yes | No |
| 4. If the consumer fails to notify the institution of loss or theft of an access device within two business days of discovery of loss or theft, is the consumer's liability limited to the lesser of \$500 or the sum of (§ 205.6(b)(2)) | | |
| a. \$50 or actual loss within the first two business days, whichever is less, and | Yes | No |
| b. Unauthorized transfer amounts that occur after the two business days and before notification (provided the institution proves that these unauthorized transfers could have been prevented had notification occurred within the two business days) | Yes | No |
| 5. If a consumer fails to notify the institution of an unauthorized transfer within sixty days of transmittal of the periodic statement on which that transfer appears, is consumer liability limited to (§ 205.6(b)(3)) | | |
| a. \$50 or actual loss that appears on the statement or occurs during the sixty-day period, whichever is less, and | Yes | No |

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| b. The amount of unauthorized transfers that occur after the close of sixty days and before notice to the institution (provided the institution proves that the unauthorized transfers could have been prevented had notification occurred within the sixty days) | Yes | No |
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Initial Disclosures—Section 205.7

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| 1. Does the institution make the following disclosures? | | |
| a. A summary of the consumer's liability under section 205.6 (or lesser liability under state law or agreement) (§ 205.7(b)(1)) | Yes | No |
| b. The telephone number and address of the person or office to be notified when the consumer believes that an unauthorized electronic fund transfer has been or may be made (§ 205.7(b)(2)) | Yes | No |
| c. The institution's business days, as determined under section 205.2(d) (§ 205.7(b)(3)) | Yes | No |
| d. The type of electronic fund transfers that the consumer may make, and any limitations on the frequency and dollar amount of these transfers (§ 205.7(b)(4)) | Yes | No |

(If details on the limitations on frequency and dollar amount of transfers are essential to maintain the security of the system, they need not be disclosed.)

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| e. Any charges for electronic fund transfers or for the right to make transfer (§ 205.7(b)(5)) | Yes | No |
| f. A summary of the consumer's right to receive documentation of electronic fund transfers, as provided in sections 205.9, 205.10(a), and 205.10(d) (§ 205.7(b)(6)) | Yes | No |
| g. A summary of the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure for initiating a stop-payment order, as provided in section 205.10(c) (§ 205.7(b)(7)) | Yes | No |
| h. A summary of the institution's liability to the consumer for its failure to make or to stop certain transfers under section 910 of the Electronic Fund Transfer Act (§ 205.7(b)(8)) | Yes | No |
| i. Circumstances under which the institution in the ordinary course of business will disclose information to third parties concerning the consumer's account (§ 205.7(b)(9)) | Yes | No |
| j. An error resolution notice meeting the requirements of section 205.7(b)(10)) | Yes | No |
| k. A notice that a fee may be imposed at an ATM operated by another institution | Yes | No |

Change in Terms and Error Resolution Notices—Section 205.8

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| 1. Since the last examination, has the institution made any change in a term or condition that required that a written notice be sent to consumers? Such a change may include increased fees, increased liability for the consumer, fewer types of electronic fund transfers available, or stricter limitations on the frequency or dollar amounts of transfers. (§ 205.8(a)) | Yes | No |
| If so, was the notice provided at least twenty-one days before the effective date of the change? (§ 205.8(a)) | Yes | No |
| 2. Does the institution provide either the long-form error resolution notice at least once every calendar year or the short-form error resolution notice on each periodic statement? (§ 205.8(b)) | Yes | No |

