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Department of the Treasury

Regulatory Bulletin

RB 37-37

Handbook: **Examination**

Subject: **Electronic Fund Transfer Act** **Section: 1330**

Electronic Fund Transfer Act

Summary: This bulletin transmits Examination Handbook Section 1330, Electronic Fund Transfer Act (EFTA), implemented by Regulation E. It contains guidance and procedures for examining for compliance with the rules on electronic fund transfers such as ATM, point-of-sale, and remote banking systems. This revised handbook section replaces the existing Examination Handbook Section 1330.

For Further Information Contact: Your OTS Regional Office or the Compliance Division of OTS, Washington, DC. You may access this bulletin and the Examination Handbook at our web site: www.ots.treas.gov.

Regulatory Bulletin 37-37

SUMMARY OF CHANGES

OTS substantially revised and updated Examination Handbook Section 1330 to comport with interagency guidance related to electronic funds transfers. Change bars in the margins of the handbook section indicate revisions to content. We provide a summary of all substantive changes below.

1330 Electronic Fund Transfer Act

The EFTA protects consumers who use electronic funds transfers through ATMs, point-of-sale terminals, preauthorized transfers, and remote banking programs. Regulation E implements EFTA by requiring disclosures for consumers, limits on consumer liability, and error resolution processes. The revised examination procedures include new provisions for payroll accounts and ATM disclosures, as well as provisions of the Electronic Signatures in Global and National Commerce Act (E-SIGN Act), which allows electronic and paper documents to have the same effect if the consumer consents. The E-SIGN Act did not require implementing regulations and previous interim regulations were deleted as unnecessary.

The narrative includes the changes to the regulation and staff commentary. It is arranged to follow a logical order that lays out the main features of the regulation. The main divisions are:

1. Scope (205.2, 205.3)
2. Disclosures (205.4, 205.7, 205.8, 205.16)
3. Issuance of access devices (205.5, 205.18)
4. Consumer liability and error resolution (205.6, 205.11)
5. Receipts and periodic statements (205.9, 205.18)

All references have been updated.

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Examinations, Supervision, and Consumer Protection

Rescinded (Replaced with issuance of RB 37-57)

Electronic Fund Transfer Act

The Electronic Fund Transfer Act (EFTA) (15 USC 1693 et seq.) of 1978 is intended to protect individual consumers engaging in electronic fund transfers (EFTs). EFT services include transfers through automated teller machines, point-of-sale terminals, automated clearinghouse systems, telephone bill-payment plans in which periodic or recurring transfers are contemplated, and remote banking programs. The Federal Reserve Board (Board) implements EFTA through Regulation E, which includes an official staff commentary.

The Electronic Signatures in Global and National Commerce Act (the E-Sign Act), 15 USC 7001 *et seq.*, became effective October 1, 2000, and allows electronic documents and signatures to have the same validity as paper documents and handwritten signatures. Disclosures in consumer transactions provided in electronic form would satisfy Regulation E's written disclosure requirement only if the financial institution received proper consent under the E-Sign Act. If a financial institution provides disclosures in both paper and electronic form, the paper form can be used to meet the disclosure requirements, and E-Sign consent is not required. The Board issued final rules for the electronic delivery of disclosures required under Regulation E on December 10, 2007 (72 Fed. Reg. 63,452 (Nov. 9, 2007)).

LINKS
Program
Questionnaire

To help clarify the requirements of Regulation E, the following background information does not strictly follow the order of the regulatory text, but rather it is presented in the following order:

I. Scope (Section 205.2, Section 205.3)
II. Disclosures (Section 205.4, Section 205.7, Section 205.8, Section 205.16)
III. Issuance of access devices (Section 205.5, Section 205.18)
IV. Consumer liability and error resolution (Section 205.6, Section 205.11)
V. Receipts and periodic statements (Section 205.9, Section 205.18)
VI. Other requirements (Section 205.10, Section 205.14, Section 205.15)
VII. Relation to other laws (Section 205.12)
VIII. Administrative enforcement and record retention (Section 205.13)
IX. Miscellaneous (EFTA provisions not reflected in Regulation E)

For ease of use by the examiner, however, the examination procedures and checklist follow the order of the regulation.

Approved – FFIEC

I. Scope

Key Definitions

Access device is a card, code, or other means of access to a consumer's account or a combination of these used by the consumer to initiate EFTs. Access devices include debit cards, personal identification numbers (PINs), telephone transfer and telephone bill payment codes, and other means to initiate an EFT to or from a consumer account (Section 205.2(a)(1) and Staff Commentary 205.2(a)-1).

Access devices do not include either of the following:

- Magnetic tape or other devices used internally by a financial institution to initiate electronic transfers.
- A check or draft used to capture the MICR (Magnetic Ink Character Recognition) encoding or routing, account, and serial numbers to initiate a one-time ACH debit (Staff Commentary 205.2(a)-1 and -2).

Accepted access device is an access device that a consumer:

- Requests and receives, signs, or uses (or authorizes another to use) to transfer money between accounts or to obtain money, property, or services.
- Requests to be validated even if it was issued on an unsolicited basis.
- Receives as a renewal or substitute for an accepted access device from either the financial institution that initially issued the device or a successor (Section 205.2(a)(2)).

