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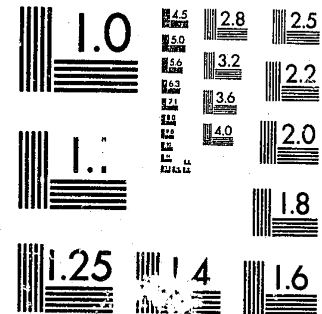

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National Institute of Justice
United States Department of Justice
Washington, D.C. 20531

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FEDERAL RESERVE

press release

NCJRS

APR 4 1979

ACQUISITIONS

For immediate release   March 21, 1979

The Federal Reserve Board ~~today issued~~ final regulations for consumer protection under two sections of the Electronic Fund Transfer Act.

At the same time, the Board asked for public comment, through April 30, 1979, on proposals that would (1) require certain disclosures to all consumers with EFT cards regarding their financial responsibility for the use of lost or stolen EFT cards, and that would (2) make these disclosures a precondition of imposing any liability.

The Act directs the Board to issue implementing regulations and model disclosure clauses. Proposed rules were issued for comment on December 26, 1978 to implement two sections of the Act that became effective February 8, 1979. Proposed regulations for other sections of the Act that go into effect in May 1980 will be issued later.

The Act protects consumers in their use of electronic fund transfer services. Electronic transfer services permit consumers to transfer funds without the use of checks. The use of an EFT card is one means of effecting such transfers. EFT cards can be used by consumers to withdraw cash from their accounts at automated teller machines, or to debit their accounts at the point of sale for purchases of goods or services.

The rules issued today -- Regulation E -- relate to sections of the Act that:

1. Limit a consumer's liability for unauthorized use of an EFT card;

2. Specify the conditions under which EFT cards may be issued.

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The regulation exempts certain transfers, including automatic transfers from savings accounts to checking accounts. Other exemptions may be considered later.

Under the final regulation announced today a financial institution may issue to a consumer an EFT card that is valid for use only:

1. In response to an oral or written request or applicaton;

2. As a renewal of, or in substitution for, a card that has already been used or accepted, or

3. As a renewal of, or in substitution for, a card issued on an unsolicited basis before February 8, 1979, provided certain disclosures are made.

Financial institutions may distribute unsolicited cards only if all of the following conditions are satisfied:

1. The unsolicited card is not valid for use;

2. The distribution of such cards is accompanied by the following disclosures of the consumer's rights and liabilities that will apply if the card is validated:

a. The rules of the institution issuing the card concerning the liability of its customers in the event of unauthorized use of the card.

b. The telephone number at which loss or theft of an EFT card may be reported.

c. The business days during which such reports can be made.

d. The kinds of electronic fund transfers the consumer may initiate, including limits on the frequency or dollar amounts of such transfers.

e. Any charges that will be made.

f. The conditions under which the issuing institution will disclose information about the consumer's account to third parties.

g. Whether the issuing institution will provide periodic statements or other documentation of transfers.

h. Whether the financial institution has error resolution procedures, and if so, a summary of those procedures.

i. The conditions under which the financial institution will assume liability to the consumer for failure to make electronic fund transfers.

3. The distribution also is accompanied by a clear explanation that the unsolicited card is not valid for use, and how the consumer may dispose of the card if validation is not desired; and

4. The card is validated only in response to the consumer's oral or written request or application for validation and after verification of the consumer's identity.

In connection with its proposals the Board noted that under the final regulations it adopted -- based on the two sections of the Act now in effect (Sections 909 and 911) "some consumers will receive notice of their potential liability for unauthorized transfers before May 1980 but the vast majority of users of EFT devices will not learn of their liability until after the remainder of the Act and regulation go into effect" May 10, 1980. The Board indicated that it was proposing such disclosures before that time because the Board "believes that all consumers should be informed of their liability and of the need for prompt reporting..."

Consequently, the Board requested comment on the following proposals:

1.--That financial institutions should be required to inform all customers now holding EFT cards, and consumers who apply for EFT access devices prior to May 1980:

a. What their liability for unauthorized use of the card will be;

b. How to report loss or theft of the card; and

c. The institution's business days.

2.--That delivery of the above disclosures should be a precondition to imposing any liability on the consumer.

(The Act will make delivery of such disclosures a precondition of imposing liability after May 10, 1980.)

Regulation E provides that the consumer's liability for unauthorized use of a lost or stolen combined EFT/credit card would be determined by the kind of transaction made, and not by the nature of the card. Thus:

--The consumer's liability for unauthorized credit transactions (that did not involve an overdraft on the consumer's account made with a combined EFT/credit card) would be limited to $50.

--The consumer's liability for unauthorized debit transactions (transfer of funds out of the consumer's account) would be limited to $50 if the consumer reports the loss or theft of the card within two business days after learning of it.

The Act provides that if the consumer fails to report loss or theft of an EFT card within two business days of learning about it, and the financial institution which issued the card shows that losses would not have occurred but for the consumer's failure to report, the consumer's liability may be as much as $500.

Further, if the consumer fails to report unauthorized use of the card within 60 days after issuance of a periodic statement showing unauthorized use of the card, the consumer's loss may be unlimited with respect to transfers made after the 60 days.

Notification of loss or theft may be given in person, by telephone or in writing.

Copies of the Board's orders are attached.

# # # # # # # # #

Title 12 - Banks and Banking

CHAPTER II - FEDERAL RESERVE SYSTEM

SUBCHAPTER A - BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

[Reg. E; Docket No. R-0193]

PART 205 - ELECTRONIC FUND TRANSFERS

Authority, Purpose and Scope, Definitions, Exemptions, Issuance of Access Devices, Liability of Consumer for Unauthorized Transfers, and Model Disclosure Clauses

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting in final form portions of Regulation E to implement two sections of the Electronic Fund Transfer Act that became effective on February 8, 1979. The regulatory proposal was published for comment on Friday, December 29, 1978 (43 FR 60933). Section 205.4 implements § 911 of the Act and relates to issuance of access devices; section 205.5 implements § 909 and relates to liability of consumers for unauthorized electronic fund transfers. The Board is also adopting sections on the regulation's scope and purpose (§ 205.1), definitions (§ 205.2), exemptions (§ 205.3), and model disclosure clauses (Appendix A). Finally, the Board is issuing an analysis of the economic impact of the adopted portions of the Act and regulation, as required by § 904 of the Act.

The Board believes that it is important for consumers to be informed about their liability for unauthorized transfers. Consequently, the Board is separately publishing for comment a proposal that would require financial institutions to give consumers certain disclosures prior to the effective date of the remaining sections of the Act. The Board proposes

to make delivery of those disclosures a precondition to imposing any liability on a consumer. (See 44 FR______.)

EFFECTIVE DATE: March 30, 1979.

FOR FURTHER INFORMATION CONTACT: Regarding the regulation: Dolores S. Smith, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452-2412). Regarding the economic impact analysis: Frederick J. Schroeder, Economist, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452-2584).

SUPPLEMENTARY INFORMATION: (1) Introduction; General Matters. The Board is adopting in final form five sections and an appendix of Regulation E[1/] to implement certain provisions of the Electronic Fund Transfer Act of 1978 (Title XX, Pub. L. 95-630), enacted on November 10, 1978. These sections of Regulation E were published for comment on December 29, 1978. The Board received 134 comments on the proposal and, based on the comments received and its own analysis, has revised the proposed regulation, the model clauses contained in the appendix, and the analysis of the economic impact of the regulation.

Section 909 of the Act sets limits on consumer liability for unauthorized electronic fund transfers which occur after loss, theft or unauthorized use of an EFT card or other access device. Section 911 establishes a partial ban on the unsolicited issuance of EFT access devices. Because these two sections of the Act became effective on February 8, 1979, and financial institutions need to know the requirements of the regulation

1/ Please note that the original Regulation E, Purchase of Warrants, was rescinded as of November 8, 1978 (43 FR 53708, Friday, November 17, 1978).

implementing them, the Board believes the public interest requires that the regulation be effective immediately. The delayed effective date requirement of 12 CFR § 262.2(d) is therefore suspended, as permitted by 12 CFR § 262.2(e). The expanded procedures set forth in the Board's policy statement of January 15, 1979 (44 FR 3957), were not followed in developing the regulation since the proposal was initiated before the policy statement was adopted and since expedited action was necessary because of the early effective date of these statutory provisions.

Section 904(a)(1) of the Act requires the Board, when prescribing regulations, to consult with the other Federal agencies that have enforcement responsibilities under the Act. Members of the Board's staff met with staff members from the enforcement agencies prior to the issuance of the proposal, and have consulted again with them on the final rule.

Federal savings and loan associations should note that they are subject to the provisions of Regulation E and that there may be some inconsistency between this regulation and the Federal Home Loan Bank Board's regulation governing remote service units (12 CFR 545.4-2). The Board of Governors has been advised by the Bank Board that § 545.4-2 will be amended promptly to conform to the Act and Regulation E.

Section 904(a)(2) requires the Board to prepare an analysis of the economic impact of the regulation on the various participants in electronic fund transfer systems, the effects upon competition in the provision of electronic fund transfer services among large and small financial institutions, and the availability of such services to different classes of consumers, particularly low-income consumers. Section 904(a)(3) requires the Board to

demonstrate, to the extent practicable, that the consumer protections provided by the proposed regulation outweigh the compliance costs imposed upon consumers and financial institutions. The Board's analysis of the regulation's economic impact is published in section (4) below. The final regulation and the economic impact statement have been transmitted to Congress.

The Board is also adopting Appendix A to the regulation, Model Disclosure Clauses. Although § 904(b) of the Act, which requires the Board to issue model disclosures for optional use by financial institutions, does not become effective until May 1980, the Board believes that issuance of these clauses now is appropriate because certain disclosures are presently required by §§ 205.4(a)(3), (b), and (d). The clauses are discussed in greater detail in section (3) below.

The Board had solicited comment on whether certain requirements of the regulation should be modified, as permitted by § 904(c), to alleviate undue compliance burdens on small financial institutions. Comments on this issue do not, in the Board's opinion, presently justify any modification of the regulatory requirements for small financial institutions. The Board will again solicit comment on possible modifications when the rest of the regulation is issued for comment.

The Board had proposed rescinding five public information letters on Regulation Z (445, 520, 528, 921, and 1082). Letters 445, 520, 528, and 1082 will not be rescinded as they do not conflict with the provisions of Regulation E. The last paragraph of Letter 921 is rescinded effective immediately, as it states that unsolicited issuance of an access device permitting credit extensions under a preexisting overdraft agreement is not permitted.

Issuance of such devices (in accordance with the requirements of § 205.4(b)) is now permitted by § 205.4(c)(iii).

Section 914, which assigns administrative enforcement of the Act and the regulation to various Federal agencies, does not become effective until 1980. The Board intends, however, to enforce the effective requirements of the Act and Regulation E as to State member banks under the general enforcement authority contained in § 1818b of the Financial Institutions Supervisory Act (12 U.S.C. 1818b (1974)). Other financial institutions should consult the agency with supervisory jurisdiction over them to determine the agency's position as to enforcement.

(2) Regulatory Provisions. Section 205.1--Authority, Purpose and Scope. This section had been proposed as a general introduction to electronic fund transfer services for consumers and financial institutions. Comments on this section generally opposed inclusion of a descriptive statement of the scope of electronic fund transfers within the body of the regulation, arguing that doing so might limit the development of new EFT services. The Board has therefore amended this section to provide a general statement concerning the scope and purpose of the Act and regulation.

