

## Electronic Fund Transfer Act<sup>1</sup>

### Introduction

The Electronic Fund Transfer Act (EFTA) (15 USC 1693 et seq.) was enacted on November 10, 1978, and is implemented by Federal Reserve Regulation E (12 CFR 205). The EFTA provides a basic framework establishing the rights, liabilities and responsibilities of consumers who use electronic fund transfer (EFT) services and financial institutions that offer these services. Its primary objective is the protection of individual consumers in their dealings with these services. Examples of EFTs are automated teller machine (ATM) transfers, telephone bill-payment transfers, point-of-sale transfers, preauthorized transfers from or to a consumer's account (i.e. direct deposits or withdrawals of funds), and transfers resulting from debit card transactions, whether or not initiated through an electronic terminal.

As defined in the EFTA, and Section 205.3(b) of Regulation E, the term “electronic fund transfer,” refers to a transaction initiated through an electronic terminal, telephone, computer, or magnetic tape that orders, instructs, or authorizes a financial institution to either credit or debit a consumer's asset account. The term electronic terminal includes point-of-sale terminals, automated teller machines, and cash dispensing machines. The consumer is usually issued a card or a code (known as an access device), or both, that may be used to initiate such transfers.

### Exemptions – §205.3(c)

The following types of electronic fund transfers are *not* covered by the EFTA:

- Any transfer of funds originated by check, draft, or similar paper instrument; or any payment made by check, draft, or similar paper instrument at an electronic terminal.
- Check guarantee or authorization services that do not directly result in a debit or credit to a consumer's account.
- Any transfer of funds for a consumer within a system that is used primarily to transfer funds between financial institutions or businesses. An example is a wire transfer of funds for a consumer through the Fedwire or other similar network.
- Any transfer of funds which has as its primary purpose the purchase or sale of securities or commodities regulated by the Securities and Exchange Commission (SEC) or the Commodity Futures Trading Commission (CFTC), purchased or sold through a brokerdealer regulated by the SEC or through a future commission merchant regulated by the CFTC, or held in book-entry form by a Federal Reserve Bank or federal agency.

- Intra-institutional automatic transfers under an agreement between a consumer and a financial institution:
  - between the consumer's account and the institution itself (except that § 205.10(e) regarding compulsory use and sections 915 and 916 of the EFTA regarding civil and criminal liability are applicable);
  - between two accounts of the consumer within the institution; or
  - from the consumer's account to a family member's account within the institution.
- Transfers initiated by telephone between a consumer and a financial institution making the transfer and does not take place under a telephone, bill payment, or other plans contemplating periodic or recurring transfers.
- Preauthorized transfers to or from an account held at a financial institution with assets of \$100 million or less on the preceding December 31 (except that § 205.10(e) and sections 915 and 916 of the EFTA are applicable).

### Special Requirements – §205.4

Section 205.4(a) requires that disclosures be clear and readily understandable, in writing, and in a form the consumer may keep.

Section 205.4(b) permits, at the institution's option, the disclosure of additional information, and allows disclosures required by other laws (for example, Truth in Lending disclosures) to be combined with Regulation E disclosures.

Section 205.4(d)(1) permits the institution holding an account to combine required disclosures into a single statement if a consumer holds two or more accounts at an institution. Thus, a single periodic statement or error resolution notice is sufficient for multiple accounts. In order to comply with Section 205.4(d)(2), an institution need provide only one set of disclosures for a joint account.

Section 205.4(e) permits two or more institutions that jointly provide EFT services to contract among themselves to fulfill the requirements that the regulation imposes on any or all of them. When making disclosures under Section 205.7 (Initial Disclosures) and Section 205.8 (Change in Terms; Error Resolution Notice), an institution in a shared system need only make those required disclosures that are within its knowledge and the purview of its relationship with the consumer for whom it holds an account.

### Issuance of Access Devices – §205.5

Section 205.5 governs the issuance of access devices. For access devices that also constitute credit cards, the issuance rules of Regulation E apply if the only credit feature is a preexisting credit line attached to the asset account to cover overdrafts (or to maintain a specified minimum balance). Regulation Z rules apply if there is another type of credit

<sup>1</sup> This section fully incorporates the examination procedures issued under DCA RD Memo 98-001: Electronic Fund Transfer Act (Regulation E) Examination Procedures.

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feature, for example, one permitting direct extensions of credit that do not involve the asset account. In general, an institution may issue an access device to a consumer only if:

- it is requested (in writing or orally) or applied for; or
- it is a renewal of, or in substitution for, an accepted access device (as defined in § 205.2(a)).

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

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

1. the access device is not validated, meaning, the device is not yet activated;
2. the access device is accompanied by the explanation that it is not validated and of how it may be disposed of if the consumer does not wish to validate it;
3. the access device is accompanied by a complete disclosure, in accordance with § 205.7, of the consumer's rights and liabilities that will apply if the access device is validated; and
4. the access device is validated only upon oral or written request from the consumer and after a verification of the consumer's identity by some reasonable means.

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

### **Liability of Consumers for Unauthorized Transfers – §205.6**

A consumer may be held liable for unauthorized EFTs (as defined in § 205.2(m)) only if:

- the institution has provided the following written disclosures to the consumer:
  - a summary of the consumer's liability for unauthorized EFTs;
  - the telephone number and address for reporting that an unauthorized EFT has been or may be made; and
  - the institution's business days.
- the access device is accepted (as defined in § 205.2(a)); and
- the institution has provided a means to identify the consumer to whom the access device was issued.