Account includes the following:

- Checking, savings, or other consumer asset account held by a financial institution (directly or indirectly), including certain club accounts, established primarily for personal, family, or household purposes.
- ***Payroll card account,*** established through an employer (directly or indirectly), to which EFTs of the consumer's wages, salary, or other employee compensation (such as commissions), are made on a recurring basis. The payroll card account can be operated or managed by the employer, a third-party processor, a depository institution, or any other person. All transactions involving the transfer of funds to or from a payroll card account are covered by the regulation (Section 205.2(b)(2) and Staff Commentary 205.2(b)-2).

An account does not include:

- An account held by a financial institution under a bona fide trust agreement.
- An occasional or incidental credit balance in a credit plan.
- Profit-sharing and pension accounts established under a bona fide trust agreement.
- Escrow accounts such as for payments of real estate taxes, insurance premiums, or completion of repairs.
- Accounts for purchasing U.S. savings bonds (Section 205.2(b)(2) and Staff Commentary 205.2(b)-3).

A ***payroll card account*** does not include a card used:

- Solely to disburse incentive-based payments (other than commissions when they represent the primary means through which a consumer is paid) that are unlikely to be a consumer's primary source of salary or other compensation;
- Solely to make disbursements unrelated to compensation, such as petty cash reimbursements or travel per diem payments; or
- In isolated instances to which an employer typically does not make recurring payments (Staff Commentary 205.2(b)-2).

ATM operator is any person that operates an ATM at which a consumer initiates an EFT or a balance inquiry and that does not hold the account to or from which the transfer is made or about which the inquiry is made (Section 205.16(a)).

Electronic fund transfer (EFT) is a transfer of funds initiated through an electronic terminal, telephone, computer (including on-line banking) or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer's account. EFTs include, but are not limited to, point-of-sale (POS) transfers; automated teller machine (ATM) transfers; direct deposits or withdrawals of funds; transfers initiated by telephone; and transfers resulting from debit card transactions, whether or not initiated through an electronic terminal (Section 205.3(b)).

Electronic terminal is an electronic device, other than a telephone call by a consumer, through which a consumer may initiate an EFT. The term includes, but is not limited to, point-of-sale terminals, automated teller machines, and cash-dispensing machines (Section 205.2(h)).

Preauthorized electronic fund transfer is an EFT authorized in advance to recur at substantially regular intervals (Section 205.2(k)).

Unauthorized electronic fund transfer is an EFT from a consumer's account initiated by a person other than the consumer without authority to initiate the transfer and from which the consumer receives no benefit. This does not include an EFT initiated in any of the following ways:

- By a person who was furnished the access device to the consumer's account by the consumer, unless the consumer has notified the financial institution that transfers by that person are no longer authorized;
- With fraudulent intent by the consumer or any person acting in concert with the consumer; or
- By the financial institution or its employee (Section 205.2(m)).

Coverage - Section 205.3

The requirements of Regulation E apply only to accounts for which there is an agreement for EFT services to or from the account between (i) the consumer and the financial institution or (ii) the consumer and a third party, when the account-holding financial institution has received notice of the agreement and the fund transfers have begun (Staff Commentary 205.3(a)-1).

Regulation E applies to all persons, including offices of foreign financial institutions in the United States, that offer EFT services to residents of any state[1] and it covers any account located in the United States through which EFTs are offered to a resident of a state, no matter where a particular transfer occurs or where the financial institution is chartered (Staff Commentary 205.3(a)-3). Regulation E does not apply to a foreign branch of a U.S. financial institution unless the EFT services are offered in connection with an account in a state, as defined in Section 205.2(*l*) (Staff Commentary 205.3(a)-3).

Exclusions from Coverage - Section 205.3(c) describes transfers that are not EFTs and are therefore not covered by the EFTA and Regulation E:

- Transfers of funds originated by check, draft, or similar paper instrument;
- Check guarantee or authorization services that do not directly result in a debit or credit to a consumer's account;
- Any transfer of funds for a consumer within a system that is used primarily to transfer funds between financial institutions or businesses, *e.g.*, Fedwire or other similar network;

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[1] *State* means any state, territory, or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; or any of their political subdivisions. 12 CFR 205.2(l).

- Any transfer of funds which has as its primary purpose the purchase or sale of securities or commodities regulated by the Securities and Exchange Commission (SEC) or the Commodity Futures Trading Commission (CFTC), purchased or sold through a broker-dealer regulated by the SEC or through a futures commission merchant regulated by the CFTC, or held in book-entry form by a Federal Reserve Bank or federal agency;

- Intra-institutional automatic transfers under an agreement between a consumer and a financial institution;

- Transfers initiated by telephone between a consumer and a financial institution provided the transfer is not a function of a written plan contemplating periodic or recurring transfers. A written statement available to the public, such as a brochure, that describes a service allowing a consumer to initiate transfers by telephone constitutes a written plan; or

- Preauthorized transfers to or from accounts at financial institutions with assets of less than $100 million on the preceding December 31. Such preauthorized transfers, however, remain subject to the compulsory use prohibition under Section 913 of the EFTA and 12 CFR 205.10(e), as well as the civil and criminal liability provisions of Sections 915 and 916 of the EFTA. A small financial institution that provides EFT services besides preauthorized transfers must comply with the Regulation E requirements for those *other* services (Staff Commentary 205.3(c)(7)-1). For example, a small financial institution that offers ATM services must comply with Regulation E in regard to the issuance of debit cards, terminal receipts, periodic statements, and other requirements.