Section 205.2--Definitions. In response to numerous comments pointing out that a user of the regulation cannot fully grasp the meaning of the substantive provisions before learning the meaning of the defined terms, the definitions have been placed near the beginning of the regulation.

(a) "Access device" and "accepted access device." The phrase "that may be used by the consumer" has been inserted in the definition of "access device" to indicate that an access device must be something that

the consumer uses to make electronic fund transfers. For example, data on magnetic tape, used by an institution to initiate preauthorized transfers, do not constitute access devices.

The definition of "accepted access device" has been expanded by the addition of two clauses. The first makes an access device "accepted" if it was issued on an unsolicited basis but has subsequently been validated upon the consumer's request in accordance with § 205.4(b). As pointed out in public comments, a request for validation, like a request for the device itself, indicates that the consumer wishes to have and use the device.

The second clause renders "accepted" any access device issued in renewal of or in substitution for an accepted access device, when the new device is received by the consumer. This corresponds to similar language in the Regulation Z definition of "accepted credit card."

Note that under § 205.4(a)(3), a financial institution will be permitted to renew an access device that was issued on an unsolicited basis before February 8, 1979, and that may not be an "accepted access device," provided certain disclosures are given. Any renewal device thus issued does not become an "accepted access device" until the consumer for whom the access device is intended has received the device and has signed it or used it or has authorized another person to use it. (See the discussion regarding § 205.4(a)(3), below.)

(b) "Account." There are two changes in this definition. One is the substitution of "credit plan" for "open end credit plan" in the exclusion of occasional or incidental credit balances. In the proposed regulation, "open end credit plan" was defined in § 205.12(1); the term has been deleted since it tied "open end credit plan" to certain

Regulation Z concepts, and would have narrowed the exclusion to credit plans meeting the precise qualifications of Regulation Z. The Board believes that occasional or incidental credit balances in other types of credit plans should also qualify for the exclusion. "Credit plan" hinges on the broad definition of "credit," discussed below, and therefore serves this purpose better than "open end credit plan."

The other change is the deletion of the last sentence, excluding accounts held pursuant to bona fide trust agreements. Virtually identical language has been added to the section on exemptions (§ 205.3(f)); the purpose of the change is to group together all exemptions.

(c) "Act." This definition is identical to the proposed version.

(d) "Business day." The definition of this term differs from the proposed definition. The phrase "or the issuer," following "financial institution," has been deleted as unnecessary, since the definition of "financial institution" now includes persons who issue access devices and provide EFT services by agreement with a consumer.

"Business day" is defined as any day on which the offices of the consumer's financial institution are open to the public for carrying on "substantially all business functions." "Substantially all business functions" includes the "back-office" operations of the institution. Thus, for example, if the offices of an institution are open on Saturday for handling most transactions with customers (such as deposits, withdrawals, and loan applications) but not for processing claims of account errors or performing other internal functions, then Saturday is not a business day for that institution.

The Board solicited comment on whether the regulation should set a uniform rule as to what constitutes a business day, such as that set forth in § 226.9 of Regulation Z for rescission purposes. Some comments favored the Regulation Z rule (Monday through Saturday, exclusive of Federal holidays) or a similar rule, such as Monday through Friday, exclusive of Federal and State holidays. Others advocated defining as a business day any day on which the institution is capable of receiving notice of loss or theft of access devices. Under this definition, for example, a Sunday on which all offices of an institution were closed, but on which the institution maintained telephone lines for reporting loss or theft of an access device, would be a business day.

The Board believes that while weekend availability of telephone lines for reporting stolen or lost access devices is desirable, most consumers will not consider a weekend day a business day, especially if the institution's offices are closed. However, institutions should have the flexibility to keep their offices open on a weekend day and have it considered a business day. Loss or theft would, of course, be reportable at the institution's offices. The Board has added a requirement, discussed below, that an institution disclose what its business days are when it issues an access device on an unsolicited basis, as well as when it renews a device under § 205.4(a)(3).

(e) "Consumer." This definition is identical to the proposed definition.

(f) "Credit." A definition of the term "credit" has been added. "Credit" is defined broadly, using the same language as in Regulation B.

Teis term replaces "extension of credit" (proposed § 205.12(i)) and "open end credit plan" (proposed § 205.12(1)), both of which have been deleted.

(g) "Electronic fund transfer." This definition is identical to the proposed version.

(h) "Electronic terminal." This definition is identical to the proposed version. It should be noted that this term includes merchant-operated terminals through which the consumer can make deposits or withdrawals.

(i) "Financial institution." The definition has been revised in the following ways. First, the phrase "State or Federal" is inserted before "mutual savings bank" to reflect the fact that, by recent legislation, mutual savings banks may have Federal charters. Second, reference to agents is omitted. Third, language has been added to include within the definition persons who, by agreement with consumers, provide electronic fund transfer services and who also issue access devices for such services. The addition of this language makes it possible to eliminate the term "issuer" from the regulation, and to use "financial institution" instead (including in the provisions on issuance of access devices).

Restructuring the definitional framework as it relates to financial institutions and issuers carries out the intent of § 904(d) of the Act, which directs the Board to ensure that the requirements of the regulation generally (and not merely those relating to issuance) are made applicable to persons who provide EFT services but do not hold consumers' accounts.

Finally, a new paragraph within § 205.2(i) permits two or more institutions that are subject to the regulation, with respect to a given EFT

system or service, to agree among themselves as to which of them will carry out the duties imposed by the Act and the regulation. This does not alter an institution's obligations (to provide disclosures, for example), but merely sanctions indirect compliance with those obligations.

(j) "State." The statutory definition of "State" has been added to the regulation.

(k) "Unauthorized electronic fund transfer." This definition is identical to the proposed version. Some comments suggested that language be added so as to exclude from the scope of this term any transfer made possible by the consumer's negligence. However, the Board believes that it was the intent of Congress to adopt the framework set forth in the definition and in rules on liability for unauthorized use (§ 205.5) in place of a negligence standard, not in addition to it.

Definitions that appeared in the proposed regulation and that have been deleted from the final version are "credit card" (§ 205.12(f)), "extension of credit" (§ 205.12(i)), "issuer" (§ 205.12(k)), and "open end credit plan" (§ 205.12(l)). Reasons for the deletion of "issuer" and "open end credit plan" have been discussed above. "Credit card" has been deleted because it appears only in §§ 205.4(c) and 205.5(d); references to Regulation Z have been added as appropriate in order to specify the meaning of the term. "Extension of credit" has been deleted because its function is served by the new term "credit."

Some commenters urged that the Board add a definition of the term "error," which appears in the definition of "unauthorized electronic fund transfer" (§ 205.2(j)). The Board has decided not to do so. The error resolu-

tion provisions of the Act (§ 908) do not become effective until May 1980, which gives the Board the time necessary to develop regulations implementing these provisions. As part of that process, the Board may decide to modify the statutory definition of "error," as authorized by § 908(f)(7). In the interim, the statutory definition is available as a guide.

Section 205.3--Exemptions. This section corresponds to § 205.2 of the proposal and implements the exemptions contained in § 903 of the Act. It remains unchanged, with three exceptions discussed below.

Section 205.3(a) exempts from the regulation's requirements check guarantee or authorization services that do not "directly result in a debit or credit to a consumer's account." Some comments asked whether the practice of "memo-posting" or putting a hold on the consumer's funds, in the amount of the guaranteed or authorized check, constitutes a direct debit to the account for purposes of Regulation E. It is the Board's opinion that memo-posting does not directly result in a debit to the account, and services employing such holds are exempt (because the transfer of funds is not complete until the paper instrument, i.e., the check, is cleared through the check payment system).

The Board has amended the language of § 205.3(b), Wire transfers, to clarify that transfers for consumers by any network similar to Fedwire (that is used primarily for financial institution or business transfers) are exempt.

Section 205.3(c), dealing with securities and commodities transfers, has been amended to specifically exempt purchases or sales of commodities through brokers registered with the Commodity Futures Trading Commission.

The Board had solicited comment on whether transfers involving mutual fund or pension accounts should be exempted, but will defer any action on such exemptions pending further public comment on the rest of the regulation, as such accounts do not appear to be seriously affected by the effective sections of the regulation.

The Board had also solicited comment on whether § 205.3(d), dealing with automatic transfers, should be expanded to include other intra-institutional transfers. The comments generally supported expansion of the exemption; the three major suggested changes were (1) to exempt all automatic transfers between a consumer's deposit accounts (including transfers between checking and savings accounts, share and share draft accounts, and savings and NOW accounts) within a single financial institution or between institutions, (2) to exempt all automatic transfers between a consumer's accounts and between the consumer's accounts and the financial institution's accounts (e.g., automatic mortgage or other loan payments, automatic debiting of checking account service charges), and (3) to exempt all preauthorized automatic transfers between a consumer's accounts, and between a consumer's accounts and the institution's or third parties' accounts.

The Board has decided to defer any action on whether intra-institutional transfers other than those specified by the Act should be similarly exempted pending further public comment and analysis. The issues raised by the proposed expansion of the exemption are, in the Board's opinion, best considered in the context of the other requirements of the Act. The Board believes that such transfers are not materially affected by the portions of the Act now in effect and will again raise the issue when proposing the relevant sections of the regulation.

The exemption from the scope of the Act and regulation for any trust account held by a financial institution pursuant to a bona fide trust agreement was contained in the definition of "account." It has been moved to the exemption section for clarity. The Board does not believe, as suggested by some commenters, that the Act intended to limit the exempted accounts to those for which the financial institution is the trustee.

Section 205.4--Issuance of Access Devices. Section 205.4 corresponds to § 205.3 of the proposed regulation. Proposed § 205.3(a)(1) permitted issuance of access devices in response to either oral or written requests. The Act is silent on this point. The majority of the commenters favored permitting oral requests, arguing that this would be more convenient for both financial institutions and consumers. For this reason, and because it is desirable to have the same rules apply to EFT devices and to credit cards (which under Regulation Z may be issued upon oral request), the Board has decided to adopt § 205.4(a)(1) in the form proposed; an oral request for an access device will suffice to authorize issuance. Note that if an institution issues an access device in response to a fraudulent request (whether oral or written) and the device is intercepted and used, the consumer whose account is affected will bear no liability, since the device will not be an "accepted access device."

Footnote 1, which has been added to § 205.4(a)(1), addresses the question of whether all holders of a joint account must request an access device before the institution may issue a device or devices. The footnote explains that if a holder of a joint account requests an access device, the institution may issue a device to the requesting holder; it may also issue a device for the other holder(s) in response to a specific request for the additional card(s). The Board believes it is appropriate for an account

holder to be able to request an access device for a joint account holder. In addition, a more stringent requirement could easily be circumvented, since oral requests are permitted under the regulation.

Section 205.4(a)(2) remains unchanged; its applicability is limited to the issuance of renewal or substitute devices that take the place of accepted access devices.

Many commenters asked the Board for a "grandfather" provision that would permit them to renew access devices that were issued on an unsolicited basis before the effective date of the Act, without regard to whether the device being replaced is an accepted access device. They argued that such a provision is necessary because in many cases where unsolicited access devices were sent out, the financial institution is unable to determine (or is able to do so only at great expense) whether a particular device was ever used by the consumer. Since these institutions do not know which of their existing EFT devices are "accepted," they would have to treat all devices as unaccepted and to seek a request for renewal rather than renew automatically. This, it was suggested, would be confusing and irritating to a consumer who has been using the device, and burdensome for the institution. In addition, since some institutions may have access devices outstanding that require renewal only infrequently or not at all, imposing greater requirements on institutions whose access devices require renewal more frequently would be anticompetitive.

