

Board of Governors of the Federal Reserve System

Official Staff Commentary on Regulation E

12 CFR 205, supplement I; as amended effective November 29, 2010



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6-413

SECTION 205.2—Definitions

2(a) Access Device

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

2. *Checks used to capture information.* The term *access device* does not include a check or draft used to capture the MICR (magnetic ink character recognition) encoding to initiate a one-time ACH debit. For example, if a consumer authorizes a one-time ACH debit from the consumer's account using a blank, partially completed, or fully completed and signed check for the merchant to capture the routing, account, and serial numbers to initiate the debit, the check is not an access device. (Although the check is not an access device under Regulation E, the transaction is nonetheless covered by the regulation. See comment 3(b)(1)-1.v.)

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2(b) Account

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

- i. Club accounts, such as vacation clubs. In many cases, however, these accounts are exempt from the regulation under section 205.3(c)(5) because all electronic transfers to or from the account have been preauthorized by the consumer and involve another account of the consumer at the same institution.
- ii. A retail repurchase agreement (repo), which is a loan made to a financial institution by a consumer that is collateralized by govern-

ment or government-insured securities.

2. *Certain employment-related cards not covered.* The term *payroll card account* does not include a card used solely to disburse incentive-based payments (other than commissions which can represent the primary means through which a consumer is paid), such as bonuses, which are unlikely to be a consumer's primary source of salary or other compensation. The term also does not include a card used solely to make disbursements unrelated to compensation, such as petty cash reimbursements or travel per diem payments. Similarly, a payroll card account does not include a card that is used in isolated instances to which an employer typically does not make recurring payments, such as when providing final payments or in emergency situations when other payment methods are unavailable. However, all transactions involving the transfer of funds to or from a payroll card account are covered by the regulation, even if a particular transaction involves payment of a bonus, other incentive-based payment, or reimbursement, or the transaction does not represent a transfer of wages, salary, or other employee compensation.

3. Examples of accounts not covered by Regulation E (12 CFR 205) include—

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

Paragraph 2(b)(2)

1. *Bona fide trust agreements.* The term *bona fide trust agreement* is not defined by the act or regulation; therefore, financial institutions must look to state or other applicable law for interpretation.

2. *Custodial agreements.* An account held under a custodial agreement that qualifies as a trust under the Internal Revenue Code, such as an individual retirement account, is considered to be held under a trust agreement for purposes of Regulation E.

6-415

2(d) Business Day

1. *Duration.* A business day includes the entire 24-hour period ending at midnight, and a notice required by the regulation is effective even if given outside normal business hours. The regulation does not require, however, that a financial institution make telephone lines available on a 24-hour basis.

2. *Substantially all business functions.* *Substantially all business functions* include both the public and the back-office operations of the institution. For example, if the offices of an institution are open on Saturdays for handling some consumer transactions (such as deposits, withdrawals, and other teller transactions), but not for performing internal functions (such as investigating account errors), then Saturday is not a business day for that institution. In this case, Saturday does not count toward the business-day standard set by the regulation for reporting lost or stolen access devices, resolving errors, etc.

3. *Short hours.* A financial institution may determine, at its election, whether an abbreviated day is a business day. For example, if an institution engages in substantially all business functions until noon on Saturdays instead of its usual 3:00 p.m. closing, it may consider Saturday a business day.

4. *Telephone line.* If a financial institution makes a telephone line available on Sundays for reporting the loss or theft of an access device, but performs no other business functions, Sunday is not a business day under the “substantially all business functions” standard.

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2(h) Electronic Terminal

1. *Point-of-sale (POS) payments initiated by telephone.* Because the term electronic terminal excludes a telephone operated by a con-

sumer, a financial institution need not provide a terminal receipt when—

- i. a consumer uses a debit card at a public telephone to pay for the call;
- ii. a consumer initiates a transfer by a means analogous in function to a telephone, such as by home banking equipment or a facsimile machine.

2. *POS terminals.* A POS terminal that captures data electronically, for debiting or crediting to a consumer’s asset account, is an electronic terminal for purposes of Regulation E even if no access device is used to initiate the transaction. (See section 205.9 for receipt requirements.)

3. *Teller-operated terminals.* A terminal or other computer equipment operated by an employee of a financial institution is not an electronic terminal for purposes of the regulation. However, transfers initiated at such terminals by means of a consumer’s access device (using the consumer’s PIN, for example) are EFTs and are subject to other requirements of the regulation. If an access device is used only for identification purposes or for determining the account balance, the transfers are not EFTs for purposes of the regulation.

6-416.3

2(k) Preauthorized Electronic Fund Transfer

1. *Advance authorization.* A *preauthorized electronic fund transfer* under Regulation E is one authorized by the consumer in advance of a transfer that will take place on a recurring basis, at substantially regular intervals, and will require no further action by the consumer to initiate the transfer. In a bill-payment system, for example, if the consumer authorizes a financial institution to make monthly payments to a payee by means of EFTs, and the payments take place without further action by the consumer, the payments are preauthorized EFTs. In contrast, if the consumer must take action each month to initiate a payment (such as by entering instructions on a touch-tone telephone or home computer), the payments are not preauthorized EFTs.

6-417**2(m) Unauthorized Electronic Fund Transfer**

1. *Transfer by institution's employee.* A consumer has no liability for erroneous or fraudulent transfers initiated by an employee of a financial institution.

2. *Authority.* If a consumer furnishes an access device and grants authority to make transfers to a person (such as a family member or co-worker) who exceeds the authority given, the consumer is fully liable for the transfers unless the consumer has notified the financial institution that transfers by that person are no longer authorized.

3. *Access device obtained through robbery or fraud.* An unauthorized EFT includes a transfer initiated by a person who obtained the access device from the consumer through fraud or robbery.

4. *Forced initiation.* An EFT at an automated teller machine (ATM) is an unauthorized transfer if the consumer has been induced by force to initiate the transfer.

5. *Reversal of direct deposits.* The reversal of a direct deposit made in error is not an unauthorized EFT when it involves—

- i. a credit made to the wrong consumer's account;
- ii. a duplicate credit made to a consumer's account; or
- iii. a credit in the wrong amount (for example, when the amount credited to the consumer's account differs from the amount in the transmittal instructions).

6-418**SECTION 205.3—Coverage****3(a) General**

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

- i. the consumer and the financial institution (including an account for which an access device has been issued to the consumer, for

example):

- ii. the consumer and a third party (for preauthorized debits or credits, for example), when the account-holding institution has received notice of the agreement and the fund transfers have begun.

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

3. *Foreign applicability.* Regulation E applies to all persons (including branches and other offices of foreign banks located in the United States) that offer EFT services to residents of any state, including resident aliens. It covers any account located in the United States through which EFTs are offered to a resident of a state. This is the case whether or not a particular transfer takes place in the United States and whether or not the financial institution is chartered in the United States or a foreign country. The regulation does not apply to a foreign branch of a U.S. bank unless the EFT services are offered in connection with an account in a state as defined in section 205.2(l).

6-419**3(b) Electronic Fund Transfer***Paragraph 3(b)(1)—Definition*

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

- i. A deposit made at an ATM or other electronic terminal (including a deposit in cash or by check) provided a specific agreement exists between the financial institution and the consumer for EFTs to or from the account to which the deposit is made.
- ii. A transfer sent via ACH. For example, Social Security benefits under the U.S. Treasury's direct-deposit program are covered, even if the listing of payees and payment amounts reaches the account-holding institution by means of a computer print-out from a correspondent bank.
- iii. A preauthorized transfer credited or deb-

ited to an account in accordance with instructions contained on magnetic tape, even if the financial institution holding the account sends or receives a composite check.

- iv. A transfer from the consumer's account resulting from a debit card transaction at a merchant location, even if no electronic terminal is involved at the time of the transaction, if the consumer's asset account is subsequently debited for the amount of the transfer.
- v. A transfer via ACH where a consumer has provided a check to enable the merchant or other payee to capture the routing, account, and serial numbers to initiate the transfer, whether the check is blank, partially completed, or fully completed and signed; whether the check is presented at POS or is mailed to a merchant or other payee or lockbox and later converted to an EFT; or whether the check is retained by the consumer, the merchant or other payee, or the payee's financial institution.
- vi. A payment made by a bill payer under a bill-payment service available to a consumer via computer or other electronic means, unless the terms of the bill-payment service explicitly state that all payments, or all payments to a particular payee or payees, will be solely by check, draft, or similar paper instrument drawn on the consumer's account, and the payee or payees that will be paid in this manner are identified to the consumer.

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

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

collection, presentment, or return of checks through the check-collection system, such as through transmission of electronic check images.

6-419.1

Paragraph 3(b)(2)—Electronic Fund Transfer Using Information from a Check

1. *Notice at POS not furnished due to inadvertent error.* If the copy of the notice under section 205.3(b)(2)(ii) for ECK transactions is not provided to the consumer at POS because of a bona fide unintentional error, such as when a terminal printing mechanism jams, no violation results if the payee maintains procedures reasonably adapted to avoid such occurrences.

2. *Authorization to process a transaction as an EFT or as a check.* In order to process a transaction as an EFT or alternatively as a check, the payee must obtain the consumer's authorization to do so. A payee may, at its option, specify the circumstances under which a check may not be converted to an EFT. (See model clauses in appendix A-6.)

3. *Notice for each transfer.* Generally, a notice to authorize an electronic check conversion transaction must be provided for each transaction. For example, a consumer must receive a notice that the transaction will be processed as an EFT for each transaction at POS or each time a consumer mails a check in an accounts receivable (ARC) transaction to pay a bill, such as a utility bill, if the payee intends to convert a check received as payment. Similarly, the consumer must receive notice if the payee intends to collect a service fee for insufficient or uncollected funds via an EFT for each transaction whether at POS or if the consumer mails a check to pay a bill. The notice about when funds may be debited from a consumer's account and the non-return of consumer checks by the consumer's financial institution must also be provided for each transaction. However, if in an ARC transaction, a payee provides a coupon book to a consumer, for example, for mortgage loan payments, and the payment dates and amounts are set out in the coupon book, the payee may provide a single notice on the coupon book

stating all of the required disclosures under paragraph (b)(2) of this section in order to obtain authorization for each conversion of a check and any debits via EFT to the consumer's account to collect any service fees imposed by the payee for insufficient or uncollected funds in the consumer's account. The notice must be placed on a conspicuous location of the coupon book that a consumer can retain—for example, on the first page, or inside the front cover.

4. *Multiple payments/multiple consumers.* If a merchant or other payee will use information from a consumer's check to initiate an EFT from the consumer's account, notice to a consumer listed on the billing account that a check provided as payment during a single billing cycle or after receiving an invoice or statement will be processed as a one-time EFT or as a check transaction constitutes notice for all checks provided in payment for the billing cycle or the invoice for which notice has been provided, whether the check(s) is submitted by the consumer or someone else. The notice applies to all checks provided in payment for the billing cycle or invoice until the provision of notice on or with the next invoice or statement. Thus, if a merchant or other payee receives a check as payment for the consumer listed on the billing account after providing notice that the check will be processed as a one-time EFT, the authorization from that consumer constitutes authorization to convert any other checks provided for that invoice or statement. Other notices required under this paragraph (b)(2) (for example, to collect a service fee for insufficient or uncollected funds via an EFT) provided to the consumer listed on the billing account also constitutes notice to any other consumer who may provide a check for the billing cycle or invoice.

5. *Additional disclosures about ECK transactions at POS.* When a payee initiates an EFT at POS using information from the consumer's check, and returns the check to the consumer at POS, the payee need not provide a notice to the consumer that the check will not be returned by the consumer's financial institution.

6-419.2

Paragraph 3(b)(3)—Collection of Returned-Item Fees via Electronic Fund Transfer

1. *Fees imposed by account-holding institution.* The requirement to obtain a consumer's authorization to collect a fee via EFT for the return of an EFT or check unpaid applies only to the person that intends to initiate an EFT to collect the returned item fee from the consumer's account. The authorization requirement does not apply to any fees assessed by the consumer's account-holding financial institution when it returns the unpaid underlying EFT or check or pays the amount of an overdraft.

2. *Accounts receivable transactions.* In an accounts receivable (ARC) transaction where a consumer sends in a payment for amounts owed (or makes an in-person payment at a biller's physical location, such as when a consumer makes a loan payment at a bank branch or places a payment in a drop box), a person seeking to electronically collect a fee for items returned unpaid must obtain the consumer's authorization to collect the fee in this manner. A consumer authorizes a person to electronically collect a returned item fee when the consumer receives notice, typically on an invoice or statement, that the person may collect the fee through an EFT to the consumer's account, and the consumer goes forward with the underlying transaction by providing payment. The notice must also state the dollar amount of the fee. However, an explanation of how that fee will be determined may be provided in place of the dollar amount of the fee if the fee may vary due to the amount of the transaction or due to other factors, such as the number of days the underlying transaction is left outstanding. For example, if a state law permits a maximum fee of \$30 or 10 percent of the underlying transaction, whichever is greater, the person collecting the fee may explain how the fee is determined, rather than state a specific dollar amount for the fee.

3. *Disclosure of dollar amount of fee for POS transactions.* The notice provided to the consumer in connection with a POS transaction under section 205.3(b)(3)(ii) must state the

amount of the fee for a returned item if the dollar amount of the fee can be calculated at the time the notice is provided or mailed. For example, if notice is provided to the consumer at the time of the transaction, if the applicable state law sets a maximum fee that may be collected for a returned item based on the amount of the underlying transaction (such as where the amount of the fee is expressed as a percentage of the underlying transaction), the person collecting the fee must state the actual dollar amount of the fee on the notice provided to the consumer. Alternatively, if the amount of the fee to be collected cannot be calculated at the time of the transaction (for example, where the amount of the fee will depend on the number of days a debt continues to be owed), the person collecting the fee may provide a description of how the fee will be determined on both the posted notice as well as on the notice provided at the time of the transaction. However, if the person collecting the fee elects to send the consumer notice after the person has initiated an EFT to collect the fee, that notice must state the amount of the fee to be collected.

4. *Third party providing notice.* The person initiating an EFT to a consumer's account to electronically collect a fee for an item returned unpaid may obtain the authorization and provide the notices required under section 205.3(b)(3) through third parties, such as merchants.

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3(c) Exclusions from Coverage

Paragraph 3(c)(1)—Checks

1. *Re-presented checks.* The electronic re-presentation of a returned check is not covered by Regulation E because the transaction originated by check. Regulation E does apply, however, to any fee debited via an EFT from a consumer's account by the payee because the check was returned for insufficient or uncollected funds. The person debiting the fee electronically must obtain the consumer's authorization.

2. *Check used to capture information for a one-time EFT.* See comment 3(b)(1)-1.v.