Electronic Check Conversion (ECK) and Collection of Returned-Item Fees

Regulation E covers electronic check conversion (ECK) transactions. In an ECK transaction, a consumer provides a check to a payee and information from the check is used to initiate a one-time EFT from the consumer's account. Although transfers originated by checks are not covered by Regulation E, an ECK is treated as an EFT and not a payment originated by check. Payees must obtain the consumer's authorization for each ECK transaction. A consumer authorizes a one-time EFT for an ECK transaction when the consumer receives notice that the transaction will or may be processed as an EFT and goes forward with the underlying transaction[2] (Sections 205.3(b)(2)(i) and (ii) and Staff Commentary 205.3(b)(2)-3).

Until December 31, 2009, a person using the check to initiate the EFT must include a notice that funds may be withdrawn from the consumer's account as soon as the same day payment is received, and, as

[2] For POS transactions, the notice must be posted in a prominent and conspicuous location and a copy of the notice must be provided to the consumer at the time of the transaction (Sections 205.3(b)(2)(i) and (ii) and Staff Commentary 205.3(b)(2)-3).

applicable, that the consumer's check will not be returned by the financial institution (Section 205.3(b)(2)(iii) and Appendix A-6).

If a payee re-presents electronically a check that has been returned unpaid, the transaction is not an EFT, and Regulation E does not apply because the transaction originated by check (Staff Commentary 205.3(c)(1)-1)).

However, Regulation E applies to a fee collected electronically from a consumer's account for a check or EFT returned unpaid. A consumer authorizes a one-time EFT from the consumer's account to pay the fee for the returned item or transfer if the person collecting the fee provides notice to the consumer stating the amount of the fee and that the person may electronically collect the fee, and the consumer goes forward with the underlying transaction[3] (Section 205.3(b)(3))). These authorization requirements do not apply to fees imposed by the account-holding financial institution for returning the check or EFT or paying the amount of an overdraft (Staff Commentary 205.3(b)(3)-1)).

II. DISCLOSURES

Disclosures Generally - Section 205.4

Required disclosures must be clear and readily understandable, in writing, and in a form the consumer may keep. The required disclosures may be provided to the consumer in electronic form, if the consumer affirmatively consents after receiving a notice that complies with the E-Sign Act (Section 205.4(a)(1)).

Disclosures may be made in a language other than English, if the disclosures are made available in English upon the consumer's request (Section 205.4(a)(2)).

A financial institution has the option of disclosing additional information and combining disclosures required by other laws (for example, Truth in Lending disclosures) with Regulation E disclosures (Section 205.4(b)).

A financial institution may combine required disclosures into a single statement if a consumer holds two or more accounts at the financial institution. Thus, a single periodic statement or error resolution notice is sufficient for multiple accounts. In addition, it is only necessary for a financial institution to provide one set of disclosures for a joint account (Section 205.4(c)(l) and (2)).

Two or more financial institutions that jointly provide EFT services may contract among themselves to meet the requirements that the regulation imposes on any or all of them. When making initial

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[3] For POS transactions, the notice must be posted in a prominent and conspicuous location and a copy of the notice must either be provided to the consumer at the time of the transaction or mailed to the consumer's address as soon as reasonably practicable after the person initiates the EFT to collect the fee (Section 205.3(b)(3)).

disclosures (see Section 205.7) and disclosures of a change in terms or an error resolution notice (see Section 205.8), a financial institution in a shared system only needs to make disclosures that are within its knowledge and apply to its relationship with the consumer for whom it holds an account (Section 205.4(d)).

Initial Disclosure of Terms and Conditions - Section 205.7

Financial institutions must provide initial disclosures of the terms and conditions of EFT services before the first EFT is made or at the time the consumer contracts for an EFT service. They must give a summary of various consumer rights under the regulation, including the consumer's liability for unauthorized EFTs, the types of EFTs the consumer may make, limits on the frequency or dollar amount, fees charged by the financial institution, and the error-resolution procedures. Appendix A to Part 205 provides model clauses that financial institutions may use to provide the disclosures.

Timing of Disclosures. Financial institutions must make the required disclosures at the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving the consumer's account (Section 205.7(a)).

Disclosures given by a financial institution earlier than the regulation requires (for example, when the consumer opens a checking account) need not be repeated when the consumer later authorizes an electronic check conversion or agrees with a third party to initiate preauthorized transfers to or from the consumer's account, unless the terms and conditions differ from the previously disclosed term. This interpretation also applies to any notice provided about one-time EFTs from a consumer's account initiated using information from the consumer's check. On the other hand, if an agreement for EFT services to be provided by an account-holding financial institution is directly between the consumer and the account-holding financial institution, disclosures must be given in close proximity to the event requiring disclosure, for example, when the consumer contracts for a new service (Staff Commentary 205.7(a)-1).