**Consumer Liability for Unauthorized Transfers:  
Electronic Fund Transfer Act—Regulation E (12 CFR 205.6)**

<b>Event</b>	<b>Timing of consumer notification of bank</b>	<b>Maximum liability</b>
Loss or theft of access device <sup>1</sup>	Within two business days after learning of loss or theft.	Lesser of \$50, OR total amount of unauthorized transfers.
Loss or theft of access device	More than two business days after learning of loss or theft.	Lesser of \$500, OR the sum of: (a) \$50 or the total amount of unauthorized transfers occurring in the first two business days, whichever is less, AND (b) the amount of unauthorized transfers occurring after two business days and before notice to the institution. <sup>2</sup>
Loss or theft of access device	More than 60 calendar days after transmittal of statement showing first unauthorized transfer made with access device.	For transfers occurring within the 60-day period, the lesser of \$500, OR the sum of: (a) lesser of \$50 or the amount of unauthorized transfers in first two business days, AND (b) the amount of unauthorized transfers occurring after two business days.  For transfers occurring after the 60-day period, unlimited liability (until the institution is notified). <sup>3</sup>
Unauthorized transfer(s) appearing on periodic statement (no use of access device)	Within 60 calendar days after transmittal of the periodic statement.	No liability.
Unauthorized transfer(s) appearing on periodic statement (no use of access device)	More than 60 calendar days after transmittal of the periodic statement showing first unauthorized transfer.	Unlimited liability for unauthorized transfers occurring 60 calendar days after the periodic statement and before notice to the institution.

<sup>1</sup> Includes a personal identification number (PIN) if used without a card in a telephone transaction, for example.

<sup>2</sup> Provided the financial institution demonstrates that these transfers would not have occurred had notice been given within the two-business-day period.

<sup>3</sup> Provided the financial institution demonstrates that these transfers would not have occurred had notice been given within the 60-day period.

Section 205.6(b)(4) states that if a consumer's delay in notifying an institution was due to extenuating circumstances, such as extended travel or hospitalization, the time periods for notification specified above shall be extended to a reasonable time. Also, Section 205.6(b)(6) provides that if any lesser liability limits are imposed by applicable state law or by an agreement with the consumer, those limits shall apply instead of the limits set by this section.

These liability provisions apply to unauthorized EFTs initiated by a combined access device-credit card, including an access device with overdraft privileges. These provisions do not apply to the unauthorized use of a combined access device-credit card when no EFTs are involved (for example, when the card is used to draw cash advances directly from a credit line).

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

### Initial Disclosure of Terms and Conditions – §205.7

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

- a summary of the consumer's liability under Section 205.6 or other applicable law or agreement;
- the telephone number and address of the person or office to notify in the event of loss or unauthorized use;
- the institution's business days;
- types of EFTs the consumer may make and any limitations on the frequency and dollar amount of transfers (the details of the limitations may be withheld if the security of the system requires confidentiality);
- any charges for EFTs or for the right to make EFTs;
- a summary of the consumer's right to receive documentation of EFTs as provided in Sections 205.9, 205.10(a) and 205.10(d);
- a summary of the consumer's right to stop payment of a preauthorized EFT and the procedure for initiating a stop-payment order;
- a summary of the institution's liability for its failure to make or stop certain transfers;
- the circumstances under which the institution in the ordinary course of business will disclose information concerning the consumer's account to third parties; and
- a notice which is substantially similar to the notice in Appendix A of 12 CFR 205 concerning error resolution procedures and the consumer's rights under them.

### Change in Terms; Error Resolution Notice – §205.8

If a change in terms is contemplated, the institution must 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 § 205.7(b) if the change would result in any of the following:

- increased fees or charges;
- increased liability for the consumer;
- fewer types of available EFTs; or
- stricter limitations on the frequency or dollar amounts of transfers.

If an immediate change in terms or conditions is necessary to maintain or restore the security of an EFT system or account, prior notice need not be given by the institution. However, if such a change is to be permanent, the institution must provide written notice of the change to the consumer on or with the next regularly scheduled periodic statement or within 30 days, unless disclosures would jeopardize the security of the system or account.

For accounts to or from which EFTs can be made, an error resolution notice (as set forth in 12 CFR 205 Appendix A – Model Form A-3) must be mailed or delivered to the consumer at least once each calendar year. Alternatively, an abbreviated error resolution notice substantially similar to the notice set out in Appendix A (Model Form A-3) may be included with each periodic statement.

### Documentation of Transfers – §205.9

Receipts given at electronic terminals are required to provide specific documentation. The receipt must be made available at the time the transfer is initiated at an electronic terminal and must include, as applicable:

- amount of the transfer – a charge for making the transfer may be included in the amount if the terminal is owned or operated by an entity other than the institution that holds the consumer's account, provided the charge is disclosed on the receipt and on a sign posted on or at the terminal;
- date – the date the consumer initiates the transfer;
- type of transfer and type of account – descriptions such as “withdrawal from checking” or “transfer from savings to checking” are appropriate. This is true even if the accounts are only similar in function to a checking account (such as a share draft or NOW account) or a savings account (such as a share account). If the access device used can only access one account, the type-of-account requirement does not apply;
- a number or code identifying the consumer's account(s), or the access device used to initiate the transfer. The number and code need not exceed four digits or letters to comply;
- location of the terminal – the location where the transfer is initiated may be given in the form of a code or terminal number; and
- the name of any third party to or from whom funds are transferred – a code may be used to identify the party, but only if the code is explained on the receipt. This

requirement does not apply if the name of the party is provided by the consumer in a manner the terminal cannot duplicate on the receipt, such as on a payment stub.