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

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

6-421

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

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

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

3. *Similar fund transfer systems.* Fund transfer systems that are similar to Fedwire include the Clearing House Interbank Payments System (CHIPS), Society for Worldwide Interbank Financial Telecommunication (SWIFT), Telex,

and transfers made on the books of correspondent banks.

6-422*Paragraph 3(c)(4)—Securities and Commodities Transfers*

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

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

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

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

6-423*Paragraph 3(c)(5)—Automatic Transfers by Account-Holding Institution*

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

- i. electronic debits or credits to consumer accounts for check charges, stop-payment charges, NSF charges, overdraft charges, provisional credits, error adjustments, and similar items that are initiated automatically on the occurrence of certain events;
- ii. debits to consumer accounts for group insurance available only through the financial institution and payable only by means of an aggregate payment from the institution to the insurer;
- iii. EFTs between a thrift institution and its paired commercial bank in the state of

Rhode Island, which are deemed under state law to be intra-institutional;

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

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

6-424*Paragraph 3(c)(6)—Telephone-Initiated Transfers*

1. *Written plan or agreement.* A transfer that the consumer initiates by telephone is covered if the transfer is made under a written plan or agreement between the consumer and the financial institution making the transfer. A written statement available to the public or to account holders that describes a service allowing a consumer to initiate transfers by telephone constitutes a plan—for example, a brochure, or material included with periodic statements. The following, however, do not by themselves constitute a written plan or agreement:

- i. a hold-harmless agreement on a signature card that protects the institution if the consumer requests a transfer
- ii. a legend on a signature card, periodic statement, or passbook that limits the number of telephone-initiated transfers the consumer can make from a savings account because of reserve requirements under Regulation D (12 CFR 204)
- iii. an agreement permitting the consumer to approve by telephone the rollover of funds at the maturity of an instrument

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

- i. an employee of the financial institution completes the transfer manually (for example, by means of a debit memo or de-

- posit slip);
- ii. the consumer is required to make a separate request for each transfer;
- iii. the consumer uses the plan infrequently;
- iv. the consumer initiates the transfer via a facsimile machine;
- v. the consumer initiates the transfer using a financial institution's audio-response or voice-response telephone system.

6-425*Paragraph 3(c)(7)—Small Institutions*

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

6-426

SECTION 205.4—General Disclosure Requirements; Jointly Offered Services

4(a) Form of Disclosures

1. *General.* Although no particular rules govern type size, number of pages, or the relative conspicuousness of various terms, the disclosures must be in a clear and readily understandable written form that the consumer may retain. Numbers or codes are considered readily understandable if explained elsewhere on the disclosure form.
2. *Foreign-language disclosures.* Disclosures may be made in languages other than English, provided they are available in English upon request.

6-427

SECTION 205.5—Issuance of Access Devices

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

equivalent to issuing an access device and is subject to the limitations of this section.

6-428

5(a) Solicited Issuance

Paragraph 5(a)(1)

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

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

Paragraph (5)(a)(2)

1. *One-for-one rule.* In issuing a renewal or substitute access device, only one renewal or substitute device may replace a previously issued device. For example, only one new card and PIN may replace a card and PIN previously issued. A financial institution may provide additional devices at the time it issues the renewal or substitute access device, however, provided the institution complies with section 205.5(b). (See comment 5(b)-5.) If the replacement device or the additional device permits either fewer or additional types of electronic fund transfer services, a change-in-terms notice or new disclosures are required.

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

6-429

5(b) Unsolicited Issuance

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

PIN until after the institution verifies the consumer's identity does not comply with the regulation.

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

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

4. *Verification of identity.* To verify the consumer's identity, a financial institution may use any reasonable means, such as a photograph, fingerprint, personal visit, signature comparison, or personal information about the consumer. However, even if reasonable means were used, if an institution fails to verify correctly the consumer's identity and an imposter succeeds in having the device validated, the consumer is not liable for any unauthorized transfers from the account.

5. *Additional access devices in a renewal or substitution.* A financial institution may issue more than one access device in connection with the renewal or substitution of a previously issued accepted access device, provided that any additional access device (beyond the device replacing the accepted access device) is not validated at the time it is issued, and the institution complies with the other requirements of section 205.5(b). The institution may, if it chooses, set up the validation procedure such that both the device replacing the previously issued device and the additional device are not validated at the time they are issued, and validation will apply to both devices. If the institution sets up the validation procedure in this way, the institution should provide a clear and readily understandable disclosure to the consumer that both devices are unvalidated and that validation will apply to both devices.

6-430

SECTION 205.6—Liability of Consumer for Unauthorized Transfers

6(a) Conditions for Liability

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

- i. electronic or mechanical confirmation (such as a PIN);
- ii. comparison of the consumer's signature, fingerprint, or photograph.

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

6-431

6(b) Limitations on Amount of Liability

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

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

3. *Limits on liability.* The extent of the consumer's liability is determined solely by the consumer's promptness in reporting the loss or theft of an access device. Similarly, no agreement between the consumer and an institution may impose greater liability on the con-

sumer for an unauthorized transfer than the limits provided in Regulation E.

6-432*Paragraph 6(b)(1)—Timely Notice Given*

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

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

3. *Two-business-day rule.* The two-business-day period does not include the day the consumer learns of the loss or theft or any day that is not a business day. The rule is calculated based on two 24-hour periods, without regard to the financial institution's business hours or the time of day that the consumer learns of the loss or theft. For example, a consumer learns of the loss or theft at 6 p.m. on Friday. Assuming that Saturday is a business day and Sunday is not, the two-business day period begins on Saturday and expires at 11:59 p.m. on Monday, not at the end of the financial institution's business day on Monday.

6-433*Paragraph 6(b)(2)—Timely Notice Not Given*

1. *\$500 limit applies.* The second tier of liability is \$500. For example, the consumer's card is stolen on Monday and the consumer learns of the theft that same day. The consumer reports the theft on Friday. The \$500 limit applies because the consumer failed to notify the financial institution within two business days of learning of the theft (which would have been by midnight Wednesday). How much the consumer is actually liable for,

however, depends on when the unauthorized transfers take place. In this example, assume a \$100 unauthorized transfer was made on Tuesday and a \$600 unauthorized transfer on Thursday. Because the consumer is liable for the amount of the loss that occurs within the first two business days (but no more than \$50), plus the amount of the unauthorized transfers that occurs after the first two business days and before the consumer gives notice, the consumer's total liability is \$500 (\$50 of the \$100 transfer plus \$450 of the \$600 transfer, in this example). But if \$600 was taken on Tuesday and \$100 on Thursday, the consumer's maximum liability would be \$150 (\$50 of the \$600 plus \$100).

6-434*Paragraph 6(b)(3)—Periodic Statement; Timely Notice Not Given*

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

2. *Transfers not involving access device.* The first two tiers of liability do not apply to unauthorized transfers from a consumer's account made without an access device. If, however, the consumer fails to report such unauthorized transfers within 60 calendar days of the financial institution's transmittal of the periodic statement, the consumer may be liable for any transfers occurring after the close of the 60 days and before notice is given to the

institution. For example, a consumer's account is electronically debited for \$200 without the consumer's authorization and by means other than the consumer's access device. If the consumer notifies the institution within 60 days of the transmittal of the periodic statement that shows the unauthorized transfer, the consumer has no liability. However, if in addition to the \$200, the consumer's account is debited for a \$400 unauthorized transfer on the 61st day and the consumer fails to notify the institution of the first unauthorized transfer until the 62nd day, the consumer may be liable for the full \$400.

6-435

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

1. *Extenuating circumstances.* Examples of circumstances that require extension of the notification periods under this section include the consumer's extended travel or hospitalization.

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

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

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

3. *Content of notice.* Notice to a financial institution is considered given when a consumer takes reasonable steps to provide the institution with the pertinent account information. Even when the consumer is unable to provide

the account number or the card number in reporting a lost or stolen access device or an unauthorized transfer, the notice effectively limits the consumer's liability if the consumer otherwise identifies sufficiently the account in question. For example, the consumer may identify the account by the name on the account and the type of account in question.

6-436

SECTION 205.7—Initial Disclosures

7(a) Timing of Disclosures

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

2. *Lack of advance notice of a transfer.* Where a consumer authorizes a third party to debit or credit the consumer's account, an account-holding 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 institution has previously given the disclosures.

3. *Addition of new accounts.* If a consumer opens a new account permitting EFTs at a financial institution, and the consumer already has received Regulation E disclosures for another account at that institution, the institution need only disclose terms and conditions that differ from those previously given.

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

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

- ii. inquiring about the receipt of a preauthorized credit;
- iii. stopping payment of a preauthorized debit;
- iv. giving notice of an error.

2. *Location of telephone number.* The telephone number need not be incorporated into the text of the disclosure; for example, the institution may instead insert a reference to a telephone number that is readily available to the consumer, such as “Call your branch office. The number is shown on your periodic statement.” However, an institution must provide a specific telephone number and address, on or with the disclosure statement, for reporting a lost or stolen access device or a possible unauthorized transfer.

6-437

7(b) Content of Disclosures

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

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

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

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

6-438

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

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

- i. reporting the loss or theft of an access device or possible unauthorized transfers;

6-439

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

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

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

3. *Preauthorized transfers.* Financial institutions are not required to list preauthorized

transfers among the types of transfers that a consumer can make.

4. *One-time EFTs initiated using information from a check.* 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.)

6-440

Paragraph 7(b)(5)—Fees

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

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

3. *Interchange system fees.* Fees paid by the account-holding institution to the operator of a shared or interchange ATM system need not be disclosed, unless they are imposed on the consumer by the account-holding institution. Fees for use of an ATM that are debited directly to the consumer's account by an institution other than the account-holding institution (for example, fees included in the transfer amount) need not be disclosed. (See section 205.7(b)(11) for the general notice requirement regarding fees that may be imposed by ATM operators and by a network used to complete the transfer.)

6-441

Paragraph 7(b)(9)—Confidentiality

1. *Information provided to third parties.* An institution must describe the circumstances under which any information relating to an account to or from which EFTs are permitted will be made available to third parties, not just information concerning those EFTs. The term "third parties" includes affiliates such as other subsidiaries of the same holding company.

6-442

Paragraph 7(b)(10)—Error Resolution

1. *Substantially similar.* The error-resolution notice must be substantially similar to the model form in appendix A of part 205. An institution may use different wording so long as the substance of the notice remains the same, may delete inapplicable provisions (for example, the requirement for written confirmation of an oral notification), and may substitute substantive state law requirements affording greater consumer protection than Regulation E.

2. *Extended time period for certain transactions.* To take advantage of the longer time periods for resolving errors under section 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, an institution that relies on the exception from provisional crediting in section 205.11(c)(2) for accounts subject to Regulation T (12 CFR 220) must disclose accordingly.

6-442.5

7(c) Addition of Electronic Fund Transfer Services

1. *Addition of electronic check conversion services.* One-time EFTs initiated using information from a consumer's check are a new type of transfer requiring new disclosures, as applicable. (See appendix A-2.)

6-443

SECTION 205.8—Change-in-Terms Notice; Error-Resolution Notice

8(a) Change-in-Terms Notice

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

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

- i. closing some of an institution's ATMs
- ii. cancellation of an access device

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

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

6-444

8(b) Error-Resolution Notice

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

2. *Exception for new accounts.* For new ac-

counts, disclosure of the longer error-resolution time periods under section 205.11(c)(3) is not required in the annual error-resolution notice or in the notice that may be provided with each periodic statement as an alternative to the annual notice.

6-445

SECTION 205.9—Receipts at Electronic Terminals; Periodic Statements

9(a) Receipts at Electronic Terminals

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

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

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

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

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

6. *Multiple transfers.* If the consumer makes multiple transfers at the same time, the finan-

cial institution may document them on a single or on separate receipts.

the electronic terminal. An accounting or business date may be disclosed in addition if the dates are clearly distinguished.

6-446*Paragraph 9(a)(1)—Amount*

1. *Disclosure of transaction fee.* The required display of a fee amount on or at the terminal may be accomplished by displaying the fee on a sign at the terminal or on the terminal screen for a reasonable duration. Displaying the fee on a screen provides adequate notice, as long as consumers are given the option to cancel the transaction after receiving notice of a fee. (See section 205.16 for the notice requirements applicable to ATM operators that impose a fee for providing EFT services).

2. *Relationship between section 205.9(a)(1) and section 205.16.* The requirements of sections 205.9(a)(1) and 205.16 are similar but not identical.

- i. Section 205.9(a)(1) requires that if the amount of the transfer as shown on the receipt will include the fee, then the fee must be disclosed either on a sign on or at the terminal, or on the terminal screen. Section 205.16 requires disclosure both on a sign on or at the terminal (in a prominent and conspicuous location) and on the terminal screen. Section 205.16 permits disclosure on a paper notice as an alternative to the on-screen disclosure.
- ii. The disclosure of the fee on the receipt under section 205.9(a)(1) cannot be used to comply with the alternative paper disclosure procedure under section 205.16, if the receipt is provided at the completion of the transaction because, pursuant to the statute, the paper notice must be provided before the consumer is committed to paying the fee.
- iii. Section 205.9(a)(1) applies to any type of electronic terminal as defined in Regulation E (for example, to POS terminals as well as to ATMs), while section 205.16 applies only to ATMs.

Paragraph 9(a)(2)—Date

1. *Calendar date.* The receipt must disclose the calendar date on which the consumer uses

6-447*Paragraph 9(a)(3)—Type*

1. *Identifying transfer and account.* Examples identifying the type of transfer and the type of the consumer's account include "withdrawal from checking," "transfer from savings to checking," or "payment from savings."

2. *Exception.* Identification of an account is not required when the consumer can access only one asset account at a particular time or terminal, even if the access device can normally be used to access more than one account. For example, the consumer may be able to access only one particular account at terminals not operated by the account-holding institution, or may be able to access only one particular account when the terminal is offline. The exception is available even if, in addition to accessing one asset account, the consumer also can access a credit line.

3. *Access to multiple accounts.* If the consumer can use an access device to make transfers to or from different accounts of the same type, the terminal receipt must specify which account was accessed, such as "withdrawal from checking I" or "withdrawal from checking II." If only one account besides the primary checking account can be debited, the receipt can identify the account as "withdrawal from other account."

4. *Generic descriptions.* Generic descriptions may be used for accounts that are similar in function, such as share draft or NOW accounts and checking accounts. In a shared system, for example, when a credit union member initiates transfers to or from a share draft account at a terminal owned or operated by a bank, the receipt may identify a withdrawal from the account as a "withdrawal from checking."