Where a consumer authorizes a third party to debit or credit the consumer's account, an account-holding financial institution that has not received advance notice of the transfer or transfers must provide the required disclosures as soon as reasonably possible after the first debit or credit is made, unless the financial institution has previously given the disclosures (Staff Commentary 205.7(a)-2).

If a consumer opens a new account permitting EFTs at a financial institution, and the consumer has already received Regulation E disclosures for another account at that financial institution, the financial institution need only disclose terms and conditions that differ from those previously given (Staff Commentary 205.7(a)-3).

If a financial institution joins an interchange or shared network system (which provides access to terminals operated by other financial institutions), disclosures are required for additional EFT services not previously available to consumers if the terms and conditions differ from those previously disclosed (Staff Commentary 205.7(a)-4).

A financial institution may provide disclosures covering all EFT services that it offers, even if some consumers have not arranged to use all services (Staff Commentary 205.7(a)-5).

Addition of EFT Services. A financial institution must make disclosures for any new EFT service added to a consumer's account if the terms and conditions are different from those described in the initial disclosures. ECK transactions may be a new type of transfer requiring new disclosures (See Appendix A-2 and Staff Commentary 205.7(c)-1).

Content of Disclosures. Section 205.7(b) requires a financial institution to provide the following disclosures as they apply:

- **Liability of consumers for unauthorized electronic fund transfers.** The financial institution must include a summary of the consumer's liability (under Section 205.6, state law, or other applicable law or agreement) for unauthorized transfers (Section 205.7(b)(1)). A financial institution does not need to provide the liability disclosures if it imposes no liability. If it later decides to impose liability, it must first provide the disclosures (Staff Commentary 205.7(b)(1)-1). The financial institution can choose to include advice on promptly reporting unauthorized transfers or the loss or theft of the access device (Staff Commentary 205.7(b)(1)-3).

- **Telephone number and address.** A financial institution must provide a specific telephone number and address, on or with the disclosure statement, for reporting a lost or stolen access device or a possible unauthorized transfer (Staff Commentary 205.7(b)(2)-2). Except for the telephone number and address for reporting a lost or stolen access device or a possible unauthorized transfer, the disclosure may insert a reference to a telephone number that is readily available to the consumer such as "Call your branch office. The number is shown on your periodic statement" (Staff Commentary 205.7(b)(2)-2).

- **Business days.** The financial institution's business days (Section 205.7(b)(3)).

- **Types of transfers; limitations on frequency or dollar amount.** Limitations on the frequency and dollar amount of transfers generally must be disclosed in detail (Section 205.7(b)(4)). If the confidentiality of certain details is essential to the security of an account or system, these details may be withheld (but the fact that limitations exist must still be disclosed)[4] A limitation on account activity that restricts the consumer's ability to make EFTs must be disclosed even if the restriction also applies to transfers made by non-electronic means.[5] Financial institutions are not required to list preauthorized transfers among the types of transfers that a consumer can make (Staff Commentary 205.7(b)(4)-3). Financial institutions

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[4] For example, if a financial institution limits cash ATM withdrawals to $100 per day, the financial institution may disclose that daily withdrawal limitations apply and need not disclose that the limitations may not always be in force (such as during periods when its ATMs are off-line) (Staff Commentary 205.7(b)(4)-1).

[5] For example, Regulation D (12 CFR 204) restricts the number of payments to third parties that may be made from a money market deposit account; a financial institution that does not execute fund transfers in excess of those limits must disclose the restriction as a limitation on the frequency of EFTs (Staff Commentary 205.7(b)(4)-2).

must disclose the fact that one-time EFTs initiated using information from a consumer's check are among the types of transfers that a consumer can make. (See Appendix A-2 and Staff Commentary 205.7(b)(4)-4.)

- **Fees**. A financial institution must disclose all fees for EFTs or for the right to make EFTs (Section 205.7(b)(5)). Other fees, for example, minimum-balance fees, stop-payment fees, account overdrafts, or ATM inquiry fees, may, but need not, be disclosed under Regulation E (see Regulation DD, 12 CFR Part 230) (Staff Commentary 205.7(b)(5)-1). A per-item fee for EFTs must be disclosed even if the same fee is imposed on non-electronic transfers. If a per-item fee is imposed only under certain conditions, such as when the transactions in the cycle exceed a certain number, those conditions must be disclosed. Itemization of the various fees may be on the disclosure statement or on an accompanying document referenced in the statement (Staff Commentary 205.7(b)(5)-2).

  A financial institution must disclose that networks used to complete the EFT as well as an ATM operator, may charge a fee for an EFT or for balance inquiries (Section 205.7(b)(11)).

- **Documentation.** A summary of the consumer's right to receipts and periodic statements, as provided in Section 205.9, and notices regarding preauthorized transfers as provided in Sections 205.10(a) and 205.10(d) (Section 205.7(b)(6)).

