

Board of Governors of the Federal Reserve System

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# Regulation E

## Electronic Fund Transfers

12 CFR 205; as amended effective November 29, 2010



# Regulation E

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12 CFR 205; as amended effective November 29, 2010

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#### SECTION 205.1—Authority and Purpose

(a) *Authority.* The regulation in this part, known as Regulation E, is issued by the Board of Governors of the Federal Reserve

\* The interpretations (also referred to as the official staff commentary) begin at 6-413.

System pursuant to the Electronic Fund Transfer Act (15 USC 1693 et seq.). The information-collection requirements have been approved by the Office of Management and Budget under 44 USC 3501 et seq. and have been assigned OMB No. 7100-0200.

(b) *Purpose.* This part carries out the purposes of the Electronic Fund Transfer Act, which establishes the basic rights, liabilities, and responsibilities of consumers who use electronic fund transfer services and of financial institutions that offer these services. The primary objective of the act and this part is the protection of individual consumers engaging in electronic fund transfers.

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#### SECTION 205.2—Definitions

For purposes of this regulation, the following definitions apply:

(a) (1) *Access device* means a card, code, or other means of access to a consumer's account, or any combination thereof, that may be used by the consumer to initiate electronic fund transfers;

(2) An access device becomes an "*accepted access device*" when the consumer—

(i) requests and receives, or signs, or uses (or authorizes another to use) the access device to transfer money between accounts or to obtain money, property, or services;

(ii) requests validation of an access device issued on an unsolicited basis; or

(iii) receives an access device in renewal of, or in substitution for, an accepted access device from either the financial institution that initially issued the device or a successor.

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(b)(1) *Account* means a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a financial institution and established primarily for personal, family, or household purposes.

(2) The term includes a “payroll card account” which is an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer’s wages, salary, or other employee compensation (such as commissions), are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution, or any other person. For rules governing payroll card accounts, see section 205.18.

(3) The term does not include an account held by a financial institution under a bona fide trust agreement.

(c) *Act* means the Electronic Fund Transfer Act (title IX of the Consumer Credit Protection Act, 15 USC 1693 et seq.).

(d) *Business day* means any day on which the offices of the consumer’s financial institution are open to the public for carrying on substantially all business functions.

(e) *Consumer* means a natural person.

(f) *Credit* means the right granted by a financial institution to a consumer to defer payment of debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.

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(g) *Electronic fund transfer* is defined in section 205.3.

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

(i) *Financial institution* means a bank, savings association, credit union, or any other person

that directly or indirectly holds an account belonging to a consumer or that issues an access device and agrees with a consumer to provide electronic fund transfer services.

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(j) *Person* means a natural person or an organization, including a corporation, government agency, estate, trust, partnership, proprietorship, cooperative, or association.

(k) *Preauthorized electronic fund transfer* means an electronic fund transfer authorized in advance to recur at substantially regular intervals.

(l) *State* means any state, territory, or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; or any political subdivision of the above in this paragraph (l).

(m) *Unauthorized electronic fund transfer* means an electronic fund transfer from a consumer’s account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit. The term does not include an electronic fund transfer initiated—

(1) by a person who was furnished the access device to the consumer’s account by the consumer, unless the consumer has notified the financial institution that transfers by that person are no longer authorized;

(2) with fraudulent intent by the consumer or any person acting in concert with the consumer; or

(3) by the financial institution or its employee.

**6-305****SECTION 205.3—Coverage**

(a) *General.* This part applies to any electronic fund transfer that authorizes a financial institution to debit or credit a consumer’s account. Generally, this part applies to financial institutions. For purposes of sections 205.3(b)(2) and (b)(3), 205.10(b), (d), and (e), 205.13, and 205.20, this part applies to any person.

(b) *Electronic fund transfer.*

(1) *Definition.* The term *electronic fund transfer* means any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a customer's account. The term includes, but is not limited to—

- (i) point-of-sale transfers;
- (ii) automated teller machine transfers;
- (iii) direct deposits or withdrawals of funds;
- (iv) transfers initiated by telephone; and
- (v) transfers resulting from debit card transactions, whether or not initiated through an electronic terminal.

(2) *Electronic fund transfer using information from a check.*

(i) This part applies where a check, draft, or similar paper instrument is used as a source of information to initiate a one-time electronic fund transfer from a consumer's account. The consumer must authorize the transfer.

(ii) The person initiating an electronic fund transfer using the consumer's check as a source of information for the transfer must provide a notice that the transaction will or may be processed as an EFT, and obtain a consumer's authorization for each transfer. A consumer authorizes a one-time electronic fund transfer (in providing a check to a merchant or other payee for the MICR encoding, that is, the routing number of the financial institution, the consumer's account number and the serial number) when the consumer receives notice and goes forward with the underlying transaction. For point-of-sale transfers, the notice must be posted in a prominent and conspicuous location, and a copy thereof, or a substantially similar notice, must be provided to the consumer at the time of the transaction.

(iii) The person that initiates an electronic fund transfer using the consumer's check as a source of information for the transfer shall also provide a notice to the consumer at the same time it provides the notice required under paragraph (b)(2)(ii) that when a check is used to initiate an electronic fund transfer, funds may be

debited from the consumer's account as soon as the same-day payment is received, and, as applicable, that the consumer's check will not be returned by the financial institution holding the consumer's account. For point-of-sale transfers, the person initiating the transfer may post the notice required in this paragraph (b)(2)(iii) in a prominent and conspicuous location and need not include this notice on the copy of the notice given to the consumer under paragraph (b)(2)(ii). The requirements in this paragraph (b)(2)(iii) shall remain in effect until December 31, 2009.

(iv) A person may provide notices that are substantially similar to those set forth in appendix A-6 to comply with the requirements of this paragraph (b)(2).

(3) *Collection of returned-item fees via electronic fund transfer.*

(i) *General.* The person initiating an electronic fund transfer to collect a fee for the return of an electronic fund transfer or a check that is unpaid, including due to insufficient or uncollected funds in the consumer's account, must obtain the consumer's authorization for each transfer. A consumer authorizes a one-time electronic fund transfer from his or her account to pay the fee for the returned item or transfer if the person collecting the fee provides notice to the consumer stating that the person may electronically collect the fee, and the consumer goes forward with the underlying transaction. The notice must state that the fee will be collected by means of an electronic fund transfer from the consumer's account if the payment is returned unpaid and must disclose the dollar amount of the fee. If the fee may vary due to the amount of the transaction or due to other factors, then, except as otherwise provided in paragraph (b)(3)(ii) of this section, the person collecting the fee may disclose, in place of the dollar amount of the fee, an explanation of how the fee will be determined.

(ii) *Point-of-sale transactions.* If a fee for an electronic fund transfer or check returned unpaid may be collected elec-

tronically in connection with a point-of-sale transaction, the person initiating an electronic fund transfer to collect the fee must post the notice described in paragraph (b)(3)(i) of this section in a prominent and conspicuous location. The person also must either provide the consumer with a copy of the posted notice (or a substantially similar notice) at the time of the transaction, or mail the copy (or a substantially similar notice) to the consumer's address as soon as reasonably practicable after the person initiates the electronic fund transfer to collect the fee. If the amount of the fee may vary due to the amount of the transaction or due to other factors, the posted notice may explain how the fee will be determined, but the notice provided to the consumer must state the dollar amount of the fee if the amount can be calculated at the time the notice is provided or mailed to the consumer.

(iii) *Delayed compliance date for fee disclosure.* Through December 31, 2007, the notice required to be provided to consumers under paragraph (b)(3)(ii) of this section in connection with a point-of-sale transaction, whether given to the consumer at the time of the transaction or subsequently mailed to the consumer, need not include either the dollar amount of any fee collected electronically for a check or electronic fund transfer returned unpaid or an explanation of how the amount of the fee will be determined.

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(c) *Exclusions from coverage.* The term *electronic fund transfer* does not include:

- (1) *Checks.* Any transfer of funds originated by check, draft, or similar paper instrument; or any payment made by check, draft, or similar paper instrument at an electronic terminal.
- (2) *Check guarantee or authorization.* Any transfer of funds that guarantees payment or authorizes acceptance of a check, draft, or similar paper instrument but that does not directly result in a debit or credit to a consumer's account.
- (3) *Wire or other similar transfers.* Any

transfer of funds through Fedwire or through a similar wire transfer system that is used primarily for transfers between financial institutions or between businesses.

(4) *Securities and commodities transfers.* Any transfer of funds the primary purpose of which is the purchase or sale of a security or commodity, if the security or commodity is—

- (i) regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission;
- (ii) purchased or sold through a broker-dealer regulated by the Securities and Exchange Commission or through a futures commission merchant regulated by the Commodity Futures Trading Commission; or
- (iii) held in book-entry form by a Federal Reserve Bank or federal agency.

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(5) *Automatic transfers by account-holding institutions.* Any transfer of funds under an agreement between a consumer and a financial institution which provides that the institution will initiate individual transfers without a specific request from the consumer:

- (i) between a consumer's accounts within the financial institution;
- (ii) from a consumer's account to an account of a member of the consumer's family held in the same financial institution; or
- (iii) between a consumer's account and an account of the financial institution, except that these transfers remain subject to section 205.10(e) regarding compulsory use and sections 915 and 916 of the act regarding civil and criminal liability.

(6) *Telephone-initiated transfers.* Any transfer of funds that—

- (i) is initiated by a telephone communication between a consumer and a financial institution making the transfer, and
- (ii) does not take place under a telephone bill-payment or other written plan in which periodic or recurring transfers are contemplated.

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(7) *Small institutions.* Any preauthorized transfer to or from an account if the assets of the account-holding financial institution were \$100 million or less on the preceding December 31. If assets of the account-holding institution subsequently exceed \$100 million, the institution's exemption for preauthorized transfers terminates one year from the end of the calendar year in which the assets exceed \$100 million. Preauthorized transfers exempt under this paragraph (c)(7) remain subject to section 205.10(e) regarding compulsory use and sections 915 and 916 of the act regarding civil and criminal liability.

**6-307****SECTION 205.4—General Disclosure Requirements; Jointly Offered Services**

(a)(1) *Form of disclosures.* Disclosures required under this part shall be clear and readily understandable, in writing, and in a form the consumer may keep, except as otherwise provided in this part. The disclosures required by this part may be provided to the consumer in electronic form, 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.). A financial institution may use commonly accepted or readily understandable abbreviations in complying with the disclosure requirements of this part.

(2) *Foreign-language disclosures.* Disclosures required under this part may be made in a language other than English, provided that the disclosures are made available in English upon the consumer's request.

(b) *Additional information; disclosures required by other laws.* A financial institution may include additional information and may combine disclosures required by other laws (such as the Truth in Lending Act (15 USC 1601 et seq.) or the Truth in Savings Act (12 USC 4301 et seq.)) with the disclosures required by this part.

(c) *Multiple accounts and account holders.*

(1) *Multiple accounts.* A financial institution may combine the required disclosures into a single statement for a consumer who holds more than one account at the institution.

(2) *Multiple account holders.* For joint accounts held by two or more consumers, a financial institution need provide only one set of the required disclosures and may provide them to any of the account holders.

(d) *Services offered jointly.* Financial institutions that provide electronic fund transfer services jointly may contract among themselves to comply with the requirements that this part imposes on any or all of them. An institution need make only the disclosures required by sections 205.7 and 205.8 that are within its knowledge and within the purview of its relationship with the consumer for whom it holds an account.

**6-308****SECTION 205.5—Issuance of Access Devices**

(a) *Solicited issuance.* Except as provided in paragraph (b) of this section, a financial institution may issue an access device to a consumer only—

- (1) in response to an oral or written request for the device; or
- (2) as a renewal of, or in substitution for, an accepted access device whether issued by the institution or a successor.

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(b) *Unsolicited issuance.* A financial institution may distribute an access device to a consumer on an unsolicited basis if the access device is—

- (1) not validated, meaning that the institution has not yet performed all the procedures that would enable a consumer to initiate an electronic fund transfer using the access device;
- (2) accompanied by a clear explanation that the access device is not validated and how the consumer may dispose of it if validation is not desired;
- (3) accompanied by the disclosures required by section 205.7, of the consumer's rights

and liabilities that will apply if the access device is validated; and

(4) validated only in response to the consumer's oral or written request for validation, after the institution has verified the consumer's identity by a reasonable means.

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### SECTION 205.6—Liability of Consumer for Unauthorized Transfers

(a) *Conditions for liability.* A consumer may be held liable, within the limitations described in paragraph (b) of this section, for an unauthorized electronic fund transfer involving the consumer's account only if the financial institution has provided the disclosures required by section 205.7(b)(1), (2), and (3). If the unauthorized transfer involved an access device, it must be an accepted access device and the financial institution must have provided a means to identify the consumer to whom it was issued.

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(b) *Limitations on amount of liability.* A consumer's liability for an unauthorized electronic fund transfer or a series of related unauthorized transfers shall be determined as follows:

(1) *Timely notice given.* If the consumer notifies the financial institution within two business days after learning of the loss or theft of the access device, the consumer's liability shall not exceed the lesser of \$50 or the amount of unauthorized transfers that occur before notice to the financial institution.

(2) *Timely notice not given.* If the consumer fails to notify the financial institution within two business days after learning of the loss or theft of the access device, the consumer's liability shall not exceed the lesser of \$500 or the sum of—

(i) \$50 or the amount of unauthorized transfers that occur within the two business days, whichever is less; and

(ii) the amount of unauthorized transfers that occur after the close of two business days and before notice to the institution, provided the institution establishes that these transfers would not have occurred

had the consumer notified the institution within that two-day period.

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(3) *Periodic statement; timely notice not given.* A consumer must report an unauthorized electronic fund transfer that appears on a periodic statement within 60 days of the financial institution's transmittal of the statement to avoid liability for subsequent transfers. If the consumer fails to do so, the consumer's liability shall not exceed the amount of the unauthorized transfers that occur after the close of the 60 days and before notice to the institution, and that the institution establishes would not have occurred had the consumer notified the institution within the 60-day period. When an access device is involved in the unauthorized transfer, the consumer may be liable for other amounts set forth in paragraphs (b)(1) or (b)(2) of this section, as applicable.

(4) *Extension of time limits.* If the consumer's delay in notifying the financial institution was due to extenuating circumstances, the institution shall extend the times specified above to a reasonable period.

(5) *Notice to financial institution.*

(i) Notice to a financial institution is given when a consumer takes steps reasonably necessary to provide the institution with the pertinent information, whether or not a particular employee or agent of the institution actually receives the information.

(ii) The consumer may notify the institution in person, by telephone, or in writing.

(iii) Written notice is considered given at the time the consumer mails the notice or delivers it for transmission to the institution by any other usual means. Notice may be considered constructively given when the institution becomes aware of circumstances leading to the reasonable belief that an unauthorized transfer to or from the consumer's account has been or may be made.

(6) *Liability under state law or agreement.* If state law or an agreement between the consumer and the financial institution im-

poses less liability than is provided by this section, the consumer's liability shall not exceed the amount imposed under the state law or agreement.

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#### SECTION 205.7—Initial Disclosures

(a) *Timing of disclosures.* A financial institution shall make the disclosures required by this section at the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving the consumer's account.

(b) *Content of disclosures.* A financial institution shall provide the following disclosures, as applicable:

(1) *Liability of consumer.* A summary of the consumer's liability, under section 205.6 or under state or other applicable law or agreement, for unauthorized electronic fund transfers.

(2) *Telephone number and address.* The telephone number and address of the person or office to be notified when the consumer believes that an unauthorized electronic fund transfer has been or may be made.

(3) *Business days.* The financial institution's business days.

(4) *Types of transfer; limitations.* The type of electronic fund transfers that the consumer may make and any limitations on the frequency and dollar amount of transfers. Details of the limitations need not be disclosed if confidentiality is essential to maintain the security of the electronic fund transfer system.

(5) *Fees.* Any fees imposed by the financial institution for electronic fund transfers or for the right to make transfers.

(6) *Documentation.* A summary of the consumer's right to receipts and periodic statements, as provided in section 205.9, and notices regarding preauthorized transfers as provided in sections 205.10(a) and 205.10(d).

(7) *Stop payment.* A summary of the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure for placing a stop-payment order, as provided in section 205.10(c).

(8) *Liability of institution.* A summary of the financial institution's liability to the consumer under section 910 of the act for failure to make or to stop certain transfers.

(9) *Confidentiality.* The circumstances under which, in the ordinary course of business, the financial institution may provide information concerning the consumer's account to third parties.

(10) *Error resolution.* A notice that is substantially similar to Model Form A-3 as set out in appendix A of this part concerning error resolution.

(11) *ATM fees.* A notice that a fee may be imposed by an automated teller machine operator as defined in section 205.16(a)(1), when the consumer initiates an electronic fund transfer or makes a balance inquiry, and by any network used to complete the transaction.