5. *Point-of-sale transactions.* There is no prescribed terminology for identifying a transfer at a merchant's POS terminal. A transfer may be identified, for example, as a purchase, a sale of goods or services, or a payment to a

third party. When a consumer obtains cash from a POS terminal in addition to purchasing goods, or obtains cash only, the documentation need not differentiate the transaction from one involving the purchase of goods.

6-448*Paragraph 9(a)(5)—Terminal Location*

1. *Options for identifying terminal.* The institution may provide either—
 - i. the city, state or foreign country, and the information in section 205.9(a)(5)(i), (ii), or (iii), or
 - ii. a number or a code identifying the terminal.

If the institution chooses the second option, the code or terminal number identifying the terminal where the transfer is initiated may be given as part of a transaction code.

2. *Omission of city name.* The city may be omitted if the generally accepted name (such as a branch name) contains the city name.
3. *Omission of state.* The state may be omitted from the location information on the receipt if—
 - i. all the terminals owned or operated by the financial institution providing the statement (or by the system in which it participates) are located in that state, or
 - ii. all transfers occur at terminals located within 50 miles of the financial institution's main office.
4. *Omission of city and state.* The city and state may be omitted if all the terminals owned or operated by the financial institution providing the statement (or by the system in which it participates) are located in the same city.

Paragraph 9(a)(5)(i)

1. *Street address.* The address should include number and street (or intersection); the number (or intersecting street) may be omitted if the street alone uniquely identifies the terminal location.

Paragraph 9(a)(5)(ii)

1. *Generally accepted name.* Examples of a generally accepted name for a specific location include a branch of the financial institution, a shopping center, or an airport.

Paragraph 9(a)(5)(iii)

1. *Name of owner or operator of terminal.* Examples of an owner or operator of a terminal are a financial institution or a retail merchant.

6-449*Paragraph 9(a)(6)—Third-Party Transfer*

1. *Omission of third-party name.* The receipt need not disclose the third-party name if the name is provided by the consumer in a form that is not machine readable (for example, if the consumer indicates the payee by depositing a payment stub into the ATM). If, on the other hand, the consumer keys in the identity of the payee, the receipt must identify the payee by name or by using a code that is explained elsewhere on the receipt.
2. *Receipt as proof of payment.* Documentation required under the regulation constitutes prima facie proof of a payment to another person, except in the case of a terminal receipt documenting a deposit.

6-450**9(b) Periodic Statements**

1. *Periodic cycles.* Periodic statements may be sent on a cycle that is shorter than monthly. The statements must correspond to periodic cycles that are reasonably equal, that is, do not vary by more than four days from the regular cycle. The requirement of reasonably equal cycles does not apply when an institution changes cycles for operational or other reasons, such as to establish a new statement day or date.
2. *Interim statements.* Generally, a financial institution must provide periodic statements for each monthly cycle in which an EFT occurs, and at least quarterly if a transfer has not occurred. Where EFTs occur between regularly scheduled cycles, interim statements

must be provided. For example, if an institution issues quarterly statements at the end of March, June, September, and December, and the consumer initiates an EFT in February, an interim statement for February must be provided. If an interim statement contains interest or rate information, the institution must comply with Regulation DD, 12 CFR 230.6.

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

4. *Statement pickup.* A financial institution may permit, but may not require, consumers to pick up their periodic statements at the financial institution.

5. *Periodic statements limited to EFT activity.* A financial institution that uses a passbook as the primary means for displaying account activity, but also allows the account to be debited electronically, may provide a periodic statement that reflects only the EFTs and other required disclosures (such as charges, account balances, and address and telephone number for inquiries). (See section 205.9(c)(1)(i) for the exception applicable to preauthorized transfers for passbook accounts.)

6. *Codes and accompanying documents.* To meet the documentation requirements for periodic statements, a financial institution may—

- i. include copies of terminal receipts to reflect transfers initiated by the consumer at electronic terminals;
- ii. enclose posting memos, deposit slips, and other documents that, together with the statement, disclose all the required information;
- iii. use codes for names of third parties or terminal locations and explain the information to which the codes relate on an accompanying document.

6-451

Paragraph 9(b)(1)—Transaction Information

1. *Information obtained from others.* While financial institutions must maintain reasonable procedures to ensure the integrity of data obtained from another institution, a merchant, or

other third parties, verification of each transfer that appears on the periodic statement is not required.

Paragraph 9(b)(1)(i)

1. *Incorrect deposit amount.* If a financial institution determines that the amount actually deposited at an ATM is different from the amount entered by the consumer, the institution need not immediately notify the consumer of the discrepancy. The periodic statement reflecting the deposit may show either the correct amount of the deposit or the amount entered by the consumer along with the institution's adjustment.

6-452

Paragraph 9(b)(1)(iii)

1. *Type of transfer.* There is no prescribed terminology for describing a type of transfer. Placement of the amount of the transfer in the debit or the credit column is sufficient if other information on the statement, such as a terminal location or third-party name, enables the consumer to identify the type of transfer.

Paragraph 9(b)(1)(iv)

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

6-453

Paragraph 9(b)(1)(v)

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

2. *Consumer as third-party payee.* If a consumer makes an electronic fund transfer to another consumer, the financial institution

must identify the recipient by name (not just by an account number, for example).

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

4. *Account-holding institution as third party.* Transfers to the account-holding institution (by ATM, for example) must show the institution as the recipient, unless other information on the statement (such as, “loan payment from checking”) clearly indicates that the payment was to the account-holding institution.

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

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

6-454

Paragraph 9(b)(3)—Fees

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

2. *Fees in interchange system.* An account-holding institution must disclose any fees it imposes on the consumer for EFTs, including fees for ATM transactions in an interchange or shared ATM system. Fees for use of an ATM imposed on the consumer by an institution other than the account-holding institution and included in the amount of the transfer by the

terminal-operating institution need not be separately disclosed on the periodic statement.

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

6-455

Paragraph 9(b)(4)—Account Balances

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

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

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

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

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

6-456

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

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

6-456.1

Paragraph 9(c)(1)—Preauthorized Transfers to Accounts

1. *Accounts that may be accessed only by preauthorized transfers to the account.* The exception for “accounts that may be accessed only by preauthorized transfers to the ac-

count” includes accounts that can be accessed by means other than EFTs, such as checks. If, however, an account may be accessed by any EFT other than preauthorized credits to the account, such as preauthorized debits or ATM transactions, the account does not qualify for the exception.

2. *Reversal of direct deposits.* For direct-deposit-only accounts, a financial institution must send a periodic statement at least quarterly. A reversal of a direct deposit to correct an error does not trigger the monthly statement requirement when the error represented a credit to the wrong consumer’s account, a duplicate credit, or a credit in the wrong amount. (See also comment 2(m)-5.)

6-457**9(d) Documentation for Foreign-Initiated Transfers**

1. *Foreign-initiated transfers.* An institution must make a good faith effort to provide all required information for foreign-initiated transfers. For example, even if the institution is not able to provide a specific terminal location, it should identify the country and city in which the transfer was initiated.

6-458**SECTION 205.10—Preauthorized Transfers****10(a)—Preauthorized Transfers to Consumer’s Account***Paragraph 10(a)(1)—Notice by Financial Institution*

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

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

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

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

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

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

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

6-459**10(b) Written Authorization for Preauthorized Transfers from Consumer’s Account**

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

tion also is not required when a successor institution begins collecting payments.

2. *Authorization obtained by third party.* The account-holding financial institution does not violate the regulation when a third-party payee fails to obtain the authorization in writing or fails to give a copy to the consumer; rather, it is the third-party payee that is in violation of the regulation.

3. *Written authorization for preauthorized transfers.* The requirement that preauthorized EFTs be authorized by the consumer “only by a writing” cannot be met by a payee’s signing a written authorization on the consumer’s behalf with only an oral authorization from the consumer.

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

6-459.1

5. *Similarly authenticated.* The similarly-authenticated standard permits signed, written authorizations to be provided electronically. The writing and signature requirements of this section are satisfied by complying with the Electronic Signatures in Global and National Commerce Act, 15 USC 7001 et seq., which defines electronic records and electronic signatures. Examples of electronic signatures include, but are not limited to, digital signatures and security codes. A security code need not originate with the account-holding institution. The authorization process should evidence the consumer’s identity and assent to the authorization. The person that obtains the authorization must provide a copy of the terms of the authorization to the consumer either electronically or in paper form. Only the consumer may authorize the transfer and not, for example, a third-party merchant on behalf of the consumer.

6. *Requirements of an authorization.* An authorization is valid if it is readily identifiable

as such and the terms of the preauthorized transfer are clear and readily understandable.

7. *Bona fide error.* Consumers sometimes authorize third-party payees, by telephone or online, to submit recurring charges against a credit card account. If the consumer indicates use of a credit card account when in fact a debit card is being used, the payee does not violate the requirement to obtain a written authorization if the failure to obtain written authorization was not intentional and resulted from a bona fide error, and if the payee maintains procedures reasonably adapted to avoid any such error. Procedures reasonably adapted to avoid error will depend upon the circumstances. Generally, requesting the consumer to specify whether the card to be used for the authorization is a debit (or check) card or a credit card is a reasonable procedure. Where the consumer has indicated that the card is a credit card (or that the card is not a debit or check card), the payee may rely on the consumer’s statement without seeking further information about the type of card. If the payee believes, at the time of the authorization, that a credit card is involved, and later finds that the card used is a debit card (for example, because the consumer later brings the matter to the payee’s attention), the payee must obtain a written and signed or (where appropriate) a similarly authenticated authorization as soon as reasonably possible, or cease debiting the consumer’s account.

6-460

10(c) Consumer’s Right to Stop Payment

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

2. *Revocation of authorization.* Once a financial institution has been notified that the consumer’s authorization is no longer valid, it must block all future payments for the particular debit transmitted by the designated payee-

originator. (However, see comment 10(c)-3.) The institution may not wait for the payee-originator to terminate the automatic debits. The institution may confirm that the consumer has informed the payee-originator of the revocation (for example, by requiring a copy of the consumer's revocation as written confirmation to be provided within 14 days of an oral notification). If the institution does not receive the required written confirmation within the 14-day period, it may honor subsequent debits to the account.

3. *Alternative procedure for processing a stop-payment request.* If an institution does not have the capability to block a preauthorized debit from being posted to the consumer's account—as in the case of a preauthorized debit made through a debit card network or other system, for example—the institution may instead comply with the stop-payment requirements by using a third party to block the transfer(s), as long as the consumer's account is not debited for the payment.

tion need not provide a consumer the option of receiving notice with each varying transfer, and may instead provide notice only when a debit to an account of the consumer falls outside a specified range or differs by more than a specified amount from the most recent transfer, if the funds are transferred and credited to an account of the consumer held at another financial institution. The specified range or amount, however, must be one that reasonably could be anticipated by the consumer, and the institution must notify the consumer of the range or amount at the time the consumer provides authorization for the preauthorized transfers. For example, if the transfer is for payment of interest for a fixed-rate certificate of deposit account, an appropriate range might be based on a month containing 28 days and a month containing 31 days.

6-462

10(e) Compulsory Use

Paragraph 10(e)(1)—Credit

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

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

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

6-461

10(d) Notice of Transfers Varying in Amount

Paragraph 10(d)(1)—Notice

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

Paragraph 10(d)(2)—Range

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

2. *Transfers to an account of the consumer held at another institution.* A financial institu-

6-463
Paragraph 10(e)(2)—Employment or Government Benefit

1. *Payroll.* An employer (including a financial institution) may not require its employees to receive their salary by direct deposit to any particular institution. An employer may require direct deposit of salary by electronic means if employees are allowed to choose the institution that will receive the direct deposit. Alternatively, an employer may give employees the choice of having their salary deposited at a particular institution (designated by the employer), or receiving their salary by another means, such as by check or cash.

5. *Request for documentation or information.* A request for documentation or other information must be treated as an error unless it is clear that the consumer is requesting a duplicate copy for tax or other recordkeeping purposes.

6. *Terminal receipts for transfers of \$15 or less.* The fact that an institution does not make a terminal receipt available for a transfer of \$15 or less in accordance with section 205.9(e) is not an error for purposes of section 205.11(a)(1)(vi) or (vii).

6-464
SECTION 205.11—Procedures for Resolving Errors

11(a) Definition of Error

1. *Terminal location.* With regard to deposits at an ATM, a consumer's request for the terminal location or other information triggers the error-resolution procedures, but the financial institution need only provide the ATM location if it has captured that information.

2. *Verifying an account debit or credit.* If the consumer contacts the financial institution to ascertain whether a payment (for example, in a home-banking or bill-payment program) or any other type of EFT was debited to the account, or whether a deposit made via ATM, preauthorized transfer, or any other type of EFT was credited to the account, without asserting an error, the error-resolution procedures do not apply.

3. *Loss or theft of access device.* A financial institution is required to comply with the error-resolution procedures when a consumer reports the loss or theft of an access device if the consumer also alleges possible unauthorized use as a consequence of the loss or theft.

4. *Error asserted after account closed.* The financial institution must comply with the error-resolution procedures when a consumer properly asserts an error, even if the account has been closed.

6-465
11(b) Notice of Error from Consumer

Paragraph 11(b)(1)—Timing; Contents

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

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

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

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

5. *Discovery of error by institution.* The error-resolution procedures of this section apply when a notice of error is received from the

consumer, and not when the financial institution itself discovers and corrects an error.

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

7. *Effect of late notice.* An institution is not required to comply with the requirements of this section for any notice of error from the consumer that is received by the institution later than 60 days from the date on which the periodic statement first reflecting the error is sent. Where the consumer's assertion of error involves an unauthorized EFT, however, the institution must comply with section 205.6 before it may impose any liability on the consumer.

6-466

Paragraph 11(b)(2)—Written Confirmation

1. *Written confirmation-of-error notice.* If the consumer sends a written confirmation of error to the wrong address, the financial institution must process the confirmation through normal procedures. But the institution need not provisionally credit the consumer's account if the written confirmation is delayed beyond 10 business days in getting to the right place because it was sent to the wrong address.

6-467

11(c) Time Limits and Extent of Investigation

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

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

3. *Charges for error resolution.* If a billing

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

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

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

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

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

amount upon transmitting the requested information, clarification, or documentation.

6-468*Paragraph 11(c)(2)(i)*

1. *Compliance with all requirements.* Financial institutions exempted from provisionally crediting a consumer's account under section 205.11(c)(2)(i)(A) and (B) must still comply with all other requirements of section 205.11.

6-469*Paragraph 11(c)(3)—Extension of Time Periods*

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

6-470*Paragraph 11(c)(4)—Investigation*

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

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

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

fer correctly corresponds to the amount of the consumer's purchase.