- **Stop payment.** A summary of the consumer's right to stop payment of a preauthorized electronic fund transfer and the procedure for placing a stop-payment order, as provided in Section 205.10(c) (Section 205.7(b)(7)).

- **Liability of institution.** A summary of the financial institution's liability to the consumer under Section 910 of the EFTA for failure to make or to stop certain transfers (Section 205.7(b)(8)).

- **Confidentiality.** The circumstances under which, in the ordinary course of business, the financial institution may provide information concerning the consumer's account to third parties (Section 205.7(b)(9)). A financial institution must describe the circumstances under which any information relating to an account to or from which EFTs are permitted will be made available to third parties, not just information concerning those EFTs. Third parties include other subsidiaries of the same holding company (Staff Commentary 205.7(b)(9)-1).

- **Error Resolution.** The error-resolution notice must be substantially similar to Model Form A-3 in Appendix A of Part 205. A financial institution may use different wording so long as the substance of the notice remains the same, may delete inapplicable provisions (for example, the requirement for written confirmation of an oral notification), and may substitute substantive state law requirements affording greater consumer protection than Regulation E (Staff Commentary 205.7(b)(10)-1). To take advantage of the longer time periods for resolving errors under Section 205.11(c)(3) (for new accounts as defined in Regulation CC, transfers initiated outside the United States, or transfers resulting from POS debit card transactions), a financial institution must have disclosed these longer time periods. Similarly, a financial institution relying on the exception from provisional crediting in Section 205.11(c)(2) for accounts relating to extensions of credit by securities brokers and dealers (Regulation T, 12 CFR Part 220) must disclose accordingly (Staff Commentary 205.7(b)(10)-2).

Change in Terms; Error Resolution Notice - Section 205.8

If a financial institution contemplates a change in terms it must mail or deliver a written or electronic notice to the consumer at least 21 days before the effective date of any change in a term or condition required to be disclosed under Section 205.7(b) if the change would result in any of the following:

- Increased fees or charges.
- Increased liability for the consumer;
- Fewer types of available EFTs; or
- Stricter limitations on the frequency or dollar amounts of transfers (Section 205.8(a)(1)).

If an immediate change in terms or conditions is necessary to maintain or restore the security of an EFT system or account, the financial institution does not need to give prior notice. However, if the change is to be permanent, the financial institution must provide notice in writing of the change to the consumer on or with the next regularly scheduled periodic statement or within 30 days, unless disclosures would jeopardize the security of the system or account (Section 205.8(a)(2)).

For accounts to or from which EFTs can be made, the financial institution must mail, deliver, or provide electronically to the consumer at least once each calendar year, the error resolution notice in 12 CFR 205 Appendix A - Model Form A-3, or one substantially similar. Alternatively, the financial institution may include an abbreviated error resolution notice substantially similar to the notice set out in Appendix A (Model Form A-3) with each periodic statement (Section 205.8(b)).

Disclosures at Automated Teller Machines - Section 205.16

An ATM operator that charges a fee is required to post notice that a fee will be imposed and disclose the amount of the fee (Section 205.16(b)). Notices must be posted both (1) in a prominent and conspicuous location on or at the machine, and (2) on the screen or on a paper notice before the consumer is committed to paying a fee (Section 205.16(c)(1) and (2)). The fee may be imposed by the ATM operator only if: (1) the consumer is provided the required notices, and (2) the consumer elects to continue the transaction (Section 205.16(e)).

An ATM operator that charges a fee is required to post notice that a fee will be imposed and disclose the amount of the fee.

The "prominent and conspicuous notice" standard applies to notice posted on or at the ATM. The "clear and readily understandable standard" applies to the content of the notice. The requirement that the notice be in a retainable format only applies to printed notices (not those on the ATM screen) (Section 205.16(c)).

These fee disclosures are not required where a network owner is not charging a fee directly to the consumer i.e., some network owners charge an interchange fee to financial institutions whose customers use the network) (Staff Commentary 205.7(b)(5)-3). If the network practices change such that the network charges the consumer directly, these fee disclosure requirements would apply to the network (Section 205.7(c)).

III. Issuance of Access Devices - Sections 205.5 and 205.18

In general, a financial institution may issue an access device to a consumer only in the following cases:

- The consumer requested it in writing or orally.[6]
- It is a renewal of, or a substitute for, an accepted access device (as defined in Section 205.2(a)) (Section 205.5(a)).

Only one renewal or substitute device may replace a previously issued device. A financial institution may provide additional devices at the time it issues the renewal or substitute access device provided the institution complies with the requirements for issuing unsolicited access devices for the additional devices (Staff Commentaries 205.5(a)(2)-1 and 205.5(b)-5).

A financial institution may issue an unsolicited access device only if the access device meets all of the following criteria. The access device is:

- Not validated - that is, it cannot be used to initiate an EFT.
- Accompanied by the explanation that it is not validated and how the consumer may dispose of it if the consumer does not wish to validate it.
- Accompanied by a complete disclosure, in accordance with Section 205.7, of the consumer's rights and liabilities that will apply if the access device is validated.
- Validated only upon oral or written request from the consumer and after a verification of the consumer's identity by some reasonable means (Section 205.5(b)).