An electronic terminal receipt need not be provided for electronic transfers initiated by home banking equipment.

Section 205.9(b) provides the documentation requirements for periodic statements. Periodic statements must be sent monthly if an EFT has occurred, or quarterly if no EFT has occurred. For each EFT made during the cycle, the statement must include, as applicable:

- amount of the transfer – if a charge was imposed at an electronic terminal by the owner or operator of the terminal, that charge may be included in the amount;
- date the transfer was posted to the account;
- type of transfer(s) and type of account(s) to or from which funds were transferred;
- for each transfer (except deposits to the consumer's account) initiated at an electronic terminal, the location that appears on the receipt. If an identification code was used, that identification code must be given with one of the following descriptions:
  - street address of the terminal and the city, state, or foreign country;
  - a generally accepted name for the location of the terminal (such as an airport, shopping center, or branch of an institution), and the city, state, or foreign country; or
  - name of the entity (except the institution providing the statement) at whose place of business the terminal is located, such as a store, and the city, state, or foreign country;
- the name of any third party payee or payor;
- the account number(s);
- the total amount of any fees and charges, other than a finance charge as defined by Regulation Z, assessed during the period for making EFTs, the right to make EFTs, or for account maintenance;
- the balance in the account at the beginning and close of the statement period;
- the address and telephone number to be used by the consumer for inquiries or notice of errors. If the institution has elected to send the abbreviated error notice with every periodic statement, the address and telephone number may appear on that document; and
- if the institution has provided a telephone number which the consumer can use to find out whether or not a preauthorized transfer has taken place, that telephone number.

Where a consumer's passbook may not be accessed by an EFT other than preauthorized transfers to the account, a periodic statement need not be sent, provided that the financial institution updates the consumer's passbook or provides the required information on a separate document at the consumer's request. To update the passbook, the amount and date of each EFT made since the passbook was last presented must be listed.

If the consumer has a non-passbook account that may not be accessed by an EFT other than preauthorized transfers to the account, a periodic statement must be sent at least quarterly.

### Preauthorized Transfers – §205.10

Section 205.10(a)(1) covers preauthorized transfers to a consumer's account. This section requires that, when an account is scheduled to be credited by a preauthorized EFT from the same payor at least once every 60 days, some form of notice must be provided to the consumer so that the consumer can find out whether or not the transfer occurred.

The notice requirement will be satisfied by the payor's providing notification to the consumer that the transfer has been initiated. If the payor does not provide notice to the consumer, the burden is on the institution to adopt one of the three alternative procedures for supplying the notice.

1. The institution can choose to give the consumer oral or written notice every time a preauthorized transfer occurs or fails to occur.
2. The second alternative is that the institution can notify the consumer within 2 business days after the preauthorized transfer occurred.
3. As a third alternative, the institution can establish a telephone line that the consumer may call to find out whether a preauthorized transfer has occurred. The telephone number must be disclosed on the initial disclosures and on each periodic statement. The telephone line must be "readily available" so that consumers calling to inquire about transfers are able to have their calls answered with little difficulty. In addition, it is expected that these telephone notice systems will be designed so that consumers do not have to bear the cost of long distance calls within the institution's service area to inquire about their transfers. Therefore, a multi-branch institution with a statewide customer base could provide consumers with either a toll-free number or designate local numbers for different communities within the state.

Section 205.10(a)(3) requires an institution that receives a preauthorized transfer to credit the consumer's account as of the day the funds are received.

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Section 205.10(b) states that preauthorized transfers from a consumer's account may only be authorized by the consumer in writing, signed or similarly authenticated by the consumer. Written authorizations include electronic authorizations (such as via a home banking system) which are similarly authenticated by the consumer as long as there are means to identify the consumer (such as a security code) and to make available a paper copy of the authorization (automatically or upon request). In all cases, the party that obtains the authorization from the consumer must provide a copy to the consumer.

Section 205.10(c) gives the consumer the right to stop payment of a preauthorized transfer from an account. The consumer must notify the institution orally or in writing at any time up to three business days before the scheduled date of the transfer. The institution may require written confirmation of an oral stop payment order to be made within 14 days of the consumer's oral notification. However, the institution may only impose the written confirmation requirement if, at the time the consumer made the oral stop payment order, the institution informed the consumer that written confirmation is required and told the consumer the address to which the confirmation should be sent. If the consumer fails to provide the written confirmation, the oral stop payment order ceases to be binding after 14 days.

Section 205.10(d) deals with a preauthorized transfer from a consumer's account that varies in amount from the previous transfer under the same authorization or the preauthorized amount. In the event such a transfer is scheduled to occur, the institution or designated payee must mail or deliver to the consumer a written notice, at least 10 days before the scheduled transfer date, containing the amount and scheduled date of the transfer. However, if the institution or the payee informs the consumer of the right to receive advance notice of varying transfers, the consumer may elect to receive notice only when the amount varies from the most recent transfer by more than an agreed upon amount or when it falls outside a specified range.

Section 205.10(e) prohibits the institution from conditioning an extension of credit on the condition of repayment by means of preauthorized EFT, except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account. The section also prohibits anyone from requiring the establishment of an account for receipt of EFTs with a particular institution either as a condition of employment or the receipt of a government benefit.

### Procedures for Resolving Errors – §205.11

Section 205.11 sets forth the definition of "error", the steps the consumer must take when alleging an error in order to

receive the protection of the EFTA and Regulation E, and the procedures that an institution must follow to resolve an alleged error.