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

5. *No EFT agreement.* When there is no agreement between the institution and the third party for the type of EFT involved, the financial institution must review any relevant information within the institution's own records for the particular account to resolve the consumer's claim. The extent of the investigation required may vary depending on the facts and circumstances. However, a financial institution may not limit its investigation solely to the payment instructions where additional information within its own records pertaining to the particular account in question could help to resolve a consumer's claim.

Information that may be reviewed as part of an investigation might include—

- i. the ACH transaction records for the transfer;
- ii. the transaction history of the particular account for a reasonable period of time immediately preceding the allegation of error;
- iii. whether the check number of the transaction in question is notably out-of-sequence;
- iv. the location of either the transaction or the payee in question relative to the consumer's place of residence and habitual transaction area;
- v. information relative to the account in question within the control of the institution's third-party service providers if the financial institution reasonably believes that it may have records or other information that could be dispositive; or
- vi. any other information appropriate to resolve the claim.

6-471**11(d) Procedures If Financial Institution Determines No Error or Different Error Occurred**

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

6-472*Paragraph 11(d)(1)—Written Explanation*

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

6-473*Paragraph 11(d)(2)—Debiting Provisional Credit*

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

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

6-474**11(e) Reassertion of Error**

1. *Withdrawal of error; right to reassert.* The financial institution has no further error-

resolution responsibilities if the consumer voluntarily withdraws the notice alleging an error. A consumer who has withdrawn an allegation of error has the right to reassert the allegation unless the financial institution had already complied with all of the error-resolution requirements before the allegation was withdrawn. The consumer must do so, however, within the original 60-day period.

6-475**SECTION 205.12—Relation to Other Laws****12(a) Relation to Truth in Lending**

1. *Determining applicable regulation.* i. For transactions involving access devices that also function as credit cards, whether Regulation E or Regulation Z (12 CFR 226) applies depends on the nature of the transaction. For example, if the transaction solely involves an extension of credit, and does not include a debit to a checking account (or other consumer asset account), the liability limitations and error-resolution requirements of Regulation Z apply. If the transaction debits a checking account only (with no credit extended), the provisions of Regulation E apply. If the transaction debits a checking account but also draws on an overdraft line of credit attached to the account, Regulation E's liability limitations apply, in addition to section 226.13(d) and (g) of Regulation Z (which apply because of the extension of credit associated with the overdraft feature on the checking account). If a consumer's access device is also a credit card and the device is used to make unauthorized withdrawals from a checking account, but also is used to obtain unauthorized cash advances directly from a line of credit that is separate from the checking account, both Regulation E and Regulation Z apply.

ii. The following examples illustrate these principles:

A. A consumer has a card that can be used either as a credit card or a debit card. When used as a debit card, the card draws on the consumer's checking account. When used as a credit card, the card draws only

on a separate line of credit. If the card is stolen and used as a credit card to make purchases or to get cash advances at an ATM from the line of credit, the liability limits and error-resolution provisions of Regulation Z apply; Regulation E does not apply.

- B. In the same situation, if the card is stolen and is used as a debit card to make purchases or to get cash withdrawals at an ATM from the checking account, the liability limits and error-resolution provisions of Regulation E apply; Regulation Z does not apply.
- C. In the same situation, assume the card is stolen and used both as a debit card and as a credit card; for example, the thief makes some purchases using the card as a debit card, and other purchases using the card as a credit card. Here, the liability limits and error-resolution provisions of Regulation E apply to the unauthorized transactions in which the card was used as a debit card, and the corresponding provisions of Regulation Z apply to the unauthorized transactions in which the card was used as a credit card.
- D. Assume a somewhat different type of card, one that draws on the consumer's checking account and can also draw on an overdraft line of credit attached to the checking account. There is no separate line of credit, only the overdraft line, associated with the card. In this situation, if the card is stolen and used, the liability limits and the error-resolution provisions of Regulation E apply. In addition, if the use of the card has resulted in accessing the overdraft line of credit, the error-resolution provisions of section 226.13(d) and (g) of Regulation Z also apply, but not the other error-resolution provisions of Regulation Z.

2. *Issuance rules.* For access devices that also constitute credit cards, the issuance rules of Regulation E apply if the only credit feature is a preexisting credit line attached to the asset account to cover overdrafts (or to maintain a specified minimum balance) or an overdraft service, as defined in section 205.17(a). Regulation Z (12 CFR part 226) rules apply if there is another type of credit feature; for

example, one permitting direct extensions of credit that do not involve the asset account.

3. *Overdraft service.* The addition of an overdraft service, as that term is defined in section 205.17(a), to an accepted access device does not constitute the addition of a credit feature subject to Regulation Z. Instead, the provisions of Regulation E apply, including the liability limitations (section 205.6) and the requirement to obtain consumer consent to the service before any fees or charges for paying an overdraft may be assessed on the account (section 205.17).

6-476

12(b) Preemption of Inconsistent State Laws

1. *Specific determinations.* The regulation prescribes standards for determining whether state laws that govern EFTs, and state laws regarding gift certificates, store gift cards, or general-use prepaid cards that govern dormancy, inactivity, or service fees, or expiration dates, are preempted by the act and the regulation. A state law that is inconsistent may be preempted even if the Board has not issued a determination. However, nothing in section 205.12(b) provides a financial institution with immunity for violations of state law if the institution chooses not to make state disclosures and the Board later determines that the state law is not preempted.

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

- i. *Definition of unauthorized use.* Section 5(4) is preempted to the extent that it relates to the section of state law governing consumer liability for unauthorized use of an access device.
- ii. *Consumer liability for unauthorized use of an account.* Section 14 is inconsistent with section 205.6 and is less protective of the consumer than the federal law. The state law places liability on the consumer for the unauthorized use of an account in cases involving the consumer's negligence. Under the federal law, a consumer's liability for unauthorized use is not related to

the consumer's negligence and depends instead on the consumer's promptness in reporting the loss or theft of the access device.

- iii. *Error resolution.* Section 15 is preempted because it is inconsistent with section 205.11 and is less protective of the consumer than the federal law. The state law allows financial institutions up to 70 days to resolve errors, whereas the federal law generally requires errors to be resolved within 45 days.
- iv. *Receipts and periodic statements.* Sections 17 and 18 are preempted because they are inconsistent with section 205.9. The state provisions require a different disclosure of information than does the federal law. The receipt provision is also preempted because it allows the consumer to be charged for receiving a receipt if a machine cannot furnish one at the time of a transfer.

6-477

SECTION 205.13—Administrative Enforcement; Record Retention

13(b) Record Retention

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

6-478

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

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

1. *Applicability.* This section applies only when a service provider issues an access device to a consumer for initiating transfers to or from the consumer's account at a financial institution and the two entities have no agreement regarding this EFT service. If the service provider does not issue an access device to

the consumer for accessing an account held by another institution, it does not qualify for the treatment accorded by section 205.14. For example, this section does not apply to an institution that initiates preauthorized payroll deposits to consumer accounts on behalf of an employer. By contrast, section 205.14 can apply to an institution that issues a code for initiating telephone transfers to be carried out through the ACH from a consumer's account at another institution. This is the case even if the consumer has accounts at both institutions.

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

6-479

14(b) Compliance by Electronic Fund Transfer Service Provider

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

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

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

Paragraph 14(b)(2)—Error Resolution

1. *Error resolution.* When a consumer notifies the service provider of an error, the EFT service provider must investigate and resolve the error in compliance with section 205.11 as modified by section 205.14(b)(2). If an error occurred, any fees or charges imposed as a result of the error, either by the service provider or by the account-holding institution (for example, overdraft or dishonor fees) must be reimbursed to the consumer by the service provider.

6-480
14(c) Compliance by Account-Holding Institution

Paragraph 14(c)(1)

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

6-480.5
SECTION 205.16—Disclosures at Automated Teller Machines

16(b) General

Paragraph 16(b)(1)

1. *Specific notices.* An ATM operator that imposes a fee for a specific type of transaction—such as for a cash withdrawal, but not for a balance inquiry, or for some cash withdrawals, but not for others (such as where the card was issued by a foreign bank or by a card issuer that has entered into a special contractual relationship with the ATM operator regarding surcharges)—may provide a notice on or at the ATM that a fee will be imposed or a notice that a fee may be imposed for providing EFT services or may specify the type of EFT for which a fee is imposed. If, however, a fee will be imposed in all instances, the notice must state that a fee will be imposed.

6-480.6
SECTION 205.17—Requirements for Overdraft Services

7(a) Definition

1. *Exempt securities- and commodities-related lines of credit.* The definition of “overdraft service” does not include the payment of transactions in a securities or commodities account pursuant to which credit is extended by a broker-dealer registered with the Securities

and Exchange Commission or the Commodity Futures Trading Commission.

17(b) Opt-In Requirement

1. *Scope.*

i. *Account-holding institutions.* Section 205.17(b) applies to ATM and one-time debit card transactions made with a debit card issued by or on behalf of the account-holding institution. Section 205.17(b) does not apply to ATM and one-time debit card transactions made with a debit card issued by or through a third party unless the debit card is issued on behalf of the account-holding institution.

ii. *Coding of transactions.* A financial institution complies with the rule if it adapts its systems to identify debit card transactions as either one-time or recurring. If it does so, the financial institution may rely on the transaction’s coding by merchants, other institutions, and other third parties as a one-time or a preauthorized or recurring debit card transaction.

iii. *One-time debit card transactions.* The opt-in applies to any one-time debit card transaction, whether the card is used, for example, at a point-of-sale, in an on-line transaction, or in a telephone transaction.

iv. *Application of fee prohibition.* The prohibition on assessing overdraft fees under section 205.17(b)(1) applies to all institutions. For example, the prohibition applies to an institution that has a policy and practice of declining to authorize and pay any ATM or one-time debit card transactions when the institution has a reasonable belief at the time of the authorization request that the consumer does not have sufficient funds available to cover the transaction. However, the institution is not required to comply with sections 205.17(b)(1)(i)-(iv), including the notice and opt-in requirements, if it does not assess overdraft fees for paying ATM or one-time debit card transactions that overdraw the consumer’s account. Assume an institution does not provide an opt-in notice, but authorizes an ATM or one-time debit card transaction on the reasonable belief that the consumer has sufficient funds in the account to cover the

transaction. If, at settlement, the consumer has insufficient funds in the account (for example, due to intervening transactions that post to the consumer's account), the institution is not permitted to assess an overdraft fee or charge for paying that transaction.

2. *No affirmative consent.* A financial institution may pay overdrafts for ATM and one-time debit card transactions even if a consumer has not affirmatively consented or opted in to the institution's overdraft service. If the institution pays such an overdraft without the consumer's affirmative consent, however, it may not impose a fee or charge for doing so. These provisions do not limit the institution's ability to debit the consumer's account for the amount overdrawn if the institution is permitted to do so under applicable law.

3. *Overdraft transactions not required to be authorized or paid.* Section 205.17 does not require a financial institution to authorize or pay an overdraft on an ATM or one-time debit card transaction even if the consumer has affirmatively consented to an institution's overdraft service for such transactions.

4. *Reasonable opportunity to provide affirmative consent.* A financial institution provides a consumer with a reasonable opportunity to provide affirmative consent when, among other things, it provides reasonable methods by which the consumer may affirmatively consent. A financial institution provides such reasonable methods, if—

i. *By mail.* The institution provides a form for the consumer to fill out and mail to affirmatively consent to the service.

ii. *By telephone.* The institution provides a readily-available telephone line that consumers may call to provide affirmative consent.

iii. *By electronic means.* The institution provides an electronic means for the consumer to affirmatively consent. For example, the institution could provide a form that can be accessed and processed at its website, where the consumer may click on a check box to provide consent and confirm

that choice by clicking on a button that affirms the consumer's consent.

iv. *In person.* The institution provides a form for the consumer to complete and present at a branch or office to affirmatively consent to the service.

5. *Implementing opt-in at account-opening.* A financial institution may provide notice regarding the institution's overdraft service prior to or at account-opening. A financial institution may require a consumer, as a necessary step to opening an account, to choose whether or not to opt into the payment of ATM or one-time debit card transactions pursuant to the institution's overdraft service. For example, the institution could require the consumer, at account opening, to sign a signature line or check a box on a form (consistent with comment 17(b)-6) indicating whether or not the consumer affirmatively consents at account opening. If the consumer does not check any box or provide a signature, the institution must assume that the consumer does not opt in. Or, the institution could require the consumer to choose between an account that does not permit the payment of ATM or one-time debit card transactions pursuant to the institution's overdraft service and an account that permits the payment of such overdrafts, provided that the accounts comply with section 205.17(b)(2) and section 205.17(b)(3).

6. *Affirmative consent required.* A consumer's affirmative consent, or opt-in, to a financial institution's overdraft service must be obtained separately from other consents or acknowledgements obtained by the institution, including a consent to receive disclosures electronically. An institution may obtain a consumer's affirmative consent by providing a blank signature line or check box that the consumer could sign or select to affirmatively consent, provided that the signature line or check box is used solely for purposes of evidencing the consumer's choice whether or not to opt into the overdraft service and not for other purposes. An institution does not obtain a consumer's affirmative consent by including pre-printed language about the overdraft service in an account disclosure provided with a signature card or contract that the consumer must sign to open the account and that acknowl-

edges the consumer's acceptance of the account terms. Nor does an institution obtain a consumer's affirmative consent by providing a signature card that contains a pre-selected check box indicating that the consumer is requesting the service.

7. *Confirmation.* A financial institution may comply with the requirement in section 205.17(b)(1)(iv) to provide confirmation of the consumer's affirmative consent by mailing or delivering to the consumer a copy of the consumer's completed opt-in notice, or by mailing or delivering a letter or notice to the consumer acknowledging that the consumer has elected to opt into the institution's service. The confirmation, which must be provided in writing, or electronically if the consumer agrees, must include a statement informing the consumer of the right to revoke the opt-in at any time. See section 205.17(d)(6), which permits institutions to include the revocation statement on the initial opt-in notice. An institution complies with the confirmation requirement if it has adopted reasonable procedures designed to ensure that overdraft fees are assessed only in connection with transactions paid after the confirmation has been mailed or delivered to the consumer.

8. *Outstanding Negative Balance.* If a fee or charge is based on the amount of the outstanding negative balance, an institution is prohibited from assessing any such fee if the negative balance is solely attributable to an ATM or one-time debit card transaction, unless the consumer has opted into the institution's overdraft service for ATM or one-time debit card transactions. However, the rule does not prohibit an institution from assessing such a fee if the negative balance is attributable in whole or in part to a check, ACH, or other type of transaction not subject to the prohibition on assessing overdraft fees in section 205.17(b)(1).