(c) *Addition of electronic fund transfer services.* If an electronic fund transfer service is added to a consumer's account and is subject to terms and conditions different from those described in the initial disclosures, disclosures for the new service are required.

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

(a) *Change-in-terms notice.*

(1) *Prior notice required.* A financial institution shall mail or deliver a written notice to the consumer at least 21 days before the effective date of any change in a term or condition required to be disclosed under section 205.7(b) if the change would result in—

- (i) increased fees for the consumer;
- (ii) increased liability for the consumer;
- (iii) fewer types of available electronic fund transfers; or
- (iv) stricter limitations on the frequency or dollar amount of transfers.

(2) *Prior-notice exception.* A financial institution need not give prior notice if an immediate change in terms or conditions is necessary to maintain or restore the security of an account or an electronic fund transfer system. If the institution makes such a



change permanent and disclosure would not jeopardize the security of the account or system, the institution shall notify the consumer in writing on or with the next regularly scheduled periodic statement or within 30 days of making the change permanent.

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(b) *Error-resolution notice.* For accounts to or from which electronic fund transfers can be made, a financial institution shall mail or deliver to the consumer, at least once each calendar year, an error-resolution notice substantially similar to the model form set forth in appendix A of this part (Model Form A-3). Alternatively, an institution may include an abbreviated notice substantially similar to the model form error-resolution notice set forth in appendix A of this part (Model Form A-3), on or with each periodic statement required by section 205.9(b).

**6-321****SECTION 205.9—Receipts at Electronic Terminals; Periodic Statements**

(a) *Receipts at electronic terminals.* Except as provided in paragraph (e) of this section, a financial institution shall make a receipt available to a consumer at the time the consumer initiates an electronic fund transfer at an electronic terminal. The receipt shall set forth the following information, as applicable:

- (1) *Amount.* The amount of the transfer. A transaction fee may be included in this amount, provided the amount of the fee is disclosed on the receipt and displayed on or at the terminal.
- (2) *Date.* The date the consumer initiates the transfer.
- (3) *Type.* The type of transfer and the type of the consumer's account(s) to or from which funds are transferred. The type of account may be omitted if the access device used is able to access only one account at that terminal.
- (4) *Identification.* A number or code that identifies the consumer's account or accounts, or the access device used to initiate the transfer. The number or code need not

exceed four digits or letters to comply with the requirements of this paragraph (a)(4).

(5) *Terminal location.* The location of the terminal where the transfer is initiated, or an identification such as a code or terminal number. Except in limited circumstances where all terminals are located in the same city or state, if the location is disclosed, it shall include the city and state or foreign country and one of the following:

- (i) the street address; or
- (ii) a generally accepted name for the specific location; or
- (iii) the name of the owner or operator of the terminal if other than the account-holding institution.

(6) *Third-party transfer.* The name of any third party to or from whom funds are transferred.

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(b) *Periodic statements.* For an account to or from which electronic fund transfers can be made, a financial institution shall send a periodic statement for each monthly cycle in which an electronic fund transfer has occurred and shall send a periodic statement at least quarterly if no transfer has occurred. The statement shall set forth the following information, as applicable:

- (1) *Transaction information.* For each electronic fund transfer occurring during the cycle—
  - (i) the amount of the transfer;
  - (ii) the date the transfer was credited or debited to the consumer's account;
  - (iii) the type of transfer and type of account to or from which funds were transferred;
  - (iv) for a transfer initiated by the consumer at an electronic terminal (except for a deposit of cash or a check, draft, or similar paper instrument), the terminal location described in paragraph (a)(5) of this section; and
  - (v) the name of any third party to or from whom funds were transferred.

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(2) *Account number.* The number of the account.

(3) *Fees.* The amount of any fees assessed against the account during the statement period for electronic fund transfers, for the right to make transfers, or for account maintenance.

(4) *Account balances.* The balance in the account at the beginning and at the close of the statement period.

(5) *Address and telephone number for inquiries.* The address and telephone number to be used for inquiries or notice of errors, preceded by "Direct inquiries to" or similar language. The address and telephone number provided on an error-resolution notice under section 205.8(b) given on or with the statement satisfies this requirement.

(6) *Telephone number for preauthorized transfers.* A telephone number the consumer may call to ascertain whether preauthorized transfers to the consumer's account have occurred, if the financial institution uses the telephone-notice option under section 205.10(a)(1)(iii).

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(c) *Exceptions to the periodic-statement requirement for certain accounts.*

(1) *Preauthorized transfers to accounts.* For accounts that may be accessed only by preauthorized transfers to the account the following rules apply:

(i) *Passbook accounts.* For passbook accounts, the financial institution need not provide a periodic statement if the institution updates the passbook upon presentation or enters on a separate document the amount and date of each electronic fund transfer since the passbook was last presented.

(ii) *Other accounts.* For accounts other than passbook accounts, the financial institution must send a periodic statement at least quarterly.

(2) *Intra-institutional transfers.* For an electronic fund transfer initiated by the consumer between two accounts of the consumer in the same institution, documenting the transfer on a periodic statement for one

of the two accounts satisfies the periodic-statement requirement.

(3) *Relationship between paragraphs (c)(1) and (c)(2) of this section.* An account that is accessed by preauthorized transfers to the account described in paragraph (c)(1) of this section and by intra-institutional transfers described in paragraph (c)(2) of this section, but by no other type of electronic fund transfers, qualifies for the exceptions provided by paragraph (c)(1) of this section.

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(d) *Documentation for foreign-initiated transfers.* The failure by a financial institution to provide a terminal receipt for an electronic fund transfer or to document the transfer on a periodic statement does not violate this part if—

(1) the transfer is not initiated within a state; and

(2) the financial institution treats an inquiry for clarification or documentation as a notice of error in accordance with section 205.11.

(e) *Exception for receipts in small-value transfers.* A financial institution is not subject to the requirement to make available a receipt under paragraph (a) of this section if the amount of the transfer is \$15 or less.

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### SECTION 205.10—Preauthorized Transfers

(a) *Preauthorized transfers to consumer's account.*

(1) *Notice by financial institution.* When a person initiates preauthorized electronic fund transfers to a consumer's account at least once every 60 days, the account-holding financial institution shall provide notice to the consumer by:

(i) *Positive notice.* Providing oral or written notice of the transfer within two business days after the transfer occurs; or

(ii) *Negative notice.* Providing oral or written notice, within two business days after the date on which the transfer was scheduled to occur, that the transfer did not occur; or

(iii) *Readily available telephone line.* Providing a readily available telephone line that the consumer may call to determine whether the transfer occurred and disclosing the telephone number on the initial disclosure of account terms and on each periodic statement.

(2) *Notice by payor.* A financial institution need not provide notice of a transfer if the payor gives the consumer positive notice that the transfer has been initiated.

(3) *Crediting.* A financial institution that receives a preauthorized transfer of the type described in paragraph (a)(1) of this section shall credit the amount of the transfer as of the date the funds for the transfer are received.

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(b) *Written authorization for preauthorized transfers from consumer's account.* Preauthorized electronic fund transfers from a consumer's account may be authorized only by a writing signed or similarly authenticated by the consumer. The person that obtains the authorization shall provide a copy to the consumer.

(c) *Consumer's right to stop payment.*

(1) *Notice.* A consumer may stop payment of a preauthorized electronic fund transfer from the consumer's account by notifying the financial institution orally or in writing at least three business days before the scheduled date of the transfer.

(2) *Written confirmation.* The financial institution may require the consumer to give written confirmation of a stop-payment order within 14 days of an oral notification. An institution that requires written confirmation shall inform the consumer of the requirement and provide the address where confirmation must be sent when the consumer gives the oral notification. An oral stop-payment order ceases to be binding after 14 days if the consumer fails to provide the required written confirmation.

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(d) *Notice of transfers varying in amount.*

(1) *Notice.* When a preauthorized electronic fund transfer from the consumer's account will vary in amount from the previous transfer under the same authorization or from the preauthorized amount, the designated payee or the financial institution shall send the consumer written notice of the amount and date of the transfer at least 10 days before the scheduled date of transfer.

(2) *Range.* The designated payee or the institution shall inform the consumer of the right to receive notice of all varying transfers, but may give the consumer the option of receiving notice only when a transfer falls outside a specified range of amounts or only when a transfer differs from the most recent transfer by more than an agreed-upon amount.

(e) *Compulsory use.*

(1) *Credit.* No financial institution or other person may condition an extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers, except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account.

(2) *Employment or government benefit.* No financial institution or other person may require a consumer to establish an account for receipt of electronic fund transfers with a particular institution as a condition of employment or receipt of a government benefit.

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### SECTION 205.11—Procedures for Resolving Errors

(a) *Definition of error.*

(1) *Types of transfers or inquiries covered.*

The term *error* means—

- (i) an unauthorized electronic fund transfer;
- (ii) an incorrect electronic fund transfer to or from the consumer's account;
- (iii) the omission of an electronic fund transfer from a periodic statement;
- (iv) a computational or bookkeeping er-

ror made by the financial institution relating to an electronic fund transfer;

(v) the consumer's receipt of an incorrect amount of money from an electronic terminal;

(vi) an electronic fund transfer not identified in accordance with section 205.9 or 205.10(a) of Regulation E; or

(vii) the consumer's request for documentation required by section 205.9 or 205.10(a) or for additional information or clarification concerning an electronic fund transfer, including a request the consumer makes to determine whether an error exists under paragraphs (a)(1)(i) through (vi) of this section.

(2) *Types of inquiries not covered.* The term *error* does not include—

(i) a routine inquiry about the consumer's account balance;

(ii) a request for information for tax or other recordkeeping purposes; or

(iii) a request for duplicate copies of documentation.

#### 6-330

(b) *Notice of error from consumer.*

(1) *Timing; contents.* A financial institution shall comply with the requirements of this section with respect to any oral or written notice of error from the consumer that—

(i) is received by the institution no later than 60 days after the institution sends the periodic statement or provides the passbook documentation, required by section 205.9, on which the alleged error is first reflected;

(ii) enables the institution to identify the consumer's name and account number; and

(iii) indicates why the consumer believes an error exists and includes to the extent possible the type, date, and amount of the error, except for requests described in paragraph (a)(1)(vii) of this section.

(2) *Written confirmation.* A financial institution may require the consumer to give written confirmation of an error within 10 business days of an oral notice. An institution that requires written confirmation shall inform the consumer of the requirement and provide the address where confirmation

must be sent when the consumer gives the oral notification.

(3) *Request for documentation or clarifications.* When a notice of error is based on documentation or clarification that the consumer requested under paragraph (a)(1)(vii) of this section, the consumer's notice of error is timely if received by the financial institution no later than 60 days after the institution sends the information requested.

#### 6-331

(c) *Time limits and extent of investigation.*

(1) *Ten-day period.* A financial institution shall investigate promptly and, except as otherwise provided in this paragraph (c), shall determine whether an error occurred within 10 business days of receiving a notice of error. The institution shall report the results to the consumer within three business days after completing its investigation. The institution shall correct the error within one business day after determining that an error occurred.

(2) *Forty-five day period.* If the financial institution is unable to complete its investigation within 10 business days, the institution may take up to 45 days from receipt of a notice of error to investigate and determine whether an error occurred, provided the institution does the following:

(i) Provisionally credits the consumer's account in the amount of the alleged error (including interest where applicable) within 10 business days of receiving the error notice. If the financial institution has a reasonable basis for believing that an unauthorized electronic fund transfer has occurred and the institution has satisfied the requirements of section 205.6(a), the institution may withhold a maximum of \$50 from the amount credited. An institution need not provisionally credit the consumer's account if—

(A) the institution requires but does not receive written confirmation within 10 business days of an oral notice of error; or

(B) the alleged error involves an account that is subject to Regulation T (Securities Credit by Brokers and Dealers, 12 CFR 220);

- (ii) Informs the consumer, within two business days after the provisional crediting, of the amount and date of the provisional crediting and gives the consumer full use of the funds during the investigation;
  - (iii) Corrects the error, if any, within one business day after determining that an error occurred; and
  - (iv) Reports the results to the consumer within three business days after completing its investigation (including, if applicable, notice that a provisional credit has been made final).
- (3) *Extension of time periods.* The time periods in paragraphs (c)(1) and (c)(2) of this section are extended as follows:
- (i) The applicable time is 20 business days in place of 10 business days under paragraphs (c)(1) and (c)(2) of this section if the notice of error involves an electronic fund transfer to or from the account within 30 days after the first deposit to the account was made.
  - (ii) The applicable time is 90 days in place of 45 days under paragraph (c)(2) of this section, for completing an investigation, if a notice of error involves an electronic fund transfer that—
    - (A) was not initiated within a state;
    - (B) resulted from a point-of-sale debit card transaction; or
    - (C) occurred within 30 days after the first deposit to the account was made.
- (4) *Investigation.* With the exception of transfers covered by section 205.14, a financial institution's review of its own records regarding an alleged error satisfies the requirements of this section if—
- (i) the alleged error concerns a transfer to or from a third party; and
  - (ii) there is no agreement between the institution and the third party for the type of electronic fund transfer involved.

**6-332**

(d) *Procedures if financial institution determines no error or different error occurred.* In addition to following the procedures specified in paragraph (c) of this section, the financial institution shall follow the procedures set forth in this paragraph (d) if it determines that no

error occurred or that an error occurred in a manner or amount different from that described by the consumer.

(1) *Written explanation.* The institution's report of the results of its investigation shall include a written explanation of the institution's findings and shall note the consumer's right to request the documents that the institution relied on in making its determination. Upon request, the institution shall promptly provide copies of the documents.

(2) *Debiting provisional credit.* Upon debiting a provisionally credited amount, the financial institution shall—

- (i) notify the consumer of the date and amount of the debiting;
- (ii) notify the consumer that the institution will honor checks, drafts, or similar instruments payable to third parties and preauthorized transfers from the consumer's account (without charge to the consumer as a result of an overdraft) for five business days after the notification. The institution shall honor items as specified in the notice, but need honor only items that it would have paid if the provisionally credited funds had not been debited.

**6-333**

(e) *Reassertion of error.* A financial institution that has fully complied with the error resolution requirements has no further responsibilities under this section should the consumer later reassert the same error, except in the case of an error asserted by the consumer following receipt of information provided under paragraph (a)(1)(vii) of this section.

**6-336**

### SECTION 205.12—Relation to Other Laws

(a) *Relation to Truth in Lending.*

(1) The Electronic Fund Transfer Act and this part govern—

- (i) The addition to an accepted credit card as defined in Regulation Z (12 CFR 226.12, comment 12-2), of the capability to initiate electronic fund transfers;
- (ii) The issuance of an access device that permits credit extensions (under a preex-

isting agreement between a consumer and a financial institution) only when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, or under an overdraft service, as defined in section 205.17(a);

(iii) The addition of an overdraft service, as defined in section 205.17(a), to an accepted access device; and

(iv) A consumer's liability for an unauthorized electronic fund transfer and the investigation of errors involving an extension of credit that occurs under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account, or under an overdraft service, as defined in section 205.17(a).

(2) The Truth in Lending Act and Regulation Z (12 CFR part 226), which prohibit the unsolicited issuance of credit cards, govern—

(i) The addition of a credit feature to an accepted access device; and

(ii) Except as provided in paragraph (a)(1)(ii) of this section, the issuance of a credit card that is also an access device.

#### 6-337

(b) *Preemption of inconsistent state laws.*

(1) *Inconsistent requirements.* The Board shall determine, upon its own motion or upon the request of a state, financial institution, or other interested party, whether the act and this part preempt state law relating to electronic fund transfers, or dormancy, inactivity, or service fees, or expiration dates in the case of gift certificates, store gift cards, or general-use prepaid cards.

(2) *Standards for determination.* State law is inconsistent with the requirements of the act and this part if it—

(i) requires or permits a practice or act prohibited by the federal law;

(ii) provides for consumer liability for unauthorized electronic fund transfers that exceeds the limits imposed by the federal law;

(iii) allows longer time periods than the

federal law for investigating and correcting alleged errors, or does not require the financial institution to credit the consumer's account during an error investigation in accordance with section 205.11(c)(2)(i); or

(iv) requires initial disclosures, periodic statements, or receipts that are different in content from those required by the federal law except to the extent that the disclosures relate to consumer rights granted by the state law and not by the federal law.

#### 6-338

(c) *State exemptions.*

(1) *General rule.* Any state may apply for an exemption from the requirements of the act or this part for any class of electronic fund transfers within the state. The Board shall grant an exemption if it determines that—

(i) under state law, the class of electronic fund transfers is subject to requirements substantially similar to those imposed by the federal law; and

(ii) there is adequate provision for state enforcement.

(2) *Exception.* To assure that the federal and state courts continue to have concurrent jurisdiction and to aid in implementing the act—

(i) no exemption shall extend to the civil liability provisions of section 915 of the act; and

(ii) when the Board grants an exemption, the state law requirements shall constitute the requirements of the federal law for purposes of section 915 of the act, except for state law requirements not imposed by the federal law.