Section 205.11(a), defines the term "error" to mean:

- an unauthorized EFT;
- an incorrect EFT to or from the consumer's account;
- the omission from a periodic statement of an EFT to or from the consumer's account that should have been included;
- a computational or bookkeeping error made by the institution relating to an EFT;
- the consumer's receipt of an incorrect amount of money from an electronic terminal;
- an EFT not identified in accordance with the requirements of Sections 205.9 or 205.10(a); or
- a consumer's request for any documentation required by Sections 205.9 or 205.10(a), or for additional information or clarification concerning an EFT.

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

A notice of error is an oral or written notice indicating why the consumer believes an error exists that is received by the institution not later than 60 days after a periodic statement or other documentation which first reflects the alleged error is provided. The notice of error must also enable the institution to identify the consumer's name and account number, and, to the extent possible, the type, date and amount of the error. An institution may require a consumer to give written confirmation of an error within 10 business days of giving oral notice. The institution shall provide the address where confirmation must be sent. If written confirmation is not received, the institution must still comply with the error resolution procedures, but it need not provisionally credit the account if it takes longer than 10 business days to resolve the matter.

After receiving a notice of error, the institution is required to promptly investigate the alleged error and transmit the results to the consumer within 10 business days. As an alternative to this, the institution may take up 45 calendar days to complete its investigation provided it:

- provisionally credits the funds (including interest, where applicable) to the consumer's account within the 10 business-day period;
- advises the consumer within 2 business days of the provisional crediting; and

- gives the consumer full use of the funds during the investigation.

An institution need not provisionally credit the account if:

- the consumer fails to provide the required written confirmation of an oral notice of an error; or
- the notice of error involves an account subject to the margin requirements or other aspects of Regulation T (12 CFR 220).

If, after investigating the alleged error, the institution determines that an error has occurred, it shall promptly (within one business day after such determination) correct the error, including the crediting of interest (if applicable). The institution shall provide within three business days of the completed investigation an oral or written report of the correction to the consumer and, as applicable, notify the consumer that the provisional credit has been made final.

If the institution determines that no error occurred or that an error occurred in a different manner or amount from that described by the consumer, the institution must mail or deliver a written explanation of its findings within three business days after concluding its investigation. The explanation must include a notice of the consumer's rights to request the documents upon which the institution relied in making its determination.

Upon debiting a provisionally credited amount, the institution shall notify the consumer of the date and amount of the debit, of the fact that the institution will honor (without charge) checks, drafts or similar paper instruments payable to third parties and preauthorized debits for five business days after transmittal of the notice. The institution need honor only items that it would have paid if the provisionally credited funds had not been debited. Upon request from the consumer, the institution must promptly mail or deliver to the consumer copies of documents upon which it relied in making its determination.

If a notice involves an error that occurred within 30 days after the first deposit to the account was made, the time periods are extended from 10 and 45 days, to 20 and 90 days, respectively.

If the notice of error involves a transaction that was not initiated in a state or resulted from a point-of-sale debit card transaction, the 45-day period is extended to 90 days.

#### **Relation to State Law – §205.12**

Section 205.12 sets forth the relationship between the EFTA and the Truth in Lending Act (TILA) with regard to the issuance of access devices, consumer liability, and investigation of errors. This section also provides standards for determination and procedures for applying for state exemptions.

The EFTA governs:

- the issuance of debit cards and other access devices with EFT capabilities;
- the addition of EFT features to credit cards; and
- the issuance of access devices whose only credit feature is a pre-existing agreement to extend credit to cover account overdrafts or to maintain a minimum account balance.

The TILA governs:

- the issuance of credit cards as defined in Regulation Z, 12 CFR 226.2(a)(15);
- the addition of a credit feature to a debit card or other access device; and
- the issuance of dual debit/credit cards except for access devices whose only credit feature is a pre-existing agreement to cover account overdrafts or to maintain a minimum account balance.

The EFTA and Regulation E preempt inconsistent state laws, but only to the extent of the inconsistency. The Federal Reserve Board is given the authority to determine whether or not a state law is inconsistent. An institution, state, or other interested party may request the Board to make such a determination. A state law will not be deemed inconsistent if it is more protective of the consumer than the EFTA or Regulation E. Upon application, the Board has the authority to exempt any state from the requirements of the Act or the regulation for any class of EFTs within a state with the exception of the civil liability provision.

#### **Administrative Enforcement – §205.13 and §917**

Section 917 specifically directs the federal financial institution supervisory agencies to enforce compliance with the provisions of the EFTA.

Institutions are required to maintain evidence of compliance with the EFTA and Regulation E for a period of not less than two years. This period may be extended by the agency supervising the institution. It may also be extended if the institution is subject to an action filed under Sections 910, 915 or 916(a) of the EFTA which generally apply to the institution's liability under the EFTA and Regulation E. Persons subject to the EFTA who have actual notice that they are being investigated or subject to an enforcement proceeding must retain records until disposition of the proceeding. Records may be stored on microfiche, microfilm, magnetic tape, or in any other manner capable of accurately retaining and reproducing the information.

#### **Services Offered by Provider Not Holding Consumer's Account – §205.14**

This section applies in limited situations where the institution provides EFT services and issues access devices, but does

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not hold the asset account and no agreement exists between the service provider and the account at the institution. The transfers initiated by the service-providing institution are often cleared through an automated clearinghouse (ACH). This section divides the responsibilities between the two institutions with the greater responsibility placed on the service-providing institution.

The responsibilities of the service-providing institution are set forth in Section 205.14(b)(1) and (2). The duties of the account-holding institution are found in Section 205.14(c)(1) and (2).