The Board has therefore added § 205.4(a)(3), which permits the issuance of a validated renewal or substitute access device, but only on the condition that the financial institution disclose to the consumer the consumer's liability for unauthorized transfers, the telephone number and

address to be used to report the loss or theft of the card or an unauthorized transfer, and the institution's business days.

The Board believes it would not be fair to consumers who are using their access devices to have financial institutions require a further application. At the same time, the Board recognizes that other consumers will not want the renewal devices. Requiring these disclosures about the consumer's liability to be made when an institution renews a device that may or may not have been accepted will, in the Board's opinion, enable consumers to make an informed decision about whether or not to keep and use the access device.

Note that while § 205.4(a)(3) sanctions the renewal of a prior access device that may not have been accepted, the consumer will incur no liability from the issuance since the renewal device does not become an accepted access device until the consumer accepts the device by signing or using it, or by authorizing another person to use it.

Section 205.4(b) specifies the conditions under which access devices may be issued on an unsolicited basis. Sections 205.4(b)(1), (2) and (3) correspond to §§ 205.3(b)(1)(i), (ii) and (iii) of the proposal and are substantially unchanged.

Section 205.4(b)(4) combines proposed §§ 205.3(b)(1)(iv) and 205.3(b)(2). The change in structure emphasizes that the requirement for verification of personal identity applies only to access devices issued on an unsolicited basis.

The substance of proposed § 205.3(b)(2) has been revised by the addition, to the four specified means of verification of personal identity, of language that would also permit use of any other reasonable means of verification. The Board believes that limiting verification methods to a specified

few would risk hampering technological innovation in this area. Such innovation might produce methods that would provide greater certainty and security than any of the four methods listed. In any event, it should be noted that if an institution fails to verify identity (even if it employed reasonable means), and thus validates an access device for an imposter, the device will not become an "accepted access device." Hence the consumer whose account is depleted will bear no liability whatever.

The provision concerning what constitutes validation (proposed § 205.3(b)(3)) has been incorporated as a continuation of the introductory language of § 205.4(b). The phrase "all procedures" has been substituted for "any procedure" to make clear that, if several steps are needed to activate the access device, validation consists of performing not just one, but all of them. (On the other hand, note that if a solicited access device can be used in the institution's system to initiate a transfer immediately upon issuance, then it is "validated" even though no validation procedure was performed after issuance.) The word "enable" replaces the word "permit," to underscore that validation relates to the physical possibility of use of the device, not merely the permissibility of use under an agreement between the institution and the consumer.

The Board solicited comment on whether it should specify methods of validation. The vast majority of comments urged that limiting means of validation would stifle technological development. On this basis, the Board has decided not to make any change in the validation provisions in this respect.

Section 205.4(c) concerns the relationship of this regulation to Regulation Z, and corresponds to proposed § 205.3(c). The provision has been

restructured for clarity and one significant change has been made. Section 205.4(c)(1) lists the activities that are covered by the issuance rules of Regulation E, while § 205.4(c)(2) states what is covered by the counterpart provisions of Regulation Z. A category, set forth in § 205.4(c)(1)(iii), has been added to the coverage of Regulation E (with a corresponding exception in § 205.4(c)(2)(iii)). The category is access devices that are also credit cards solely by virtue of their capacity to access an existing overdraft credit line attached to the consumer's account.

The Board believes this change is appropriate for a number of reasons. First, as comments pointed out, the consumer has already requested the overdraft credit line itself, and thus the issuance of an access device does not force unwanted credit on the consumer. Also, since the device must be issued unvalidated (to comply with § 205.4(b)(1)), it cannot be used until validated at the recipient's request and upon verification of the recipient's identity. Thus, there is less danger of unauthorized use following interception of the device than in the case of ordinary credit cards. Finally, this revision brings the rules on the relationship between the EFT and TIL Acts in the area of issuance into closer conformity with the corresponding rules regarding liability for unauthorized use.

The disclosures to be given with an unsolicited access device appear in § 205.4(d). The Board believes these disclosures are necessary to provide adequate information to consumers receiving access devices they did not request. This provision differs in several ways from proposed § 205.3(d). Language has been added clarifying the rule that the disclosures must be in a form that the recipient can retain. A new disclosure is required (§ 205.4(d)(3)), namely, what days constitute the institution's business days.

This disclosure is necessary because the regulation permits variance among institutions as to what constitutes a business day, and it is important for consumers to know which days count toward the two days that they have to report a lost or stolen access device. The disclosure concerning the right to stop payment of preauthorized transfers (proposed § 205.3(d)(6)) has been deleted, since preauthorized transfers are not made by use of access devices.

The remaining disclosure requirements are substantially the same as proposed. Section 205.4(d)(4), corresponding to proposed § 205.3(d)(3), has been changed by the deletion of the words "and nature," which added nothing to "type." It should be pointed out that if there are limitations on the frequency or dollar amount of transfers for security reasons, the institution must disclose that fact. Only the details of the limitations are exempt from disclosure. Sections 205.4(d)(7), (8) and (9) (corresponding to proposed §§ 205.3(d)(7), (8) and (9)) have been revised so that the requirements are to disclose the institution's policies and not the consumer's rights (under State law, for example).

The disclosure requirement regarding charges, set forth in § 205.4(d)(5), gives rise to the question of whether the institution must disclose the entire account maintenance charge, even if part of it is imposed on similar accounts not accessible by electronic means. The Board believes that the answer is no; the disclosure need include only those charges, or components of charges, that relate to electronic fund transfers or to EFT capability on an account.

As adopted, the regulation imposes disclosure requirements only when a financial institution issues an unsolicited access device under § 205.4(b) or renews what may be an unaccepted access device issued before

February 8, 1979, under § 205.4(a)(3). Note, however, that the Board is separately publishing for comment (44 FR______) a proposal that would require financial institutions, as to all accounts that can be accessed by an EFT device, to disclose a consumer's potential liability and that would make delivery of those disclosures a precondition of imposing any liability on the consumer.

Section 205.5--Liability of Consumer for Unauthorized Transfers. This section implements § 909 of the Act and sets forth the conditions under which a consumer may be held liable for unauthorized electronic fund transfers involving an access device, and the limits on such liability.

Section 205.5(a) sets forth two general conditions that must be met before any liability can be imposed upon a consumer for unauthorized transfers. First, the access device must be an "accepted access device," as that term is defined in § 205.2(a). Under that definition, an accepted access device is one that (1) the consumer requests and receives, signs, uses, or authorizes another person to use; (2) was issued on an unsolicited basis and has been validated at the consumer's request; or (3) is a renewal or substitute device that takes the place of an accepted access device.

The second condition that must be met before any liability can be imposed on a consumer is that the financial institution must have provided a means whereby the consumer to whom the access device was issued can be identified. Comments on this second requirement raised two questions. The proposal employed the word "user" instead of "consumer" (now in the final rule) for identification purposes. Commenters asked whether this word meant that each user of the card had to have a separate identifier (e.g., a personal identification number or PIN). The Board believes that such a requirement is not mandated by the Act, and that the requirement of identification is

a general one (i.e., electronic terminals need not have the capability to identify each separate user of an access device as an authorized user as a precondition to liability).

Commenters also inquired whether the examples of means of identification (which are not exclusive) permit the use of PINs and other alphabetical or numerical codes as sufficient identifiers. The Board believes that the words "electronic or mechanical confirmation" include within their scope the use of PINs.

Note that, under the statutory language of § 909(b), the financial institution has the burden of proving that a transfer was unauthorized, that the access device was an accepted access device, and that the financial institution has complied with the consumer identification requirement. Note also that the Board is publishing for comment a proposal that would make disclosure of consumer liability a precondition to imposing any liability on the consumer.

Section 205.5(b) has been substantially revised. As a preliminary matter, the Board continues to believe that the intention of Congress was to provide limits on liability for a series of unauthorized transfers arising from a single loss or theft of the device, not for each unauthorized transfer from an account; the regulation so provides. The comments addressing this issue were divided, but the comments in support of the Board's interpretation argued, and the Board agrees, that a significant consumer benefit of the Act would be lost if the provision were changed.

The most significant revision of this subsection is the deletion of the words "or possible unauthorized transfer" after the words "loss or theft of the access device." A significant number of comments pointed out that the statutory language imposing liability before the end of 60 days

after transmittal of a periodic statement showing unauthorized transfers is limited to unauthorized use following loss or theft of an access device, and does not include, as the proposed regulatory language and accompanying footnote suggested, any affirmative duty on the part of a consumer to be aware of and report possible unauthorized use not resulting from loss or theft of the device, or to examine a periodic statement before 60 days. The Board agrees with this position and has accordingly deleted the phrase.

Some commenters indicated that the proposed regulation did not make clear what liability limits apply in the case of failure to report unauthorized transfers appearing on a periodic statement. It was suggested that the proposed language could be interpreted to impose zero liability for transfers occurring before the end of the 60 day period after transmittal of a statement. Section 205.5(b) has been restructured to clarify that the $50 liability limit (or the amount of unauthorized transfers, if less) applies to transfers before the close of the 60 days.

Section 205.5(b)(3) makes clear that all three tiers of liability can apply to a series of unauthorized transfers. For example, a consumer could be liable for $50 for transfers that occurred before the close of two business days after the consumer learns of the loss or theft, for another $450 for transfers occurring after the close of the two business days and before the elapse of the 60-day period following transmittal of a periodic statement, and for an unlimited amount of liability for transfers occurring after the close of the 60 days, if the financial institution can prove when the consumer learned of the loss or theft, and that the losses occurring after the close of 2 business days and after the close of the 60 days would not have occurred but for the failure of the consumer to notify the financial institution.

A number of comments suggested that the Board specify maximum time periods for extension of the notice periods when extenuating circumstances prevent the consumer from notifying the institution of loss or theft of the access device or unauthorized transfers. The Board does not believe that such time periods can be uniform, given the wide variety of circumstances that may arise which could delay notification by the consumer.

Section 205.5(b)(5) (corresponding to proposed § 205.4(d)(3)) has been amended to conform more closely to the statutory language. It states that an applicable State law, or an agreement between the consumer and the institution, that provides for less liability than is imposed by the Federal law will determine the consumer's liability for unauthorized transfers. Some commenters suggested that the Board preempt State credit card liability laws (that have been interpreted to apply to EFT cards) that provide for less consumer liability than the Federal EFT law. The Board declines to do so at this time.

The Board had solicited comment on whether a financial institution could specify a particular person or office to be notified in the event of loss or theft of the access device or unauthorized transfer. The comments from financial institutions on this question were in favor of such latitude; other commenters opposed it. The Board believes that § 909(a) precludes it from permitting an institution to designate a particular person to receive such notice; consequently, no change has been made to that portion of § 205.5(c).

The Board has added, however, a provision similar to one contained in § 226.13(e) of Regulation Z. It provides that written communication of loss, theft or unauthorized transfer is effective upon receipt by

the financial institution or, if not actually received, upon expiration of the time usually required for transmission, whichever is earlier. The Board believes that the disclosure of a telephone number and address for notification of loss, theft or unauthorized transfer will encourage prompt communication by consumers. Additionally, the model disclosure clause implementing the provision as to advisability of prompt reporting of loss or theft (§ A(2) of Appendix A) has been amended to encourage telephone notification.