9. *Daily or Sustained Overdraft, Negative Balance, or Similar Fee or Charge.*

i. *Daily or sustained overdraft, negative balance, or similar fees or charges.* If a consumer has not opted into the institution's overdraft service for ATM or one-time debit card transactions, the fee prohibition in sec-

tion 205.17(b)(1) applies to all overdraft fees or charges for paying those transactions, including but not limited to daily or sustained overdraft, negative balance, or similar fees or charges. Thus, where a consumer's negative balance is solely attributable to an ATM or one-time debit card transaction, the rule prohibits the assessment of such fees unless the consumer has opted in. However, the rule does not prohibit an institution from assessing daily or sustained overdraft, negative balance, or similar fees or charges if a negative balance is attributable in whole or in part to a check, ACH, or other type of transaction not subject to the fee prohibition. When the negative balance is attributable in part to an ATM or one-time debit card transaction, and in part to a check, ACH, or other type of transaction not subject to the fee prohibition, the date on which such a fee may be assessed is based on the date on which the check, ACH, or other type of transaction is paid into overdraft.

ii. *Examples.* The following examples illustrate how an institution complies with the fee prohibition. For each example, assume the following: (a) The consumer has not opted into the payment of ATM or one-time debit card overdrafts; (b) these transactions are paid into overdraft because the amount of the transaction at settlement exceeded the amount authorized or the amount was not submitted for authorization; (c) under the account agreement, the institution may charge a per-item fee of \$20 for each overdraft, and a one-time sustained overdraft fee of \$20 on the fifth consecutive day the consumer's account remains overdrawn; (d) the institution posts ATM and debit card transactions before other transactions; and (e) the institution allocates deposits to account debits in the same order in which it posts debits.

a. Assume that a consumer has a \$50 account balance on March 1. That day, the institution posts a one-time debit card transaction of \$60 and a check transaction of \$40. The institution charges an overdraft fee of \$20 for the check overdraft but cannot assess an overdraft fee for the debit card transaction. At the end

of the day, the consumer has an account balance of negative \$70. The consumer does not make any deposits to the account, and no other transactions occur between March 2 and March 6. Because the consumer's negative balance is attributable in part to the \$40 check (and associated overdraft fee), the institution may charge a sustained overdraft fee on March 6 in connection with the check.

b. Same facts as in a., except that on March 3, the consumer deposits \$40 in the account. The institution allocates the \$40 to the debit card transaction first, consistent with its posting order policy. At the end of the day on March 3, the consumer has an account balance of negative \$30, which is attributable to the check transaction (and associated overdraft fee). The consumer does not make any further deposits to the account, and no other transactions occur between March 4 and March 6. Because the remaining negative balance is attributable to the March 1 check transaction, the institution may charge a sustained overdraft fee on March 6 in connection with the check.

c. Assume that a consumer has a \$50 account balance on March 1. That day, the institution posts a one-time debit card transaction of \$60. At the end of that day, the consumer has an account balance of negative \$10. The institution may not assess an overdraft fee for the debit card transaction. On March 3, the institution pays a check transaction of \$100 and charges an overdraft fee of \$20. At the end of that day, the consumer has an account balance of negative \$130. The consumer does not make any deposits to the account, and no other transactions occur between March 4 and March 8. Because the consumer's negative balance is attributable in part to the check, the institution may assess a \$20 sustained overdraft fee. However, because the check was paid on March 3, the institution must use March 3 as the start date for determining the date on which the sustained overdraft fee may be assessed. Thus, the

institution may charge a \$20 sustained overdraft fee on March 8.

iii. *Alternative approach.* For a consumer who does not opt into the institution's overdraft service for ATM and one-time debit card transactions, an institution may also comply with the fee prohibition in section 205.17(b)(1) by not assessing daily or sustained overdraft, negative balance, or similar fees or charges unless a consumer's negative balance is attributable solely to check, ACH or other types of transactions not subject to the fee prohibition while that negative balance remains outstanding. In such case, the institution would not have to determine how to allocate subsequent deposits that reduce but do not eliminate the negative balance. For example, if a consumer has a negative balance of \$30, of which \$10 is attributable to a one-time debit card transaction, an institution complies with the fee prohibition if it does not assess a sustained overdraft fee while that negative balance remains outstanding.

Paragraph 17(b)(2)—Conditioning Payment of Other Overdrafts on Consumer's Affirmative Consent

1. *Application of the same criteria.* The prohibitions on conditioning in section 205.17(b)(2) generally require an institution to apply the same criteria for deciding when to pay overdrafts for checks, ACH transactions, and other types of transactions, whether or not the consumer has affirmatively consented to the institution's overdraft service with respect to ATM and one-time debit card overdrafts. For example, if an institution's internal criteria would lead the institution to pay a check overdraft if the consumer had affirmatively consented to the institution's overdraft service for ATM and one-time debit card transactions, it must also apply the same criteria in a consistent manner in determining whether to pay the check overdraft if the consumer has not opted in.

2. *No requirement to pay overdrafts on checks, ACH transactions, or other types of transactions.* The prohibition on conditioning in section 205.17(b)(2) does not require an

institution to pay overdrafts on checks, ACH transactions, or other types of transactions in all circumstances. Rather, the rule simply prohibits institutions from considering the consumer's decision not to opt in when deciding whether to pay overdrafts for checks, ACH transactions, or other types of transactions.

Paragraph 17(b)(3)—Same Account Terms, Conditions, and Features

1. *Variations in terms, conditions, or features.*

A financial institution may not vary the terms, conditions, or features of an account provided to a consumer who does not affirmatively consent to the payment of ATM or one-time debit card transactions pursuant to the institution's overdraft service. This includes, but is not limited to:

- i. Interest rates paid and fees assessed;
- ii. The type of ATM or debit card provided to the consumer. For instance, an institution may not provide consumers who do not opt in a PIN-only card while providing a debit card with both PIN and signature-debit functionality to consumers who opt in;
- iii. Minimum balance requirements; or
- iv. Account features such as on-line bill payment services.

2. *Limited-feature bank accounts.* Section 205.17(b)(3) does not prohibit institutions from offering deposit account products with limited features, provided that a consumer is not required to open such an account because the consumer did not opt in. For example, section 205.17(b)(3) does not prohibit an institution from offering a checking account designed to comply with state basic banking laws, or designed for consumers who are not eligible for a checking account because of their credit or checking account history, which may include features limiting the payment of overdrafts. However, a consumer who applies, and is otherwise eligible, for a full-service or other particular deposit account product may not be provided instead with the account with more limited features because the consumer has declined to opt in.

Paragraph 17(b)(4)—Exception to the Notice and Opt-In Requirement

17(c) Timing

1. *Early compliance.* A financial institution may provide the notice required by section 205(b)(1)(i) and obtain the consumer's affirmative consent to the financial institution's overdraft service for ATM and one-time debit card transactions prior to July 1, 2010, provided that the financial institution complies with all of the requirements of this section.

2. *Permitted fees or charges.* Fees or charges for ATM and one-time debit card overdrafts may be assessed only for overdrafts paid on or after the date the financial institution receives the consumer's affirmative consent to the institution's overdraft service. See also comment 17(b)-7.

17(d) Content and Format

1. *Overdraft service.* The description of the institution's overdraft service should indicate that the consumer has the right to affirmatively consent, or opt into payment of overdrafts for ATM and one-time debit card transactions. The description should also disclose the institution's policies regarding the payment of overdrafts for other transactions, including checks, ACH transactions, and automatic bill payments, provided that this content is not more prominent than the description of the consumer's right to opt into payment of overdrafts for ATM and one-time debit card transactions. As applicable, the institution also should indicate that it pays overdrafts at its discretion, and should briefly explain that if the institution does not authorize and pay an overdraft, it may decline the transaction.

2. *Maximum fee.* If the amount of a fee may vary from transaction to transaction, the financial institution may indicate that the consumer may be assessed a fee "up to" the maximum fee. The financial institution must disclose all applicable overdraft fees, including but not limited to:

- i. Per item or per transaction fees;
- ii. Daily overdraft fees;

iii. Sustained overdraft fees, where fees are assessed when the consumer has not repaid the amount of the overdraft after some period of time (for example, if an account remains overdrawn for five or more business days); or

iv. Negative balance fees.

3. *Opt-in methods.* The opt-in notice must include the methods by which the consumer may consent to the overdraft service for ATM and one-time debit card transactions. Institutions may tailor Model Form A-9 to the methods offered to consumers for affirmatively consenting to the service. For example, an institution need not provide the tear-off portion of Model Form A-9 if it is only permitting consumers to opt-in telephonically or electronically. Institutions may, but are not required, to provide a signature line or check box where the consumer can indicate that he or she declines to opt in.

4. *Identification of consumer's account.* An institution may use any reasonable method to identify the account for which the consumer submits the opt-in notice. For example, the institution may include a line for a printed name and an account number, as shown in Model Form A-9. Or, the institution may print a bar code or use other tracking information. See also comment 17(b)-6, which describes how an institution obtains a consumer's affirmative consent.

5. *Alternative plans for covering overdrafts.* 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. For example, the notice might state "We also offer *overdraft protection plans*, such as a link to a savings account or to an overdraft line of credit, which may be less expensive than our standard overdraft practices." 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.

17(f) Continuing Right To Opt-In or To Revoke the Opt-In

1. *Fees or charges for overdrafts incurred prior to revocation.* Section 205.17(f)(1) provides that a consumer may revoke his or her prior consent at any time. If a consumer does so, this provision does not require the financial institution to waive or reverse any overdraft fees assessed on the consumer's account prior to the institution's implementation of the consumer's revocation request.

17(g) Duration of Opt-In

1. *Termination of overdraft service.* A financial institution may, for example, terminate the overdraft service when the consumer makes excessive use of the service.

6-480.7

SECTION 205.18—Requirements for Financial Institutions Offering Payroll Card Accounts

18(a) Coverage

1. *Issuance of access device.* Consistent with section 205.5(a), a financial institution may issue an 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 card account when the consumer chooses to receive salary or other compensation through a payroll card account.

2. *Application to employers and service providers.* Typically, employers and third-party service providers do not meet the definition of a *financial institution* subject to the regulation because they neither hold payroll card accounts nor 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.

6-480.71**18(b) Alternative to Periodic Statements**

1. *Posted transactions.* A history of transactions provided under sections 205.18(b)(1)(ii) and (iii) shall reflect transfers once they have been posted to the account. Thus, an institution does not need to include transactions that have been authorized but that have not yet posted to the account.

2. *Electronic history.* The electronic history required under section 205.18(b)(1)(ii) must be provided in a form that the consumer may keep, as required under section 205.4(a)(1). Financial institutions may satisfy this requirement if they make the electronic history available in a format that is capable of being retained. For example, an institution satisfies the requirement if it provides a history at an Internet website in a format that is capable of being printed or stored electronically using an Internet web browser.

6-480.72**18(c) Modified Requirements**

1. *Error-resolution safe-harbor provision.* Institutions that choose to investigate notices of error provided up to 120 days from the date a transaction has posted to a consumer's account may still disclose the error-resolution time period required by the regulation (as set forth in the model form in appendix A-7). Specifically, an institution may disclose to payroll card account holders that the institution will investigate any notice of error provided within 60 days of the consumer electronically accessing an account or receiving a written history upon request that reflects the error, even if, for some or all transactions, the institution investigates any notice of error provided up to 120 days from the date that the transaction alleged to be in error has posted to the consumer's account. Similarly, an institution's summary of the consumer's liability (as required under section 205.7(b)(1)) may disclose that liability is based on the consumer providing notice of error within 60 days of the consumer electronically accessing an account or receiving a written history reflecting the error, even if, for some or all transactions, the institution allows a consumer to assert a

notice of error up to 120 days from the date of posting of the alleged error.

2. *Electronic access.* A consumer is deemed to have accessed a payroll card account electronically when the consumer enters a user identification code or password or otherwise complies with a security procedure used by an institution to verify the consumer's identity. An institution is not required to determine whether a consumer has in fact accessed information about specific transactions to trigger the beginning of the 60-day periods for liability limits and error resolution under sections 205.6 and 205.11.

3. *Untimely notice of error.* An institution that provides a transaction history under section 205.18(b)(1) is not required to comply with the requirements of section 205.11 for any notice of error from the consumer pertaining to a transfer that occurred more than 60 days prior to the earlier of the date the consumer electronically accesses the account or the date the financial institution sends a written history upon the consumer's request. (Alternatively, as provided in section 205.18(c)(4)(ii), an institution need not comply with the requirements of section 205.11 with respect to any notice of error received from the consumer more than 120 days after the date of posting of the transfer allegedly in error.) Where the consumer's assertion of error involves an unauthorized EFT, however, the institution must comply with section 205.6 before it may impose any liability on the consumer.

6-480.74**Section 205.20—Requirements for Gift Cards and Gift Certificates****20(a) Definitions**

1. *Form of card, code, or device.* Section 205.20 applies to any card, code, or other device that meets one of the definitions in section 205.20(a)(1) through (a)(3) (and is not otherwise excluded by section 205.20(b)), even if it is not issued in card form. Section 205.20 applies, for example, to an account number or bar code that can be used to access underlying funds. Similarly, section 205.20 ap-

plies to a device with a chip or other embedded mechanism that links the device to stored funds, such as a mobile phone or sticker containing a contactless chip that enables the consumer to access the stored funds. A card, code, or other device that meets the definition in section 205.20(a)(1) through (a)(3) includes an electronic promise (*see* comment 20(a)-2) as well as a promise that is not electronic. *See, however,* section 205.20(b)(5). In addition, section 205.20 applies if a merchant issues a code that entitles a consumer to redeem the code for goods or services, regardless of the medium in which the code is issued (*see, however,* section 205.20(b)(5)), and whether or not it may be redeemed electronically or in the merchant's store. Thus, for example, if a merchant e-mails a code that a consumer may redeem in a specified amount either on-line or in the merchant's store, that code is covered under section 205.20, unless one of the exclusions in section 205.20(b) apply.

2. *Electronic promise.* The term "electronic promise" as used in EFTA Sections 915(a)(2)(B), (a)(2)(C), and (a)(2)(D) means a person's commitment or obligation communicated or stored in electronic form made to a consumer to provide payment for goods or services for transactions initiated by the consumer. The electronic promise is itself represented by a card, code or other device that is issued or honored by the person, reflecting the person's commitment or obligation to pay. For example, if a merchant issues a code that can be given as a gift and that entitles the recipient to redeem the code in an on-line transaction for goods or services, that code represents an electronic promise by the merchant and is a card, code, or other device covered by section 205.20.