### **Electronic Fund Transfer of Government Benefits – §205.15**

Section 205.15 contains the rules that apply to electronic benefit transfer (EBT) programs. It provides modified rules on the issuance of access devices, periodic statements, initial disclosures, liability for unauthorized use, and error resolution notices.

Section 205.15(a) provides that a government agency is deemed to be a financial institution and subject to the regulation, if it directly or indirectly issues an access device to a consumer for use in initiating an EFT of government benefits from an account. Needs-tested EBT programs established under state or local law or administered by a state or local agency (such as food stamp programs) are exempt. Federally administered EBT programs and state and local employment-related EBT programs (such as retirement and unemployment benefits) remain covered by Regulation E. The term account means an account established by a government agency for distributing government benefits to a consumer electronically, such as through ATMs or point-of-sale terminals.

A government agency need not furnish the periodic statement required by §205.9(b) if the agency makes available to the consumer:

- the consumer's account balance through a readily available telephone line and at a terminal; and
- a written history of the consumer's account transactions that covers at least 60 days preceding the date of the consumer's oral or written request.

A government agency that does not furnish periodic statements in accordance with the above shall be subject to special modified requirements as set forth in §205.15(d).

### **Disclosures at Automated Teller Machines - §205.16**

Section 205.16 requires disclosures at ATMs, before a fee can be charged to the consumer. This applies when a consumer

uses an ATM that is operated by a financial institution or other company that does not hold the consumer's account.

In these cases, the operator of the ATM must disclose the fact that a fee will be charged for providing EFT services or a balance inquiry, AND the amount of the fee. The ATM operator may post this information in prominent and conspicuous location on or at the ATM. Alternatively, the operator may provide the notice on the ATM screen or on paper, before the consumer is obligated to pay a fee.

An ATM operator may only impose a fee on a consumer initiating an EFT service or balance inquiry if the consumer is provided with the required notices AND elects to continue the transaction after receiving the notice.

### **Requirements for Electronic Communications - §205.17**

Section 205.17 contains the rules for electronic delivery of required disclosures, when consumers have consented to receive them electronically. A financial institution that delivers disclosure electronically has two options under the regulation. The financial institution must:

1. Send the disclosure to the consumer's electronic address; or
2. Make the disclosure available at another location such as an Internet web site; AND
  - i. Alert the consumer of the disclosure's availability by sending a notice to the consumer's electronic address (or to a postal address, at the financial institution's option). The notice shall identify the account involved and the address of the Internet web site or other location where the disclosure is available; and
  - ii. Make the disclosure available for at least 90 days from the date the disclosure first becomes available or from the date of the notice alerting the consumer of the disclosure, whichever comes later.

When a disclosure provided by an electronic means is returned to a financial institution as undeliverable, the financial institution shall take reasonable steps to attempt redelivery using information in its files.

### **Suspension of Obligations – §912; Waiver of Rights – §914**

Section 912 suspends, under certain conditions, a consumer's obligation to another person in the event a malfunction in an EFT system prevents payment to the person, until the malfunction is corrected and the EFT may be completed.



Section 914 states that no writing or other agreement between a consumer and any other person may contain any provision that constitutes a waiver of any right conferred or cause of action created by the EFTA. However, Section 914 does not prohibit any writing or other agreement that grants a consumer greater protection or a more extensive right or remedy than that provided by the EFTA or a waiver agreement to settle a dispute or action.

**Liability of Financial Institutions – §910;  
Civil Liability – §915;  
Criminal Liability – §916**

Section 910 provides that institutions subject to the EFTA are liable for all damages proximately caused by failure to make an EFT in accordance with the terms and conditions of an account, in a timely manner, or in the correct amount, when properly instructed to do so by a consumer. However, Section 910 also sets forth certain exceptions when an institution would not be liable for failing to make an EFT. Section 910 also provides that institutions are liable in certain circumstances for failure to make an electronic fund transfer due to insufficient funds and failure to stop payment of preauthorized debits.

A financial institution may also be liable for civil damages if it fails to comply with the EFTA. The civil liability provisions are found in §915. The damages an institution would have to pay in a successful individual action are actual damages and statutory damages between \$100 and \$1,000, as determined by the court. In a successful class action suit, the institution would have to pay actual damages and statutory damages up to the lesser of \$500,000 or 1% of the institution's net worth. In both successful individual and class actions, court costs and a reasonable attorney's fee would be recovered by the consumer.

The institution generally will not be liable for violations caused by unintentional bona fide errors that occurred despite the maintenance of procedures reasonably adopted to avoid such errors. Also, the institution will not be liable if it acted in accordance with an official interpretation issued by the Board of Governors of the Federal Reserve System or its authorized staff. An institution cannot be held liable for improper disclosure if it utilized in an appropriate manner a model clause approved by the Board of Governors. Further, an institution can avoid liability by notifying the consumer of a violation, taking corrective action, including adjustment to the consumer's account and payment of appropriate damages prior to a court case.

Section 916 sets forth provisions for criminal liability. Penalties under these provisions run from a \$5,000 fine or imprisonment of not more than one year, or both, for knowing

and willful failures to comply with the EFTA, up to a \$10,000 fine or imprisonment of not more than ten years, or both, for the fraudulent use of a debit card.