Receipts at Electronic Terminals and Periodic Statements—Section 205.9

1. Does the institution make a receipt, in a retainable form, available to the consumer at the time an electronic fund transfer is initiated? (§ 205.9(a))	Yes	No
2. Does the receipt contain the following items, as applicable? (§ 205.9)	Yes	No
a. The amount of the transfer (amount may be combined with any transfer charge if certain conditions are met) (§ 205.9(a)(1))	Yes	No
b. The calendar date the transfer was initiated (§ 205.9(a)(2))	Yes	No
c. The type of transfer and account to or from which funds were transferred (Transactions are exempt from the type-of-account requirement if the access device used can access only one account.) (§ 205.9(a)(3))	Yes	No
d. A number or code that identifies one of the following:		
i. The consumer's account or	Yes	No
ii. The access device used (§ 205.9(a)(4))	Yes	No
(Note: The number or code need not exceed four digits or letters.)		
e. Identification or location of the terminal (§ 205.9(a)(5))	Yes	No
f. The name of any third party to or from whom funds are transferred unless the name is provided in a non-machine-readable form (§ 205.9(a)(6))	Yes	No
3. Does the institution mail or deliver a periodic statement for each monthly or shorter cycle in which an electronic fund transfer has occurred? (§ 205.9(b))	Yes	No
4. If no electronic fund transfers have occurred, has the institution mailed or delivered a periodic statement at least quarterly for non-passbook accounts? (§ 205.9(b))	Yes	No
5. Does the periodic statement or accompanying documents contain the following items? (§ 205.9(b)(1))		
a. The amount of the transfer (amount may include transfer charge if it was added in accordance with the terminal receipt requirements) (§ 205.9(b)(1)(i))	Yes	No
b. The date the transfer was posted to the account (§ 205.9(b)(1)(ii))	Yes	No
c. The type of transfer and account (§ 205.9(b)(1)(iii))	Yes	No
d. The location of the terminal (§ 205.9(b)(1)(iv))	Yes	No
e. The name of any third party to or from whom funds were transferred (§ 205.9(b)(1)(v))	Yes	No
f. The account number(s) (§ 205.9(b)(2))	Yes	No
g. The total amount of any fees or charges assessed during the statement period for electronic fund transfers, for the right to make electronic fund transfers, or for account maintenance (excluding any finance charges under Regulation Z, overdraft or stop-payment charges, and any transfer charges combined with transfer amounts under section 205.9(a)) (§ 205.9(b)(3))	Yes	No
h. The beginning and ending balances (§ 205.9(b)(4))	Yes	No
i. The address and telephone number to be used for inquiries or notice of errors (§ 205.9(b)(5))	Yes	No
j. If applicable, the telephone number to be used to find out whether a preauthorized credit has been made as scheduled (§ 205.9(b)(6))	Yes	No

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| 6. For passbook accounts that receive only preauthorized credits, does the institution, upon presentation by the consumer, enter in a passbook or on a separate document the amount and date of each electronic fund transfer made since the passbook was last presented? (§ 205.9(c)) | Yes | No |
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Preauthorized Transfers—Section 205.10

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| 1. If a consumer's account is to be credited by a preauthorized electronic fund transfer from the same payor at least once every sixty days, (§ 205.10(a)(1)) | | |
| a. Does the institution provide oral or written notice, within two business days after the transfer occurs or was scheduled to occur, that the transfer did or did not occur or | Yes | No |
| b. If the telephone alternative is selected, does the institution disclose, in initial disclosures and on each periodic statement, the telephone number the consumer can call to determine whether the transfer occurred and | Yes | No |
| c. Is the telephone number "readily available" during the institution's business hours | Yes | No |
| 2. Does the institution credit the consumer's account for preauthorized electronic fund transfers as of the day the funds are received? (§ 205.10(a)(3)) | Yes | No |
| 3. Does institution obtain authorization from the consumer for preauthorized electronic fund transfers from the consumer's account? (§ 205.10(b)) | Yes | No |
| 4. Does the institution comply with section 205.10(c) regarding stop-payment orders? | Yes | No |
| 5. If a preauthorized electronic fund transfer from a consumer's account varies in amount from the previous transfer under the same authorization or from the preauthorized amount, does the institution provide proper notice at least ten days before the scheduled date of transfer? (§ 205.10(d)) | Yes | No |
| (Note: If the designated payee makes the notification, the institution is absolved of this requirement.) | | |
| 6. Does the institution refrain from conditioning an extension of credit to a consumer on repayment by preauthorized electronic fund transfers? (§ 205.10(e)(1)) | Yes | No |
| 7. Does the institution refrain from requiring a consumer to establish an account with a particular institution for receipt of electronic fund transfers as a condition of employment or receipt of a government benefit? (§ 205.10(e)(2)) | Yes | No |

