

OUTLINE REG E

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Electronic Funds Transfer Act enacted in 1978; Reg E promulgated in 1979

- I. definitions B consumer, account, access device, accepted access device
- II. transactions to which the Regulation does and does not apply
- III. basic protections
- IV. Exemptions/modifications by other law B state or federal (MA limits/electronic check conversion)

Definitions: (some) (edited)

Access device@ means a **card, code, or other means of access to a consumer=s account**, or any combination thereof, that may be used by the consumer to initiate electronic funds transfers

Accepted access device@ : an access device becomes an **Accepted access device@** when the consumer to whom the access device was issued:

- (i) **requests and receives, or signs, or uses, or authorizes another to use**, the access device to transfer money between accounts or to obtain money, property, or services;
- (ii) **requests validation** of an access device issued on an **unsolicited** basis; or
- (iii) receives an access device issued in **renewal of, or in substitution** for, an accepted access device from either the financial institution that initially issued the device or a successor.

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

Consumer@ means a **natural person**

Electronic funds transfer@ means any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit 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**.

Exclusions from coverage: The term 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. **(BUT--electronic check conversion, with notice/permission)**

Wire or 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...

Automatic transfers by an account-holding institution. Any transfer of funds under an agreement between a consumer and a financial institution which provides that the institution will initiate individual transfers without a specific request from the consumer between consumer=s accounts within the financial institution; consumer and family member in same institution, and consumer account and the financial institution=s account

Telephone Initiated Transfers: Any transfer of funds that: is initiated by a telephone communication between a consumer and a financial institution 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. (Preauthorized)

Preauthorized electronic fund transfer@ means an electronic fund transfer authorized in advance to recur at substantially regular intervals

Unauthorized electronic funds transfer@ means an electronic fund transfer from a consumer=s account initiated by a person **other than the consumer** without actual authority to initiate the transfer and from which the consumer receives no benefit. **Does not include:** transfer by a person furnished the access device by the consumer, unless the consumer has notified institution that transfers by that person are no longer authorized; transfers made with fraudulent intent by consumer or person acting in concert with consumer, or by the financial institution or its employee.

Issuance of Access Devices: Solicited: in response to oral or written request; renewal or substitution; **Unsolicited: may be distributed if not validated,** and accompanied by a clear explanation that it is not validated and how the consumer may dispose of it if validation is not desired; accompanied by disclosures of rights and responsibilities if device is activated.

Limitations on Liability for unauthorized transactions

Institution must give consumer disclosure on limitation of liability

If the unauthorized transfer involved an access device, it must be an accepted access

device, and the institution must have provided a means to identify the consumer to whom it was issued

Timely Notice Given: if consumer notifies the financial institution within 2 business days after learning of the loss or theft of the access device, the consumer=s liability shall not exceed the lesser of **\$50** or the amount of the unauthorized transfers that occur before notice to the financial institution

Timely Notice Not Given: If the consumer fails to notify the financial institution within 2 business days after learning of the loss or theft of the access device, the consumer=s liability shall not exceed the lesser of **\$500**, or the sum of \$50 or the amount of unauthorized transfers that occur within 2 business days , whichever is less, and the amount of unauthorized transfers that occur after 2 business days but before notice to the institution, if the institution establishes that the transfers would not have happened had the consumer notified the institution within that 2 day period.

Periodic Statement, timely notice not given: A consumer must report an unauthorized electronic fund transfer that appears on a periodic statement with 60 days of the institution=s transmittal of the statement to avoid liability for subsequent transfers. If access device used, consumer may be liable for other amounts as listed above...

Extenuating circumstances: If notice from consumer is delayed due to extenuating circumstances, the institution shall extend the times specified to a reasonable period

Notice can be in person, by telephone, or in writing; in writing is considered given at time the consumer mails the notice or delivers it for transmission to the institution by any other usual means

Liability under state law or agreement: If state law, or agreement with institution, imposes less liability on consumer, that controls. **MA law: \$50 limit;** does not address unsolicited cards/activation

Disclosures: Must include **telephone number and address** for reporting unauthorized transfers; any **fees imposed** by the institution for electronic funds transfers or for the right to make transfers; the institution=s business days; **summary of liability of consumer;** summary of consumer=s right to receipts and periodic statements; summary of the **consumer=s right to stop payment of a preauthorized electronic funds transfer** and the procedure for placing a stop-payment order; a summary of the institution=s liability to the consumer for failing to make or stop certain transfers; a notice of error resolution process; a notice of any ATM fees that may be imposed when the consumer initiates an electronic fund transfer or makes a balance inquiry, and by any network used to complete the transaction.