**Examination Objectives**

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

**Examination Procedures**

1. Determine if access devices contain credit privileges in order to evaluate compliance with applicable portions of Truth in Lending. [§205.12(a)]
2. Obtain and review copies of the following:
  - a. Disclosure forms.
  - b. Account agreements.
  - c. Procedural manuals and written policies.
  - d. Merchant agreements.
  - e. Automated teller machine receipts and periodic statements.
  - f. Error resolution statements/files.
  - g. Form letters used in case of errors or questions concerning an account.
  - h. Any agreements with third parties allocating compliance responsibilities.
  - i. Consumer complaint file.
3. Test for compliance with written policies and internal controls while performing the examination procedures.
4. For each type of EFT service provided, review items given to customers at the time an account is opened, or prior to the first EFT transaction, to determine that all required disclosures are furnished. [§205.7]
5. If the institution has changed the terms or conditions since the last examination that required a written notice to the customer, determine that the proper notice was provided in a timely manner. [§205.8(a)]
6. Review a sample of periodic statements to determine that they contain sufficient information for the consumer to adequately identify transactions and that they otherwise comply with regulatory requirements. [§205.9]
7. Review consumer complaints regarding EFT transactions to determine compliance with the error resolution procedures and to isolate any apparent deficiencies in the institution's operations. [§205.11]
8. Review policies regarding liability for unauthorized transfers. [§205.6]

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9. Verify that the policies comply with the regulation, and determine whether they are applied in practice.
10. Review policies regarding issuance of access devices, ascertain whether they comply with the requirements of the regulation, and determine whether they are applied in practice. [§205.5]
11. Review policies regarding preauthorized debits and credits, ascertain whether they comply with the requirements of the regulation, and determine whether they are applied in practice. [§205.10]
12. Verify that the financial institution does not require compulsory use of EFTs, except as authorized. [§205.10(e)]
13. Determine that the financial institution is maintaining records of compliance for a period of not less than two years from the date disclosures are required to be made or action is required to be made. [§205.13(b)]
14. Determine that appropriate disclosures are provided to non-customer consumers if fees will be imposed for EFT services at ATMs operated by the bank.
15. If the institution provides required disclosures electronically, determine that the institution's delivery method(s) comply with the electronic delivery provisions of the regulation.

<b>Examination Checklist—Electronic Fund Transfer Act</b>		
<b>A. Section 205.5—Issuance of Access Devices</b>		
	<b>Yes</b>	<b>No</b>
1. Does the institution issue validated access devices only:		
a. In response to requests or applications [§205.5(a)(1)]; or,		
b. As a renewal or substitution for an accepted access device [§205.5(a)(2)]; or		
2. Does the institution issue unsolicited access devices only when the devices are:		
a. Not validated [§205.5(b)(1)]; and,		
b. Accompanied by an explanation that the device is not validated, and how to dispose of the device if the customer does not want it [§205.5(b)(2)]; and,		
c. Accompanied by the required disclosures, [§205.5(b)(3)]; and,		
d. Validated only on consumer request and after proper identification is made? [§205.5(b)(4)]		
3. Does the institution verify the consumer's identity by a reasonable means (such as by photograph, personal visit, or signature)? [§205.5(b)(4)]		
<b>B. Section 205.6—Liability of Consumer for Unauthorized Transfers</b>		
1. Does the institution impose liability on the consumer for unauthorized transfer only:		
a. If an accepted access device is used [§205.6(a)]; and,		
b. If the institution has provided a means to identify the consumer to whom it was issued; and,		
c. If the institution has provided the disclosures required by Section 205.7(b)(1) (2) and (3).		
2. Does the institution NOT use negligence of the consumer as a basis for greater liability than is permissible under Regulation E? [Official Staff Commentary §205.6(b)]		
3. Is the consumer's liability for unauthorized use of a lost or stolen access device limited to the lesser of \$50 or actual loss if the consumer notifies the institution within two business days of discovery of loss or theft of the access device? [§205.6(b)(1)]		
4. If the consumer fails to notify the institution of loss or theft of an access device within two business days of discovery of loss or theft, is consumer liability limited to \$500, as follows: [§205.6(b)(2)]		
a. The lesser of \$50 or actual loss within the first two business days; and,		
b. Unauthorized transfer amounts that occur after the two business days and before notification (provided the institution proves these unauthorized transfers could have been prevented had notification within the two business days occurred)?		

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	Yes	No
5. If a consumer fails to notify the institution of an unauthorized transfer within 60 days of transmittal of the periodic statement upon which that transfer appears, is consumer liability limited to: [§205.6(b)(3)]		
a. The lesser of \$50 or actual loss that appears on the statement or occurs during the 60 day period; and,		
b. The amount of unauthorized transfers that occur after the close of 60 days and before notice to the institution (provided the institution proves that the unauthorized transfers could have been prevented had notification occurred within the 60 days)?		
<b>C. Section 205.7—Initial Disclosures</b>		
1. Does the institution make the following disclosures:		
a. A summary of the consumer's liability under §205.6 (or lesser liability under state law or agreement)? [§205.7(b)(1)]		
b. The telephone number and address of the person or office to be notified when the consumer believes that an unauthorized EFT has been or may be made? [§205.7(b)(2)]		
c. The institution's business days, as determined under §205.2(d)? [§205.7(b)(3)]		
d. The type of EFTs that the consumer may make and any limitations on the frequency and dollar amount of transfer? [§205.7(b)(4)] (If details on the limitations on frequency and dollar amount of transfers are essential to maintain the security of the system, they need not be disclosed.)		
e. Any charges for EFTs or for the right to make transfers? [§205.7(b)(5)]		
f. A summary of the consumer's right to receive documentation of EFTs, as provided in §205.9, 205.10(a), and 205.10(d)? [§205.7(b)(6)]		
g. A summary of the consumer's right to stop payment of a preauthorized EFT and the procedure for initiating a stop-payment order, as provided in §205.10(c)? [§205.7(b)(7)]		
h. A summary of the institution's liability to the consumer for its failure to make or to stop certain transfers under §910 of the Act? [§205.7(b)(8)]		
i. Circumstances under which the institution in the ordinary course of business will disclose information to third parties concerning the consumer's account? [§205.7(b)(9)]		
j. An error resolution notice meeting the requirements of §205.7(b)(10)?		
<b>D. Section 205.8—Change in Terms; Error Resolution Notice</b>		
1. Has the institution made any changes in a term or condition since the last examination that required a written notice to a consumer? The change would need to result in: increased fees, increased liability for the consumer, fewer types of EFTs available, and stricter limitations on the frequency or dollar amounts of transfers. [§205.8(a)]		
a. If so, was the notice provided at least 21 days before the effective date of such change? [§205.8(a)]		