[6] For 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 (Staff Commentary 205.5(a)(1)-1).

The financial institution may use any reasonable means of verifying the consumer's identity, but the consumer is not liable for any unauthorized transfers if an imposter succeeds in validating the access device (Staff Commentary 205.5(b)-4).

Payroll Card Access Devices. Consistent with Section 205.5(a), a financial institution may issue a payroll card access device only in response to an oral or written request for the device or as a renewal or substitute for an accepted access device. A consumer is deemed to request an access device for a payroll account when the consumer chooses to receive salary or other compensation through a payroll card account (Staff Commentary 205.18(a)-1).

EFT added to credit card. The EFTA and Regulation E apply when the capability to initiate EFTs is added to an accepted credit card (as defined under Regulation Z). The EFTA and Regulation E also apply to the issuance of an access device that permits credit extensions under a preexisting agreement between the consumer and a financial institution to extend credit only to cover overdrafts (or to maintain a specified minimum balance). The Truth in Lending Act and Regulation Z govern the addition of a credit feature to an accepted access device, and except as discussed above, the issuance of a credit card that is also an access device. For information on Regulation E's relationship to other laws, including Truth in Lending, see Section 205.12.

IV. Consumer Liability and Error Resolution

Liability of Consumers for Unauthorized Transfers - Section 205.6

A consumer may be liable for an unauthorized EFT (defined in Section 205.2(m)) depending on when the consumer notifies the financial institution and whether an access device was used to conduct the transaction. Under the EFTA, there is no bright-line time limit within which consumers must report unauthorized EFTs (71 Fed. Reg. 1638, 1653 (Jan. 10, 2006)).

The extent of the consumer's liability is determined solely by the consumer's promptness in notifying the financial institution.

The extent of the consumer's liability is determined solely by the consumer's promptness in notifying the financial institution (Staff Commentary 205.6(b)-3). Other factors <u>may not</u> be used as a basis to hold consumers liable. Regulation E expressly prohibits the following factors as the basis for imposing greater liability than is permissible under Regulation E: the consumer was negligent (*e.g.*, wrote a PIN on an ATM card); an agreement between the consumer and the financial institution provides for greater liability; or the consumer is liable for a greater amount under state law (Staff Commentaries 205.6(b)-2 and 205.6(b)-3).

A consumer may only be held liable for an unauthorized transaction, within the limitations set forth in Section 205.6(b), if:

- The financial institution has provided all of the following written disclosures to the consumer:

- — A summary of the consumer's liability for unauthorized EFTs.
- — The telephone number and address for reporting that an unauthorized EFT has been or may be made.
- — The financial institution's business days.

- Any access device used to effect the EFT was an accepted access device (as defined in Section 205.2(a)).
- The financial institution has provided a means to identify the consumer to whom the access device was issued (Section 205.6(a)).

Regulation E allows, but does not require, the financial institution to provide a separate means to identify each consumer of a multiple-user account (Staff Commentary 205.6(a)-2).

The limitations on the amount of consumer liability for unauthorized EFTs, the time limits within which consumers must report unauthorized EFTs, and the liability for failing to adhere to those time limits, are listed in the chart below. The financial institution may impose less consumer liability than is provided by Section 205.6 based on state law or the deposit agreement (Section 205.6(b)(6)).

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

Event	Timing of Consumer Notice to Financial Institution	Maximum liability
Loss or theft of access device[7]	Within two business days after learning of loss or theft	Lesser of $50, OR total amount of unauthorized transfers.
Loss or theft of access device	More than two business days after learning of loss or theft up to 60 calendar days after transmittal of statement showing first unauthorized transfer made with access device.	Lesser of $500, OR the sum of: (a) $50 or the total amount of unauthorized transfers occurring in the first two business days, whichever is less, AND (b) The amount of unauthorized transfers occurring after two business days and before notice to the financial institution.[8]
Loss or theft of access device	More than 60 calendar days after transmittal of statement showing first unauthorized transfer made with access device.	For transfers occurring within the 60-day period, the lesser of $500, OR the sum of (a) Lesser of $50 or the amount of unauthorized transfers in first two business days, AND (b) The amount of unauthorized transfers occurring after two business days. For transfers occurring after the 60-day period, unlimited liability (until the financial institution is notified)[9]
Unauthorized transfer(s) not involving loss or theft of an access device	Within 60 calendar days after transmittal of the periodic statement on which the unauthorized transfer first appears.	No liability.
Unauthorized transfer(s) not involving loss or theft of an access device	More than 60 calendar days after transmittal of the periodic statement on which the unauthorized transfer first appears.	Unlimited liability for unauthorized transfers occurring 60 calendar days after the periodic statement and before notice to the financial institution.

[7] Includes a personal identification number (PIN) if used without a card in a telephone transaction, for example.

[8] Provided the financial institution demonstrates that these transfers would not have occurred had notice been given within the two-business-day period.

[9] Provided the financial institution demonstrates that these transfers would not have occurred had notice been given within the 60-day period.