3. *Cards, codes, or other devices redeemable for specific goods or services.* Certain cards, codes, or other devices may be redeemable upon presentation for a specific good or service, or "experience," such as a spa treatment, hotel stay, or airline flight. In other cases, a card, code, or other device may entitle the consumer to a certain percentage off the purchase of a good or service, such as 20% off of any purchase in a store. Such cards, codes, or other devices generally are

not subject to the requirements of this section because they are not issued to a consumer "in a specified amount" as required under the definitions of "gift certificate," "store gift card," or "general-use prepaid card." However, if the card, code, or other device is issued in a specified or denominated amount that can be applied toward the purchase of a specific good or service, such as a certificate or card redeemable for a spa treatment up to \$50, the card, code, or other device is subject to this section, unless one of the exceptions in section 205.20(b) apply. *See, e.g.,* section 205.20(b)(3). Similarly, if the card, code, or other device states a specific monetary value, such as "a \$50 value," the card, code, or other device is subject to this section, unless an exclusion in section 205.20(b) applies.

4. *Issued primarily for personal, family, or household purposes.* Section 205.20 only applies to cards, codes, or other devices that are sold or issued to a consumer primarily for personal, family, or household purposes. A card, code, or other device initially purchased by a business is subject to this section if the card, code, or other device is purchased for redistribution or resale to consumers primarily for personal, family, or household purposes. Moreover, the fact that a card, code, or other device may be primarily funded by a business, for example, in the case of certain rewards or incentive cards, does not mean the card, code, or other device is outside the scope of section 205.20, if the card, code, or other device will be provided to a consumer primarily for personal, family, or household purposes. *But see* section 205.20(b)(3). Whether a card, code, or other device is issued to a consumer primarily for personal, family, or household purposes will depend on the facts and circumstances. For example, if a program manager purchases store gift cards directly from an issuing merchant and sells those cards through the program manager's retail outlets, such gift cards are subject to the requirements of section 205.20 because the store gift cards are sold to consumers primarily for personal, family, or household purposes. In contrast, a card, code, or other device generally would not be issued to consumers primarily for personal, family, or household purposes, and therefore would fall

outside the scope of section 205.20, if the purchaser of the card, code, or device is contractually prohibited from reselling or redistributing the card, code, or device to consumers primarily for personal, family, or household purposes, and reasonable policies and procedures are maintained to avoid such sale or distribution for such purposes. However, if an entity that has purchased cards, codes, or other devices for business purposes sells or distributes such cards, codes, or other devices to consumers primarily for personal, family, or household purposes, that entity does not comply with section 205.20 if it has not otherwise met the substantive and disclosure requirements of the rule or unless an exclusion in section 205.20(b) applies.

5. *Examples of cards, codes, or other devices issued for business purposes.* Examples of cards, codes, or other devices that are issued and used for business purposes and therefore excluded from the definitions of “gift certificate,” “store gift card,” or “general-use prepaid card” include:

- i. Cards, codes, or other devices to reimburse employees for travel or moving expenses.
- ii. Cards, codes, or other devices for employees to use to purchase office supplies and other business-related items.

Paragraph 20(a)(2)—Store Gift Card

1. *Relationship between “gift certificate” and “store gift card”.* The term “store gift card” in section 205.20(a)(2) includes “gift certificate” as defined in section 205.20(a)(1). For example, a numeric or alphanumeric code representing a specified dollar amount or value that is electronically sent to a consumer as a gift which can be redeemed or exchanged by the recipient to obtain goods or services may be both a “gift certificate” and a “store gift card” if the specified amount or value cannot be increased.

2. *Affiliated group of merchants.* The term “affiliated group of merchants” means two or more affiliated merchants or other persons that are related by common ownership or common corporate control (*see, e.g.,* 12 CFR 227.3(b) and 12 CFR 223.2) and that share the same

name, mark, or logo. For example, the term includes franchisees that are subject to a common set of corporate policies or practices under the terms of their franchise licenses. The term also applies to two or more merchants or other persons that agree among themselves, by contract or otherwise, to redeem cards, codes, or other devices bearing the same name, mark, or logo (other than the mark, logo, or brand of a payment network), for the purchase of goods or services solely at such merchants or persons. For example, assume a movie theatre chain and a restaurant chain jointly agree to issue cards that share the same “Flix and Food” logo that can be redeemed solely towards the purchase of movie tickets or concessions at any of the participating movie theatres, or towards the purchase of food or beverages at any of the participating restaurants. For purposes of section 205.20, the movie theatre chain and the restaurant chain would be considered to be an affiliated group of merchants, and the cards are considered to be “store gift cards.” However, merchants or other persons are not considered to be affiliated merely because they agree to accept a card that bears the mark, logo, or brand of a payment network.

3. *Mall gift cards.* See comment 20(a)(3)-2.

Paragraph 20(a)(3)—General-Use Prepaid Card

1. *Redeemable upon presentation at multiple, unaffiliated merchants.* A card, code, or other device is redeemable upon presentation at multiple, unaffiliated merchants if, for example, such merchants agree to honor the card, code, or device if it bears the mark, logo, or brand of a payment network, pursuant to the rules of the payment network.

2. *Mall gift cards.* Mall gift cards that are intended to be used or redeemed for goods or services at participating retailers within a shopping mall may be considered store gift cards or general-use prepaid cards depending on the merchants with which the cards may be redeemed. For example, if a mall card may only be redeemed at merchants within the mall itself, the card is more likely to be redeemable at an affiliated group of merchants

and considered a store gift card. However, certain mall cards also carry the brand of a payment network and can be used at any retailer that accepts that card brand, including retailers located outside of the mall. Such cards are considered general-use prepaid cards.

Paragraph 20(a)(4)—Loyalty, Award, or Promotional Gift Card

1. *Examples of loyalty, award, or promotional programs.* Examples of loyalty, award or promotional programs under section 205.20(a)(4) include, but are not limited to:

- i. Consumer retention programs operated or administered by a merchant or other person that provide to consumers cards or coupons redeemable for or towards goods or services or other monetary value as a reward for purchases made or for visits to the participating merchant;
- ii. Sales promotions operated or administered by a merchant or product manufacturer that provide coupons or discounts redeemable for or towards goods or services or other monetary value.
- iii. Rebate programs operated or administered by a merchant or product manufacturer that provide cards redeemable for or towards goods or services or other monetary value to consumers in connection with the consumer's purchase of a product or service and the consumer's completion of the rebate submission process.
- iv. Sweepstakes or contests that distribute cards redeemable for or towards goods or services or other monetary value to consumers as an invitation to enter into the promotion for a chance to win a prize.
- v. Referral programs that provide cards redeemable for or towards goods or services or other monetary value to consumers in exchange for referring other potential consumers to a merchant.
- vi. Incentive programs through which an employer provides cards redeemable for or towards goods or services or other monetary value to employees, for example, to recognize job performance, such as increased sales, or to encourage employee wellness and safety.

vii. Charitable or community relations programs through which a company provides cards redeemable for or towards goods or services or other monetary value to a charity or community group for their fundraising purposes, for example, as a reward for a donation or as a prize in a charitable event.

2. *Issued for loyalty, award, or promotional purposes.* To indicate that a card, code, or other device is issued for loyalty, award, or promotional purposes as required by section 205.20(a)(4)(iii), it is sufficient for the card, code, or other device to state on the front, for example, "Reward" or "Promotional."

3. *Reference to toll-free number and Web site.* If a card, code, or other device issued in connection with a loyalty, award, or promotional program does not have any fees, the disclosure under section 205.20(a)(4)(iii)(D) is not required on the card, code, or other device.

Paragraph 20(a)(6)—Service Fee

1. *Service fees.* Under section 205.20(a)(6), a service fee includes 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, such as 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. 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.

Paragraph 20(a)(7)—Activity

1. *Activity.* Under section 205.20(a)(7), any action that results in an increase or decrease of the funds underlying a gift certificate, store gift card, or general-use prepaid card, other

than the imposition of a fee, or an adjustment due to an error or a reversal of a prior transaction, constitutes activity for purposes of section 205.20. For example, the purchase and activation of a certificate or card, the use of the certificate or card to purchase a good or service, or the reloading of funds onto a store gift card or general-use prepaid card constitutes activity. However, the imposition of a fee, the replacement of an expired, lost, or stolen certificate or card, and a balance inquiry do not constitute activity. In addition, if a consumer attempts to engage in a transaction with a gift certificate, store gift card, or general-use prepaid card, but the transaction cannot be completed due to technical or other reasons, such attempt does not constitute activity. Furthermore, if the funds underlying a gift certificate, store gift card, or general-use prepaid card are adjusted because there was an error or the consumer has returned a previously purchased good, the adjustment also does not constitute activity with respect to the certificate or card.

20(b) Exclusions

1. *Application of exclusion.* A card, code, or other device is excluded from the definition of “gift certificate,” “store gift card,” or “general-use prepaid card” if it meets any of the exclusions in section 205.20(b). An excluded card, code, or other device generally is not subject to any of the requirements of this section. (See, however, section 205.20(a)(4)(iii), requiring certain disclosures for loyalty, award, or promotional gift cards).

2. *Eligibility for multiple exclusions.* A card, code, or other device may qualify for one or more exclusions. For example, a corporation may give its employees a gift card that is marketed solely to businesses for incentive-related purposes, such as to reward job performance or promote employee safety. In this case, the card may qualify for the exclusion for loyalty, award, or promotional gift cards under section 205.20(b)(3), or for the exclusion for cards, codes, or other devices not marketed to the general public under section 205.20(b)(4). In addition, as long as any one of the exclusions apply, a card, code, or other

device is not covered by section 205.20, even if other exclusions do not apply. In the above example, the corporation may give its employees a type of gift card that can also be purchased by a consumer directly from a merchant. Under these circumstances, while the card does not qualify for the exclusion for cards, codes, or other devices not marketed to the general public under section 205.20(b)(4) because the card can also be obtained through retail channels, it is nevertheless exempt from the substantive requirements of section 205.20 because it is a loyalty, award, or promotional gift card. (See, however, section 205.20(a)(4)(iii), requiring certain disclosures for loyalty, award, or promotional gift cards.). Similarly, a person may market a reloadable card to teenagers for occasional expenses that enables parents to monitor spending. Although the card does not qualify for the exclusion for cards, codes, or other devices not marketed to the general public under section 205.20(b)(4), it may nevertheless be exempt from the requirements of section 205.20 under section 205.20(b)(2) if it is reloadable and not marketed or labeled as a gift card or gift certificate.

Paragraph 20(b)(1)—Usable Solely For Telephone Services

1. *Examples of excluded products.* The exclusion for products usable solely for telephone services applies to prepaid cards for long-distance telephone service, prepaid cards for wireless telephone service and prepaid cards for other services that function similar to telephone services, such as prepaid cards for voice over internet protocol (VoIP) access time.

Paragraph 20(b)(2)—Reloadable and Not Marketed or Labeled as a Gift Card or Gift Certificate

1. *Reloadable.* A card, code, or other device is “reloadable” if the terms and conditions of the agreement permit funds to be added to the card, code, or other device after the initial purchase or issuance. A card, code, or other device is not “reloadable” merely because the issuer or processor is technically able to add

functionality that would otherwise enable the card, code, or other device to be reloaded.

2. *Marketed or labeled as a gift card or gift certificate.* The term “marketed or labeled as a gift card or gift certificate” means directly or indirectly offering, advertising or otherwise suggesting the potential use of a card, code or other device, as a gift for another person. Whether the exclusion applies generally does not depend on the type of entity that makes the promotional message. For example, a card may be marketed or labeled as a gift card or gift certificate if anyone (other than the purchaser of the card), including the issuer, the retailer, the program manager that may distribute the card, or the payment network on which a card is used, promotes the use of the card as a gift card or gift certificate. A card, code, or other device, including a general-purpose reloadable card, is marketed or labeled as a gift card or gift certificate even if it is only occasionally marketed as a gift card or gift certificate. For example, a network-branded general purpose reloadable card would be marketed or labeled as a gift card or gift certificate if the issuer principally advertises the card as a less costly alternative to a bank account but promotes the card in a television, radio, newspaper, or Internet advertisement, or on signage as “the perfect gift” during the holiday season. However, the mere mention of the availability of gift cards or gift certificates in an advertisement or on a sign that also indicates the availability of other excluded prepaid cards does not by itself cause the excluded prepaid cards to be marketed as a gift card or a gift certificate. For example, the posting of a sign in a store that refers to the availability of gift cards does not by itself constitute the marketing of otherwise excluded prepaid cards that may also be sold in the store as gift cards or gift certificates, provided that a consumer acting reasonably under the circumstances would not be led to believe that the sign applies to all prepaid cards sold in the store. (*See, however*, comment 20(b)(2)-4.ii.)

3. *Examples of marketed or labeled as a gift card or gift certificate.*

- i. Examples of marketed or labeled as a gift card or gift certificate include:

- A. Using the word “gift” or “present” on a card, certificate, or accompanying material, including documentation, packaging and promotional displays;

- B. Representing or suggesting that a certificate or card can be given to another person, for example, as a “token of appreciation” or a “stocking stuffer,” or displaying a congratulatory message on the card, certificate or accompanying material;

- C. Incorporating gift-giving or celebratory imagery or motifs, such as a bow, ribbon, wrapped present, candle, or congratulatory message, on a card, certificate, accompanying documentation, or promotional material;

- ii. The term does not include:

- A. Representing that a card or certificate can be used as a substitute for a checking, savings, or deposit account;

- B. Representing that a card or certificate can be used to pay for a consumer’s health-related expenses—for example, a card tied to a health savings account;

- C. Representing that a card or certificate can be used as a substitute for travelers checks or cash;

- D. Representing that a card or certificate can be used as a budgetary tool, for example, by teenagers, or to cover emergency expenses.