	Yes	No
2. Does the institution provide either the long form error resolution notice at least once every calendar year or the short form error resolution notice on each periodic statement? [§205.8(b)]		
<b>E. Section 205.9—Receipts at Electronic Terminals; Periodic Statements</b>		
1. Does the institution make a receipt available to the consumer, in a retainable form, at the time an EFT is initiated? [§205.9(a)]		
2. Does the receipt contain the following items as applicable: [§205.9(a)]		
a. The amount of the transfer (amount may be combined with any transfer charge if certain conditions are met)? [§205.9(a)(1)]		
b. The calendar date the transfer was initiated? [§205.9(a)(2)]		
c. The type of transfer and account to or from which funds are transferred? (Transactions are exempt from the type-of-account requirement if the access device used can only access one account.) [§205.9(a)(3)]		
d. A number or code that identifies one of the following:		
i. the consumer's account, or		
ii. the access device used? [§205.9(a)(4)] <i>NOTE: The number or code need not exceed four digits or letters to comply.</i>		
e. Identification or location of the terminal? [§205.9(a)(5)]		
f. The name of any third party to or from whom funds are transferred unless the name is provided in a non-machine readable form? [§205.9(a)(6)]		
3. Does the institution mail or deliver a periodic statement for each monthly or shorter cycle in which an EFT has occurred? [§205.9(b)]		
4. If no EFTs have occurred, has the institution mailed or delivered a periodic statement at least quarterly for non-passbook accounts? [§205.9(b)]		
5. Does the periodic statement or accompanying documents contain the following items: [§205.9(b)(1)]		
a. The amount of the transfer (amount may include transfer charge if it was added in accordance with the terminal receipt requirements); [§205.9(b)(1)(i)]		
b. The date the transfer was posted to the account; [§205.9(b)(1)(ii)]		
c. The type of transfer and account; [§205.9(b)(1)(iii)]		
d. The location of the terminal; [§205.9(b)(1)(iv)]		
e. The name of any third party to or from whom funds were transferred; [§205.9(b)(1)(v)] Yes No		
f. The account number(s); [§205.9(b)(2)]		

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	Yes	No
g. The total amount of any fees or charges assessed during the statement period for EFTs, the right to make EFTs or for account maintenance (excluding any finance charges under Regulation Z, overdraft or stop payment charges and any transfer charges combined with transfer amounts under §205.9(a)); [§205.9(b)(3)]		
h. The beginning and ending balances; [§205.9(b)(4)]		
i. The address and telephone number to be used for inquiries or notice of errors; and, [§205.9(b)(5)]		
j. If applicable, the telephone number to use in finding out whether a preauthorized credit has been made as scheduled? [§205.9(b)(6)]		
6. For passbook accounts that only receive preauthorized credits, does the institution upon presentation by the consumer enter in a passbook or on a separate document the amount and date of each EFT made since the passbook was last presented? [§205.9(c)]		
<b>F. Section 205.10—Preauthorized Transfers</b>		
1. If a consumer's account is to be credited by a preauthorized EFT from the same payor at least once every 60 days: [205.10(a)(1)]		
a. Does the institution provide oral or written notice, within two business days, after the transfer occurs or was scheduled to occur, that the transfer did or did not occur; or		
b. If the telephone alternative is selected, does the institution disclose the telephone number in initial disclosures and on each periodic statement; and		
c. Is the number "readily available" during the institution's business hours?		
2. Does the institution credit the consumer's account for preauthorized EFTs as of the day the funds are received? [§205.10(a)(3)]		
3. Does the institution obtain authorization from the consumer for preauthorized EFTs? [§205.10(b)]		
4. Does the financial institution comply with §205.10(c) regarding stop payment orders?		
5. If a preauthorized EFT from a consumer's account varies in amount from the previous transfer under the same authorization or preauthorized amount, does the institution provide proper notice at least ten days before the scheduled date of transfer? [§205.10(d)] <i>NOTE: If the designated payee makes the notification, the institution is absolved from this requirement.</i>		
6. Does the institution refrain from conditioning an extension of credit to a consumer on repayment by preauthorized EFTs? [§205.10(e)(1)]		
7. Does the institution refrain from requiring a consumer to establish an account with a particular institution for receipt of EFTs as a condition of employment or receipt of a government benefit? [§205.10(e)(2)]		