Changes in terms: If any terms of the agreement with the consumer change, involving increased consumer fees, increased liability for the consumer, fewer types of available electronic

funds transfers, stricter limits on frequency or dollar amount of transfers. Institution must send notice at least **21 days** before effective date of change; must send annual Error Resolution notice

Receipts: Financial institution must provide receipt for electronic funds transfer at electronic terminal (ATM), identifying the consumer's account by # or code and the type of transfer and type of account, unless only one account accessed at that terminal (checking, for instance); the location of the terminal or a code to identify the location

Periodic statements: Monthly if activity, quarterly if no activity ; must include the name of any party to or from whom funds were transferred; must disclose fees, balances, and include telephone # and address for inquiries, and a telephone # the consumer may call to find out whether preauthorized transfers to the consumer's account have occurred (only says **TO**, not from); exceptions to periodic statements for passbook accounts

Exception for foreign-initiated transfers: The failure by a financial institution to provide a terminal receipt for an electronic funds transfer or to document the transfer on a periodic statement is accepted, if the transfer is not initiated within a state, and the institution treats an inquiry for clarification or documentation as a notice of error

Stop Payment: A consumer may stop payment of a preauthorized electronic fund transfer from the consumer's account by notifying the financial institution **orally or in writing at least 3 days before the scheduled date of the transfer**; the institution may require the consumer to give a written confirmation of a stop-payment order within 14 days or an oral notification. (and if consumer does not comply, the stop payment order ceases to be binding). If the preauthorized transfer varies from previous transfer amounts, the institution shall send the consumer written notice of the amount and date of transfer at least 10 days before the scheduled date of the transfer.

Errors: means unauthorized electronic funds transfer; an incorrect transfer; omission of a transfer from a periodic statement (foreign transaction, above); computational or bookkeeping error by institution; receipt of incorrect amount from ATM; request for documentation of incorrect amount, but NOT routine balance inquiry, duplicate, info for taxes, etc.

Consumer notify (oral or written) no later than **60 days** after the institution sends the periodic statement or provides the passbook reflecting the alleged error; institution may require written confirmation of oral notice within **10 business** days. Institution must investigate promptly, and shall determine whether an error occurred within **10 business** days of receiving a notice of error, and report to consumer within 3 business days, correcting error in one business day after determining that an error occurred. NOTE: institution has **45 days** to complete investigation if cannot do it in 10 days, as long as it provides a **provisional credit** within 10 days of receiving the error notice; **90 day limit for ATM transactions that did not initiate in a state**, or resulted from point-of-sale debit transaction, or occurred within 30 days after the first deposit to the account was made. Using its own records is sufficient if the institution has no agreement between it and the 3rd party to or from whom transaction made; must provide other

documents it relied on if it does have such a relationship, on consumer request. No need to reinvestigate if consumer later asserts same error, unless that results from the information provided.

On **unsolicited cards**: if an institution adds a credit feature to an accepted access device, or issues a credit card that is also an access device, Reg Z controls, or state law does, it if is more protective. Therefore, in MA, should not get unsolicited access devices, but: Act provides state may apply for an exemption, and no information that MA has

Separate section of Act for electronic funds transfer of government benefits (but not needs-tested benefits); government agency similar to institution, but has some lessened requirements-- need not do periodic statement if it provides info re consumer balance through telephone line and at a terminal, or gives written response if consumer asks for it

ATMs must disclose fee on screen or paper notice before the consumer is committed to paying a fee

Please note: this is a summary of some, but not all, of the provisions of Regulation E, 12 CFR part 205. Any views expressed by the author are her views alone, and do not constitute an interpretation or opinion of the Office of the Attorney General.