4. *Reasonable policies and procedures to avoid marketing as a gift card.* The exclusion for a card, code, or other device that is reloadable and not marketed or labeled as a gift card or gift certificate in section 205.20(b)(2) applies if a reloadable card, code, or other device is not marketed or labeled as a gift card or gift certificate and if persons subject to the rule, including issuers, program managers, and retailers, maintain policies and procedures reasonably designed to avoid such marketing. Such policies and procedures may include contractual provisions prohibiting a reloadable card, code, or other device from being marketed or labeled as a gift card or gift certificate, merchandising guidelines or plans regarding how the product must be displayed in a retail outlet, and controls to regularly monitor or otherwise verify that the card,

code or other device is not being marketed as a gift card. Whether a reloadable card, code, or other device has been marketed as a gift card or gift certificate will depend on the facts and circumstances, including whether a reasonable consumer would be led to believe that the card, code, or other device is a gift card or gift certificate. The following examples illustrate the application of section 205.20(b)(2):

i. An issuer or program manager of prepaid cards agrees to sell general-purpose reloadable cards through a retailer. The contract between the issuer or program manager and the retailer establishes the terms and conditions under which the cards may be sold and marketed at the retailer. The terms and conditions prohibit the general-purpose reloadable cards from being marketed as a gift card or gift certificate, and require policies and procedures to regularly monitor or otherwise verify that the cards are not being marketed as such. The issuer or program manager sets up one promotional display at the retailer for gift cards and another physically separated display for excluded products under section 205.20(b), including general-purpose reloadable cards and wireless telephone cards, such that a reasonable consumer would not believe that the excluded cards are gift cards. The exclusion in section 205.20(b)(2) applies because policies and procedures reasonably designed to avoid the marketing of the general-purpose reloadable cards as gift cards or gift certificates are maintained, even if a retail clerk inadvertently stocks or a consumer inadvertently places a general-purpose reloadable card on the gift card display.

ii. Same facts as in i., except that the issuer or program manager sets up a single promotional display at the retailer on which a variety of prepaid cards are sold, including store gift cards and general-purpose reloadable cards. A sign stating “Gift Cards” appears prominently at the top of the display. The exclusion in section 205.20(b)(2) does not apply with respect to the general-purpose reloadable cards because policies and procedures reasonably designed to avoid the marketing of ex-

cluded cards as gift cards or gift certificates are not maintained.

iii. Same facts as in i., except that the issuer or program manager sets up a single promotional multi-sided display at the retailer on which a variety of prepaid card products, including store gift cards and general-purpose reloadable cards are sold. Gift cards are segregated from excluded cards, with gift cards on one side of the display and excluded cards on a different side of a display. Signs of equal prominence at the top of each side of the display clearly differentiate between gift cards and the other types of prepaid cards that are available for sale. The retailer does not use any more conspicuous signage suggesting the general availability of gift cards, such as a large sign stating “Gift Cards” at the top of the display or located near the display. The exclusion in section 205.20(b)(2) applies because policies and procedures reasonably designed to avoid the marketing of the general-purpose reloadable cards as gift cards or gift certificates are maintained, even if a retail clerk inadvertently stocks or a consumer inadvertently places a general-purpose reloadable card on the gift card display.

iv. Same facts as in i., except that the retailer sells a variety of prepaid card products, including store gift cards and general-purpose reloadable cards, arranged side-by-side in the same checkout lane. The retailer does not affirmatively indicate or represent that gift cards are available, such as by displaying any signage or other indicia at the checkout lane suggesting the general availability of gift cards. The exclusion in section 205.20(b)(2) applies because policies and procedures reasonably designed to avoid marketing the general-purpose reloadable cards as gift cards or gift certificates are maintained.

5. *On-line sales of prepaid cards.* Some Web sites may prominently advertise or promote the availability of gift cards or gift certificates in a manner that suggests to a consumer that the Web site exclusively sells gift cards or gift certificates. For example, a Web site may display a banner advertisement or a graphic on

the home page that prominently states “Gift Cards,” “Gift Giving,” or similar language without mention of other available products, or use a Web address that includes only a reference to gift cards or gift certificates in the address. In such a case, a consumer acting reasonably under the circumstances could be led to believe that all prepaid products sold on the Web site are gift cards or gift certificates. Under these facts, the Web site has marketed all such products, including general-purpose reloadable cards, as gift cards or gift certificates, and the exclusion in section 205.20(b)(2) does not apply.

6. *Temporary non-reloadable cards issued in connection with a general-purpose reloadable card.* Certain general-purpose reloadable cards that are typically marketed as an account substitute initially may be sold or issued in the form of a temporary non-reloadable card. After the card is purchased, the cardholder is typically required to call the issuer to register the card and to provide identifying information in order to obtain a reloadable replacement card. In most cases, the temporary non-reloadable card can be used for purchases until the replacement reloadable card arrives and is activated by the cardholder. Because the temporary non-reloadable card may only be obtained in connection with the general-purpose reloadable card, the exclusion in section 205.20(b)(2) applies so long as the card is not marketed as a gift card or gift certificate.

Paragraph 20(b)(4)—Not Marketed to the General Public

1. *Marketed to the general public.* A card, code, or other device is marketed to the general public if the potential use of the card, code, or other device is directly or indirectly offered, advertised, or otherwise promoted to the general public. A card, code, or other device may be marketed to the general public through any advertising medium, including television, radio, newspaper, the Internet, or signage. However, the posting of a company policy that funds may be disbursed by prepaid card (such as a sign posted at a cash register or customer service center stating that store

credit will be issued by prepaid card) does not constitute the marketing of a card, code, or other device to the general public. In addition, the method of distribution by itself is not dispositive in determining whether a card, code, or other device is marketed to the general public. Factors that may be considered in determining whether the exclusion applies to a particular card, code, or other device include the means or channel through which the card, code, or device may be obtained by a consumer, the subset of consumers that are eligible to obtain the card, code, or device, and whether the availability of the card, code, or device is advertised or otherwise promoted in the marketplace.

2. *Examples.* The following examples illustrate the application of the exclusion in section 205.20(b)(4):

i. A merchant sells its gift cards at a discount to a business which may give them to employees or loyal consumers as incentives or rewards. In determining whether the gift card falls within the exclusion in section 205.20(b)(4), the merchant must consider whether the card is of a type that is advertised or made available to consumers generally or can be obtained elsewhere. If the card can also be purchased through retail channels, the exclusion in section 205.20(b)(4) does not apply, even if the consumer obtained the card from the business as an incentive or reward. See, however, section 205.20(b)(3).

ii. A national retail chain decides to market its gift cards only to members of its frequent buyer program. Similarly, a bank may decide to sell gift cards only to its customers. If a member of the general public may become a member of the program or a customer of the bank, the card does not fall within the exclusion in section 205.20(b)(4) because the general public has the ability to obtain the cards. See, however, section 205.20(b)(3).

iii. A card issuer advertises a reloadable card to teenagers and their parents promoting the card for use by teenagers for occasional expenses, schoolbooks and emergencies and by parents to monitor spending. Because the card is marketed to and may

be sold to any member of the general public, the exclusion in section 205.20(b)(4) does not apply. See, however, section 205.20(b)(2).

iv. An insurance company settles a policyholder's claim and distributes the insurance proceeds to the consumer by means of a prepaid card. Because the prepaid card is simply the means for providing the insurance proceeds to the consumer and the availability of the card is not advertised to the general public, the exclusion in section 205.20(b)(4) applies.

v. A merchant provides store credit to a consumer following a merchandise return by issuing a prepaid card that clearly indicates that the card contains funds for store credit. Because the prepaid card is issued for the stated purpose of providing store credit to the consumer and the ability to receive refunds by a prepaid card is not advertised to the general public, the exclusion in section 205.20(b)(4) applies.

vi. A tax preparation company elects to distribute tax refunds to its clients by issuing prepaid cards, but does not advertise or otherwise promote the ability to receive proceeds in this manner. Because the prepaid card is simply the mechanism for providing the tax refund to the consumer, and the tax preparer does not advertise the ability to obtain tax refunds by a prepaid card, the exclusion in section 205.20(b)(4) applies. However, if the tax preparer promotes the ability to receive tax refund proceeds through a prepaid card as a way to obtain "faster" access to the proceeds, the exclusion in section 205.20(b)(4) does not apply.

Paragraph 20(b)(5)—Issued in Paper Form Only

1. *Exclusion explained.* To qualify for the exclusion in section 205.20(b)(5), the sole means of issuing the card, code, or other device must be in a paper form. Thus, the exclusion generally applies to certificates issued in paper form where solely the paper itself may be used to purchase goods or services. A card, code or other device is not issued solely in paper form simply because it may be reproduced or printed on paper. For example, a bar

code, card or certificate number, or certificate or coupon electronically provided to a consumer and redeemable for goods and services is not issued in paper form, even if it may be reproduced or otherwise printed on paper by the consumer. In this circumstance, although the consumer might hold a paper facsimile of the card, code, or other device, the exclusion does not apply because the information necessary to redeem the value was initially issued in electronic form. A paper certificate is within the exclusion regardless of whether it may be redeemed electronically. For example, a paper certificate or receipt that bears a bar code, code, or account number falls within the exclusion in section 205.20(b)(5) if the bar code, code, or account number is not issued in any form other than on the paper. In addition, the exclusion in section 205.20(b)(5) continues to apply in circumstances where an issuer replaces a gift certificate that was initially issued in paper form with a card or electronic code (for example, to replace a lost paper certificate).

2. *Examples.* The following examples illustrate the application of the exclusion in section 205.20(b)(5):

i. A merchant issues a paper gift certificate that entitles the bearer to a specified dollar amount that can be applied towards a future meal. The merchant fills in the certificate with the name of the certificate holder and the amount of the certificate. The certificate falls within the exclusion in section 205.20(b)(5) because it is issued in paper form only.

ii. A merchant allows a consumer to prepay for a good or service, such as a car wash or time at a parking meter, and issues a paper receipt bearing a numerical or bar code that the consumer may redeem to obtain the good or service. The exclusion in section 205.20(b)(5) applies because the code is issued in paper form only.

iii. A merchant issues a paper certificate or receipt bearing a bar code or certificate number that can later be scanned or entered into the merchant's system and redeemed by the certificate or receipt holder towards the purchase of goods or services. The bar code or certificate number is not issued by

the merchant in any form other than paper. The exclusion in section 205.20(b)(5) applies because the bar code or certificate number is issued in paper form only.

iv. An on-line merchant electronically provides a bar code, card or certificate number, or certificate or coupon to a consumer that the consumer may print on a home printer and later redeem towards the purchase of goods or services. The exclusion in section 205.20(b)(5) does not apply because the bar code or card or certificate number was issued to the consumer in electronic form, even though it can be reproduced or otherwise printed on paper by the consumer.

Paragraph 20(b)(6)—Redeemable Solely For Admission to Events or Venues

1. *Exclusion explained.* The exclusion for cards, codes, or other devices that are redeemable solely for admission to events or venues at a particular location or group of affiliated locations generally applies to cards, codes, or other devices that are not redeemed for a specified monetary value, but rather solely for admission or entry to an event or venue. The exclusion also covers a card, code, or other device that is usable to purchase goods or services in addition to entry into the event or the venue, either at the event or venue or at an affiliated location or location in geographic proximity to the event or venue.

2. *Examples.* The following examples illustrate the application of the exclusion in section 205.20(b)(6):

i. A consumer purchases a prepaid card that entitles the holder to a ticket for entry to an amusement park. The prepaid card may only be used for entry to the park. The card qualifies for the exclusion in section 205.20(b)(6) because it is redeemable for admission or entry and for goods or services in conjunction with that admission. In addition, if the prepaid card does not have a monetary value, and therefore is not “issued in a specified amount,” the card does not meet the definitions of “gift certificate,” “store gift card,” or “general-use prepaid card” in section 205.20(a). See comment 20(a)-3.

ii. Same facts as in i., except that the gift card also entitles the holder of the gift card to a dollar amount that can be applied towards the purchase of food and beverages or goods or services at the park or at nearby affiliated locations. The card qualifies for the exclusion in section 205.20(b)(6) because it is redeemable for admission or entry and for goods or services in conjunction with that admission.

iii. A consumer purchases a \$25 gift card that the holder of the gift card can use to make purchases at a merchant, or, alternatively, can apply towards the cost of admission to the merchant’s affiliated amusement park. The card is not eligible for the exclusion in section 205.20(b)(6) because it is not redeemable solely for the admission or ticket itself (or for goods and services purchased in conjunction with such admission). The card meets the definition of “store gift card” and is therefore subject to section 205.20, unless a different exclusion applies.

20(c) Form of Disclosures

Paragraph 20(c)(1)—Clear and Conspicuous

1. *Clear and conspicuous standard.* All disclosures required by this section must be clear and conspicuous. Disclosures are clear and conspicuous for purposes of this section if they are readily understandable and, in the case of written and electronic disclosures, the location and type size are readily noticeable to consumers. Disclosures need not be located on the front of the certificate or card, except where otherwise required, to be considered clear and conspicuous. Disclosures are clear and conspicuous for the purposes of this section if they are in a print that contrasts with and is otherwise not obstructed by the background on which they are printed. For example, disclosures on a card or computer screen are not likely to be conspicuous if obscured by a logo printed in the background. Similarly, disclosures on the back of a card that are printed on top of indentations from embossed type on the front of the card are not likely to be conspicuous if the indentations obstruct the readability of the disclosures. To

the extent permitted, oral disclosures meet the standard when they are given at a volume and speed sufficient for a consumer to hear and comprehend them.

2. *Abbreviations and symbols.* Disclosures may contain commonly accepted or readily understandable abbreviations or symbols, such as “mo.” for month or a “/” to indicate “per.” Under the clear and conspicuous standard, it is sufficient to state, for example, that a particular fee is charged “\$2.50/mo. after 12 mos.”

Paragraph 20(c)(2)—Format

1. *Electronic disclosures.* Disclosures provided electronically pursuant to this section are not subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 USC 7001 et seq.). Electronic disclosures must be in a retainable form. For example, a person may satisfy the requirement if it provides an on-line disclosure in a format that is capable of being printed. Electronic disclosures may not be provided through a hyperlink or in another manner by which the purchaser can bypass the disclosure. A person is not required to confirm that the consumer has read the electronic disclosures.

Paragraph 20(c)(3)—Disclosure Prior to Purchase

1. *Method of purchase.* The disclosures required by this paragraph must be provided before a certificate or card is purchased regardless of whether the certificate or card is purchased in person, on-line, by telephone, or by other means.

2. *Electronic disclosures.* Section 205.20(c)(3) provides that the disclosures required by this section must be provided to the consumer prior to purchase. For certificates or cards purchased electronically, disclosures made to the consumer after a consumer has initiated an on-line purchase of a certificate or card, but prior to completing the purchase of the certificate or card, would satisfy the prior-to-purchase requirement. However, electronic

disclosures made available on a person’s Web site that may or may not be accessed by the consumer are not provided to the consumer and therefore would not satisfy the prior-to-purchase requirement.

3. *Non-physical certificates and cards.* If no physical certificate or card is issued, the disclosures must be provided to the consumer before the certificate or card is purchased. For example, where a gift certificate or card is a code that is provided by telephone, the required disclosures may be provided orally prior to purchase. See also section 205.20(c)(2).

Paragraph 20(c)(4)—Disclosures on the certificate or card

1. *Non-physical certificates and cards.* If no physical certificate or card is issued, the disclosures required by this paragraph must be disclosed on the code, confirmation, or other written or electronic document provided to the consumer. For example, where a gift certificate or card is a code or confirmation that is provided to a consumer on-line or sent to a consumer’s e-mail address, the required disclosures may be provided electronically on the same document as the code or confirmation.

2. *No disclosures on a certificate or card.* Disclosures required by section 205.20(c)(4) need not be made on a certificate or card if it is accompanied by a certificate or card that complies with this section. For example, a person may issue or sell a supplemental gift card that is smaller than a standard size and that does not bear the applicable disclosures if it is accompanied by a fully compliant certificate or card. See also comment 20(c)(2)-2.