#### 6-340

### SECTION 205.13—Administrative Enforcement; Record Retention

(a) *Enforcement by federal agencies.* Compliance with this part is enforced by the agencies listed in appendix B of this part.

**6-341****(b) Record retention.**

(1) Any person subject to the act and this part shall retain evidence of compliance with the requirements imposed by the act and this regulation for a period of not less than two years from the date disclosures are required to be made or action is required to be taken.

(2) Any person subject to the act and this part having actual notice that it is the subject of an investigation or an enforcement proceeding by its enforcement agency, or having been served with notice of an action filed under sections 910, 915, or 916(a) of the act, shall retain the records that pertain to the investigation, action, or proceeding until final disposition of the matter unless an earlier time is allowed by court or agency order.

**6-344**

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

**(a) Provider of electronic fund transfer service.** A person that provides an electronic fund transfer service to a consumer but that does not hold the consumer’s account is subject to all requirements of this part if the person—

(1) issues a debit card (or other access device) that the consumer can use to access the consumer’s account held by a financial institution; and

(2) has no agreement with the account-holding institution regarding such access.

**(b) Compliance by service provider.** In addition to the requirements generally applicable under this part, the service provider shall comply with the following special rules:

(1) *Disclosures and documentation.* The service provider shall give the disclosures and documentation required by sections 205.7, 205.8, and 205.9 that are within the purview of its relationship with the consumer. The service provider need not furnish the periodic statement required by section 205.9(b) if the following conditions are met:

(i) the debit card (or other access device)

issued to the consumer bears the service provider’s name and an address or telephone number for making inquiries or giving notice of error;

(ii) the consumer receives a notice concerning use of the debit card that is substantially similar to the notice contained in appendix A of this part;

(iii) the consumer receives, on or with the receipts required by section 205.9(a), the address and telephone number to be used for an inquiry, to give notice of an error, or to report the loss or theft of the debit card;

(iv) the service provider transmits to the account-holding institution the information specified in section 205.9(b)(1), in the format prescribed by the automated clearinghouse system used to clear the fund transfers;

(v) The service provider extends the time period for notice of loss or theft of a debit card, set forth in section 205.6(b)(1) and (2), from two business days to four business days after the consumer learns of the loss or theft; and extends the time periods for reporting unauthorized transfers or errors, set forth in sections 205.6(b)(3) and 205.11(b)(1)(i), from 60 days to 90 days following the transmittal of a periodic statement by the account-holding institution.

**(2) Error resolution.**

(i) The service provider shall extend by a reasonable time the period in which notice of an error must be received, specified in section 205.11(b)(1)(i), if a delay resulted from an initial attempt by the consumer to notify the account-holding institution.

(ii) The service provider shall disclose to the consumer the date on which it initiates a transfer to effect a provisional credit in accordance with section 205.11(c)(2)(ii).

(iii) If the service provider determines an error occurred, it shall transfer funds to or from the consumer’s account, in the appropriate amount and within the applicable time period, in accordance with section 205.11(c)(2)(i)

(iv) If funds were provisionally credited

and the service provider determines no error occurred, it may reverse the credit. The service provider shall notify the account-holding institution of the period during which the account-holding institution must honor debits to the account in accordance with section 205.11(d)(2)(ii). If an overdraft results, the service provider shall promptly reimburse the account-holding institution in the amount of the overdraft.

#### 6-345

(c) *Compliance by account-holding institution.* The account-holding institution need not comply with this part of the act and this regulation with respect to electronic fund transfers initiated through the service provider except as follows:

(1) *Documentation.* The account-holding institution shall provide a periodic statement that describes each electronic fund transfer initiated by the consumer with the access device issued by the service provider. The account-holding institution has no liability for the failure to comply with this requirement if the service provider did not provide the necessary information; and

(2) *Error resolution.* Upon request, the account-holding institution shall provide information or copies of documents needed by the service provider to investigate errors or to furnish copies of documents to the consumer. The account-holding institution shall also honor debits to the account in accordance with section 205.11(d)(2)(ii).

#### 6-346

### SECTION 205.15—Electronic Fund Transfer of Government Benefits

(a) *Government agency subject to regulation.*

(1) A government agency is deemed to be a financial institution for purposes of the act and this part if directly or indirectly it issues an access device to a consumer for use in initiating an electronic fund transfer of government benefits from an account other than needs-tested benefits in a program established under state or local law or administered by a state or local agency. The

agency shall comply with all applicable requirements of the act and this part, except as provided in this section.

(2) For purposes of this section, the term *account* means an account established by a government agency for distributing government benefits to a consumer electronically, such as through automated teller machines or point-of-sale terminals, but does not include an account for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency.

(b) *Issuance of access devices.* For purposes of this section, a consumer is deemed to request an access device when the consumer applies for government benefits that the agency disburses or will disburse by means of an electronic fund transfer. The agency shall verify the identity of the consumer receiving the device by reasonable means before the device is activated.

#### 6-346.1

(c) *Alternative to periodic statement.* A government agency need not furnish the periodic statement required by section 205.9(b) if the agency makes available to the consumer—

(1) the consumer's account balance, through a readily available telephone line and at a terminal (such as by providing balance information at a balance-inquiry terminal or providing it, routinely or upon request, on a terminal receipt at the time of an electronic fund transfer); and

(2) A written history of the consumer's account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days preceding the date of a request by the consumer.

#### 6-346.2

(d) *Modified requirements.* A government agency that does not furnish periodic statements, in accordance with paragraph (c) of this section, shall comply with the following special rules:

(1) *Initial disclosures.* The agency shall modify the disclosures under section 205.7(b) by disclosing—

(i) *Account balance.* The means by



which the consumer may obtain information concerning the account balance, including a telephone number. The agency provides a notice substantially similar to the notice contained in paragraph A-5 in appendix A of this part.

(ii) *Written account history.* A summary of the consumer's right to receive a written account history upon request, in place of the periodic statement required by section 205.7(b)(6), and the telephone number to call to request an account history. This disclosure may be made by providing a notice substantially similar to the notice contained in paragraph A-5 in appendix A of this part.

(iii) *Error resolution.* A notice concerning error resolution that is substantially similar to the notice contained in paragraph A-5 in appendix A of this part, in place of the notice required by section 205.7(b)(10).

(2) *Annual error-resolution notice.* The agency shall provide an annual notice concerning error resolution that is substantially similar to the notice contained in paragraph A-5 in appendix A of this part, in place of the notice required by section 205.8(b).

(3) *Limitations on liability.* For purposes of section 205.6(b)(3), regarding a 60-day period for reporting any unauthorized transfer that appears on a periodic statement, the 60-day period shall begin with transmittal of a written account history or other account information provided to the consumer under paragraph (c) of this section.

(4) *Error resolution.* The agency shall comply with the requirements of section 205.11 in response to an oral or written notice of an error from the consumer that is received no later than 60 days after the consumer obtains the written account history or other account information, under paragraph (c) of this section, in which the error is first reflected.

**6-346.3****SECTION 205.16—Disclosures at Automated Teller Machines**

(a) *Definition.* *Automated teller machine operator* means any person that operates an automated teller machine at which a consumer initiates an electronic fund transfer or a balance inquiry and that does not hold the account to or from which the transfer is made, or about which an inquiry is made.

(b) *General.* An automated teller machine operator that imposes a fee on a consumer for initiating an electronic fund transfer or a balance inquiry shall—

- (1) provide notice that a fee will be imposed for providing electronic fund transfer services or a balance inquiry; and
- (2) disclose the amount of the fee.

**6-346.31**

(c) *Notice requirement.* To meet the requirements of paragraph (b) of this section, an automated teller machine operator must comply with the following:

(1) *On the machine.* Post in a prominent and conspicuous location on or at the automated teller machine a notice that—

- (i) a fee will be imposed for providing electronic fund transfer services or for a balance inquiry; or
- (ii) a fee may be imposed for providing electronic fund transfer services or for a balance inquiry, but the notice in this paragraph (c)(1)(ii) may be substituted for the notice in paragraph (c)(1)(i) only if there are circumstances under which a fee will not be imposed for such services; and

(2) *Screen or paper notice.* Provide the notice required by paragraphs (b)(1) and (b)(2) of this section either by showing it on the screen of the automated teller machine or by providing it on paper, before the consumer is committed to paying a fee.

(d) *Temporary exemption.* Through December 31, 2004, the notice requirement in paragraph (c)(2) of this section does not apply to any automated teller machine that lacks the technical capability to provide such information.

(e) *Imposition of fee.* An automated teller ma-

chine operator may impose a fee on a consumer for initiating an electronic fund transfer or a balance inquiry only if—

- (1) the consumer is provided the notices required under paragraph (c) of this section, and
- (2) the consumer elects to continue the transaction or inquiry after receiving such notices.

#### 6-346.35

#### SECTION 205.17— Requirements for Overdraft Services

(a) *Definition.* For purposes of this section, the term “overdraft service” means a service under which a financial institution assesses a fee or charge on a consumer’s account held by the institution for paying a transaction (including a check or other item) when the consumer has insufficient or unavailable funds in the account. The term “overdraft service” does not include any payment of overdrafts pursuant to—

- (1) A line of credit subject to the Federal Reserve Board’s Regulation Z (12 CFR part 226), including transfers from a credit card account, home equity line of credit, or overdraft line of credit;
- (2) A service that transfers funds from another account held individually or jointly by a consumer, such as a savings account; or
- (3) A line of credit or other transaction exempt from the Federal Reserve Board’s Regulation Z (12 CFR part 226) pursuant to 12 CFR 226.3(d).

(b) *Opt-in requirement.*

(1) *General.* Except as provided under paragraph (c) of this section, a financial institution holding a consumer’s account shall not assess a fee or charge on a consumer’s account for paying an ATM or one-time debit card transaction pursuant to the institution’s overdraft service, unless the institution:

- (i) Provides the consumer with a notice in writing, or if the consumer agrees, electronically, segregated from all other information, describing the institution’s overdraft service;
- (ii) Provides a reasonable opportunity for

the consumer to affirmatively consent, or opt in, to the service for ATM and one-time debit card transactions;

(iii) Obtains the consumer’s affirmative consent, or opt-in, to the institution’s payment of ATM or one-time debit card transactions; and

(iv) Provides the consumer with confirmation of the consumer’s consent in writing, or if the consumer agrees, electronically, which includes a statement informing the consumer of the right to revoke such consent.

(2) *Conditioning payment of other overdrafts on consumer’s affirmative consent.* A financial institution shall not:

(i) Condition the payment of any overdrafts for checks, ACH transactions, and other types of transactions on the consumer affirmatively consenting to the institution’s payment of ATM and one-time debit card transactions pursuant to the institution’s overdraft service; or

(ii) Decline to pay checks, ACH transactions, and other types of transactions that overdraw the consumer’s account because the consumer has not affirmatively consented to the institution’s overdraft service for ATM and one-time debit card transactions.

(3) *Same account terms, conditions, and features.* A financial institution shall provide to consumers who do not affirmatively consent to the institution’s overdraft service for ATM and one-time debit card transactions the same account terms, conditions, and features that it provides to consumers who affirmatively consent, except for the overdraft service for ATM and one-time debit card transactions.

(4) *Exception to the notice and opt-in requirements.* The requirements of section 205.17(b)(1) do not apply 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. Financial institutions may apply this exception on an account-by-account basis.

(c) *Timing.*

(1) *Existing account holders.* For accounts opened prior to July 1, 2010, the financial institution must not assess any fees or charges on a consumer's account on or after August 15, 2010, for paying an ATM or one-time debit card transaction pursuant to the overdraft service, unless the institution has complied with section 205.17(b)(1) and obtained the consumer's affirmative consent.

(2) *New account holders.* For accounts opened on or after July 1, 2010, the financial institution must comply with section 205.17(b)(1) and obtain the consumer's affirmative consent before the institution assesses any fee or charge on the consumer's account for paying an ATM or one-time debit card transaction pursuant to the institution's overdraft service.

(d) *Content and format.* The notice required by paragraph (b)(1)(i) of this section shall be substantially similar to Model Form A-9 set forth in Appendix A of this part, include all applicable items in this paragraph, and may not contain any information not specified in or otherwise permitted by this paragraph.

(1) *Overdraft service.* A brief description of the financial institution's overdraft service and the types of transactions for which a fee or charge for paying an overdraft may be imposed, including ATM and one-time debit card transactions.

(2) *Fees imposed.* The dollar amount of any fees or charges assessed by the financial institution for paying an ATM or one-time debit card transaction pursuant to the institution's overdraft service, including any daily or other overdraft fees. If the amount of the fee is determined on the basis of the number of times the consumer has overdrawn the account, the amount of the overdraft, or other factors, the institution must disclose the maximum fee that may be imposed.

(3) *Limits on fees charged.* The maximum number of overdraft fees or charges that may be assessed per day, or, if applicable, that there is no limit.

(4) *Disclosure of opt-in right.* An explanation of the consumer's right to affirmatively

consent to the financial institution's payment of overdrafts for ATM and one-time debit card transactions pursuant to the institution's overdraft service, including the methods by which the consumer may consent to the service; and

(5) *Alternative plans for covering overdrafts.* If the institution offers a line of credit subject to the Board's Regulation Z (12 CFR part 226) or a service that transfers funds from another account of the consumer held at the institution to cover overdrafts, the institution must state that fact. An institution may, but is not required to, list additional alternatives for the payment of overdrafts.

(6) *Permitted modifications and additional content.* If applicable, the institution may modify the content required by section 205.17(d) to indicate that the consumer has the right to opt into, or opt out of, the payment of overdrafts under the institution's overdraft service for other types of transactions, such as checks, ACH transactions, or automatic bill payments; to provide a means for the consumer to exercise this choice; and to disclose the associated returned item fee and that additional merchant fees may apply. The institution may also disclose the consumer's right to revoke consent. For notices provided to consumers who have opened accounts prior to July 1, 2010, the financial institution may describe the institution's overdraft service with respect to ATM and one-time debit card transactions with a statement such as "After August 15, 2010, we will not authorize and pay overdrafts for the following types of transactions unless you ask us to (see below)."

(e) *Joint relationships.* If two or more consumers jointly hold an account, the financial institution shall treat the affirmative consent of any of the joint consumers as affirmative consent for that account. Similarly, the financial institution shall treat a revocation of affirmative consent by any of the joint consumers as revocation of consent for that account.

(f) *Continuing right to opt in or to revoke the opt-in.* A consumer may affirmatively consent to the financial institution's overdraft service at any time in the manner described in the

notice required by paragraph (b)(1)(i) of this section. A consumer may also revoke consent at any time in the manner made available to the consumer for providing consent. A financial institution must implement a consumer's revocation of consent as soon as reasonably practicable.

(g) *Duration and revocation of opt-in.* A consumer's affirmative consent to the institution's overdraft service is effective until revoked by the consumer, or unless the financial institution terminates the service.

#### 6-346.4

### SECTION 205.18—Requirements for Financial Institutions Offering Payroll Card Accounts

(a) *Coverage.* A financial institution shall comply with all applicable requirements of the act and this part with respect to payroll card accounts except as provided in this section.

(b) *Alternative to periodic statements.*

(1) A financial institution need not furnish periodic statements required by section 205.9(b) if the institution makes available to the consumer—

(i) the consumer's account balance, through a readily available telephone line;

(ii) an electronic history of the consumer's account transactions, such as through an Internet website, that covers at least 60 days preceding the date the consumer electronically accesses the account; and

(iii) a written history of the consumer's account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days preceding the date the financial institution receives the consumer's request.

(2) The history of account transactions provided under paragraphs (b)(1)(ii) and (iii) of this section must include the information set forth in section 205.9(b).

#### 6-346.41

(c) *Modified requirements.* A financial institution that provides information under paragraph (b) of this section, shall comply with the following:

(1) *Initial disclosures.* The financial institution shall modify the disclosures under section 205.7(b) by disclosing:

(i) *Account information.* A telephone number that the consumer may call to obtain the account balance, the means by which the consumer can obtain an electronic account history, such as the address of an Internet website, and a summary of the consumer's right to receive a written account history upon request (in place of the summary of the right to receive a periodic statement required by section 205.7(b)(6)), including a telephone number to call to request a history. The disclosure required by this paragraph (c)(1)(i) may be made by providing a notice substantially similar to the notice contained in paragraph A-7(a) in appendix A of this part.

(ii) *Error resolution.* A notice concerning error resolution that is substantially similar to the notice contained in paragraph A-7(b) in appendix A of this part, in place of the notice required by section 205.7(b)(10).