Knowledge of Loss or Theft. The fact that a consumer has received a periodic statement reflecting an unauthorized transaction is a factor, but not conclusive evidence, in determining whether the consumer had knowledge of a loss or theft of the access device (Staff Commentary 205.6(b)(1)-2).

Timing of Notice. If a consumer's delay in notifying a financial institution was due to extenuating circumstances, such as extended travel or hospitalization, the time periods for notification specified above must be extended to a reasonable time (Section 205.6(b)(4); Staff Commentary 205.6(b)(4)-1).

Notice to the Financial Institution. A consumer gives notice to a financial institution about unauthorized use when the consumer takes reasonable steps to provide the financial institution with the pertinent information, whether or not a particular employee actually receives the information (Section 205.6(b)(5)(i)). Even if the consumer is unable to provide the account number or the card number, the notice effectively limits the consumer's liability if the consumer sufficiently identifies the account in question, for example, by giving the name on the account and the type of account (Staff Commentary 205.6(b)(5)-3). At the consumer's option, notice may be given in person, by telephone, or in writing (Section 205.6(b)(5)(ii)). Notice in writing is considered given at the time the consumer mails the notice or delivers the notice for transmission by any other usual means to the financial institution. Notice may also be considered given when the financial institution becomes aware of circumstances leading to the reasonable belief that an unauthorized transfer has been or may be made (Section 205.6(b)(5)(iii)).

Relation of Error Resolution to Truth in Lending. Regulation E's liability and error resolution provisions apply to an extension of credit that occurs under an agreement between the consumer and a financial institution to extend credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account (Section 205.12(a)(1)(iii)). As provided in Section 205.12 and related commentary, for transactions involving access devices that also function as credit cards, the liability and error resolution provisions of Regulation E or Regulation Z will apply depending on the nature of the transaction:

- If the unauthorized use of a combined access device-credit card solely involves an extension of credit, other than an extension of credit described under Section 205.12(a)(1)(iii), and does not involve an EFT, for example, when the card is used to draw cash advances directly from a credit line, only Regulation Z will apply.

- If the unauthorized use of a combined access device-credit card involves only an EFT, for example, debit card purchases or cash withdrawals at an ATM from a checking account, only Regulation E will apply.

- If a combined access device-credit card is stolen and unauthorized transactions are made by using the card as both a debit card and a credit card, Regulation E will apply to the unauthorized transactions in which the card was used as a debit card, and Regulation Z will apply to the unauthorized transactions in which the card was used as a credit card.

Procedures for Resolving Errors - Section 205.11

This section defines the term ***error*** and describes the steps the consumer must take when asserting an error in order to receive the protection of the EFTA and Regulation E, and the procedures that a financial institution must follow to resolve an alleged error.

An ***error*** includes any of the following:

- An unauthorized EFT.
- An incorrect EFT to or from the consumer's account.
- The omission from a periodic statement of an EFT to or from the consumer's account that should have been included.
- A computational or bookkeeping error made by the financial institution relating to an EFT.
- The consumer's receipt of an incorrect amount of money from an electronic terminal;
- An EFT not identified in accordance with the requirements of Sections 205.9 or 205.10(a).
- A consumer's request for any documentation required by Sections 205.9 or 205.10(a) or for additional information or clarification concerning an EFT (Section 205.11(a)(1)).

The term ***error*** does not include:

- A routine inquiry about the balance in the consumer's account or a request for duplicate copies of documentation or other information that is made only for tax or other record-keeping purposes (Sections 205.11(a)(2)(i), (ii), and (iii)).
- The fact that a financial institution does not make a terminal receipt available for a transfer of \$15 or less in accordance with 205.9(e) (Staff Commentary 205.11(a)-6).

A financial institution must comply with the error resolution procedures in Section 205.11 with respect to any oral or written notice of error from the consumer that:

- The financial institution receives not later than 60 days after sending a periodic statement or other documentation first reflecting the alleged error (see 205.14 and 205.18).
- Enables the financial institution to identify the consumer's name and account number.
- Indicates why the consumer believes the error exists and, to the extent possible, the type, date, and amount of the error (Section 205.11(b)(1)).

A financial institution may require a consumer to give written confirmation of an error within 10 business days of giving oral notice. The financial institution must provide the address where confirmation must be sent (Section 205.11(b)(2)).

Error Resolution Procedures. After receiving a notice of error, the financial institution must do all of the following:

- Promptly investigate the oral or written allegation of error.
- Complete its investigation within 10 business days (Section 205.11(c)(1)).
- Report the results of its investigation within three business days after completing its investigation.
- Correct the error within one business day after determining that an error has occurred.

The financial institution may take up to 45 calendar days (Section 205.11(c)(2)) to complete its investigation provided it:

- Provisionally credits the funds (including interest, where applicable) to the consumer's account within the 10 business-day period.
- Advises the consumer within 2 business days of the provisional crediting.
- Gives the consumer full use of the funds during the investigation.