G. Section 205.11—Procedures for Resolving Errors		
	Yes	No
1. If the institution requires a written confirmation of an error within ten business days of an oral notice, is this requirement disclosed to the consumer with the address of where it must be sent? [§205.11(b)(2)]		
2. Does the institution promptly investigate alleged errors and resolve them within ten business days of receiving a notice of error? [§205.11(c)(1)]		
3. Does the institution inform the consumer of the results of the investigation within three business days after completing its investigation? [§205.11(c)(1)]		
4. After the institution determines an error occurred, is the error corrected within one business day? [§205.11(c)(1)]		
5. If the institution needs more time and informs the consumer that it may take up to 45 days, does the institution: [§205.11(c)(2)]		
a. Provisionally credit the amount of the alleged error (including interest, where applicable) to the consumer's account within ten business days of the initial report (except where written confirmation is required but not received within ten business days)? [§205.11(c)(2)(i)]		
b. Notify the consumer within two business days of the amount and date of the provisional crediting and the fact that the consumer will have full use of funds pending the outcome of the investigation? [§205.11(c)(2)(ii)]		
c. Give the consumer full use of the funds during the investigation period? [§205.11(c)(2)(ii)]		
6. If the institution provisionally credited the consumer's account and determines that an error has occurred, have procedures been established to: [§205.11(c)(2)]		
a. Correct the error (including crediting interest or refunding fees) within one business day? [§205.11(c)(2)(iii)]		
b. Notify the consumer within three business days of the correction and that a provisional credit has been made final? [§205.11(c)(2)(iv)]		
7. If the institution determines that no error has occurred, have procedures been established to: [§205.11(d)]		
a. Within three business days of concluding the investigation, provide a written explanation of its findings and include the notice of the consumer's right to request the documents upon which the institution relied in making its determination? [§205.11(d)(1)]		
b. Provide copies of documents?		
c. Upon debiting a provisionally credited amount, notify the consumer of the date and amount of the debit and the fact that the institution honors checks and drafts to third parties and preauthorized transfers for five business days after notification (specifying the calendar date debiting will occur) to the extent that they would have been paid if the provisionally credited funds had not been debited? [§205.11(d)(2)]		

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<b>H. Section 205.13—Administrative Enforcement</b>		
	<b>Yes</b>	<b>No</b>
1. Has the institution preserved evidence of compliance with the requirements of the Act for a two-year period or longer? [§205.13(b)]		
<b>I. Section 205.15—Electronic Fund Transfer of Government Benefits</b>		
1. If a government agency does not provide a periodic statement for electronic government benefits, does the agency:		
a. make the consumer's account balance available though a readily available telephone line and at a terminal; [§205.15(c)(1)]		
b. promptly provide a written history of the consumer's account transactions in response to a request that covers at least 60 days preceding the date of request by consumer; and [§205.15(c)(2)]		
c. provide modified initial disclosures according to §205.15(d)(1) and an annual error resolution notice according to §205.15(d)(2)?		
<b>J. Section 205.16 – Disclosures at Automated Teller Machines</b>		
1. Does the bank assess fees to non-customers who use the bank's ATMs?		
a. If yes, does the bank provide appropriate notice to consumers regarding the fees?		
b. Are the notices provided before consumers are obligated to pay the fee?		
<b>K. Section 205.17 – Electronic Communications</b>		
1. Does the bank deliver required disclosures electronically?		
2. Does the bank send the disclosures to consumers' e-mail addresses or make the disclosure available at another location such as a web-site?		
a. If disclosures are made available at another location such as a web-site, are consumers notified of the availability of these disclosures?		
3. If electronic communications of disclosures are returned as undeliverable, does the institution take reasonable steps to attempt delivery using information in its files?		
<b>L. Internal Control Procedures</b>		
1. Does the institution have adequate procedures to insure that notification of loss, theft, or unauthorized use promptly results in halting unauthorized transfers from a consumer's account, and recrediting amounts when appropriate?		
2. Do the institution's procedures indicate a willingness to resolve consumer complaints regarding EFT matters?		
3. Does a review of statements indicate that transaction identifications are in compliance with Regulation E?		



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	Yes	No
4. Do automated teller and point-of-sale transfer receipts provide a clear description of the transaction that is in compliance with Regulation E?		
5. Is the institution's advertising of EFT services free of ambiguous and deceptive statements?		
6. Is the consumer's responsibility with regard to personal access codes explained?		
7. Does a review of merchant agreements and internal controls indicate that consumers are treated consistently with what has been disclosed to them (transaction limitations, costs, documentation, identification, etc.)?		
8. Does the institution maintain any log or tracking sheet for error resolution?		
9. Is personnel able to distinguish between the applicability of Regulation E and Z as part of the issuance of debit and credit cards, error resolution procedures and consumer liability?		

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### References

*Electronic Fund Transfer Act*

<http://www.fdic.gov/regulations/laws/rules/6500-1350.html>

*Part 205, Electronic Fund Transfers (FRB Regulation E)*

<http://www.fdic.gov/regulations/laws/rules/6500-3100.html#6500part205rege>

*Advisory Opinion 94-21: User's Rights Under the Electronic Funds Transfer Act in the Event a Bank Error Regarding and Electronic Wire Transfer*

<http://www.fdic.gov/regulations/laws/rules/4000-8930.html#400094-21>

*FIL 33-2001: Electronic Fund Transfers*

<http://www.fdic.gov/news/news/financial/2001/fil0133.html>

*FIL 25-2001: Electronic Fund Transfers*

<http://www.fdic.gov/news/news/financial/2001/fil0125.html>

*FIL 114-98: Electronic Fund Transfers Act, Consumer Leasing Act, and Truth in Savings Act*

<http://www.fdic.gov/news/news/financial/1998/fil98114.html>

*FIL 31-96: Electronic Fund Transfer Act*

<http://www.fdic.gov/news/news/financial/1996/fil9631.html>

### Examination Procedures

*The FFIEC approved EFT examination procedures follow or can be found on line at:*

<http://fdic01/division/dsc/memos/memos/direct/eftmemo.pdf>