(2) *Annual error-resolution notice.* The financial institution shall provide an annual notice concerning error resolution that is substantially similar to the notice contained in paragraph A-7(b) in appendix A of this part, in place of the notice required by section 205.8(b). Alternatively, a financial institution may include on or with each electronic and written history provided in accordance with section 205.18(b)(1), a notice substantially similar to the abbreviated notice for periodic statements contained in paragraph A-3(b) in appendix A of this part, modified as necessary to reflect the error-resolution provisions set forth in this section.

(3) *Limitations on liability.*

(i) For purposes of section 205.6(b)(3), the 60-day period for reporting any unauthorized transfer shall begin on the earlier of—

(A) the date the consumer electronically accesses the consumer's account under paragraph (b)(1)(ii) of this section, provided that the electronic history made available to the consumer reflects the transfer; or

(B) the date the financial institution sends a written history of the consumer's account transactions requested by the consumer under paragraph (b)(1)(iii) of this section in which the unauthorized transfer is first reflected.

(ii) A financial institution may comply with paragraph (c)(3)(i) of this section by limiting the consumer's liability for an unauthorized transfer as provided under section 205.6(b)(3) for any transfer reported by the consumer within 120 days after the transfer was credited or debited to the consumer's account.

(4) *Error resolution.*

(i) The financial institution shall comply with the requirements of section 205.11 in response to an oral or written notice of an error from the consumer that is received by the earlier of—

(A) 60 days after the date the consumer electronically accesses the consumer's account under paragraph (b)(1)(ii) of this section, provided that the electronic history made available to the consumer reflects the alleged error; or

(B) 60 days after the date the financial institution sends a written history of the consumer's account transactions requested by the consumer under paragraph (b)(1)(iii) of this section in which the alleged error is first reflected.

(ii) In lieu of following the procedures in paragraph (c)(4)(i) of this section, a financial institution complies with the requirements for resolving errors in section 205.11 if it investigates any oral or written notice of an error from the consumer that is received by the institution within 120 days after the transfer allegedly in error was credited or debited to the consumer's account.

**6-346.43**

**SECTION 205.20—Requirements for Gift Cards and Gift Certificates**

(a) *Definitions.* For purposes of this section, except as excluded under paragraph (b), the following definitions apply:

(1) *Gift certificate* means a card, code, or other device that is:

- (i) Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount that may not be increased or reloaded in exchange for payment; and
- (ii) Redeemable upon presentation at a single merchant or an affiliated group of merchants for goods or services.

(2) *Store gift card* means a card, code, or other device that is:

- (i) Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and
- (ii) Redeemable upon presentation at a single merchant or an affiliated group of merchants for goods or services.

(3) *General-use prepaid card*

- (i) Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and
- (ii) Redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or usable at automated teller machines.

(4) *Loyalty, award, or promotional gift card* means a card, code, or other device that:

- (i) Is issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in connection with a loyalty, award, or promotional program;
- (ii) Is redeemable upon presentation at one or more merchants for goods or services, or usable at automated teller machines; and
- (iii) Sets forth the following disclosures, as applicable:

(A) A statement indicating that the

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

(B) The expiration date for the underlying funds, which must be included on the front of the card, code, or other device;

(C) The amount of any fees that may be imposed in connection with the card, code, or other device, and the conditions under which they may be imposed, which must be provided on or with the card, code, or other device; and

(D) A toll-free telephone number and, if one is maintained, a Web site, that a consumer may use to obtain fee information, which must be included on the card, code, or other device.

(5) *Dormancy or inactivity fee.* The terms “dormancy fee” and “inactivity fee” mean a fee for non-use of or inactivity on a gift certificate, store gift card, or general-use prepaid card.

(6) *Service fee.* The term “service fee” means a periodic fee for holding or use of a gift certificate, store gift card, or general-use prepaid card. A periodic fee includes any fee that may be imposed on a gift certificate, store gift card, or general-use prepaid card from time to time for holding or using the certificate or card.

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

(b) *Exclusions.* The terms “gift certificate,” “store gift card,” and “general-use prepaid card”, as defined in paragraph (a) of this section, do not include any card, code, or other device that is:

- (1) Useable solely for telephone services;
- (2) Reloadable and not marketed or labeled as a gift card or gift certificate. For purposes of this paragraph (b)(2), the term “reloadable” includes a temporary non-

reloadable card issued solely in connection with a reloadable card, code, or other device;

(3) A loyalty, award, or promotional gift card;

(4) Not marketed to the general public;

(5) Issued in paper form only; or

(6) Redeemable solely for admission to events or venues at a particular location or group of affiliated locations, or to obtain goods or services in conjunction with admission to such events or venues, at the event or venue or at specific locations affiliated with and in geographic proximity to the event or venue.

(c) *Form of disclosures.*

(1) *Clear and conspicuous.* Disclosures made under this section must be clear and conspicuous. The disclosures may contain commonly accepted or readily understandable abbreviations or symbols.

(2) *Format.* Disclosures made under this section generally must be provided to the consumer in written or electronic form. Except for the disclosures in paragraphs (c)(3) and (h)(2), written and electronic disclosures made under this section must be in a retainable form. Only disclosures provided under paragraphs (c)(3) and (h)(2) of this section may be given orally.

(3) *Disclosures prior to purchase.* Before a gift certificate, store gift card, or general-use prepaid card is purchased, a person that issues or sells such certificate or card must disclose to the consumer the information required by paragraphs (d)(2), (e)(3), and (f)(1) of this section. The fees and terms and conditions of expiration that are required to be disclosed prior to purchase may not be changed after purchase.

(4) *Disclosures on the certificate or card.* Disclosures required by paragraphs (a)(4)(iii), (d)(2), (e)(3), and (f)(2) of this section must be made on the certificate or card, or in the case of a loyalty, award, or promotional gift card, on the card, code, or other device. A disclosure made in an accompanying terms and conditions document, on packaging surrounding a certificate or card, or on a sticker or other label affixed to the certificate or card does not

constitute a disclosure on the certificate or card. For an electronic certificate or card, disclosures must be provided electronically on the certificate or card provided to the consumer. An issuer that provides a code or confirmation to a consumer orally must provide to the consumer a written or electronic copy of the code or confirmation promptly, and the applicable disclosures must be provided on the written copy of the code or confirmation.

(d) *Prohibition on imposition of fees or charges.* No person may impose a dormancy, inactivity, or service fee with respect to a gift certificate, store gift card, or general-use prepaid card, unless:

- (1) There has been no activity with respect to the certificate or card, in the one-year period ending on the date on which the fee is imposed;
- (2) The following are stated, as applicable, clearly and conspicuously on the gift certificate, store gift card, or general-use prepaid card:
  - (i) The amount of any dormancy, inactivity, or service fee that may be charged;
  - (ii) How often such fee may be assessed; and
  - (iii) That such fee may be assessed for inactivity; and
- (3) Not more than one dormancy, inactivity, or service fee is imposed in any given calendar month.

(e) *Prohibition on sale of gift certificates or cards with expiration dates.* No person may sell or issue a gift certificate, store gift card, or general-use prepaid card with an expiration date, unless:

- (1) The person has established policies and procedures 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;
- (2) The expiration date for the underlying funds is at least the later of:
  - (i) Five years after the date the gift certificate was initially issued, or the date on which funds were last loaded to a store gift card or general-use prepaid card; or

(ii) The certificate or card expiration date, if any;

(3) The following disclosures are provided on the certificate or card, as applicable:

(i) The expiration date for the underlying funds or, if the underlying funds do not expire, that fact;

(ii) A toll-free telephone number and, if one is maintained, a Web site that a consumer may use to obtain a replacement certificate or card after the certificate or card expires if the underlying funds may be available; and

(iii) Except where a non-reloadable certificate or card bears an expiration date that is at least seven years from the date of manufacture, a statement, disclosed with equal prominence and in close proximity to the certificate or card expiration date, that:

(A) The certificate or card expires, but the underlying funds either do not expire or expire later than the certificate or card, and;

(B) The consumer may contact the issuer for a replacement card; and

(4) No fee or charge is imposed on the cardholder for replacing the gift certificate, store gift card, or general-use prepaid card or for providing the certificate or card holder with the remaining balance in some other manner prior to the funds expiration date, unless such certificate or card has been lost or stolen.

(f) *Additional disclosure requirements for gift certificates or cards.* The following disclosures must be provided in connection with a gift certificate, store gift card, or general-use prepaid card, as applicable:

(1) *Fee disclosures.* For each type of fee that may be imposed in connection with the certificate or card (other than a dormancy, inactivity, or service fee subject to the disclosure requirements under paragraph (d)(2) of this section), the following information must be provided on or with the certificate or card:

(i) The type of fee;

(ii) The amount of the fee (or an explanation of how the fee will be determined); and

(iii) The conditions under which the fee may be imposed.

(2) *Telephone number for fee information.* A toll-free telephone number and, if one is maintained, a Web site, that a consumer may use to obtain information about fees described in paragraphs (d)(2) and (f)(1) of this section must be disclosed on the certificate or card.

(g) *Compliance dates.*

(1) *Effective date for gift certificates, store gift cards, and general-use prepaid cards.* Except as provided in paragraph (h), the requirements of this section apply to any gift certificate, store gift card, or general-use prepaid card sold to a consumer on or after August 22, 2010, or provided to a consumer as a replacement for such certificate or card.

(2) *Effective date for loyalty, award, or promotional gift cards.* The requirements in paragraph (a)(4)(iii) apply to any card, code, or other device provided to a consumer in connection with a loyalty, award, or promotional program if the period of eligibility for such program began on or after August 22, 2010.

(h) *Temporary exemption.*

(1) *Delayed effective date.* For any gift certificate, store gift card, or general-use prepaid card produced prior to April 1, 2010, the effective date of the requirements of paragraphs (c)(3), (d)(2), (e)(1), (e)(3), and (f) of this section is January 31, 2011, provided that an issuer of such certificate or card:

- (i) Complies with all other provisions of this section;
- (ii) Does not impose an expiration date with respect to the funds underlying such certificate or card;
- (iii) At the consumer's request, replaces such certificate or card if it has funds remaining at no cost to the consumer; and
- (iv) Satisfies the requirements of paragraph (h)(2) of this section.

(2) *Additional disclosures.* Issuers relying on the delayed effective date in section 205.20(h)(1) must disclose through in-store

signage, messages during customer service calls, Web sites, and general advertising, that:

- (i) The underlying funds of such certificate or card do not expire;
- (ii) Consumers holding such certificate or card have a right to a free replacement certificate or card, which must be accompanied by the packaging and materials typically associated with such certificate or card; and
- (iii) Any dormancy, inactivity, or service fee for such certificate or card that might otherwise be charged will not be charged if such fees do not comply with Section 915 of the Electronic Fund Transfer Act.

(3) *Expiration of additional disclosure requirements.* The disclosures in paragraph (h)(2) of this section:

- (i) Are not required to be provided on or after January 31, 2011, with respect to in-store signage and general advertising.
- (ii) Are not required to be provided on or after January 31, 2013, with respect to messages during customer service calls and Web sites.

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#### APPENDIX A—Model Disclosure Clauses and Forms

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



Collection of Returned-Item Fees  
(§ 205.3(b)(3))

A-9 Model Consent Form for Overdraft  
Services (§ 205.17)

**6-348**

A-1—Model Clauses for Unsolicited  
Issuance (§ 205.5(b)(2))

(a) *Accounts using cards.* YOU CANNOT USE THE ENCLOSED CARD TO TRANSFER MONEY INTO OR OUT OF YOUR ACCOUNT UNTIL WE HAVE VALIDATED IT. IF YOU DO NOT WANT TO USE THE CARD, PLEASE (destroy it at once by cutting it in half).

[Financial institution may add validation instructions here.]

(b) *Accounts using codes.* YOU CANNOT USE THE ENCLOSED CODE TO TRANSFER MONEY INTO OR OUT OF YOUR ACCOUNT UNTIL WE HAVE VALIDATED IT. IF YOU DO NOT WANT TO USE THE CODE, PLEASE (destroy this notice at once) [Financial institution may add validation instructions here.]

**6-349**

A-2—Model Clauses for Initial  
Disclosures (§ 205.7(b))

(a) *Consumer liability (§ 205.7(b)(1)).* (Tell us AT ONCE if you believe your [card] [code] has been lost or stolen, or if you believe that an electronic fund transfer has been made without your permission using information from your check. Telephoning is the best way of keeping your possible losses down. You could lose all the money in your account (plus your maximum overdraft line of credit). If you tell us within two business days after you learn of the loss or theft of your [card] [code], you can lose no more than \$50 if someone used your [card] [code] without your permission.)

If you do NOT tell us within two business days after you learn of the loss or theft of your [card] [code], and we can prove we could have stopped someone from using your [card] [code] without your permission if you had told us, you could lose as much as \$500.

Also, if your statement shows transfers that

you did not make, including those made by card, code or other means, tell us at once. If you do not tell us within 60 days after the statement was mailed to you, you may not get back any money you lost after the 60 days if we can prove that we could have stopped someone from taking the money if you had told us in time. If a good reason (such as a long trip or a hospital stay) kept you from telling us, we will extend the time periods.

**6-349.1**

(b) *Contact in event of unauthorized transfer (§ 205.7(b)(2)).* If you believe your [card] [code] has been lost or stolen call:

[Telephone number]

or write:

[Name of person or office to be notified]

[Address]

You should also call the number or write to the address listed above if you believe a transfer has been made using the information from your check without your permission.

(c) *Business days (§ 205.7(b)(3)).* For purposes of these disclosures, our business days are (Monday through Friday) (Monday through Saturday) (any day including Saturdays and Sundays). Holidays are (not) included.

**6-349.2**

(d) *Transfer types and limitations (§ 205.7(b)(4)).*

(1) *Account access.* You may use your [card] [code] to—

(i) withdraw cash from your [checking] [or] [savings] account

(ii) make deposits to your [checking] [or] [savings] account

(iii) transfer funds between your checking and savings accounts whenever you request

(iv) pay for purchases at places that have agreed to accept the [card] [code]

(v) pay bills directly [by telephone] from your [checking] [or] [savings] account in the amounts and on the days you request

Some of these services may not be available at all terminals.

(2) *Electronic check conversion.* You may authorize a merchant or other payee to make a one-time electronic payment from your checking account using information from your check to—

- (i) pay for purchases
- (ii) pay bills

(3) *Limitations on frequency of transfers.*

- (i) You may make only [insert number, e.g., 3] cash withdrawals from our terminals each [insert time period, e.g., week].
- (ii) You can use your telephone bill-payment service to pay [insert number] bills each [insert time period] [telephone call].
- (iii) You can use our point-of-sale transfer service for [insert number] transactions each [insert time period].
- (iv) For security reasons, there are limits on the number of transfers you can make using our [terminals] [telephone bill-payment service] [point-of-sale transfer service].

(4) *Limitations on dollar amounts of transfers.*

- (i) You may withdraw up to [insert dollar amount] from our terminals each [insert time period] time you use the [card] [code].
- (ii) You may buy up to [insert dollar amount] worth of goods or services each [insert time period] time you use the [card] [code] in our point-of-sale transfer service.

### 6-349.3

(e) *Fees* (§ 205.7(b)(5)).

(1) *Per transfer charge.* We will charge you [insert dollar amount] for each transfer you make using our [automated teller machines] [telephone bill-payment service] [point-of-sale transfer service].

(2) *Fixed charge.* We will charge you [insert dollar amount] each [insert time period] for our [automated teller machine service] [telephone bill-payment service] [point-of-sale transfer service].

(3) *Average or minimum balance charge.* We will only charge you for using our [automated teller machines] [telephone bill-payment service] [point-of-sale transfer service] if the [average] [minimum] balance in

your [checking account] [savings account] [accounts] falls below [insert dollar amount]. If it does, we will charge you [insert dollar amount] each [transfer] [insert time period].

(f) *Confidentiality* (§ 205.7(b)(9)). We will disclose information to third parties about your account or the transfers you make—

- (i) where it is necessary for completing transfers, or
- (ii) in order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant, or
- (iii) in order to comply with government agency or court orders, or
- (iv) if you give us your written permission.

### 6-349.4

(g) *Documentation* (§ 205.7(b)(6)).

(1) *Terminal transfers.* You can get a receipt at the time you make any transfer to or from your account using one of our [automated teller machines] [or] [point-of-sale terminals].

(2) *Preauthorized credits.* If you have arranged to have direct deposits made to your account at least once every 60 days from the same person or company, (we will let you know if the deposit is [not] made.) [the person or company making the deposit will tell you every time they send us the money] [you can call us at (insert telephone number) to find out whether or not the deposit has been made].

(3) *Periodic statements.* You will get a [monthly] [quarterly] account statement (unless there are no transfers in a particular month. In any case you will get the statement at least quarterly).

(4) *Passbook account where the only possible electronic fund transfers are preauthorized credits.* If you bring your passbook to us, we will record any electronic deposits that were made to your account since the last time you brought in your passbook.

**6-349.5**

(h) *Preauthorized payments* (§ 205.7(b)(6), (7), and (8); § 205.10(d)).