Section 205.5(d) remains virtually unchanged from the proposal. It provides that a consumer's liability for unauthorized transfers shall be determined solely in accordance with the EFT Act and Regulation E if the electronic fund transfer was accomplished by means of an access device that is also a credit card or if the transfer was also an extension of credit under an overdraft plan. It also provides that the Truth in Lending Act and Regulation Z determine the liability of a consumer for unauthorized use with a credit card that is also an access device, but that does not involve an electronic fund transfer.

(3) Model Disclosure Clauses. Appendix A to the regulation sets forth model clauses for use in fulfilling the disclosure requirements of §§ 205.4(a)(3),(b), and (d). These clauses, and others to be issued by the Board, will satisfy the requirements for initial disclosures (§ 905 of the Act) when these go into effect in May 1980. The Board may, however, revise these clauses when it issues the additional clauses.

Use of the model clauses is optional. Further, financial institutions may make changes as appropriate in order to reflect the services they offer. Note that this is true even for § A(2), the model disclosure of liability for unauthorized use, contrary to what was stated in the *Federal*

Register material accompanying the proposed regulation. The Board has decided that since § 205.5 mandates lesser liability than the limits set forth in the EFT Act if contract or State law so provides, it would be appropriate for the disclosure to reflect the lesser liability. Institutions may choose to use the model clauses for only some of the required disclosures, while making other required disclosures by using clauses of their own design.

Use of the model clauses that appropriately reflect the institution's EFT program will protect the institution from civil and criminal liability under §§ 915 and 916 of the Act for failure to make disclosure in proper form, as provided in § 915(d)(2). Note that §§ 915 and 916 do not take effect until May 1980.

In response to comments on the proposed versions, the model clauses have been revised, and one new clause added. The more noteworthy changes are discussed briefly below.

In § A(1), the phrase "to transfer money into or out of your account" has been added, to distinguish use of the access device for EFT purposes from other possible use (for example, as a credit card).

In § A(2), a sentence has been added to one of the options for the first paragraph, encouraging consumers to telephone rather than write to report loss or theft of an access device. Also, the phrase "or money is missing from your account" has been deleted from both alternative first paragraphs, reflecting a corresponding change in § 205.5.

Section A(4), the institution's business days, is a new model clause, corresponding to the new disclosure requirement set forth in § 205.4(d)(3). The remaining clauses have been renumbered accordingly.

In § A(5)(a), the item relating to learning account balances has been deleted, since, while some EFT devices may indeed be usable for this purpose, no electronic fund transfer is involved and the required disclosure concerns only such transfers. The item concerning periodic payments has also been deleted, since such payments are preauthorized and no access device is used. A sentence has been added at the end of § A(5)(a) in response to comments pointing out that some institutions, because of legal restrictions or because they share some terminals but not others, may not be able to offer the same EFT services at all terminals.

Section A(5)(b) contains two new items. Item (3) relates to frequency limitations in point-of-sale systems; item (4) provides language for use when security considerations prevent disclosure of frequency limits other than those set forth in item (1), (2) or (3), or of any frequency limits whatever. A new disclosure, for dollar limits in point-of-sale systems, has been added to § A(5)(c).

Section A(7) has been rephrased to make clear that the listed items are instances in which the institution will routinely disclose information about the consumer's account, but that they are not the only instances in which the institution will ever disclose such information. Item (2) has been reworded to indicate, among other things, that reports to credit bureaus and the like are not made only upon request. The item relating to the Right to Financial Privacy Act of 1978 has been deleted, since the disclosure requirement under that Act was repealed by Congress on February 27, 1979.

(4) Economic Impact Analysis of §§ 909 and 911. Introduction. Section 904(a)(2) of the Act requires the Board to prepare an analysis of the economic impact of the regulations that the Board issues to implement the Act. The following economic analysis accompanies § 205.4 of the regulation, which implements § 911 of the Act, and § 205.5 of the regulation, which implements § 909 of the Act.[1/] The analysis must consider the costs and benefits of the regulation to suppliers and users of EFT services, the effects of the regulation on competition in the provision of electronic fund transfer services among large and small financial institutions, and the effects of the regulation on the availability of EFT services to different classes of consumers, particularly low-income consumers.

The regulation in part reiterates provisions of the statute and in part amplifies the statute. Therefore, the economic analysis considers impacts of both the regulation and the statute, and throughout the analysis a distinction will be made between costs and benefits of the regulation and those of the statute. It is also important to note that the following analysis assumes that the regulation and the Act have no relevant economic impact if they are less restrictive than current industry practices or State law. In this case, the regulation will not affect costs, benefits, competition, or availability and will not inhibit the market mechanism. The following analysis of the regulation and the Act is relevant only if their provisions

1/ These sections took effect on February 8, 1979. Another economic analysis will be prepared by the Board when additional sections of the regulation are written to implement the other sections of the Act. Costs, benefits and effects identified in the present analysis will be re-evaluated at that time to take into account newly available information on the development and use of EFT services.

are more constraining than those provisions under which institutions would otherwise operate.

Section 205.4 - Issuance of Access Devices. (a) Impact of the Act and regulation on costs and benefits to institutions, consumers and other users. A primary purpose of the Act is the prevention of loss from unauthorized electronic fund transfers from consumers' accounts. The Act seeks to prevent such loss by restricting unsolicited distribution of validated EFT cards[1/] which might be intercepted and used without the consumer's knowledge. The potential risk to the consumer of such a loss varies depending upon whether or not the consumer had an existing account with the financial institution. If the institution sent a card to a consumer without an existing account, perhaps as a marketing device to gain new customers, an interception of the card could not result in any potential loss to the consumer since the consumer had not placed funds in the associated account. Consumers who already hold accounts will benefit most from the prohibition on unsolicited issuance of validated cards because these consumers will be protected from the potential loss of both funds on deposit and funds available through preexisting overdraft credit lines.

The Act establishes a two-step procedure which requires that validation occur separately from the issuance of unsolicited cards; the regulation reiterates this requirement without amplification. This provision of the Act creates the important benefit of preventing losses from unauthorized use that might occur from interception of already validated cards in transit to consumers or in the possession of consumers who never requested them and

1/ The term "card" in this economic impact analysis refers to any access device as defined in § 205.2(a) of the regulation.

do not use them. It also prevents costs and consumer inconvenience associated with establishing that any losses were from an unaccepted card.

Losses from interception have been experienced both with EFT cards and credit cards. Results of a 1976 survey of 292 institutions issuing EFT cards showed that 40 institutions reported losses related to mail-intercept since first offering EFT services, and that these losses were 11 per cent of total losses.[1/] For these 40 institutions, there were 170 instances of loss, with average dollar loss of $291.00 per instance.[2/] However, the dollar loss per outstanding card was low since the total number of cardholding customers for the institutions in the survey was several million. For credit cards issued prior to the 1970 prohibition on unsolicited cards, 300,000 per year were estimated to be stolen out of an estimated 200 million credit cards outstanding in the late 1960's; this figure includes mail-intercept as well as other card theft.[3/]

The Act does permit the distribution of unsolicited, but unvalidated, cards. The most general effect of this provision will be seen in the number of accepted cards. Although the quantitative impact of the Act's validation rules on the number of accepted cards cannot be predicted, experience in the credit card industry in the years prior to the prohibition of unso-

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1/ Linda Fenner Zimmer, "Cash Dispensers and Automated Tellers: Statistical Data and Analysis with Selected Case Histories." Fourth Status Report (Park Ridge, N.J.: August 1977), pp. 222-224. These data must be interpreted with the awareness that security measures have greatly improved since 1976.

2/ Ibid.

3/ Sylvia Porter as quoted from The Washington Star in U.S. Congress, "Unsolicited Credit Cards," Hearings before the Subcommittee on Financial Institutions of the Committee on Banking and Currency, Senate, 91st Congress, 1st Session, 1969, p. 243.

licited cards under Regulation Z can give an indication of the bounds of acceptance rates relative to either a more or less restrictive regulation.[1/] Unsolicited credit card distribution resulted in a much higher acceptance and usage rate than distribution based on solicitation of consumer requests for cards. The Marine Midland experience in 1966 points out these differences; 33,357 promotional mailings resulted in only 221 applications for credit cards (less than one per cent) while 731 direct mailings of cards resulted in 19 per cent usage in a short period and 99 per cent retention.[2/] Based on this experience, it is expected that allowing distribution of unsolicited, but unvalidated, EFT cards will result in a larger card base and more chance of acceptance by merchants and consumers than would the complete prohibition of distribution of unsolicited cards. On the other hand, the card base, the acceptance level and some of the potential benefits due to economies of scale in EFT are expected to be smaller than would be the case if issuers were able to issue validated cards that were not solicited. Because the Act requires a two-step procedure for distributing and validating cards, costs to financial institutions will be increased through additional postage and handling. Costs are also increased by the Act's requirement of positive validation by the consumer. Required processing costs will be

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1/ Analogies with credit card distribution are illustrative and not intended to obscure fundamental differences between credit cards and EFT cards. For example, fraudulent use could occur immediately for an intercepted credit card, but the consumer's liability would be strictly limited to $50. An intercepted EFT card could be used fraudulently only if the personal identification number (PIN) were intercepted or discovered, but the consumer's liability would be determined in accordance with the Act.

2/ Bank Credit-Card and Check-Credit Plans (Washington, D.C.: Board of Governors of the Federal Reserve System), July 1968, p.27.

greater for every card that is accepted, and marketing expenses needed to achieve given acceptance rates for unsolicited cards will increase.

The lower acceptance rate expected for unsolicited cards under the Act may have the anti-competitive effect of raising a barrier to entry for financial institutions wanting to expand their card bases in markets in which they have small or zero shares, and where other financial institutions are already well established. The higher processing cost per new accepted card intensifies the effect, making entry by new competitors less likely.

The regulation has classified unsolicited cards issued before February 8, 1979, as accepted for purposes of § 205.4(a). In this way the regulation allows institutions to renew or replace already issued, unsolicited cards without having to verify the consumer's identity, validate the cards and make disclosures under § 205.4(b)(2). This provision imposes no direct costs on consumers or institutions and, at the same time, it eliminates costs that institutions would otherwise incur if, regarding unsolicited cards issued prior to February 8, 1979, as not accepted, the institutions had to comply with the Act's requirements governing unsolicited cards.

Furthermore, the regulation shifts to financial institutions all liability for unauthorized use of unaccepted, unsolicited cards that have already been issued. This provision, which conforms with the specific provisions of the statute, protects consumers who have received unsolicited cards and never accepted them. Financial institutions are exposed to all risks from unauthorized use of those cards, but institutions may protect themselves from the risks by invalidating unaccepted cards.

The regulation's provision that verification may be by any reasonable means appears flexible enough to ensure that benefits from innovation

in verification technology are not precluded. Several commenters expressed concern that specification of permissible methods of verification would stifle cost-reducing innovation.

The Act further requires that a disclosure of consumers' rights and liabilities accompany each unsolicited access device, but the Act's full set of disclosures, as set forth in § 905, is not required until May 1980. To implement § 911 of the Act, the regulation, in § 205.4(b)(2), requires an interim set of disclosures to accompany each unsolicited card sent before May 1980. Two costs to financial institutions arise. One is the cost due to legal fees and paperwork resulting from the requirement of two sets of disclosures. Model disclosure clauses provided by the Board pursuant to the Act should mitigate this cost. The other cost arises from the Act's requirement that disclosures accompany the card.