20(d) Prohibition on Imposition of Fees or Charges

1. *One-year period.* Section 205.20(d) provides that a person may impose a dormancy, inactivity, or service fee only if there has been no activity with respect to a certificate or card for one year. The following examples illustrate this rule:

- i. A certificate or card is purchased on January 15 of year one. If there has been

no activity on the certificate or card since the certificate or card was purchased, a dormancy, inactivity, or service fee may be imposed on the certificate or card on January 15 of year two.

ii. Same facts as i., and a fee was imposed on January 15 of year two. Because no more than one dormancy, inactivity, or service fee may be imposed in any given calendar month, the earliest date that another dormancy, inactivity, or service fee may be imposed, assuming there continues to be no activity on the certificate or card, is February 1 of year two. A dormancy, inactivity, or service fee is permitted to be imposed on February 1 of year two because there has been no activity on the certificate or card for the preceding year (February 1 of year one through January 31 of year two), and February is a new calendar month. The imposition of a fee on January 15 of year two is not activity for purposes of section 205.20(d). See comment 20(a)(7)-1.

iii. Same facts as i., and a fee was imposed on January 15 of year two. On January 31 of year two, the consumer uses the card to make a purchase. Another dormancy, inactivity, or service fee could not be imposed until January 31 of year three, assuming there has been no activity on the certificate or card since January 31 of year two.

2. Relationship between sections 205.20(d)(2) and (c)(3). Sections 205.20(d)(2) and (c)(3) contain similar, but not identical, disclosure requirements. Section 205.20(d)(2) requires the disclosure of dormancy, inactivity, and service fees on a certificate or card. Section 205.20(c)(3) requires that vendor person that issues or sells such certificate or card disclose to a consumer any dormancy, inactivity, and service fees associated with the certificate or card before such certificate or card may be purchased. Depending on the context, a single disclosure that meets the clear and conspicuous requirements of both sections 205.20(d)(2) and (c)(3) may be used to disclose a dormancy, inactivity, or service fee. For example, if the disclosures on a certificate or card, required by section 205.20(d)(2), are visible to the consumer without having to remove packaging or other materials sold with the certifi-

cate or card, for a purchase made in person, the disclosures also meet the requirements of section 205.20(c)(3). Otherwise, a dormancy, inactivity, or service fee may need to be disclosed multiple times to satisfy the requirements of sections 205.20(d)(2) and (c)(3). For example, if the disclosures on a certificate or card, required by section 205.20(d)(2), are obstructed by packaging sold with the certificate or card, for a purchase made in person, they also must be disclosed on the packaging sold with the certificate or card to meet the requirements of section 205.20(c)(3).

3. Relationship between sections 205.20(d)(2), (e)(3), and (f)(2). In addition to any disclosures required under section 205.20(d)(2), any applicable disclosures under sections 205.20(e)(3) and (f)(2) of this section must also be provided on the certificate or card.

4. One fee per month. Under section 205.20(d)(3), no more than one dormancy, inactivity, or service fee may be imposed in any given calendar month. For example, if a dormancy fee is imposed on January 1, following a year of inactivity, and a consumer makes a balance inquiry on January 15, a balance inquiry fee may not be imposed at that time because a dormancy fee was already imposed earlier that month and a balance inquiry fee is a type of service fee. If, however, the dormancy fee could be imposed on January 1, following a year of inactivity, and the consumer makes a balance inquiry on the same date, the person assessing the fees may choose whether to impose the dormancy fee or the balance inquiry fee on January 1. The restriction in section 205.20(d)(3) does not apply to any fee that is not a dormancy, inactivity, or service fee. For example, assume a service fee is imposed on a general-use prepaid card on January 1, following a year of inactivity. If a consumer cashes out the remaining funds by check on January 15, a cash-out fee, to the extent such cash-out fee is permitted under section 205.20(e)(4), may be imposed at that time because a cash-out fee is not a dormancy, inactivity, or service fee.

5. Accumulation of fees. Section 205.20(d) prohibits the accumulation of dormancy, inactivity, or service fees for previous periods into

a single fee because such a practice would circumvent the limitation in section 205.20(d)(3) that only fee may be charged per month. For example, if a consumer purchases and activates a store gift card on January 1 but never uses the card, a monthly maintenance fee of \$2.00 a month may not be accumulated such that a fee of \$24 is imposed on January 1 the following year.

20(e) Prohibition on Sale of Gift Certificates or Cards with Expiration Dates

1. *Reasonable opportunity.* Under section 205.20(e)(1), no person may sell or issue a gift certificate, store gift card, or general-use prepaid card with an expiration date, unless there are policies and procedures in place to provide consumers with a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expiration date. Consumers are deemed to have a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expiration date if:

- i. There are policies and procedures established to prevent the sale of a certificate or card unless the certificate or card expiration date is at least five years after the date the certificate or card was sold or initially issued to a consumer; or
- ii. A certificate or card is available to consumers to purchase five years and six months before the certificate or card expiration date.

2. *Applicability to replacement certificates or cards.* Section 205.20(e)(1) applies solely to the purchase of a certificate or card. Therefore, section 205.20(e)(1) does not apply to the replacement of such certificates or cards. Certificates or cards issued as a replacement may bear a certificate or card expiration date of less than five years from the date of issuance of the replacement certificate or card. If the certificate or card expiration date for a replacement certificate or card is later than the date set forth in section 205.20(e)(2)(i), then pursuant to section 205.20(e)(2), the expiration date for the underlying funds at the time

the replacement certificate or card is issued must be no earlier than the expiration date for the replacement certificate or card. For purposes of section 205.20(e)(2), funds are not considered to be loaded to a store gift card or general-use prepaid card solely because a replacement card has been issued or activated for use.

3. *Disclosure of funds expiration—date not required.* Section 205.20(e)(3)(i) does not require disclosure of the precise date the funds will expire. It is sufficient to disclose, for example, “Funds expire 5 years from the date funds last loaded to the card.”; “Funds can be used 5 years from the date money was last added to the card.”; or “Funds do not expire.”

4. *Disclosure not required if no expiration date.* If the certificate or card and underlying funds do not expire, the disclosure required by section 205.20(e)(3)(i) need not be stated on the certificate or card. If the certificate or card and underlying funds expire at the same time, only one expiration date need be disclosed on the certificate or card.

5. *Reference to toll-free telephone number and Web site.* If a certificate or card does not expire, or if the underlying funds are not available after the certificate or card expires, the disclosure required by section 205.20(e)(3)(ii) need not be stated on the certificate or card. *See, however,* section 205.20(f)(2).

6. *Relationship to section 226.20(f)(2).* The same toll-free telephone number and Web site may be used to comply with sections 226.20(e)(3)(ii) and (f)(2). Neither a toll-free number nor a Web site must be maintained or disclosed if no fees are imposed in connection with a certificate or card, and the certificate or card and the underlying funds do not expire.

7. *Distinguishing between certificate or card expiration and funds expiration.* If applicable, a disclosure must be made on the certificate or card that notifies a consumer that the certificate or card expires, but the funds either do not expire or expire later than the certificate or card, and that the consumer may contact the issuer for a replacement card. The disclo-

sure must be made with equal prominence and in close proximity to the certificate or card expiration date. The close proximity requirement does not apply to oral disclosures. In the case of a certificate or card, close proximity means that the disclosure must be on the same side as the certificate or card expiration date. For example, if the disclosure is the same type size and is located immediately next to or directly above or below the certificate or card expiration date, without any intervening text or graphical displays, the disclosures would be deemed to be equally prominent and in close proximity. The disclosure need not be embossed on the certificate or card to be deemed equally prominent, even if the expiration date is embossed on the certificate or card. The disclosure may state on the front of the card, for example, “Funds expire after card. Call for replacement card.” or “Funds do not expire. Call for new card after 09/2016.” Disclosures made pursuant to section 205.20(e)(3)(iii)(A) may also fulfill the requirements of section 205.20(e)(3)(i). For example, making a disclosure that “Funds do not expire” to comply with section 205.20(e)(3)(iii)(A) also fulfills the requirements of section 205.20(e)(3)(i).

8. *Expiration date safe harbor.* A non-reloadable certificate or card that bears an expiration date that is at least seven years from the date of manufacture need not state the disclosure required by section 205.20(e)(3)(iii). However, section 205.20(e)(1) still prohibits the sale or issuance of such certificate or card unless there are policies and procedures in place to provide a consumer with a reasonable opportunity to purchase the certificate or card with at least five years remaining until the certificate or card expiration date. In addition, under section 205.20(e)(2), the funds may not expire before the certificate or card expiration date, even if the expiration date of the certificate or card bears an expiration date that is more than five years at the date of purchase. For purposes of this safe harbor, the date of manufacture is the date on which the certificate or card expiration date is printed on the certificate or card.

9. *Relationship between sections 205.20(d)(2), (e)(3), and (f)(2).* In addition to any disclo-

sure required to be made under section 205.20(e)(3), any applicable disclosures under sections 205.20(d)(2) and (f)(2) must also be provided on the certificate or card.

10. *Replacement or remaining balance of an expired certificate or card.* When a certificate or card expires, but the underlying funds have not expired, an issuer, at its option in accordance with applicable state law, may provide either a replacement certificate or card or otherwise provide the certificate or card holder, for example, by check, with the remaining balance on the certificate or card. In either case, the issuer may not charge a fee for the service.

11. *Replacement of a lost or stolen certificate or card not required.* Section 205.20(e)(4) does not require the replacement of a certificate or card that has been lost or stolen.

12. *Date of issuance or loading.* For purposes of section 205.20(e)(2)(i), a certificate or card is not issued or loaded with funds until the certificate or card is activated for use.

13. *Application of expiration date provisions after redemption of certificate or card.* The requirement that funds underlying a certificate or card must not expire for at least five years from the date of issuance or date of last load ceases to apply once the certificate or card has been fully redeemed, even if the underlying funds are not used to contemporaneously purchase a specific good or service. For example, some certificates or cards can be used to purchase music, media, or virtual goods. Once redeemed by a consumer, the entire balance on the certificate or card is debited from the certificate or card and credited or transferred to another “account” established by the merchant of such goods or services. The consumer can then make purchases of songs, media, or virtual goods from the merchant using that “account” either at the time the value is transferred from the certificate or card or at a later time. Under these circumstances, once the card has been fully redeemed and the “account” credited with the amount of the underlying funds, the five-year minimum expiration term no longer applies to the underlying funds. However, if the consumer only partially redeems the value of the certificate or card,

the five-year minimum expiration term requirement continues to apply to the funds remaining on the certificate or card.

20(f) Additional Disclosure Requirements for Gift Certificates or Cards

1. *Reference to toll-free telephone number and Web site.* If a certificate or card does not have any fees, the disclosure under section 205.20(f)(2) is not required on the certificate or card. *See, however,* section 205.20(e)(3)(ii).

2. *Relationship to section 226.20(e)(3)(ii).* The same toll-free telephone number and Web site may be used to comply with sections 226.20(e)(3)(ii) and (f)(2). Neither a toll-free number nor a Web site must be maintained or disclosed if no fees are imposed in connection with a certificate or card, and both the certificate or card and underlying funds do not expire.

3. *Relationship between sections 205.20(d)(2), (e)(3), and (f)(2).* In addition to any disclosures required pursuant to section 205.20(f)(2), any applicable disclosures under sections 205.20(d)(2) and (e)(3) must also be provided on the certificate or card.

20(g) Compliance dates

1. *Period of eligibility for loyalty, award, or promotional programs.* For purposes of section 205.20(g)(2), the period of eligibility is the time period during which a consumer must engage in a certain action or actions to meet the terms of eligibility for a loyalty, award, or promotional program and obtain the card, code, or other device. Under section 205.20(g)(2), a gift card issued pursuant to a loyalty, award, or promotional program that began prior to August 22, 2010 need not state the disclosures in section 205.20(a)(4)(iii) regardless of whether the consumer became eligible to receive the gift card prior to August 22, 2010, or after that date. For example, a product manufacturer may provide a \$20 rebate card to a consumer if the consumer purchases a particular product and submits a fully completed entry between January 1, 2010 and December 31, 2010. Similarly, a merchant may provide a \$20 gift card to a consumer if

the consumer makes \$200 worth of qualifying purchases between June 1, 2010 and October 30, 2010. Under both examples, gift cards provided pursuant to these loyalty, award, or promotional programs need not state the disclosures in section 205.20(a)(4)(iii) to qualify for the exclusion in section 205.20(b)(3) for loyalty, award, or promotional gift cards because the period of eligibility for each program began prior to August 22, 2010.

20(h) Temporary exemption

Paragraph 20(h)(1)—Delayed effective date

1. *Application to certificates or cards produced prior to April 1, 2010.* Certificates or cards produced prior to April 1, 2010 may be sold to a consumer on or after August 22, 2010 without satisfying the requirements of section 205.20(c)(3), (d)(2), (e)(1), (e)(3), and (f) through January 30, 2011, provided that issuers of such certificates or cards comply with the additional substantive and disclosure requirements of sections 205.20(h)(1)(i) through (iv). Issuers of certificates or cards produced prior to April 1, 2010 need not satisfy these additional requirements if the certificates or cards fully comply with the rule (sections 205.20(a) through (f)). For example, the in-store signage and other disclosures required by section 205.20(h)(2) do not apply to gift cards produced prior to April 1, 2010 that do not have fees and do not expire, and which otherwise comply with the rule.

2. *Expiration of temporary exemption.* Certificates or cards produced prior to April 1, 2010 that do not fully comply with sections 205.20(a) through (f) may not be issued or sold to consumers on or after January 31, 2011.

Paragraph 20(h)(2)—Additional disclosures

1. *Disclosures through third parties.* Issuers may make the disclosures required by section 205.20(h)(2) through a third party, such as a retailer or merchant. For example, an issuer may have a merchant install in-store signage with the disclosures required by section 205.20(h)(2) on the issuer's behalf.

2. *General advertising disclosures.* Section 205.20(h)(2) does not impose an obligation on the issuer to advertise gift certificates, store gift cards, or general-use prepaid cards.

(d)(2), and 205.18(c)(1) and (c)(2). The use of appropriate clauses in making disclosures will protect a financial institution from liability under sections 915 and 916 of the act provided the clauses accurately reflect the institution's EFT services.

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APPENDIX A—Model Disclosure Clauses and Forms

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

2. *Use of the forms.* The appendix contains model disclosure clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of sections 205.5(b)(2) and (b)(3), 205.6(a), 205.7, 205.8(b), 205.14(b)(1)(ii), 205.15(d)(1) and

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