(1) *Right to stop payment and procedure for doing so.* If you have told us in advance to make regular payments out of your account, you can stop any of these payments. Here's how:

Call us at [insert telephone number], or write us at [insert address], in time for us to receive your request three business days or more before the payment is scheduled to be made. If you call, we may also require you to put your request in writing and get it to us within 14 days after you call. (We will charge you [insert amount] for each stop-payment order you give.)

(2) *Notice of varying amounts.* If these regular payments may vary in amount, [we] [the person you are going to pay] will tell you, 10 days before each payment, when it will be made and how much it will be. (You may choose instead to get this notice only when the payment would differ by more than a certain amount from the previous payment, or when the amount would fall outside certain limits that you set.)

(3) *Liability for failure to stop payment of preauthorized transfer.* If you order us to stop one of these payments three business days or more before the transfer is scheduled, and we do not do so, we will be liable for your losses or damages.

**6-349.6**

(i) *Financial institution's liability* (§ 205.7(b)(8)). If we do not complete a transfer to or from your account on time or in the correct amount according to our agreement with you, we will be liable for your losses or damages. However, there are some exceptions. We will not be liable, for instance:

- (1) If, through no fault of ours, you do not have enough money in your account to make the transfer.
- (2) If the transfer would go over the credit limit on your overdraft line.
- (3) If the automated teller machine where you are making the transfer does not have enough cash.
- (4) If the [terminal] [system] was not work-

ing properly and you knew about the breakdown when you started the transfer.

(5) If circumstances beyond our control (such as fire or flood) prevent the transfer, despite reasonable precautions that we have taken.

(6) There may be other exceptions stated in our agreement with you.

(j) *ATM fees* (§ 205.7(b)(11)). When you use an ATM not owned by us, you may be charged a fee by the ATM operator [or any network used] (and you may be charged a fee for a balance inquiry even if you do not complete a fund transfer).

**6-350**

A-3—Model Forms for Error-Resolution Notice (§§ 205.7(b)(10) and 205.8(b)).

(a) *Initial and annual error-resolution notice* (§§ 205.7(b)(10) and 205.8(b)).

In Case of Errors or Questions About Your Electronic Transfers

Telephone us at [insert telephone number]

or

Write us at [insert address]

[or

E-mail us at [insert electronic mail address]]

as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer listed on the statement or receipt. We must hear from you no later than 60 days after we sent the FIRST statement on which the problem or error appeared.

(1) Tell us your name and account number (if any).

(2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.

(3) Tell us the dollar amount of the suspected error.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take

up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation. You may ask for copies of the documents that we used in our investigation.

(b) *Error-resolution notice on periodic statements (§ 205.8(b)).*

In Case of Errors or Questions About Your Electronic Transfers

Telephone us at [insert telephone number]

or

Write us at [insert address]

as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

- (1) Tell us your name and account number (if any).
- (2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information.
- (3) Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation.

## 6-351

A-4—Model Form for Service-Providing Institutions (§ 205.14(b)(1)(ii))

ALL QUESTIONS ABOUT TRANSACTIONS MADE WITH YOUR (NAME OF CARD) CARD MUST BE DIRECTED TO US (NAME OF SERVICE PROVIDER) AND NOT TO THE BANK OR OTHER FINANCIAL INSTITUTION WHERE YOU HAVE YOUR ACCOUNT. We are responsible for the [name of service] service and for resolving any errors in transactions made with your [name of card] card.

We will not send you a periodic statement listing transactions that you make using your [name of card] card. The transactions will appear only on the statement issued by your bank or other financial institution. SAVE THE RECEIPTS YOU ARE GIVEN WHEN YOU USE YOUR [NAME OF CARD] CARD, AND CHECK THEM AGAINST THE ACCOUNT STATEMENT YOU RECEIVE FROM YOUR BANK OR OTHER FINANCIAL INSTITUTION. If you have any questions about one of these transactions, call or write us at [telephone number and address] [the telephone number and address indicated below].

IF YOUR [NAME OF CARD] CARD IS LOST OR STOLEN, NOTIFY US AT ONCE by calling or writing to us at [telephone number and address].

## 6-352

A-5—Model Forms for Government Agencies (§ 205.15(d)(I)(i) and (ii))

- (1) *Disclosure by government agencies of information about obtaining account balances and account histories § 205.15(d)(1)(i) and (ii).*

You may obtain information about the amount of benefits you have remaining by calling [telephone number]. That information is also available [on the receipt you get when you make a transfer with your card at (an ATM)(a POS terminal)][when you make a balance inquiry at an ATM][when you make a balance inquiry at specified locations].

You also have the right to receive a written summary of transactions for the 60 days pre-

ceding your request by calling [telephone number]. [Optional: Or you may request the summary by contacting your caseworker.]

(2) *Disclosure of error-resolution procedures for government agencies that do not provide periodic statements (§ 205.15(d)(1)(iii) and (d)(2)).*

In Case of Errors or Questions About Your Electronic Transfers

Telephone us at [telephone number]

or

Write us at [insert address]

[or

E-mail us at [insert electronic mail address]]

as soon as you can, if you think an error has occurred in your [EBT] [agency's name for program] account. We must hear from you no later than 60 days after you learn of the error. You will need to tell us:

Your name and [case] [file] number.

Why you believe there is an error, and the dollar amount involved.

Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation.

If you need more information about our error-resolution procedures, call us at [telephone number][the telephone number shown above].

### 6-353

#### A-6—Model Clauses for Authorizing One-Time Electronic Fund Transfers Using Information from a Check (§ 205.3(b)(2))

(a) *Notice about electronic check conversion.* When you provide a check as payment, you authorize us either to use information from your check to make a one-time electronic fund transfer from your account or to process the payment as a check transaction.

(b) *Alternative notice about electronic check conversion (optional).* When you provide a check as payment, you authorize us to use information from your check to make a one-time electronic fund transfer from your account. In certain circumstances, such as for technical or processing reasons, we may process your payment as a check transaction. [*Specify other circumstances (at payee's option).*]

(c) *Notice for providing additional information about electronic check conversion.* When we use information from your check to make an electronic fund transfer, funds may be withdrawn from your account as soon as the same day [you make] [we receive] your payment [, and you will not receive your check back from your financial institution].

### 6-354

#### A-7—Model Clauses for Financial Institutions Offering Payroll Card Accounts (§ 205.18(c))

(a) *Disclosure by financial institutions of information about obtaining account information for payroll card accounts (§ 205.18(c)(1)).* You may obtain information about the amount of money you have remaining in your payroll card account by calling [telephone number]. This information, along

with a 60-day history of account transactions, is also available online at [Internet address].

You also have the right to obtain a 60-day written history of account transactions by calling [telephone number], or by writing us at [address].

(b) *Disclosure of error-resolution procedures for financial institutions that provide alternative means of obtaining payroll card account information (§ 205.18(c)(1)(ii) and (c)(2)).*

**In Case of Errors or Questions About Your Payroll Card Account**

Telephone us at [telephone number]

or

Write us at [address]

[or

E-mail us at [electronic mail address]]

as soon as you can, if you think an error has occurred in your payroll card account. We must allow you to report an error until 60 days after the earlier of the date you electronically access your account, if the error could be viewed in your electronic history, or the date we sent the FIRST written history on which the error appeared. You may request a written history of your transactions at any time by calling us at [telephone number] or writing us at [address]. You will need to tell us:

Your name and [payroll card account] number.

Why you believe there is an error, and the dollar amount involved.

Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in

writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation.

If you need more information about our error-resolution procedures, call us at [telephone number] [the telephone number shown above] [or visit [Internet address]].

## 6-355

### A-8—Model Clause for Electronic Collection of Returned-Item Fees (§ 205.3(b)(3))

If your payment is returned unpaid, you authorize [us / name of person collecting the fee electronically] to make a one-time electronic fund transfer from your account to collect a fee of [\$ \_\_\_\_]. [If your payment is returned unpaid, you authorize [us / name of person collecting the fee electronically] to make a one-time electronic fund transfer from your account to collect a fee. The fee will be determined [by] / [as follows]: [ \_\_\_\_].]

## A-9—Model Consent Form for Overdraft Services (§205.17)

**What You Need to Know about Overdrafts and Overdraft Fees**

An overdraft occurs when you do not have enough money in your account to cover a transaction, but we pay it anyway. We can cover your overdrafts in two different ways:

1. We have standard overdraft practices that come with your account.
2. We also offer overdraft protection plans, such as a link to a savings account, which may be less expensive than our standard overdraft practices. To learn more, ask us about these plans.

This notice explains our standard overdraft practices.

**➤ What are the standard overdraft practices that come with my account?**

We do authorize and pay overdrafts for the following types of transactions:

- Checks and other transactions made using your checking account number
- Automatic bill payments

We do not authorize and pay overdrafts for the following types of transactions unless you ask us to (see below):

- ATM transactions
- Everyday debit card transactions

We pay overdrafts at our discretion, which means we do not guarantee that we will always authorize and pay any type of transaction.

If we do not authorize and pay an overdraft, your transaction will be declined.

**➤ What fees will I be charged if [Institution Name] pays my overdraft?**

Under our standard overdraft practices:

- We will charge you a fee of up to **\$30** each time we pay an overdraft.
- Also, if your account is overdrawn for 5 or more consecutive business days, we will charge an additional \$5 per day.
- There is no limit on the total fees we can charge you for overdrawing your account.

**➤ What if I want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions?**

If you also want us to authorize and pay overdrafts on ATM and everyday debit card transactions, call [telephone number], visit [Web site], or complete the form below and [present it at a branch][mail it to:

-----  
 I do not want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions.

I want [Institution Name] to authorize and pay overdrafts on my ATM and everyday debit card transactions.

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

[Account Number]: \_\_\_\_\_ ]

**6-358** *Federal credit unions*

## APPENDIX B—Federal Enforcement Agencies

The following list indicates which federal agency enforces Regulation E for particular classes of institutions. Any questions concerning compliance by a particular institution should be directed to the appropriate enforcing agency. Terms that are not defined in the Federal Deposit Insurance Act (12 USC 1813(s)) shall have the meaning given to them in the International Banking Act of 1978 (12 USC 3101).

*National banks, and federal branches and federal agencies of foreign banks*

District office of the Office of the Comptroller of the Currency where the institution is located

*State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act*

Federal Reserve Bank serving the District in which the institution is located

*Nonmember insured banks and insured state branches of foreign banks*

Federal Deposit Insurance Corporation regional director for the region in which the institution is located

*Savings institutions insured under the Savings Association Insurance Fund of the FDIC and federally chartered savings banks insured under the Bank Insurance Fund of the FDIC (but not including state-chartered savings banks insured under the Bank Insurance Fund).*

Office of Thrift Supervision regional director for the region in which the institution is located

Division of Consumer Affairs  
National Credit Union Administration  
1775 Duke Street  
Alexandria, VA 22314-3428

*Air carriers*

Assistant General Counsel for  
Aviation Enforcement and Proceedings  
Department of Transportation  
400 Seventh Street, S.W.  
Washington, DC 20590

*Brokers and dealers*

Division of Market Regulation  
Securities and Exchange Commission  
Washington, DC 20549

*Retailers, consumer finance companies, certain other financial institutions, and all others not covered above*

Federal Trade Commission  
Electronic Fund Transfers  
Washington, DC 20580

**6-358.1**

## APPENDIX C—Issuance of Staff Interpretations

*Official Staff Interpretations*

Pursuant to section 915(d) of the act, the Board has designated the director and other officials of the Division of Consumer and Community Affairs as officials “duly authorized” to issue, at their discretion, official staff interpretations of this part. Except in unusual circumstances, such interpretations will not be issued separately but will be incorporated in an official commentary to this part, which will be amended periodically.

*Requests for Issuance of Official Staff Interpretations*

A request for an official staff interpretation shall be in writing and addressed to the Director, Division of Consumer and Community Affairs, Board of Governors of the Federal



Reserve System, Washington, D.C. 20551. The request shall contain a complete statement of all relevant facts concerning the issue, including copies of all pertinent documents.

This restriction does not apply to forms or statements whose use is required or sanctioned by a government agency.

*Scope of Interpretations*

No staff interpretations will be issued approving financial institutions' forms or statements.

SUPPLEMENT I—Official Staff  
Commentary

See 6-413.

# Electronic Fund Transfer Act

15 USC 1693 et seq.; 92 Stat. 3728; Pub. L. 95-630, Financial Institutions Regulatory and Interest Rate Control Act, Title XX (November 10, 1978)

## Section

- 901—Short Title
- 902—Findings and Purpose
- 903—Definitions
- 904—Regulations
- 905—Terms and Conditions of Transfer
- 906—Documentation of Transfers; Periodic Statements
- 907—Preauthorized Transfers
- 908—Error Resolution
- 909—Consumer Liability
- 910—Liability of Financial Institutions
- 911—Issuance of Cards or Others Means of Access
- 912—Suspension of Obligations
- 913—Compulsory Use of Electronic Fund Transfers
- 914—Waiver of Rights
- 915—General-Use Prepaid Cards, Gift Certificates, and Store Gift Cards
- 916—Civil Liability
- 917—Criminal Liability
- 918—Administrative Enforcement
- 919—Remittance Transfers
- 920—Reasonable Fees and Rules for Payment Card Transactions
- 921—Reports to Congress
- 922—Relation to State Laws\*
- 922—Exemption for State Regulation
- 923—Effective Date

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## SECTION 901—Short Title

This title may be cited as the “Electronic Fund Transfer Act”.

[15 USC 1693 note.]

## SECTION 902—Findings and Purpose

(a) The Congress finds that the use of electronic systems to transfer funds provides the potential for substantial benefits to consumers. However, due to the unique characteristics of such systems, the application of existing con-

\* Two sections labeled 922 exist due to a discrepancy in the instructions given by the act of July 21, 2010, Pub. L. 111-203, 124 Stat. 2060 versus Stat. 2068.

sumer protection legislation is unclear, leaving the rights and liabilities of consumers, financial institutions, and intermediaries in electronic fund transfers undefined.

(b) It is the purpose of this title to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. The primary objective of this title, however, is the provision of individual consumer rights.

[15 USC 1693.]

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## SECTION 903—Definitions

As used in this title—

(1) the term “accepted card or other means of access” means a card, code, or other means of access to a consumer’s account for the purpose of initiating electronic fund transfers when the person to whom such card or other means of access was issued has requested and received or has signed or has used, or authorized another to use, such card or other means of access for the purpose of transferring money between accounts or obtaining money, property, labor, or services;

(2) the term “account” means a demand deposit, savings deposit, or other asset account (other than an occasional or incidental credit balance in an open end credit plan as defined in section 103(i) of this Act), as described in regulations of the Bureau, established primarily for personal, family, or household purposes, but such term does not include an account held by a financial institution pursuant to a *bona fide* trust agreement;

(3) the term “Board” means the Board of Governors of the Federal Reserve System;

(4) the term “Bureau” means the Bureau of Consumer Financial Protection;

(5) the term “business day” means any day on which the offices of the consumer’s financial institution involved in an electronic

fund transfer are open to the public for carrying on substantially all of its business functions;

(6) the term “consumer” means a natural person;

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(7) the term “electronic fund transfer” means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone. Such term does not include—

(A) any check guarantee or authorization service which does not directly result in a debit or credit to a consumer’s account;

(B) any transfer of funds, other than those processed by automated clearinghouse, made by a financial institution on behalf of a consumer by means of a service that transfers funds held at either Federal Reserve banks or other depository institutions and which is not designed primarily to transfer funds on behalf of a consumer;

(C) any transaction the primary purpose of which is the purchase or sale of securities or commodities through a broker-dealer registered with or regulated by the Securities and Exchange Commission;

(D) any automatic transfer from a savings account to a demand deposit account pursuant to an agreement between a consumer and a financial institution for the purpose of covering an overdraft or maintaining an agreed upon minimum balance in the consumer’s demand deposit account; or

(E) any transfer of funds which is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution which is not pursuant to a prearranged plan and under which periodic or recurring transfers are

not contemplated; as determined under regulations of the Board;

**6-362**

(8) the term “electronic terminal” means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. Such term includes but is not limited to, point-of-sale terminals, automated teller machines, and cash dispensing machines;

(9) the term “financial institution” means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer;

(10) the term “preauthorized electronic fund transfer” means an electronic fund transfer authorized in advance to recur at substantially regular intervals;

(11) the term “State” means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing; and

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(12) the term “unauthorized electronic fund transfer” means an electronic fund transfer from a consumer’s account initiated by a person other than the consumer without actual authority to initiate such transfer and from which the consumer receives no benefit, but the term does not include any electronic fund transfer (A) initiated by a person other than the consumer who was furnished with the card, code, or other means of access to such consumer’s account by such consumer, unless the consumer has notified the financial institution involved that transfers by such other person are no longer authorized, (B) initiated with fraudulent intent by the consumer or any person acting in concert with the consumer, or (C) which constitutes an error committed by a financial institution.