Third-party processors argued, in particular, that this requirement would increase costs of issuance because of the need to match proper disclosure statements with cards for different institutions and customers. Different disclosures may be needed for different card recipients because of variations in State laws or practices of issuing institutions within an EFT system (as, for example, in a multi-bank holding company). Particularly when cards are issued by a party other than the financial institution, sorting costs may be significant. Another cost would occur if third-party processors were unwilling to bear the risk of failing to make the proper disclosures to each consumer, or if they were to require costly insurance against such risk. However, commenters provided no estimates of the additional costs expected to be associated with compliance with this statutory provision.

(b) Effects of the Act and regulation upon competition among large and small financial institutions in the provision of electronic transfer services. A critical factor in a financial institution's ability to compete in the issuance of debit cards, particularly for point-of-sale systems, is the willingness of merchants to accept the cards. One influence on merchant acceptance of EFT cards is the size of the outstanding card base. Financial institutions attempt to use marketing strategies that will achieve a high acceptance ratio for the lowest cost. The credit card experience in the late 1960's showed that the institutions' most successful strategy in achieving a large card base was large mailings of unsolicited cards. By allowing the distribution of unsolicited (although unvalidated) cards, the Act does not restrict entry potential for institutions as severely as was the case in the credit card industry when distribution of unsolicited cards was completely prohibited. As a result of this prohibition, companies that had not already entered the industry on a large scale were at a major disadvantage compared to the large-scale participants. Entry into the industry was difficult and competition was restrained. If a financial institution seeks to develop a point-of-sale system, a larger card base and greater volume of transactions will probably be required to make the system economically feasible than would be the case with the operation of a system of automated teller machines. For this reason, the Act's issuance restrictions may make entry into the point-of-sale EFT market more difficult for smaller institutions, thereby disadvantaging them to the extent that point-of-sale EFT is an important means of competing. These institutions have a smaller

base of existing customers to whom to issue cards and hence may not be able to generate sufficient transaction volumes. The issuance restrictions may make it more difficult to increase their card bases to sufficient sizes to cost-justify POS systems.

A majority of commenters on the size issue stated that small institutions neither need nor should have special provisions under the regulation. Small financial institutions might enter EFT markets directly, or by means of a holding company, a correspondent institution, a shared system, or other organizational structure that can confer on small institutions some of the entry advantages of large size. Special provisions for small institutions might leave consumers who deal with them less protection in EFT activities.

Several public comments argued that small institutions know their customers and communities more personally and would likely experience relatively lower EFT losses than larger institutions. It was also pointed out, however, that a small institution trying to expand might know as little about its target customers as a large institution. Therefore, no clear effect, by size of firm, is likely to be exerted by the Act or regulation.

(c) Effects of the Act and regulation on availability of electronic transfer services to different classes of consumers, especially low-income. If cards are sent unsolicited only to institutions' present consumer deposit account holders, then EFT service availability would be distributed, by this means, to low-income consumers according to their representation in the group of all account holders. Table I presents data on financial assets by income class, from which it can be seen that usage of depository services rises with income.

Public comments on the proposed regulation indicated that, while most institutions do not limit EFT and other financial service availability by income or employment status of existing account holders, other institutions do. Therefore, financial institutions might not send unsolicited cards to all present account holders. To the extent that such cards represent a costly non-price means of attracting or maintaining deposits, institutions may send cards only to high-volume customers to reduce the cost per dollar of account balance. In such an event, the distribution of EFT services would evolve away from low-income to higher-income customers. On the other hand, marketing opportunities may exist that will encourage institutions to offer EFT services to low-income consumers.

The provisions of the Act and regulation do not appear likely to influence these aspects of card issuance, nor to affect the availability of EFT services to different classes of consumers.

Section 205.5 - Conditions of liability of consumer for unauthorized transfers. (a) Impact of the Act and regulation on costs and benefits to institutions, consumers and other users. Another primary purpose of the Act is the limitation of consumer and financial institution liability for losses due to unauthorized electronic fund transfers involving consumers' accounts. The total net cost or benefit of the Act to society is related to the extent to which the Act promotes an efficiency gain in the payments mechanism and reduces losses (including security costs) associated with all fund transfers, including the expected dollar loss resulting from fraud or unauthorized use of debit cards.

The impact of the liability provisions of the Act, which are reiterated in the implementing regulation, on the aggregate loss may be felt in

three ways, two of which are benefits and the third a cost. First, by building in incentives for consumers to report quickly loss or theft of a card or discovery of unauthorized use, the Act should reduce the number of unauthorized transfers. Second, the relatively long period which consumers have in which to report unauthorized use before they assume full liability for loss will increase financial institutions' incentives for tight security systems. Third, however, is the possibility of increased unauthorized use because the Act does not hold the consumer specifically liable for negligence. For example, a consumer's liability for unauthorized use of a card does not increase if the consumer puts the identification number on the card. Through these same effects, the liability provisions of the Act will also influence the efficiency of the economy's payments mechanism.

The regulation provides that, for unsolicited cards issued before February 8, 1979, the consumer is not subject to the Act's liability provisions unless the cards have been requested and received, signed, used, or authorized for another person to use, and thus accepted. The regulation thereby extends protection from loss to all consumers holding unaccepted cards. This is a benefit to consumers that may be offset to some extent by the increased liability exposure of institutions that otherwise would have had the option of not restoring funds transferred from these consumers' accounts by unauthorized use of unaccepted debit cards. This provision of the regulation goes beyond the explicit language of the statute but clearly expresses the intent of Congress to protect consumers from losses due to unsolicited cards.

Limited data on actual loss experience for unauthorized use of EFT and credit cards indicate that losses have not been high. For example,

an Interbank ATM (Automated Teller Machine) loss survey of 125 banks showed that, on transactions volume of 10,486,000 and dollar volume of $41.0 million, the total annual fraud loss was $290,000, less than one per cent of dollar volume, and represented less than $0.03 per transaction.[1] A Payment Systems, Inc., survey of officials at 45 financial institutions offering card-activated EFT services estimated that annual average fraud loss per active card was about $0.10 compared to an average of about $0.03 per card for the total card base.[2] Nilson Reports estimated that total credit card fraud loss for 1978 would be $62.8 million on total transactions volume of $44 billion, which is less than two-tenths of one per cent of dollar volume.

Although few specific data on loss experience were reported in public comments, there were several general observations. Commenters noted that losses from unauthorized or fraudulent use of EFT were lower per transaction than check losses. Many financial institutions commented that most or all EFT-related losses were absorbed by the institution; three reasons were given for this practice. First, competitive strategies lead institutions to make EFT as attractive as possible, particularly when EFT systems are new, operating costs are relatively higher, and customer usage is being actively solicited. Second, institutions may seek to maintain customers' good will by absorbing losses. Third, and perhaps most significantly, the costs of

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1/ John A Colin, What's New in Money-Matics? Remarks made at the Bank Administration Institute Eighth National Security Conference (Atlanta, Ga.: n.p.; 1977), quoted in Veronica M. Bennett, "Card Fraud and Security in EFT Systems," (Atlanta: Payment Systems, Inc., White Paper, September 7, 1978), p. 13.

2/ Bennett, p. 17.

3/ Spencer Nilson, editor of Nilson Reports, during a telephone interview, November 1978.

investigation, proof of consumer negligence, and other litigation are high per instance of loss, making absorption of losses often the economically best alternative. When the behavior of financial institutions is determined by these factors, the Act and implementing regulation will have little impact.

The conditions of liability imposed by the Act set a minimum liability standard that must be assumed by all financial institutions offering EFT services. This means that all institutions are treated equally in terms of a floor on requirements. The Act sets the limits within which an institution can shift the liability burden to consumers. The distribution of liability between user and supplier of EFT services depends on the timing of reporting of loss, theft or unauthorized use; under the Act, the consumer assumes more liability by taking more time to report.

However, competition may lead banks to assume more liability than the regulation requires and thus reduce costs to the consumer and increase consumer acceptance. Results of a 1978 ATM Security Survey by the American Bankers Association indicate that, at present, banks do not have standard liability provisions.[1] The respondents of the survey (approximately 135 banks, half of which had deposits greater than $1.0 billion and only 6 per cent of which had deposits less than $100 million) established liability as follows: (i) case-by-case basis: 55.8 per cent; (ii) bank absorbs all losses: 24.3 per cent; (iii) set dollar limit: 9.9 per cent; and (iv) customer responsible for all losses until loss reported: 8.1 per cent.

The Act imposes a liability structure that would require financial institutions to establish details of the fact pattern surrounding loss, theft

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1/ American Bankers Association, Payments System Planning Division, "Results of an ATM Security Survey," n.p., June 1978.

or unauthorized use of an EFT card in order to recover more than $50 from a consumer alleging EFT losses. For example, a consumer's liability for loss of funds due to loss or theft of an EFT card depends on the consumer's claim as to when the loss or theft was discovered, not when it actually occurred. The burden of proof as to when the discovery was made is on the financial institution. In most cases the costs of litigation would far exceed the amount potentially recoverable. Furthermore, the Act relieves consumers of any negligence burden, which discourages careful handling of cards. These provisions of the Act, while limiting the losses of consumers, may increase overall system loss, and therefore social costs, by reducing incentives for consumers to provide security. The liability provisions of the Act may not be constraints, however, as when State law or policies of a financial institution are even more favorable to consumers.

On balance, to the extent that they are constraining, the Act's liability provisions, as reiterated in the regulation, may shift an additional cost burden onto the financial institutions. While the Act states that a consumer is to be liable for up to $50 for each unauthorized EFT, the regulation states that liability is limited to $50 for a series of unauthorized transfers occurring prior to the time the institution is notified or otherwise believes that an unauthorized transaction has taken place. This interpretation of the Act, based on the legislative history, shifts more of the liability to financial institutions.

Many commenters stated that EFT losses were relatively lower per transaction dollar than either credit card or check losses. Institutional controls and security are improving, and, as EFT services become more widespread, more lost, stolen and unauthorized cards will be captured by on-line

ATMs or point-of-sale terminals. These factors and the tendency of institutions to absorb EFT-related losses make even a qualitative assessment of the economic impact of the Act's liability provisions difficult.[1/] Perhaps the clearest benefits of the Act's liability rules derive from the prevention of individual cases of catastrophic losses by consumers in the case of loss or theft and the promotion of greater consumer confidence in EFT, circumstances that may promote EFT use and thereby increase the social benefits flowing from it.

Finally, commenters asserted that the Act's liability provisions are complicated and difficult to assess. The consumer faces greater liability under the Act than under statutes that govern credit card liability. This liability differential and the more complicated liability rules for debit cards relative to credit cards may make debit cards less attractive and hinder the widespread acceptance of EFT services, thereby reducing the contribution of EFT to efficiency gains in the payments mechanism. An additional disadvantage of the Act's provisions is that liability incurred for unauthorized transfers is not always within the control of the consumer or the financial institution, but depends on the timing of the unauthorized transfers. This characteristic of the Act may be another factor making debit cards inferior instruments to credit cards in the view of consumers, and thus hindering the acceptance of debit cards relative to credit cards.