Procedures for Resolving Errors—Section 205.11

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| 1. If the institution requires written confirmation of an error within ten business days of an oral notice, is this requirement disclosed to the consumer, along with the address to which the written confirmation must be sent? (§ 205.11(b)(2)) | Yes | No |
| 2. Does the institution promptly investigate alleged errors and resolve them within ten business days of receiving a notice of error? (§ 205.11(c)(1)) | Yes | No |
| 3. Does the institution inform the consumer of the results of the investigation within three business days after completing the investigation? (§ 205.11(c)(1)) | Yes | No |
| 4. After the institution determines that an error occurred, is the error corrected within one business day? (§ 205.11(c)(1)) | Yes | No |

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| 5. If the institution needs more time and informs the consumer that it may take up to forty-five calendar days, does the institution (§ 205.11(c)(2)) | | |
| a. Provisionally recredit the amount of the alleged error (including interest, if applicable) to the consumer's account within ten business days of the initial report (except when written confirmation is required but not received within ten business days) (§ 205.11(c)(2)(i)) | Yes | No |
| b. Notify the consumer within two business days of the amount and date of the provisional recrediting and the fact that the consumer will have full use of funds pending the outcome of the investigation (§ 205.11(c)(2)(ii)) | Yes | No |
| c. Give the consumer full use of the funds during the investigation period (§ 205.11(c)(2)(ii)) | Yes | No |
| 6. If the institution provisionally credited the consumer's account and determines that an error has occurred, have procedures been established to (§ 205.11(c)(2)) | | |
| a. Correct the error (including crediting interest or refunding fees) within one business day (§ 205.11(c)(2)(iii)) | Yes | No |
| b. Notify the consumer within three business days of the correction and that a provisional credit has been made final (§ 205.11(c)(2)(iv)) | Yes | No |
| 7. If the institution determines that no error has occurred, have procedures been established to | | |
| a. Within three business days of concluding the investigation, provide a written explanation of its findings and include the notice of the consumer's right to request the documents on which the institution relied in making its determination (§ 205.11(d)(1)) | Yes | No |
| b. Provide copies of documents | Yes | No |
| c. Upon debiting a provisionally credited amount, notify the consumer of the date and amount of the debit and the fact that the institution honors checks and drafts to third parties and preauthorized transfers for five business days after notification (specifying the calendar date debiting will occur) to the extent that they would have been paid if the provisionally recredited funds had not been debited (§ 205.11(d)(2)) | Yes | No |

Administrative Enforcement—Section 205.13

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| 1. Has the institution preserved evidence of compliance with the requirements of the Electronic Fund Transfer Act for two years, or longer if required? (§ 205.13(b)) | Yes | No |
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Electronic Fund Transfer of Government Benefits—Section 205.15

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| 1. If a government agency does not provide a periodic statement for electronic government benefits, does the agency | | |
| a. Make the consumer's account balance available through a readily available telephone line and at a terminal, (§ 205.15(c)) | Yes | No |
| b. In response to a request, promptly provide a written history of the consumer's account transactions that covers at least sixty days preceding the date of request by the consumer, and (§ 205.15(c)(2)) | Yes | No |
| c. Provide modified initial disclosures according to section 205.15(d)(1) and an annual error resolution notice according to section 205.15(d)(2) | Yes | No |

Internal Control Procedures

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| 1. Does the institution have adequate procedures to ensure that notification of loss, theft, or unauthorized use promptly results in halting unauthorized transfers from a consumer's account and recrediting amounts when appropriate? | Yes | No |
| 2. Do the institution's procedures indicate a willingness to resolve consumer complaints regarding EFT matters? | Yes | No |
| 3. Does a review of statements indicate that transaction identifications are in compliance with Regulation E? | Yes | No |
| 4. Do automated teller and point-of-sale transfer receipts provide a clear description of the transaction that is in compliance with Regulation E? | Yes | No |
| 5. Is the institution's advertising of EFT services free of ambiguous and deceptive statements? | Yes | No |
| 6. Is the consumer's responsibility with regard to personal access codes explained? | Yes | No |
| 7. Does a review of merchant agreements and internal controls indicate that the treatment of consumers is consistent with what has been disclosed to them (in such areas as transaction limitations, costs, documentation, and identification)? | Yes | No |
| 8. Does the institution maintain any log or tracking sheet for error resolution? | Yes | No |
| 9. Are personnel able to distinguish between the applicability of Regulations E and Z as part of the issuance of debit and credit cards, error resolution procedures, and consumer liability? | Yes | No |