[15 USC 1693a. As amended by act of July 21, 2010 (124 Stat. 2081).]

**6-364****SECTION 904—Regulations****(a) Prescription by the Bureau and the Board.**

(1) *In general.* Except as provided in paragraph (2), the Bureau shall prescribe rules to carry out the purposes of this title.

(2) *Authority of the Board.* The Board shall have sole authority to prescribe rules—

(A) to carry out the purposes of this title with respect to a person described in section 1029(a) of the Consumer Financial Protection Act of 2010; and

(B) to carry out the purposes of section 920.

In prescribing such regulations, the Board shall:

(1) \* consult with the other agencies referred to in section 918 and take into account, and allow for, the continuing evolution of electronic banking services and the technology utilized in such services,

(2) \* prepare an analysis of economic impact which considers the costs and benefits to financial institutions, consumers, and other users of electronic fund transfers, including the extent to which additional documentation, reports, records, or other paper work would be required, and the effects upon competition in the provision of electronic banking services among large and small financial institutions and the availability of such services to different classes of consumers, particularly low income consumers,

(3) \* to the extent practicable, the Board shall demonstrate that the consumer protections of the proposed regulations outweigh the compliance costs imposed upon consumers and financial institutions, and

(4) \* any proposed regulations and accompanying analyses shall be sent promptly to Congress by the Board.

**(b) Issuance of model clauses.** The Bureau shall issue model clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of section 905 and to aid consumers in understanding the rights and responsibilities of participants in electronic fund transfers by utilizing readily

understandable language. Such model clauses shall be adopted after notice duly given in the *Federal Register* and opportunity for public comment in accordance with section 553 of title 5, United States Code. With respect to the disclosures required by section 905(a)(3) and (4), the Bureau shall take account of variations in the services and charges under different electronic fund transfer systems and, as appropriate, shall issue alternative model clauses for disclosure of these differing account terms.

**6-365**

**(c) Criteria; modification of requirements.** Regulations prescribed hereunder may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of electronic fund transfers or remittance transfers, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of this title, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. The Bureau shall by regulation modify the requirements imposed by this title on small financial institutions if the Bureau determines that such modifications are necessary to alleviate any undue compliance burden on small financial institutions and such modifications are consistent with the purpose and objective of this title.

**6-365.1**

**(d) Applicability to service providers other than certain financial institutions.**

(1) *In general.* If electronic fund transfer services are made available to consumers by a person other than a financial institution holding a consumer's account, the Bureau shall by regulation assure that the disclosures, protections, responsibilities, and remedies created by this title are made applicable to such persons and services.

(2) *State and local government electronic benefit transfer systems.*

(A) *“Electronic benefit transfer system” defined.* In this paragraph, the term “electronic benefit transfer system”—

(i) means a system under which a government agency distributes needs-tested benefits by establishing accounts that

\* So in original.

may be accessed by recipients electronically, such as through automated teller machines or point-of-sale terminals; and

(ii) does not include employment-related payments, including salaries and pension, retirement, or unemployment benefits established by a Federal, State, or local government agency.

(B) *Exemptions generally.* The disclosures, protections, responsibilities, and remedies established under this title, and any regulation prescribed or order issued by the Bureau in accordance with this title, shall not apply to any electronic benefit transfer program established under State or local law or administered by a State or local government.

(C) *Exception for direct deposit into recipient's account.* Subparagraph (B) shall not apply with respect to any electronic funds transfer under an electronic benefit transfer program for deposits directly into a consumer account held by the recipient of the benefit.

(D) *Rule of construction.* No provision of this paragraph—

(i) affects or alters the protections otherwise applicable with respect to benefits established by any other provision<sup>†</sup> Federal, State, or local law; or

(ii) otherwise supersedes the application of any State or local law.

(3) *Fee disclosures at automated teller machines.*

(A) *In general.* The regulations prescribed under paragraph (1) shall require any automated teller machine operator who imposes a fee on any consumer for providing host transfer services to such consumer to provide notice in accordance with subparagraph (B) to the consumer (at the time the service is provided) of—

(i) the fact that a fee is imposed by such operator for providing the service; and

(ii) the amount of any such fee.

(B) *Notice requirement.* The notice required under clauses (i) and (ii) of subparagraph (A) with respect to any fee

described in such subparagraph shall appear on the screen of the automated teller machine, or on a paper notice issued from such machine, after the transaction is initiated and before the consumer is irrevocably committed to completing the transaction.

(C) *Prohibition on fees not properly disclosed and explicitly assumed by consumer.* No fee may be imposed by any automated teller machine operator in connection with any electronic fund transfer initiated by a consumer for which a notice is required under subparagraph (A), unless—

(i) the consumer receives such notice in accordance with subparagraph (B); and

(ii) the consumer elects to continue in the manner necessary to effect the transaction after receiving such notice.

(D) *Definitions.* For purposes of this paragraph, the following definitions shall apply:

(i) *Automated teller machine operator.* The term “automated teller machine operator” means any person who—

(I) operates an automated teller machine at which consumers initiate electronic fund transfers; and

(II) is not the financial institution that holds the account of such consumer from which the transfer is made.

(ii) *Electronic fund transfer.* The term “electronic fund transfer” includes a transaction that involves a balance inquiry initiated by a consumer in the same manner as an electronic fund transfer, whether or not the consumer initiates a transfer of funds in the course of the transaction.

(iii) *Host transfer services.* The term “host transfer services” means any electronic fund transfer made by an automated teller machine operator in connection with a transaction initiated by a consumer at an automated teller machine operated by such operator.

(e) *Deference.* No provision of this title may

<sup>†</sup> So in original. Probably should be followed by “of”.

be construed as altering, limiting, or otherwise affecting the deference that a court affords to—

- (1) the Bureau in making determinations regarding the meaning or interpretation of any provision of this title for which the Bureau has authority to prescribe regulations; or
- (2) the Board in making determinations regarding the meaning or interpretation of section 920.

[15 USC 1693b. As amended by acts of Aug. 22, 1996 (110 Stat. 2346, 2350); Nov. 12, 1999 (113 Stat. 1463); July 21, 2010 (124 Stat. 2081); and Dec. 20, 2012 (126 Stat. 1590).]

#### 6-366

#### SECTION 905—Terms and Conditions of Transfers

(a) The terms and conditions of electronic fund transfers involving a consumer's account shall be disclosed at the time the consumer contracts for an electronic fund transfer service, in accordance with regulations of the Bureau. Such disclosures shall be in readily understandable language and shall include, to the extent applicable—

- (1) the consumer's liability for unauthorized electronic fund transfers and, at the financial institution's option, notice of the advisability of prompt reporting of any loss, theft, or unauthorized use of a card, code, or other means of access;
- (2) the telephone number and address of the person or office to be notified in the event the consumer believes that an unauthorized electronic fund transfer has been or may be effected;
- (3) the type and nature of electronic fund transfers which the consumer may initiate, including any limitations on the frequency or dollar amount of such transfers, except that the details of such limitations need not be disclosed if their confidentiality is necessary to maintain the security of an electronic fund transfer system, as determined by the Bureau;
- (4) any charges for electronic fund transfers or for the right to make such transfers;
- (5) the consumer's right to stop payment of a preauthorized electronic fund transfer and

the procedure to initiate such a stop payment order;

- (6) the consumer's right to receive documentation of electronic fund transfers under section 906;
- (7) a summary, in a form prescribed by regulations of the Bureau, of the error resolution provisions of section 908 and the consumer's rights thereunder. The financial institution shall thereafter transmit such summary at least once per calendar year;
- (8) the financial institution's liability to the consumer under section 910;
- (9) under what circumstances the financial institution will in the ordinary course of business disclose information concerning the consumer's account to third persons; and
- (10) a notice to the consumer that a fee may be imposed by—

- (A) an automated teller machine operator (as defined in section 904(d)(3)(D)(i)) if the consumer initiates a transfer from an automated teller machine that is not operated by the person issuing the card or other means of access; and
- (B) any national, regional, or local network utilized to effect the transaction.

#### 6-367

(b) A financial institution shall notify a consumer in writing at least twenty-one days prior to the effective date of any change in any term or condition of the consumer's account required to be disclosed under subsection (a) if such change would result in greater cost or liability for such consumer or decreased access to the consumer's account. A financial institution may, however, implement a change in the terms or conditions of an account without prior notice when such change is immediately necessary to maintain or restore the security of an electronic fund transfer system or a consumer's account. Subject to subsection (a)(3), the Bureau shall require subsequent notification if such a change is made permanent.

(c) For any account of a consumer made accessible to electronic fund transfers prior to the effective date of this title, the information required to be disclosed to the consumer un-

der subsection (a) shall be disclosed not later than the earlier of—

- (1) the first periodic statement required by section 906(c) after the effective date of this title; or
- (2) thirty days after the effective date of this title.

[15 USC 1693c. As amended by acts of Nov. 12, 1999 (113 Stat. 1464) and July 21, 2010 (124 Stat. 2081).]

#### 6-368

### SECTION 906—Documentation of Transfers; Periodic Statements

(a) For each electronic fund transfer initiated by a consumer from an electronic terminal, the financial institution holding such consumer's account shall, directly or indirectly, at the time the transfer is initiated, make available to the consumer written documentation of such transfer. The documentation shall clearly set forth to the extent applicable—

- (1) the amount involved and date the transfer is initiated;
- (2) the type of transfer;
- (3) the identity of the consumer's account with the financial institution from which or to which funds are transferred;
- (4) the identity of any third party to whom or from whom funds are transferred; and
- (5) the location or identification of the electronic terminal involved.

#### 6-369

(b) For a consumer's account which is scheduled to be credited by a preauthorized electronic fund transfer from the same payor at least once in each successive sixty-day period, except where the payor provides positive notice of the transfer to the consumer, the financial institution shall elect to provide promptly either positive notice to the consumer when the credit is made as scheduled, or negative notice to the consumer when the credit is not made as scheduled, in accordance with regulations of the Bureau. The means of notice elected shall be disclosed to the consumer in accordance with section 905.

#### 6-370

(c) A financial institution shall provide each consumer with a periodic statement for each account of such consumer that may be accessed by means of an electronic fund transfer. Except as provided in subsections (d) and (e), such statement shall be provided at least monthly for each monthly or shorter cycle in which an electronic fund transfer affecting the account has occurred, or every three months, whichever is more frequent. The statement, which may include information regarding transactions other than electronic fund transfers, shall clearly set forth—

- (1) with regard to each electronic fund transfer during the period, the information described in subsection (a), which may be provided on an accompanying document;
- (2) the amount of any fee or charge assessed by the financial institution during the period for electronic fund transfers or for account maintenance;
- (3) the balances in the consumer's account at the beginning of the period and at the close of the period; and
- (4) the address and telephone number to be used by the financial institution for the purpose of receiving any statement inquiry or notice of account error from the consumer. Such address and telephone number shall be preceded by the caption "Direct Inquiries To:" or other similar language indicating that the address and number are to be used for such inquiries or notices.

#### 6-371

(d) In the case of a consumer's passbook account which may not be accessed by electronic fund transfers other than preauthorized electronic fund transfers crediting the account, a financial institution may, in lieu of complying with the requirements of subsection (c), upon presentation of the passbook provide the consumer in writing with the amount and date of each such transfer involving the account since the passbook was last presented.

(e) In the case of a consumer's account other than a passbook account, which may not be accessed by electronic fund transfers other than preauthorized electronic fund transfers crediting the account, the financial institution

may provide a periodic statement on a quarterly basis which otherwise complies with the requirements of subsection (c).

(f) In any action involving a consumer, any documentation required by this section to be given to the consumer which indicates that an electronic fund transfer was made to another person shall be admissible as evidence of such transfer and shall constitute *prima facie* proof that such transfer was made.

[15 USC 1693d. As amended by act of July 21, 2010 (124 Stat. 2081).]

#### 6-372

##### SECTION 907—Preauthorized Transfers

(a) A preauthorized electronic fund transfer from a consumer's account may be authorized by the consumer only in writing, and a copy of such authorization shall be provided to the consumer when made. A consumer may stop payment of a preauthorized electronic fund transfer by notifying the financial institution orally or in writing at any time up to three business days preceding the scheduled date of such transfer. The financial institution may require written confirmation to be provided to it within fourteen days of an oral notification if, when the oral notification is made, the consumer is advised of such requirement and the address to which such confirmation should be sent.

(b) In the case of preauthorized transfers from a consumer's account to the same person which may vary in amount, the financial institution or designated payee shall, prior to each transfer, provide reasonable advance notice to the consumer, in accordance with regulations of the Bureau, of the amount to be transferred and the scheduled date of the transfer.

[15 USC 1693e. As amended by act of July 21, 2010 (124 Stat. 2081).]

#### 6-373

##### SECTION 908—Error Resolution

(a) If a financial institution, within sixty days after having transmitted to a consumer documentation pursuant to section 906 (a), (c), or (d) or notification pursuant to section 906(b),

receives oral or written notice in which the consumer—

(1) sets forth or otherwise enables the financial institution to identify the name and account number of the consumer;

(2) indicates the consumer's belief that the documentation, or, in the case of notification pursuant to section 906(b), the consumer's account, contains an error and the amount of such error; and

(3) sets forth the reasons for the consumer's belief (where applicable) that an error has occurred, the financial institution shall investigate the alleged error, determine whether an error has occurred, and report or mail the results of such investigation and determination to the consumer within ten business days. The financial institution may require written confirmation to be provided to it within ten business days of an oral notification of error if, when the oral notification is made, the consumer is advised of such requirement and the address to which such confirmation should be sent. A financial institution which requires written confirmation in accordance with the previous sentence need not provisionally recredit a consumer's account in accordance with subsection (c), nor shall the financial institution be liable under subsection (e) if the written confirmation is not received within the ten-day period referred to in the previous sentence.

#### 6-374

(b) If the financial institution determines that an error did occur, it shall promptly, but in no event more than one business day after such determination, correct the error, subject to section 909, including the crediting of interest where applicable.

(c) If a financial institution receives notice of an error in the manner and within the time period specified in subsection (a), it may, in lieu of the requirements of subsections (a) and (b), within ten business days after receiving such notice provisionally recredit the consumer's account for the amount alleged to be in error, subject to section 909, including interest where applicable, pending the conclusion of its investigation and its determination of



whether an error has occurred. Such investigation shall be concluded not later than forty-five days after receipt of notice of the error. During the pendency of the investigation, the consumer shall have full use of the funds provisionally recredited.

**6-375**

(d) If the financial institution determines after its investigation pursuant to subsection (a) or (c) that an error did not occur, it shall deliver or mail to the consumer an explanation of its findings within 3 business days after the conclusion of its investigation, and upon request of the consumer promptly deliver or mail to the consumer reproductions of all documents which the financial institution relied on to conclude that such error did not occur. The financial institution shall include notice of the right to request reproductions with the explanation of its findings.

(e) If in any action under section 915, the court finds that—

- (1) the financial institution did not provisionally recredit a consumer's account within the ten-day period specified in subsection (c), and the financial institution (A) did not make a good faith investigation of the alleged error, or (B) did not have a reasonable basis for believing that the consumer's account was not in error; or
- (2) the financial institution knowingly and willfully concluded that the consumer's account was not in error when such conclusion could not reasonably have been drawn from the evidence available to the financial institution at the time of its investigation, then the consumer shall be entitled to treble damages determined under section 915(a)(1).

**6-376**

(f) For the purpose of this section, an error consists of—

- (1) an unauthorized electronic fund transfer;
- (2) an incorrect electronic fund transfer from or to the consumer's account;
- (3) the omission from a periodic statement of an electronic fund transfer affecting the consumer's account which should have been included;

(4) a computational error by the financial institution;

(5) the consumer's receipt of an incorrect amount of money from an electronic terminal;

(6) a consumer's request for additional information or clarification concerning an electronic fund transfer or any documentation required by this title; or

(7) any other error described in regulations of the Bureau.

[15 USC 1693f. As amended by act of July 21, 2010 (124 Stat. 2081).]

**6-377****SECTION 909—Consumer Liability for Unauthorized Transfers**

(a) A consumer shall be liable for any unauthorized electronic fund transfer involving the account of such consumer only if the card or other means of access utilized for such transfer was an accepted card or other means of access and if the issuer of such card, code, or other means of access has provided a means whereby the user of such card, code, or other means of access can be identified as the person authorized to use it, such as by signature, photograph, or fingerprint or by electronic or mechanical confirmation. In no event, however, shall a consumer's liability for an unauthorized transfer exceed the lesser of—

- (1) \$50; or
- (2) the amount of money or value of property or services obtained in such unauthorized electronic fund transfer prior to the time the financial institution is notified of, or otherwise becomes aware of, circumstances which lead to the reasonable belief that an unauthorized electronic fund transfer involving the consumer's account has been or may be effected. Notice under this paragraph is sufficient when such steps have been taken as may be reasonably required in the ordinary course of business to provide the financial institution with the pertinent information, whether or not any particular officer, employee, or agent of the financial institution does in fact receive such information.