(b) Effects of the Act and regulation upon competition among large and small financial institutions in the provision of electronic transfer services. Under the liability provisions of the Act, all institutions,

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1/ The insurance industry may contract with consumers or financial institutions to bear the risk of EFT-related losses.

regardless of size, are subject to the same standards. The regulation makes no exceptions or special provisions for small institutions. As noted above, most commenters favored this approach, arguing that exceptions and special provisions would not promote competition and would lead to confusion and possibly higher liability for some consumers, extensive litigation, and inequity. Entry barriers in markets for EFT services were thought to depend more on issuance restrictions than liability limits set by the Act.

A major difficulty in analyzing the impact of the Act on competition between small and large financial institutions is that the impact depends very much on the nature of the EFT systems involved. Thus, the effects of the Act depend on such considerations as whether widely-accepted franchise systems develop, whether systems are national or regional, or whether they are on-line or off-line. For example, systems that are widespread or off-line have a greater chance for unauthorized use. The Act could have a significant impact on the structure of the industry if small proprietary systems cannot bear the higher degree of risk.

Even without making predictions about the manner in which EFT systems will evolve, some general observations on the impact of the Act can be made. First, the Act will have the least impact on those institutions and franchise systems that are best able to assume the liability and incur per-unit costs related to determining liability according to the Act. To the extent that large systems and institutions benefit from scale and scope economies, they would be less affected than small institutions. In addition, larger institutions may enjoy economies of scale in purchasing security systems, thereby having a lower loss rate and more consumer confidence in their system than small institutions. On the other hand, to the extent that the

Act shifts the burden to the institutions, small institutions may avoid some of the costs since they are more likely to have a close relationship with customers and may therefore be better able to prescreen and educate them. Finally, with respect to POS systems, small institutions are less likely to be in large metropolitan areas. Therefore, they would tend to be in areas in which there is less crime and in which there is a lessened likelihood of unauthorized use because proprietors would recognize customers.

While most commenters agreed that smaller institutions were less exposed to EFT risk by virtue of more personal customer contact and location, there was disagreement as to whether the Act impeded competition by exposing smaller institutions to greater liability for losses. Comments also indicated that security systems and other means of limiting liabilities by limiting EFT losses were not necessarily less accessible or less cost justified for smaller institutions; rather, liability-related costs depended on card base, type of customer, and type of security chosen, regardless of institutional size.

(c) Effects of the Act and regulation on availability of electronic transfer services to different classes of consumers, especially low-income. In order to evaluate the effects of the Act's liability provisions on availability of EFT services to different classes of consumers, it is useful to look at present usage rates of available EFT systems by income class. Data from the Air Force showing use of automatic payroll deposit by income level of active duty personnel can be seen in Table II. Similar data for employees of the Board of Governors of the Federal Reserve System can be seen in Table III. The data indicate that usage of available systems increases with income level. A 1976 consumer panel survey in South Carolina shows reasons that

households, arranged by income, have chosen not to use ATMs (see Table IV).[1/] The two major reasons for not using ATMs were that the service was not needed or was unavailable; there is no apparent relationship between either the need for or availability of ATMs and income level. Thus, the two sets of data suggest that even when EFT services are available to all income classes, usage rate varies by income.

The Act may affect both EFT service availability to, and usage by, different income classes of consumers, especially low-income consumers. In this respect, the impact of the Act will probably be related to the amount of potential liability and the complexity of the liability provisions. The amount of potential liability as a percentage of consumer assets will be, on average, greater for low-income consumers than for higher-income consumers. However, the absolute dollar value of potential loss through unauthorized use for low-income consumers is relatively low. As can be seen in Table V, only a small proportion of lower-income families have more than $500 in a checking or savings account. An institution would be more likely to refund a given percentage loss from a low-balance account, relative to a higher-balance account, to avoid incurring investigation and litigation costs needed to prove the consumer's liability; this likelihood, which would benefit the low-income consumer, is increased by the Act's liability provisions.

Finally, attention is focused on two additional issues. First, because consumer liability depends in part on the consumer's examination and understanding of periodic statements, the Act will disadvantage the low-income consumer to the extent that he or she is not educated to inspect and

1/ The panel surveyed includes urban households with annual income greater than $6,000.

be able to understand statements. Second, the lack of any consumer negligence provision in the statute may, if it causes financial institutions to incur higher costs through increased liability, encourage institutions to charge EFT service fees that would make EFT more expensive for low-income consumers than it now is. The net impact of these and other aspects of the Act on EFT availability to low-income consumers is not possible to quantify and therefore cannot be empirically assessed.

Conclusion. This analysis has considered costs and benefits of the Act and regulation to existing and potential users and suppliers of EFT services. Because EFT systems are still rapidly evolving, because few data are available on existing EFT systems, and because the long-run effects of the Act and regulation will have to be measured historically, the net costs and benefits of the statutory and regulatory provisions cannot be quantified at this time. For similar reasons, it is difficult to determine the net impact of the Act and regulation on competition among large and small institutions and on the availability of EFT services to low-income and other consumers until effects identified here can be meaningfully measured.

Section 904(a)(3) of the Act directs the Board to assess whether the consumer protections of the proposed regulation outweigh total compliance costs. Sections (1) and (2) above indicate the ways in which the proposed regulation makes provisions for consumer protection not explicitly made in the Act. The Board's preliminary assessment is that the compliance costs arising from these provisions and not directly from the Act are likely to be outweighed by the consumer protections these provisions afford.

TABLE I

Families without savings or checking accounts or
liquid assets by family income, 1977*
(percentage distribution)

Family Income ($)	No Savings Accounts	No Checking Accounts	No Liquid Assets
Less than 3,000	57.2	44.7	30.2
3,000 - 4,999	52.7	49.7	33.5
5,000 - 7,499	38.3	33.8	15.7
7,500 - 9,999	33.3	23.8	9.9
10,000 - 14,999	21.4	15.2	5.6
15,000 - 19,999	11.7	11.3	3.4
20,000 - 24,999	10.4	4.4	b/
25,000 and more	5.9	2.0	.6

* Source: Thomas A. Durkin and Gregory E. Elliehausen, "1977 Consumer Credit Survey," (Washington, D.C.: Board of Governors of the Federal Reserve System, 1977): tables 21-7, 21-8, and 21-9.

a/ Liquid assets include savings accounts, certificates of deposit, checking accounts, and U.S. Government bonds.

b/ Less than one-half of one percent.

TABLE II

Air Force Active Duty Personnel
Usage of Automatic Payroll
Deposit by Income
in 1978*

Annual Income ($) a/	Number of Employees	Employees Using Automatic Payroll Deposit	
		Number	Percent
Less than 7,500	0		
7,500 - 9,999	168,611	77,297	45.8
10,000 - 11,999	142,981	97,400	68.1
12,000 - 14,999	96,107	72,931	75.9
15,000 - 19,999	78,858	64,203	81.4
20,000 - 24,999	41,106	36,717	89.3
25,000 and over	41,876	37,876	90.5

* Source: Accounting and Finance Center, Department of the Air Force.

a/ Dollar income equals regular military compensation rates plus a factor to account for bonuses, special pay, and special allowances.

TABLE III

Employees of the Board of Governors
of the Federal Reserve System
Usage of Automatic Payroll
Deposit by Income
in 1978*

Annual Income ($) a/	Number of Employees	Employees Using Automatic Payroll Deposit	
		Number	Percent
Less than 7,500	21	1	4.8
7,500 - 9,999	59	5	8.5
10,000 - 11,999	133	29	21.8
12,000 - 14,999	262	109	41.6
15,000 - 19,999	312	179	57.4
20,000 - 24,999	163	103	63.2
25,000 and over	530	433	81.7

* Source: Board of Governors of the Federal Reserve System.

a/ This includes some part-time employees.

TABLE IV

Selected Reasons Households
Have Not Used Automated
Teller Machines, by Income* (Percent)

Income of Total Household	Unsafe, Poor Lighting & Local	Not Needed; Other Facilities Available	Not Available	Suspicious of System	Encourages Overspending	Never Heard of Them	Misc.
Under $7,000	0	43.8	33.3	8.3	0	10.4	4.2
$ 7,000-10,999	1.3	32.9	44.7	14.5	0	2.6	3.9
$11,000-15,999	0.6	37.3	39.9	15.8	0	3.8	2.5
$16,000-20,000	0.9	47.9	38.5	8.5	2.6	1.7	0
Over $20,000	0.5	47.3	37.4	12.6	0.5	1.4	0.5

* Source: Olin S. Pugh and Franklin J. Ingram, "EFT and the Public," The Bankers Magazine 161 (March-April 1978): p. 45, table 4.

TABLE V

Percentage Distribution of
Checking & Savings Accounts
1977*

	Amount of checking accounts (dollars)								
	None	1-99	100-499	500-999	1,000-1,999	2,000-4,999	5,000-9,999	10,000 and more	Total
Family income (dollars)									
Less than 3,000	44.7	15.3	22.7	6.0	6.0	4.0	.7	.7	100
3,000 - 4,999	49.7	14.5	26.8	3.4	2.8	2.8	a/	a/	100
5,000 - 7,499	33.8	16.9	29.0	10.6	5.8	2.4	1.0	.5	100
7,500 - 9,999	23.8	21.0	31.4	12.4	5.7	3.3	1.9	.5	100
10,000 - 14,999	15.2	19.3	38.3	13.1	6.9	4.8	1.4	.9	100
15,000 - 19,999	11.3	16.6	36.9	12.5	12.8	6.3	2.8	.9	100
20,000 - 24,999	4.4	10.3	42.9	16.3	14.7	7.5	2.4	1.6	100
25,000 and more	2.0	7.4	19.2	20.9	23.2	18.3	4.0	4.9	100

	Amount of savings accounts (dollars)										
	None	1-199	200-499	500-999	1,000-1,999	2,000-4,999	5,000-9,999	10,000-14,999	15,000-24,999	25,000 or more	Total
Family income (dollars)											
Less than 3,000	57.2	10.5	8.6	2.0	5.9	5.3	3.9	1.3	3.9	1.3	100
3,000 - 4,999	52.7	9.6	9.6	5.4	5.4	6.6	5.4	1.8	1.2	2.4	100
5,000 - 7,499	38.3	10.7	13.8	7.1	7.1	13.3	3.6	1.5	2.0	2.6	100
7,500 - 9,999	33.3	12.6	15.0	7.7	6.3	13.0	2.4	3.4	1.0	5.3	100
10,000 - 14,999	21.4	11.6	15.3	8.9	10.3	11.6	6.9	4.7	4.2	5.2	100
15,000 - 19,999	11.7	12.0	14.0	11.7	10.4	17.9	8.8	5.8	3.2	4.5	100
20,000 - 24,999	10.4	4.1	10.8	9.1	14.9	21.2	17.0	4.1	5.4	2.9	100
25,000 and more	5.9	2.1	4.7	4.7	7.0	18.2	14.1	15.8	13.8	13.8	100

* Source: Thomas A. Durkin and Gregory E. Elliehausen, "1977 Consumer Credit Survey," (Washington, D.C.: Board of Governors of the Federal Reserve System, 1977): tables 21-8 and 21-9.

a/ Less than .5 percent

(5) Therefore, pursuant to the authority granted in Pub. L. 95-630 (to be codified in 15 U.S.C. 1693b), the Board hereby adopts 12 CFR Part 205, effective March 30, 1979, as follows:

REGULATION E

(12 CFR 205)

ELECTRONIC FUND TRANSFERS

SECTION 205.1 -- AUTHORITY, PURPOSE, AND SCOPE

(a) Authority. This regulation, issued by the Board of Governors of the Federal Reserve System, implements Title IX (Electronic Fund Transfer Act) of the Consumer Credit Protection Act, as amended (15 U.S.C. 1601 et seq.).