**6-378**

Notwithstanding the foregoing, reimbursement need not be made to the consumer for losses the financial institution establishes would not have occurred but for the failure of the consumer to report within sixty days of transmittal of the statement (or in extenuating circumstances such as extended travel or hospitalization, within a reasonable time under the circumstances) any unauthorized electronic fund transfer or account error which appears on the periodic statement provided to the consumer under section 906. In addition, reimbursement need not be made to the consumer for losses which the financial institution establishes would not have occurred but for the failure of the consumer to report any loss or theft of a card or other means of access within two business days after the consumer learns of the loss or theft (or in extenuating circumstances such as extended travel or hospitalization, within a longer period which is reasonable under the circumstances), but the consumer's liability under this subsection in any such case may not exceed a total of \$500, or the amount of unauthorized electronic fund transfers which occur following the close of two business days (or such longer period) after the consumer learns of the loss or theft but prior to notice to the financial institution under this subsection, whichever is less.

**6-379**

(b) In any action which involves a consumer's liability for an unauthorized electronic fund transfer, the burden of proof is upon the financial institution to show that the electronic fund transfer was authorized or, if the electronic fund transfer was unauthorized, then the burden of proof is upon the financial institution to establish that the conditions of liability set forth in subsection (a) have been met, and, if the transfer was initiated after the effective date of section 905, that the disclosures required to be made to the consumer under section 905(a) (1) and (2) were in fact made in accordance with such section.

(c) In the event of a transaction which involves both an unauthorized electronic fund transfer and an extension of credit as defined in section 103(e) of this Act pursuant to an

agreement between the consumer and the financial institution to extend such credit to the consumer in the event the consumer's account is overdrawn, the limitation on the consumer's liability for such transaction shall be determined solely in accordance with this section.

(d) Nothing in this section imposes liability upon a consumer for an unauthorized electronic fund transfer in excess of his liability for such a transfer under other applicable law or under any agreement with the consumer's financial institution.

(e) Except as provided in this section, a consumer incurs no liability from an unauthorized electronic fund transfer.

[15 USC 1693g.]

**6-380****SECTION 910—Liability of Financial Institutions**

(a) Subject to subsections (b) and (c), a financial institution shall be liable to a consumer for all damages proximately caused by—

(1) the financial institution's failure to make an electronic fund transfer, in accordance with the terms and conditions of an account, in the correct amount or in a timely manner when properly instructed to do so by the consumer, except where—

(A) the consumer's account has insufficient funds;

(B) the funds are subject to legal process or other encumbrance restricting such transfer;

(C) such transfer would exceed an established credit limit;

(D) an electronic terminal has insufficient cash to complete the transaction; or

(E) as otherwise provided in regulations of the Bureau;

(2) the financial institution's failure to make an electronic fund transfer due to insufficient funds when the financial institution failed to credit, in accordance with the terms and conditions of an account, a deposit of funds to the consumer's account which would have provided sufficient funds to make the transfer, and

(3) the financial institution's failure to stop

payment of a preauthorized transfer from a consumer's account when instructed to do so in accordance with the terms and conditions of the account.

#### 6-381

(b) A financial institution shall not be liable under subsection (a)(1) or (2) if the financial institution shows by a preponderance of the evidence that its action or failure to act resulted from—

- (1) an act of God or other circumstance beyond its control, that it exercised reasonable care to prevent such an occurrence, and that it exercised such diligence as the circumstances required; or
- (2) a technical malfunction which was known to the consumer at the time he attempted to initiate an electronic fund transfer or, in the case of a preauthorized transfer, at the time such transfer should have occurred.

(c) In the case of a failure described in subsection (a) which was not intentional and which resulted from a *bona fide* error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error, the financial institution shall be liable for actual damages proved.

(d) *Exception for damaged notices.* If the notice required to be posted pursuant to section 904(d)(3)(B)(i) by an automated teller machine operator has been posted by such operator in compliance with such section and the notice is subsequently removed, damaged, or altered by any person other than the operator of the automated teller machine, the operator shall have no liability under this section for failure to comply with section 904(d)(3)(B)(i).

[15 USC 1693h. As amended by acts of Nov. 12, 1999 (113 Stat. 1465) and July 21, 2010 (124 Stat. 2081).]

#### 6-382

### SECTION 911—Issuance of Cards or Other Means of Access

(a) No person may issue to a consumer any card, code, or other means of access to such consumer's account for the purpose of initiating an electronic fund transfer other than—

(1) in response to a request or application therefor; or

(2) as a renewal of, or in substitution for, an accepted card, code, or other means of access, whether issued by the initial issuer or a successor.

(b) Notwithstanding the provisions of subsection (a), a person may distribute to a consumer on an unsolicited basis a card, code, or other means of access for use in initiating an electronic fund transfer from such consumer's account, if—

- (1) such card, code, or other means of access is not validated;
- (2) such distribution is accompanied by a complete disclosure, in accordance with section 905, of the consumer's rights and liabilities which will apply if such card, code, or other means of access is validated;
- (3) such distribution is accompanied by a clear explanation, in accordance with regulations of the Bureau, that such card, code, or other means of access is not validated and how the consumer may dispose of such code, card, or other means of access if validation is not desired; and
- (4) such card, code, or other means of access is validated only in response to a request or application from the consumer, upon verification of the consumer's identity.

(c) For the purpose of subsection (b), a card, code, or other means of access is validated when it may be used to initiate an electronic fund transfer.

[15 USC 1693i. As amended by act of July 21, 2010 (124 Stat. 2081).]

#### 6-383

### SECTION 912—Suspension of Obligations

If a system malfunction prevents the effectuation of an electronic fund transfer initiated by a consumer to another person, and such other person has agreed to accept payment by such means, the consumer's obligation to the other person shall be suspended until the malfunction is corrected and the electronic fund transfer may be completed, unless such other person has subsequently, by written request,

demanded payment by means other than an electronic fund transfer.

[15 USC 1693j.]

#### 6-384

### SECTION 913—Compulsory Use of Electronic Fund Transfers

No person may—

- (1) condition the extension of credit to a consumer on such consumer's repayment by means of preauthorized electronic fund transfers; or
- (2) require a consumer to establish an account for receipt of electronic fund transfers with a particular financial institution as a condition of employment or receipt of a government benefit.

[15 USC 1693k.]

#### 6-385

### SECTION 914—Waiver of Rights

No writing or other agreement between a consumer and any other person may contain any provision which constitutes a waiver of any right conferred or cause of action created by this title. Nothing in this section prohibits, however, any writing or other agreement which grants to a consumer a more extensive right or remedy or greater protection than contained in this title or a waiver given in settlement of a dispute or action.

[15 USC 1693l.]

#### 6-385.1

### SECTION 915—General-Use Prepaid Cards, Gift Certificates, and Store Gift Cards

(a) *Definitions.* In this section, the following definitions shall apply:

- (1) *Dormancy fee; inactivity charge or fee.* The terms “dormancy fee” and “inactivity charge or fee” mean a fee, charge, or penalty for non-use or inactivity of a gift certificate, store gift card, or general-use prepaid card.
- (2) *General-use prepaid card, gift certifi-*

*cate, and store gift card.*

(A) *General-use prepaid card.* The term “general use prepaid card” means a card or other payment code or device issued by any person that is—

- (i) redeemable at multiple, unaffiliated merchants or service providers, or automated teller machines;
- (ii) issued in a requested amount, whether or not that amount may, at the option of the issuer, be increased in value or reloaded if requested by the holder;
- (iii) purchased or loaded on a prepaid basis; and
- (iv) honored, upon presentation, by merchants for goods or services, or at automated teller machines.

(B) *Gift certificate.* The term “gift certificate” means an electronic promise that is—

- (i) redeemable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo;
- (ii) issued in a specified amount that may not be increased or reloaded;
- (iii) purchased on a prepaid basis in exchange for payment; and
- (iv) honored upon presentation by such single merchant or affiliated group of merchants for goods or services.

(C) *Store gift card.* The term “store gift card” means an electronic promise, plastic card, or other payment code or device that is—

- (i) redeemable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo;
- (ii) issued in a specified amount, whether or not that amount may be increased in value or reloaded at the request of the holder;
- (iii) purchased on a prepaid basis in exchange for payment; and
- (iv) honored upon presentation by such single merchant or affiliated group of merchants for goods or services.

(D) *Exclusions.* The terms “general-use prepaid card”, “gift certificate”, and “store gift card” do not include an elec-

tronic promise, plastic card, or payment code or device that is—

- (i) used solely for telephone services;
- (ii) reloadable and not marketed or labeled as a gift card or gift certificate;
- (iii) a loyalty, award, or promotional gift card, as defined by the Bureau;
- (iv) not marketed to the general public;
- (v) issued in paper form only (including for tickets and events); or
- (vi) redeemable solely for admission to events or venues at a particular location or group of affiliated locations, which may also include services or goods obtainable—

(I) at the event or venue after admission; or

(II) in conjunction with admission to such events or venues, at specific locations affiliated with and in geographic proximity to the event or venue.

(3) *Service fee.*

(A) *In general.* The term “service fee” means a periodic fee, charge, or penalty for holding or use of a gift certificate, store gift card, or general-use prepaid card.

(B) *Exclusion.* With respect to a general-use prepaid card, the term “service fee” does not include a one-time initial issuance fee.

(b) *Prohibition on imposition of fees or charges.*

(1) *In general.* Except as provided under paragraphs (2) through (4), it shall be unlawful for any person to impose a dormancy fee, an inactivity charge or fee, or a service fee with respect to a gift certificate, store gift card, or general-use prepaid card.

(2) *Exceptions.* A dormancy fee, inactivity charge or fee, or service fee may be charged with respect to a gift certificate, store gift card, or general-use prepaid card, if—

(A) there has been no activity with respect to the certificate or card in the 12-month period ending on the date on which the charge or fee is imposed;

(B) the disclosure requirements of paragraph (3) have been met;

(C) not more than one fee may be charged in any given month; and

(D) any additional requirements that the Bureau may establish through rulemaking under subsection (d) have been met.

(3) *Disclosure requirements.* The disclosure requirements of this paragraph are met if—

(A) the gift certificate, store gift card, or general use prepaid card clearly and conspicuously states—

(i) that a dormancy fee, inactivity charge or fee, or service fee may be charged;

(ii) the amount of such fee or charge;

(iii) how often such fee or charge may be assessed; and

(iv) that such fee or charge may be assessed for inactivity; and

(B) the issuer or vendor of such certificate or card informs the purchaser of such charge or fee before such certificate or card is purchased, regardless of whether the certificate or card is purchased in person, over the Internet, or by telephone.

(4) *Exclusion.* The prohibition under paragraph (1) shall not apply to any gift certificate—

(A) that is distributed pursuant to an award, loyalty, or promotional program, as defined by the Bureau; and

(B) with respect to which, there is no money or other value exchanged.

(c) *Prohibition on sale of gift cards with expiration dates.*

(1) *In general.* Except as provided under paragraph (2), it shall be unlawful for any person to sell or issue a gift certificate, store gift card, or general-use prepaid card that is subject to an expiration date.

(2) *Exceptions.* A gift certificate, store gift card, or general-use prepaid card may contain an expiration date if—

(A) the expiration date is not earlier than 5 years after the date on which the gift certificate was issued, or the date on which card funds were last loaded to a store gift card or general-use prepaid card; and

(B) the terms of expiration are clearly and conspicuously stated.

(d) *Additional rulemaking.*

(1) *In general.* The Bureau shall—

(A) prescribe regulations to carry out this section, in addition to any other rules or regulations required by this title, including such additional requirements as appropriate relating to the amount of dormancy fees, inactivity charges or fees, or service fees that may be assessed and the amount of remaining value of a gift certificate, store gift card, or general-use prepaid card below which such charges or fees may be assessed; and

(B) shall determine the extent to which the individual definitions and provisions of the Electronic Fund Transfer Act or Regulation E should apply to general-use prepaid cards, gift certificates, and store gift cards.

(2) *Consultation.* In prescribing regulations under this subsection, the Bureau shall consult with the Federal Trade Commission.

(3) *Timing; effective date.* The regulations required by this subsection shall be issued in final form not later than 9 months after the date of enactment of the Credit CARD Act of 2009.

[15 USC 1693f-1. As amended by acts of May 22, 2009 (123 Stat. 1751) and July 21, 2010 (124 Stat. 2081).]

**6-386**

**SECTION 916—Civil Liability**

(a) Except as otherwise provided by this section and section 910, any person who fails to comply with any provision of this title with respect to any consumer, except for an error resolved in accordance with section 908, is liable to such consumer in an amount equal to the sum of—

(1) any actual damage sustained by such consumer as a result of such failure;

(2) (A) in the case of an individual action, an amount not less than \$100 nor greater than \$1,000; or

(B) in the case of a class action, such amount as the court may allow, except that (i) as to each member of the class no minimum recovery shall be applicable,

and (ii) the total recovery under this subparagraph in any class action or series of class actions arising out of the same failure to comply by the same person shall not be more than the lesser of \$500,000 or 1 per centum of the net worth of the defendant; and

(3) in the case of any successful action to enforce the foregoing liability, the costs of the action, together with a reasonable attorney's fee as determined by the court,

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(b) In determining the amount of liability in any action under subsection (a), the court shall consider, among other relevant factors—

(1) in any individual action under subsection (a)(2)(A), the frequency and persistence of noncompliance, the nature of such noncompliance, and the extent to which the noncompliance was intentional; or

(2) in any class action under subsection (a)(2)(B), the frequency and persistence of noncompliance, the nature of such compliance, the resources of the defendant, the number of persons adversely affected, and the extent to which the noncompliance was intentional.

(c) Except as provided in section 910, a person may not be held liable in any action brought under this section for a violation of this title if the person shows by a preponderance of evidence that the violation was not intentional and resulted from a *bona fide* error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

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(d) No provision of this section or section 916 imposing any liability shall apply to—

(1) any act done or omitted in good faith in conformity with any rule, regulation, or interpretation thereof by the Bureau or the Board or in conformity with any interpretation or approval by an official or employee of the Bureau of Consumer Financial Protection or the Federal Reserve System duly authorized by the Bureau or the Board to issue such interpretations or approvals under such procedures as the Bureau or the Board may prescribe therefor; or

(2) any failure to make disclosure in proper form if a financial institution utilized an appropriate model clause issued by the Bureau or the Board,

notwithstanding that after such act, omission, or failure has occurred, such rule, regulation, approval, or model clause is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.

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(e) A person has no liability under this section for any failure to comply with any requirement under this title if, prior to the institution of an action under this section, the person notifies the consumer concerned of the failure, complies with the requirements of this title, and makes an appropriate adjustment to the consumer's account and pays actual damages or, where applicable, damages in accordance with section 910.

(f) On a finding by the court that an unsuccessful action under this section was brought in bad faith or for purposes of harassment, the court shall award to the defendant attorney's fees reasonable in relation to the work expended and costs.

(g) Without regard to the amount in controversy, any action under this section may be brought in any United States district court, or in any other court of competent jurisdiction, within one year from the date of the occurrence of the violation.

[15 USC 1693m. As amended by act of July 21, 2010 (124 Stat. 2081).]

#### 6-390

##### SECTION 917—Criminal Liability

(a) Whoever knowingly and willfully—

(1) gives false or inaccurate information or fails to provide information which he is required to disclose by this title or any regulation issued thereunder; or

(2) otherwise fails to comply with any provision of this title; shall be fined not more than \$5,000 or imprisoned not more than one year, or both.

#### 6-391

(b) Whoever—

(1) knowingly, in a transaction affecting interstate or foreign commerce, uses or attempts or conspires to use any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument to obtain money, goods, services, or anything else of value which within any one-year period has a value aggregating \$1,000 or more; or

(2) with unlawful or fraudulent intent, transports or attempts or conspires to transport in interstate or foreign commerce a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(3) with unlawful or fraudulent intent, uses any instrumentality of interstate or foreign commerce to sell or transport a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained; or

(4) knowingly receives, conceals, uses, or transports money, goods, services, or anything else of value (except tickets for interstate or foreign transportation) which (A) within any one-year period has a value aggregating \$1,000 or more, (B) has moved in or is part of, or which constitutes interstate or foreign commerce and (C) has been obtained with a counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument; or

(5) knowingly receives, conceals, uses, sells, or transports in interstate or foreign commerce one or more tickets for interstate or foreign transportation, which (A) within any one-year period have a value aggregating \$500 or more, and (B) have been purchased or obtained with one or more counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument; or

(6) in a transaction affecting interstate or foreign commerce, furnishes money, property, services, or anything else of value, which within any one-year period has a value aggregating \$1,000 or more, through

the use of any counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained debit instrument knowing the same to be counterfeit, fictitious, altered, forged, lost, stolen, or fraudulently obtained— shall be fined not more than \$10,000 or imprisoned not more than ten years, or both.