(b) Purpose and Scope. In November 1978, the Congress enacted the Electronic Fund Transfer Act. The Congress found that the use of electronic systems to transfer funds provides the potential for substantial benefits to consumers, but that the unique characteristics of these systems make the application of existing consumer protection laws unclear, leaving the rights and liabilities of users of electronic fund transfer systems undefined. The Act establishes the basic rights, liabilities, and responsibilities of consumers who use electronic money transfer services and of financial institutions that offer these services. This regulation is intended to carry out the purposes of the Act, including, primarily, the protection of individual consumers engaging in electronic transfers. Except as otherwise provided, this regulation applies to all persons who are financial institutions as defined in § 205.2(i).

SECTION 205.2 -- DEFINITIONS

For the purposes of this regulation, the following definitions apply, unless the context indicates otherwise:

(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 for the purpose of initiating electronic fund transfers.

(2) An access device becomes an "accepted access device" when the consumer to whom the access device was issued:

(i) requests and receives, or signs, or uses, or authorizes another to use, the access device for the purpose of transferring money between accounts or obtaining money, property, labor or services;

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

(iii) receives an access device issued in renewal of, or in substitution for, an accepted access device, whether such access device is issued by the initial financial institution or a successor.

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

(c) "Act" means the Electronic Fund Transfer Act (Title IX of the Consumer Credit Protection Act, 15 U.S.C. 1601 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.

(g) "Electronic fund transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephone, or computer or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes, but is not limited to, point-of-sale transfers, automated teller machine transfers, direct deposits or withdrawals of funds, and transfers initiated by telephone.

(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 State or National bank, a State or Federal savings and loan association, a State or Federal mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer. The term also includes any person who issues an access device and agrees with a consumer to provide electronic fund transfer services.

Two or more financial institutions that jointly provide electronic fund transfer services may contract among themselves to fulfill the requirements that the Act and this regulation impose on any or all of them.

(j) "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 above.

(k) "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 any electronic fund transfer (1) initiated by a person who was furnished with the access device to the consumer's account by the consumer, unless the consumer has notified the financial institution involved that transfers by that person are no longer authorized, (2) initiated with fraudulent intent by the consumer or any person acting in concert with the consumer, or (3) that constitutes an error committed by the financial institution.

SECTION 205.3 -- EXEMPTIONS

This regulation does not apply to the following:

(a) Check guarantee or authorization services. Any service that guarantees payment or authorizes acceptance of a check, draft, or similar paper instrument and that does not directly result in a debit or credit to a consumer's account.

(b) Wire transfers. Any wire transfer of funds for a consumer through the Federal Reserve Communications System or other similar network that is used primarily for transfers between financial institutions or between businesses.

(c) Certain securities or commodities transfers. Any transfer 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 or the Commodity Futures Trading Commission.

(d) Automatic transfers from savings to demand deposit accounts. Any automatic transfer from a savings account to a demand deposit (checking) account under an agreement between a consumer and a financial institution for the purpose of covering an overdraft or maintaining a specified minimum balance in the consumer's checking account as permitted by 12 CFR Part 217 (Regulation Q) and 12 CFR Part 329.

(e) Certain telephone-initiated transfers. Any transfer of funds that (1) is initiated by a telephone conversation between a consumer and an officer or employee of a financial institution and (2) is not under

a telephone bill-payment or other prearranged plan or agreement in which periodic or recurring transfers are contemplated.

(f) Trust accounts. Any trust account held by a financial institution under a bona fide trust agreement.

SECTION 205.4 -- ISSUANCE OF ACCESS DEVICES

(a) General rule. A financial institution may issue an access device to a consumer only:

(1) in response to an oral or written request or application for the device;[1/] or

(2) as a renewal of, or in substitution for, an accepted access device, whether issued by the initial financial institution or a successor.

(3) as a renewal of, or in substitution for, an access device issued before February 8, 1979 (other than an accepted access device, which can be renewed or substituted under paragraph (a)(2) of this section), provided that the disclosures set forth in paragraphs (d)(1), (2), and (3) of this section accompany the renewal or substitute device; except that for a renewal or substitution that occurs before July 1, 1979, the disclosures may be sent within a reasonable time after the renewal or substitute device is issued.

(b) Exception. Notwithstanding the provisions of paragraph (a)(1) of this section, a financial institution may distribute an access device to a consumer on an unsolicited basis if:

(1) the access device is not validated;

(2) the distribution is accompanied by a complete disclosure, in accordance with paragraph (d) of this section, of the consumer's rights and liabilities that will apply if the access device is validated;

(3) the distribution is accompanied by a clear explanation that

1/ In the case of a joint account, a financial institution may issue an access device to each account holder for whom the requesting holder specifically requests an access device.

the access device is not validated and how the consumer may dispose of the access device if validation is not desired; and

(4) the access device is validated only in response to the consumer's oral or written request or application for validation and after verification of the consumer's identity by any reasonable means, such as by photograph, fingerprint, personal visit, or signature comparison.

An access device is considered validated when a financial institution has performed all procedures necessary to enable a consumer to use it to initiate an electronic fund transfer.

(c) Relation to Truth in Lending. (1) The Act and this regulation govern

(i) issuance of access devices;

(ii) addition to an accepted credit card, as defined in 12 CFR 226.2(a) (Regulation Z), of the capability to initiate electronic fund transfers; and

(iii) issuance of access devices that permit credit extensions only under a preexisting agreement between a consumer and a financial institution to extend the credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.

(2) The Truth in Lending Act (15 U.S.C. 1601 et seq.) and 12 CFR Part 226 (Regulation Z), which prohibit the unsolicited issuance of credit cards, govern

(i) issuance of credit cards as defined in 12 CFR 226.2(r);

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

(iii) issuance of credit cards that are also access devices, except as provided in paragraph (c)(1)(iii) of this section.

(d) Transitional disclosure requirements. Until May 10, 1980, a financial institution may satisfy the disclosure requirements of paragraph (b)(2) of this section by disclosing to the consumer, in a written statement that the consumer may retain, the following terms in readily understandable language:

(1) The consumer's liability under § 205.5, or under other applicable law or agreement, 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 transfers.

(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 made.

(3) The financial institution's business days, as determined under § 205.2(d).

(4) The type of electronic fund transfers that the consumer may initiate, including any limitations on the frequency or dollar amount of the transfers. The details of the limitations need not be disclosed if their confidentiality is necessary to maintain the security of the electronic fund transfer system.

(5) Any charges for electronic fund transfers or for the right to make transfers.

(6) The conditions under which the financial institution in the ordinary course of business will disclose information about the consumer's account to third parties.

(7) Whether or not the financial institution will provide documentation of electronic fund transfers, such as receipts or periodic statements, to the consumer.

(8) Whether or not the financial institution has error resolution procedures and, if so, a summary of those procedures.

(9) The conditions under which the financial institution will assume liability for the institution's failure to make electronic fund transfers.

SECTION 205.5 -- LIABILITY OF CONSUMER FOR UNAUTHORIZED TRANSFERS

(a) General rule. A consumer is liable, within the limitations described in paragraph (b) of this section, for unauthorized electronic fund transfers involving the consumer's account only if the access device used for the transfers is an accepted access device and the financial institution has provided a means (such as by signature, photograph, fingerprint, or electronic or mechanical confirmation) to identify the consumer to whom the access device was issued.

(b) Limitations on amount of liability. The amount of a consumer's liability for an unauthorized electronic fund transfer or a series of transfers arising from a single loss or theft of the access device shall not exceed $50 or the amount of unauthorized electronic fund transfers that occur before notice to the financial institution under paragraph (c) of this section, whichever is less, unless one or both of the following exceptions apply:

(1) If the consumer fails to notify the financial institution within 2 business days after learning of the loss or theft of the access device, the consumer's liability shall not exceed the lesser of $500 or the sum of

(i) $50 or the amount of unauthorized electronic fund transfers that occur before the close of the 2 business days, whichever is less, and

(ii) the amount of unauthorized electronic fund transfers that the financial institution establishes would not have occurred but for the failure of the consumer to notify the institution within 2 business days after the consumer learns of the loss or theft of the access device, and that occur after the close of 2 business days and before notice to the

financial institution.

(2) If the consumer fails to report within 60 days of transmittal of the periodic statement any unauthorized electronic fund transfer that appears on the statement, the consumer's liability shall not exceed the sum of

(i) the lesser of $50 or the amount of unauthorized electronic fund transfers that appear on the periodic statement or that occur during the 60-day period, and

(ii) the amount of unauthorized electronic fund transfers that occur after the close of the 60 days and before notice to the financial institution and that the financial institution establishes would not have occurred but for the failure of the consumer to notify the financial institution within that time.

(3) Paragraphs (b)(1) and (2) of this section may both apply in some circumstances. Paragraph (b)(1) shall determine the consumer's liability for any unauthorized transfers that appear on the periodic statement and occur before the close of the 60-day period, and paragraph (b)(2)(ii) shall determine liability for transfers that occur after the close of the 60-day period.

(4) If a delay in notifying the financial institution was due to extenuating circumstances, such as extended travel or hospitalization, the time periods specified above shall be extended to a reasonable time.

(5) If applicable State law or an agreement between the consumer and financial institution imposes lesser liability than that provided in paragraph (b) of this section, the consumer's liability shall not exceed that imposed under that law or agreement.

(c) Notice to financial institution. For purposes of this section, notice to a financial institution is given when a consumer takes such steps as are reasonably necessary 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 the information. Notice may be given to the financial institution, at the consumer's option, in person, by telephone, or in writing. Notice in writing is considered given at the time of receipt or, whether or not received, at the expiration of the time ordinarily required for transmission, whichever is earlier. Notice is also considered given when the financial institution becomes aware of circumstances that lead to the reasonable belief that an unauthorized electronic fund transfer involving the consumer's account has been or may be made.

(d) Relation to Truth in Lending. (1) A consumer's liability for an unauthorized electronic fund transfer shall be determined solely in accordance with this section if the electronic fund transfer

(i) was initiated by use of an access device that is also a credit card as defined in 12 CFR 226.2(r), or

(ii) involves an extension of credit under an agreement between a consumer and a financial institution to extend the credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.

(2) A consumer's liability for unauthorized use of a credit card that is also an access device but that does not involve an electronic fund transfer shall be determined solely in accordance with the Truth in Lending Act and 12 CFR Part 226 (Regulation Z).

APPENDIX A — MODEL DISCLOSURE CLAUSES

This appendix contains model disclosure clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of §§ 205.4(a)(3), (b) and (d). Section 915(d)(2) of the Act provides that use of these clauses in conjunction with other requirements of the regulation will protect financial institutions from liability under §§ 915 and 916 of the Act to the extent that the clauses accurately reflect the institutions' electronic fund transfer services.

Financial institutions need not use any of the provided clauses, but may use clauses of their own design in conjunction with the model clauses. The inapplicable portions of words or phrases in parentheses should be deleted. Financial institutions may make alterations, substitutions or additions in the clauses in order to reflect the services offered, such as technical changes (e.g., substitution of a trade name for the word "card," deletion of inapplicable services), or substitution of lesser liability limits in § A(2).

SECTION A(1) -- DISCLOSURE THAT ACCESS DEVICE IS NOT VALIDATED AND HOW TO DISPOSE OF DEVICE IF VALIDATION IS NOT DESIRED (§ 205.4(b)(3))

(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.]

SECTION A(2) -- DISCLOSURE OF CONSUMER'S LIABILITY FOR UNAUTHORIZED TRANSFERS AND OPTIONAL DISCLOSURE OF ADVISABILITY OF PROMPT REPORTING (§ 205.4(d)(1))

(a) Liability disclosure. (Tell us AT ONCE if you believe your (card)(code) has been lost or stolen. 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 2 business days, you can lose no more than $50 if someone used your (card)(code) without your permission.) (If you believe your (card)(code) has been lost or stolen, and you tell us within 2 business days after you learn of the loss or theft, you can lose no more than $50 if someone used your (card)(code) without your permission.)

If you do NOT tell us within 2 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, 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.

SECTION A(3) -- DISCLOSURE OF TELEPHONE NUMBER AND ADDRESS TO BE NOTIFIED IN EVENT OF UNAUTHORIZED TRANSFER (§ 205.4(d)(2))

(a) Address and telephone number. If you believe your (card) (code) has been lost or stolen or that someone has transferred or may transfer money from your account without your permission, call:

[Telephone number]

or write:

[Name of person or office to be notified]
[Address]

SECTION A(4) -- DISCLOSURE OF WHAT CONSTITUTES BUSINESS DAY OF INSTITUTION (§ 205.4(d)(3))

(a) Business day disclosure. Our business days are (Monday through Friday)(Monday through Saturday)(any day including Saturdays and Sundays). Holidays are (not) included.

SECTION A(5) -- DISCLOSURE OF TYPES OF AVAILABLE TRANSFERS AND LIMITS ON TRANSFERS (§ 205.4(d)(4))

(a) Account access. You may use your (card)(code) to

(1) Withdraw cash from your (checking)(or)(savings) account.

(2) Make deposits to your (checking)(or)(savings) account.

(3) Transfer funds between your checking and savings accounts whenever you request.

(4) Pay for purchases at places that have agreed to accept the (card)(code).

(5) 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.

(b) Limitations on frequency of transfers.

(1) You may make only [insert number, e.g., 3] cash withdrawals from our terminals each [insert time period, e.g., week].

(2) You can use your telephone bill-payment service to pay [insert number] bills each ([insert time period])(telephone call).

(3) You can use our point-of-sale transfer service for [insert number] transactions each [insert time period].

(4) For security reasons, there are (other) limits on the number of transfers you can make using our (terminals)(telephone bill-payment service)(point-of-sale transfer service).

(c) Limitations on dollar amounts of transfers.

(1) You may withdraw up to [insert dollar amount] from our terminals each ([insert time period])(time you use the (card) (code)).

(2) 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.

SECTION A(6) -- DISCLOSURE OF CHARGES FOR TRANSFERS OR RIGHT TO MAKE TRANSFERS (§ 205.4(d)(5))

(a) 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).

(b) 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).

(c) 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]).

SECTION A(7) -- DISCLOSURE OF ACCOUNT INFORMATION TO THIRD PARTIES (§ 205.4(d)(6))

(a) Account information disclosure. We will disclose information to third parties about your account or the transfers you make:

(1) where it is necessary for completing transfers.

or

(2) in order to verify the existence and condition of your account for a third party, such as a credit bureau or merchant.

or

(3) in order to comply with government agency or court orders.

or

(4) if you give us your written permission.

By order of the Board of Governors, March 21, 1979.

(signed) Griffith L. Garwood

Griffith L. Garwood
Deputy Secretary of the Board

[SEAL]

FEDERAL RESERVE SYSTEM

[12 CFR Part 205]

[Reg. E; Docket No. R-0212]

ELECTRONIC FUND TRANSFERS

Disclosure of Consumers' Liability
for Unauthorized Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: Section 909 of the Electronic Fund Transfer Act, which relates to a consumer's liability for unauthorized transfers, became effective on February 8, 1979. The Board is publishing for comment two proposals that relate to disclosing the consumer's liability for unauthorized use of an access device. Proposal A would require financial institutions to give consumers certain disclosures regarding their potential liability. Proposal B would make compliance with the disclosure requirement a precondition to the institution's imposing any liability on the consumer.

DATE: Comments must be received on or before April 30, 1979.

ADDRESS: Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551. All material submitted should refer to docket number R-0212.

FOR FURTHER INFORMATION CONTACT: Regarding the regulation: Dolores S. Smith, Section Chief, Division of Consumer Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551 (202/452-2412). Regarding the economic impact analysis: Frederick J. Schroeder, Economist, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, (202/452-2584).

SUPPLEMENTARY INFORMATION: (1) The Board has adopted regulations (see 44 FR ______) to implement §§ 909 and 911 of the Electronic Fund Transfer Act, the two sections that became effective on February 8, 1979. Under those regulations, some consumers will receive notice of their potential liability for unauthorized transfers before May 1980, but the vast majority of users of EFT devices will not learn of their liability until after the remainder of the Act and regulation go into effect. The Board believes that all consumers should be informed of their potential liability and of the need for prompt reporting. Consumers should be aware that unless they report the loss or theft of an access device within two days of learning of the loss or theft, their liability may increase from $50 to $500. Similarly, they need to know that they must report an unauthorized transfer appearing on a periodic statement within 60 days; and that if they fail to report it, their liability for later transfers could be unlimited.

The Board is publishing two proposals for public comment. Proposal A would require financial institutions to disclose to consumers who now hold EFT access devices (as well as consumers who apply for access devices prior to May 1980): (1) what their liability for unauthorized transfers would be; (2) how to report the loss of theft of the access device; and (3) the institution's business days. These disclosures would have to be made by August 1, 1979, as to all accounts now in existence or established between now and July 31, 1979. After August 1, 1979, and before May 1980, institutions would be required to make the disclosures before the first electronic fund transfer is made on an account.

The Board's Proposal B would make delivery of these interim disclosures a precondition to imposing liability. (Section 909(b) of the Act will make delivery of the disclosures a precondition of imposing liability after May 1980.)

Under either proposal, if a financial institution assumes all risk and imposes no liability on a consumer for unauthorized transfers, then the institution would not be required to provide disclosures.

(2) Section 904(a)(2) of the Act requires the Board to prepare an analysis of the economic impact of the regulations that the Board issues to implement the Act. The following economic analysis accompanies proposed §§ 205.4(e) and 205.5(a) of the regulation, which are designed to implement, in part, § 909 of the Act.[1/]

Two proposals are offered for comment. Proposal A requires that financial institutions make liability disclosures before August 1, 1979, to holders of all accounts that can be accessed by an electronic fund transfer (EFT) access device unless they impose no liability on a consumer for unauthorized transfers. Proposal A does not change the consumer's liability limits as set forth in § 205.5(b). Proposal B, on the other hand, in effect allows a financial institution to choose whether or not

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1/ The analysis must consider the costs and benefits of the proposed regulation to suppliers and users of EFT services, the effects of the proposed regulation on competition in the provision of electronic fund transfer services among large and small financial institutions, and the effects of the proposed regulation on the availability of EFT services to different classes of consumers, particularly low-income consumers. The analysis presented here is to be read in conjunction with the economic impact analysis that accompanied the Board's Regulation E (44 FR _____, March __, 1979).

to make interim liability disclosures to consumers, given that consumers can be held liable only if the institution makes the disclosures.

Interim liability disclosures under both Proposals A and B would provide consumers with information that might improve their ability to plan financial activities and might encourage them to exercise greater care in the use of EFT access devices and accounts. Greater consumer care may benefit financial instititutions by reducing unauthorized use of EFT systems. Another potential benefit to institutions is greater consumer acceptance of EFT stemming from increased certainty about the liability rules applicable to unauthorized transfers.

Proposal A would force financial institutions to incur disclosure costs if they impose liability for unauthorized use. Costs for disclosure statement drafting, legal advice, printing, and distribution may be high, even if the Regulation E model disclosure clauses are used. The proximity of the August 1, 1979, disclosure deadline may impose additional costs. Financial institutions, particularly those that issue periodic statements in a cycle less frequent than monthly, may have to make special disclosure mailings to account holders. Special mailings to holders of inactive accounts would be required in any case. Costs associated with the disclosure program would be passed on to consumers to some degree.

Proposal B would permit financial institutions to choose optimal disclosure programs after weighing the expected costs and benefits associated with making the interim liability disclosures to all or some of their account holders. A more efficient allocation of resources would result

with no loss of consumer protection relative to the liability provisions established by the Act. The provision conditioning consumer liability on whether interim disclosures were made would protect consumers not covered by other disclosure provisions of the Act and would guarantee that a consumer would not be held liable for any loss from unauthorized use unless disclosures were made.

It is not apparent whether small financial institutions are likely to be placed at a cost disadvantage relative to larger institutions under either Proposal A or B. Proposal B, however, would allow institutions more flexibility to adapt to the ultimate disclosure requirements mandated by the Act for May 1980, so that small institutions would be better able to schedule the relatively larger fixed-cost expenditures associated with their disclosure programs. It is also not apparent whether low-income consumers would be affected differently from higher-income consumers under the different proposals.

The Board solicits comments and information on the possible costs, benefits, and significance of the effects discussed above.

(3) Pursuant to the authority granted in Pub. L. 95-630, Title XX, § 904 (November 10, 1978), the Board proposes to amend Regulation E, 12 CFR Part 205, as follows:

PROPOSAL A

The Board proposes to add a new paragraph (e) to § 205.4 as follows:

SECTION 205.4 -- ISSUANCE OF ACCESS DEVICES

* * *

(e) Interim disclosure of consumer's liability. (1) For any account accessible by an access device, the financial institution shall disclose to the consumer, in a written statement that the consumer may retain, the following terms in readily understandable language:

(i) The consumer's liability under § 205.5, or under other applicable law or agreement, 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 transfers.

(ii) 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 made.

(iii) The financial institution's business days, as determined under § 205.2(d).

(2) The disclosures set forth in paragraph (e)(1) of this section shall be made before August 1, 1979, for any account accessible by an access device and in existence on February 8, 1979, or established after February 8, 1979, and before August 1, 1979. For any such account established on or after August 1, 1979, and before May 10, 1980, these disclosures shall be made before the first electronic fund transfer is made involving the consumer's account.

(3) The disclosure set forth in paragraph (e)(1) of this section need not be made by any financial institution that imposes upon the consumer no liability for unauthorized transfers.

PROPOSAL B

1. The Board proposes to add a new paragraph (e) to § 205.4 as set forth under Proposal A.

2. The Board proposes, in addition, to amend § 205.5(a) to read as follows:

SECTION 205.5 -- LIABILITY OF CONSUMER FOR UNAUTHORIZED TRANSFERS

(a) General rule. A consumer is liable, within the limitations described in paragraph (b) of this section, for unauthorized electronic fund transfers involving the consumer's account only if:

(1) the access device used for such transfers is an accepted access device;

(2) the financial institution has provided a means (such as by signature, photograph, fingerprint, or electronic or mechanical confirmation) to identify the consumer to whom the access device was issued; and

(3) the financial institution discloses to the consumer, in accordance with the requirements of § 205.4(e), the terms specified in § 205.4(e)(1).

* * *

By order of the Board of Governors, March 21, 1979.

(signed) Griffith L. Garwood

Griffith L. Garwood
Deputy Secretary of the Board

[SEAL]

END