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(c) As used in this section, the term “debit instrument” means a card, code, or other device, other than a check, draft, or similar paper instrument, by the use of which a person may initiate an electronic fund transfer.

[15 USC 1693n.]

**6-393****SECTION 918—Administrative Enforcement**

(a) Subject to subtitle B of the Consumer Financial Protection Act of 2010, compliance with the requirements imposed under this title shall be enforced under—

(1) section 8 of the Federal Deposit Insurance Act, by the appropriate Federal banking agency, as defined in section 3(q) of the Federal Deposit Insurance Act (12 U.S.C. 1813(q)), with respect to—

(A) national banks, Federal savings associations, and Federal branches and Federal agencies of foreign banks;

(B) member banks of the Federal Reserve System (other than national banks), branches and agencies of foreign banks (other than Federal branches, Federal agencies, and insured State branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act; and

(C) banks and State savings associations insured by the Federal Deposit Insurance Corporation (other than members of the Federal Reserve System), and insured State branches of foreign banks;

(2) the Federal Credit Union Act, by the Administrator of the National Credit Union Administration with respect to any Federal credit union;

(3) the Federal Aviation Act of 1958, by the Secretary of Transportation, with respect to any air carrier or foreign air carrier subject to that Act;

(4) the Securities Exchange Act of 1934, by the Securities and Exchange Commission, with respect to any broker or dealer subject to that Act; and

(5) subtitle E of the Consumer Financial Protection Act of 2010, by the Bureau, with respect to any person subject to this title, except that the Bureau shall not have authority to enforce the requirements of section 920 or any regulations prescribed by the Board under section 920.

The terms used in paragraph (1) that are not defined in this title or otherwise defined in section 3(s) of the Federal Deposit Insurance Act (12 U.S.C. 1813(s)) shall have the meaning given to them in section 1(b) of the International Banking Act of 1978 (12 U.S.C. 3101).

(b) For the purpose of the exercise by any agency referred to in any of paragraphs (1) through (4) of subsection (a) of its powers under any Act referred to in that subsection, a violation of any requirement imposed under this title shall be deemed to be a violation of a requirement imposed under that Act. In addition to its powers under any provision of law specifically referred to in any of paragraphs (1) through (4) of subsection (a), each of the agencies referred to in that subsection may exercise, for the purpose of enforcing compliance with any requirement imposed under this title, any other authority conferred on it by law.

(c) Except to the extent that enforcement of the requirements imposed under this title is specifically committed to some other Government agency under any of paragraphs (1) through (4) of subsection (a), and subject to subtitle B of the Consumer Financial Protection Act of 2010, the Federal Trade Commission shall be authorized to enforce such requirements. For the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act, a violation of any requirement imposed under this title shall be deemed a violation of a requirement imposed under that Act.



All of the functions and powers of the Federal Trade Commission under the Federal Trade Commission Act are available to the Federal Trade Commission to enforce compliance by any person subject to the jurisdiction of the Federal Trade Commission with the requirements imposed under this title, irrespective of whether that person is engaged in commerce or meets any other jurisdictional tests under the Federal Trade Commission Act.

[15 USC 1693o. As amended by acts of Aug. 9, 1989 (103 Stat. 440); Dec. 19, 1991 (105 Stat. 2301); Oct. 11, 1996 (110 Stat. 3399); and July 21, 2010 (124 Stat. 2082, 2083).]

#### 6-394

#### SECTION 919—Remittance Transfers

(a) *Disclosures required for remittance transfers.*

(1) *In general.* Each remittance transfer provider shall make disclosures as required under this section and in accordance with rules prescribed by the Board. Disclosures required under this section shall be in addition to any other disclosures applicable under this title.

(2) *Disclosures.* Subject to rules prescribed by the Board, a remittance transfer provider shall provide, in writing and in a form that the sender may keep, to each sender requesting a remittance transfer, as applicable to the transaction—

(A) at the time at which the sender requests a remittance transfer to be initiated, and prior to the sender making any payment in connection with the remittance transfer, a disclosure describing—

- (i) the amount of currency that will be received by the designated recipient, using the values of the currency into which the funds will be exchanged;
- (ii) the amount of transfer and any other fees charged by the remittance transfer provider for the remittance transfer; and
- (iii) any exchange rate to be used by the remittance transfer provider for the remittance transfer, to the nearest 1/100th of a point; and

(B) at the time at which the sender

makes payment in connection with the remittance transfer—

(i) a receipt showing—

(I) the information described in subparagraph (A);

(II) the promised date of delivery to the designated recipient; and

(III) the name and either the telephone number or the address of the designated recipient, if either the telephone number or the address of the designated recipient is provided by the sender; and

(ii) a statement containing—

(I) information about the rights of the sender under this section regarding the resolution of errors; and

(II) appropriate contact information for—

(aa) the remittance transfer provider; and

(bb) the State agency that regulates the remittance transfer provider and the Board, including the toll-free telephone number established under section 1013 of the Consumer Financial Protection Act of 2010.

(3) *Requirements relating to disclosures.* With respect to each disclosure required to be provided under paragraph (2) a remittance transfer provider shall—

(A) provide an initial notice and receipt, as required by subparagraphs (A) and (B) of paragraph (2), and an error resolution statement, as required by subsection (d), that clearly and conspicuously describe the information required to be disclosed therein; and

(B) with respect to any transaction that a sender conducts electronically, comply with the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 et seq.).

(4) *Exception for disclosures of amount received.*

(A) *In general.* Subject to the rules prescribed by the Board, and except as provided under subparagraph (B), the disclosures required regarding the amount of currency that will be received by the designated recipient shall be deemed to be

accurate, so long as the disclosures provide a reasonably accurate estimate of the foreign currency to be received. This paragraph shall apply only to a remittance transfer provider who is an insured depository institution, as defined in section 3 of the Federal Deposit Insurance Act (12 U.S.C. 1813), or an insured credit union, as defined in section 101 of the Federal Credit Union Act (12 U.S.C. 1752), and if—

- (i) a remittance transfer is conducted through a demand deposit, savings deposit, or other asset account that the sender holds with such remittance transfer provider; and
- (ii) at the time at which the sender requests the transaction, the remittance transfer provider is unable to know, for reasons beyond its control, the amount of currency that will be made available to the designated recipient.

(B) *Deadline.* The application of subparagraph (A) shall terminate 5 years after the date of enactment of the Consumer Financial Protection Act of 2010, unless the Board determines that termination of such provision would negatively affect the ability of remittance transfer providers described in subparagraph (A) to send remittances to locations in foreign countries, in which case, the Board may, by rule, extend the application of subparagraph (A) to not longer than 10 years after the date of enactment of the Consumer Financial Protection Act of 2010.

(5) *Exemption authority.* The Board may, by rule, permit a remittance transfer provider to satisfy the requirements of—

- (A) paragraph (2)(A) orally, if the transaction is conducted entirely by telephone;
- (B) paragraph (2)(B), in the case of a transaction conducted entirely by telephone, by mailing the disclosures required under such subparagraph to the sender, not later than 1 business day after the date on which the transaction is conducted, or by including such documents in the next periodic statement, if the telephone transaction is conducted through a demand deposit, savings deposit, or other

asset account that the sender holds with the remittance transfer provider;

(C) subparagraphs (A) and (B) of paragraph (2) together in one written disclosure, but only to the extent that the information provided in accordance with paragraph (3)(A) is accurate at the time at which payment is made in connection with the subject remittance transfer; and

(D) paragraph (2)(A), without compliance with section 101(c) of the Electronic Signatures in Global Commerce Act, if a sender initiates the transaction electronically and the information is displayed electronically in a manner that the sender can keep.

(6) *Storefront and Internet notices.*

(A) *In general.*

(i) *Prominent posting.* Subject to subparagraph (B), the Board may prescribe rules to require a remittance transfer provider to prominently post, and timely update, a notice describing a model remittance transfer for one or more amounts, as the Board may determine, which notice shall show the amount of currency that will be received by the designated recipient, using the values of the currency into which the funds will be exchanged.

(ii) *Onsite displays.* The Board may require the notice prescribed under this subparagraph to be displayed in every physical storefront location owned or controlled by the remittance transfer provider.

(iii) *Internet notices.* Subject to paragraph (3), the Board shall prescribe rules to require a remittance transfer provider that provides remittance transfers via the Internet to provide a notice, comparable to a storefront notice described in this subparagraph, located on the home page or landing page (with respect to such remittance transfer services) owned or controlled by the remittance transfer provider.

(iv) *Rulemaking authority.* In prescribing rules under this subparagraph, the Board may impose standards or requirements regarding the provision of the storefront and Internet notices re-

quired under this subparagraph and the provision of the disclosures required under paragraphs (2) and (3).

(B) *Study and analysis.* Prior to proposing rules under subparagraph (A), the Board shall undertake appropriate studies and analyses, which shall be consistent with section 904(a)(2), and may include an advanced notice of proposed rulemaking, to determine whether a storefront notice or Internet notice facilitates the ability of a consumer—

(i) to compare prices for remittance transfers; and

(ii) to understand the types and amounts of any fees or costs imposed on remittance transfers.

(b) *Foreign language disclosures.* The disclosures required under this section shall be made in English and in each of the foreign languages principally used by the remittance transfer provider, or any of its agents, to advertise, solicit, or market, either orally or in writing, at that office.

(c) *Regulations regarding transfers to certain nations.* If the Board determines that a recipient nation does not legally allow, or the method by which transactions are made in the recipient country do not allow, a remittance transfer provider to know the amount of currency that will be received by the designated recipient, the Board may prescribe rules (not later than 18 months after the date of enactment of the Consumer Financial Protection Act of 2010) addressing the issue, which rules shall include standards for a remittance transfer provider to provide—

(1) a receipt that is consistent with subsections (a) and (b); and

(2) a reasonably accurate estimate of the foreign currency to be received, based on the rate provided to the sender by the remittance transfer provider at the time at which the transaction was initiated by the sender.

(d) *Remittance transfer errors.*

(1) *Error resolution.*

(A) *In general.* If a remittance transfer provider receives oral or written notice from the sender within 180 days of the

promised date of delivery that an error occurred with respect to a remittance transfer, including the amount of currency designated in subsection (a)(3)(A) that was to be sent to the designated recipient of the remittance transfer, using the values of the currency into which the funds should have been exchanged, but was not made available to the designated recipient in the foreign country, the remittance transfer provider shall resolve the error pursuant to this subsection and investigate the reason for the error.

(B) *Remedies.* Not later than 90 days after the date of receipt of a notice from the sender pursuant to subparagraph (A), the remittance transfer provider shall, as applicable to the error and as designated by the sender—

(i) refund to the sender the total amount of funds tendered by the sender in connection with the remittance transfer which was not properly transmitted;

(ii) make available to the designated recipient, without additional cost to the designated recipient or to the sender, the amount appropriate to resolve the error;

(iii) provide such other remedy, as determined appropriate by rule of the Board for the protection of senders; or

(iv) provide written notice to the sender that there was no error with an explanation responding to the specific complaint of the sender.

(2) *Rules.* The Board shall establish, by rule issued not later than 18 months after the date of enactment of the Consumer Financial Protection Act of 2010, clear and appropriate standards for remittance transfer providers with respect to error resolution relating to remittance transfers, to protect senders from such errors. Standards prescribed under this paragraph shall include appropriate standards regarding record keeping, as required, including documentation—

(A) of the complaint of the sender;

(B) that the sender provides the remittance transfer provider with respect to the alleged error; and

(C) of the findings of the remittance

transfer provider regarding the investigation of the alleged error that the sender brought to their attention.

(3) *Cancellation and refund policy rules.* Not later than 18 months after the date of enactment of the Consumer Financial Protection Act of 2010, the Board shall issue final rules regarding appropriate remittance transfer cancellation and refund policies for consumers.

(e) *Applicability of this title.*

(1) *In general.* A remittance transfer that is not an electronic fund transfer, as defined in section 903, shall not be subject to any of the provisions of sections 905 through 913. A remittance transfer that is an electronic fund transfer, as defined in section 903, shall be subject to all provisions of this title, except for section 908, that are otherwise applicable to electronic fund transfers under this title.

(2) *Rule of construction.* Nothing in this section shall be construed—

(A) to affect the application to any transaction, to any remittance provider, or to any other person of any of the provisions of subchapter II of chapter 53 of title 31, United States Code, section 21 of the Federal Deposit Insurance Act (12 U.S.C. 1829b), or chapter 2 of title I of Public Law 91-508 (12 U.S.C. 1951-1959), or any regulations promulgated thereunder; or

(B) to cause any fund transfer that would not otherwise be treated as such under paragraph (1) to be treated as an electronic fund transfer, or as otherwise subject to this title, for the purposes of any of the provisions referred to in subparagraph (A) or any regulations promulgated thereunder.

(f) *Acts of agents.*

(1) *In general.* A remittance transfer provider shall be liable for any violation of this section by any agent, authorized delegate, or person affiliated with such provider, when such agent, authorized delegate, or affiliate acts for that remittance transfer provider.

(2) *Obligations of remittance transfer providers.* The Board shall prescribe rules to

implement appropriate standards or conditions of, liability of a remittance transfer provider, including a provider who acts through an agent or authorized delegate. An agency charged with enforcing the requirements of this section, or rules prescribed by the Board under this section, may consider, in any action or other proceeding against a remittance transfer provider, the extent to which the provider had established and maintained policies or procedures for compliance, including policies, procedures, or other appropriate oversight measures designed to assure compliance by an agent or authorized delegate acting for such provider.

(g) *Definitions.* As used in this section—

(1) the term “designated recipient” means any person located in a foreign country and identified by the sender as the authorized recipient of a remittance transfer to be made by a remittance transfer provider, except that a designated recipient shall not be deemed to be a consumer for purposes of this Act;

(2) the term “remittance transfer”—

(A) means the electronic (as defined in section 106(2) of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7006(2))) transfer of funds requested by a sender located in any State to a designated recipient that is initiated by a remittance transfer provider, whether or not the sender holds an account with the remittance transfer provider or whether or not the remittance transfer is also an electronic fund transfer, as defined in section 903; and

(B) does not include a transfer described in subparagraph (A) in an amount that is equal to or lesser than the amount of a small-value transaction determined, by rule, to be excluded from the requirements under section 906(a);

(3) the term “remittance transfer provider” means any person or financial institution that provides remittance transfers for a consumer in the normal course of its business, whether or not the consumer holds an account with such person or financial institution; and

(4) the term “sender” means a consumer

who requests a remittance provider to send a remittance transfer for the consumer to a designated recipient.

[15 USC 1693o-1. As added by act of July 21, 2010 (124 Stat. 2060).]

#### 6-394.5

See section 920 at 9-1548.

#### 6-394.7

### SECTION 921—Reports to Congress

(a) Not later than twelve months after the effective date of this title and at one-year intervals thereafter, the Bureau shall make reports to the Congress concerning the administration of its functions under this title, including such recommendations as the Bureau deems necessary or appropriate. In addition, each report of the Bureau shall include its assessment of the extent to which compliance with this title is being achieved, and a summary of the enforcement actions taken under section 917 of this title. In such report, the Bureau shall particularly address the effects of this title on the costs and benefits to financial institutions and consumers, on competition, on the introduction of new technology, on the operations of financial institutions, and on the adequacy of consumer protection.

(b) In the exercise of its functions under this title, the Bureau may obtain upon request the views of any other Federal agency which, in the judgment of the Bureau, exercises regulatory or supervisory functions with respect to any class of persons subject to this title.

[15 USC 1693p (formerly section 919). As amended by acts of Dec. 21, 1982 (96 Stat. 1825) and July 21, 2010 (124 Stat. 2060, 2068, 2081), which redesignated the number of this section.]

#### 6-396

### SECTION 922—Exemption for State Regulation

The Bureau shall by regulation exempt from the requirements of this title any class of electronic fund transfers within any State if the Bureau determines that under the law of that State that class of electronic fund transfers is subject to requirements substantially similar to those imposed by this title, and that there is adequate provision for enforcement.

[15 USC 1693r (formerly section 921). As amended by act of July 21, 2010 (124 Stat. 2060, 2081), which redesignated the number of this section.]

#### 6-396

### SECTION 922—Exemption for State Regulation

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[15 USC 1693r (formerly section 921). As amended by act of July 21, 2010 (124 Stat. 2060, 2081), which redesignated the number of this section.]

#### 6-397

### SECTION 923—Effective Date

This title takes effect upon the expiration of eighteen months from the date of its enactment, except that sections 909 and 911 take effect upon the expiration of ninety days after the date of enactment.

[15 USC 1693 note (formerly section 922). As amended by act of July 21, 2010 (124 Stat. 2060), which redesignated the number of this section.]