A financial institution need not provisionally credit the account to take up to 45 calendar days to complete its investigation if the consumer fails to provide the required written confirmation of an oral notice of error, or if the notice of error involves an account subject to the margin requirements or other aspects of Regulation T (Securities Credit by Brokers and Dealers, 12 CFR part 220) (Section 205.11(c)(2)(i)(B)).

However, where an error involves an unauthorized EFT, the financial institution must comply with the requirements of the provisions relating to unauthorized EFTs before holding the consumer liable, even if the consumer does not provide a notice of error within the time limits in Section 205.11(b) (Staff Commentary 205.11(b)(1)-7).

When investigating a claim of error, the financial institution need only review its own records if the alleged error concerns a transfer to or from a third party, and there is no agreement between the financial institution and the third party for the type of EFT involved (Section 205.11(c)(4)). However, the financial institution may not limit its investigation solely to the payment instructions where other information within the financial institution's records pertaining to a particular account may help to resolve a consumer's claim (Staff Commentary 205.11(c)(4)-5).

If, after investigating the alleged error, the financial institution determines that an error has occurred, it must promptly (within one business day after such determination) correct the error, including the crediting of interest if applicable. The financial institution must provide within three business days of the completed investigation an oral or written report of the correction to the consumer and, as applicable, notify the consumer that the provisional credit has been made final (Section 205.11(c)(2)(iii) and (iv)).

If the financial institution determines that no error occurred or that an error occurred in a different manner or amount from that described by the consumer, the financial institution must mail or deliver a written explanation of its findings within three business days after concluding its investigation. The explanation must include a notice of the consumer's rights to request the documents upon which the financial institution relied in making its determination (Section 205.11(d)).

Upon debiting a provisionally credited amount, the financial institution must notify the consumer of the date and amount of the debit and of the fact that the financial institution will honor (without charge) checks, drafts, or similar paper instruments payable to third parties and preauthorized debits for five business days after transmittal of the notice. The financial institution need honor only items that it would have paid if the provisionally credited funds had not been debited. Upon request from the consumer, the financial institution must promptly mail or deliver to the consumer copies of documents upon which it relied in making its determination (Section 205.11(d)(2)).

If a notice involves an error that occurred within 30 days after the first deposit to the account was made, the time periods are extended from 10 and 45 days, to 20 and 90 days, respectively. If the notice of error involves a transaction that was not initiated in a state or resulted from a point-of-sale debit card transaction, the 45-day period is extended to 90 days (Section 205.11(c)(3)).

If a financial institution has fully complied with the investigation requirements, it generally does not need to reinvestigate if a consumer later reasserts the same error. However, it must investigate a claim of error asserted by a consumer following receipt of information provided pursuant to Section 205.11(a)(1)(vii) (Section 205.11(e)).

V. Receipts and Periodic Statements

Documentation of Transfers – Section 205.9

Electronic terminal receipts. Receipts must be made available at the time a consumer initiates an EFT at an electronic terminal (Section 205.9(a)). Financial institutions may provide receipts only to consumers who request one (Staff Commentary 205.9(a)-1). The receipt must include, as applicable:

- *Amount of the transfer* – a charge for making the transfer may be included in the amount, provided the charge is disclosed on the receipt and on a sign posted on or at the terminal.
- *Date* – the date the consumer initiates the transfer.

- *Type of transfer and type of account* – descriptions such as "withdrawal from checking" or "transfer from savings to checking" are appropriate. This is true even if the accounts are only similar in function to a checking account (such as a share draft or NOW account) or a savings account (such as a share account). If the access device used can only access one account, the type of account may be omitted (Staff Commentaries 205.9(a)(3)-1; 205.9(3)-2; 205.9(3)-4; and 205.9(3)-5).

- *Number or code identifying the consumer's account(s) or the access device used to initiate the transfer* – the number and code need not exceed four digits or letters.

- *Location of the terminal* – The location of the terminal where the transfer is initiated or an identification, such as a code or terminal number. If the location is disclosed, except in limited circumstances where all terminals are located in the same city or state, the receipt must include the city and state or foreign country and one of the following:

  — Street address of the terminal;

  — Generally accepted name for the location of the terminal (such as an airport, shopping center, or branch of a financial institution); or

  — Name of the entity (if other than the financial institution providing the statement) at whose place of business the terminal is located, such as a store, and the city, state, or foreign country (Section 205.9(a)(5)).

Name of any third party to or from whom funds are transferred – a code may be used to identify the party if the code is explained on the receipt. This requirement does not apply if the name of the party is provided by the consumer in a manner the terminal cannot duplicate on the receipt, such as on a payment stub (Section 205.9(a)(6) and Staff Commentary 205.9(a)(6)-1).

Receipts are not required for electronic EFTs of $15 or less (Section 205.9(e)).

Periodic statements. Periodic statements must be sent for each monthly cycle in which an EFT has occurred, and at least quarterly if no EFT has occurred (Section 205.9(b)). For each EFT made during the cycle, the statement must include, as applicable:

- Amount of the transfer - if a charge was imposed at an electronic terminal by the owner or operator of the terminal, that charge may be included in the amount.

- Date the transfer was posted to the account.

- Type of transfer(s) and type of account(s) to or from which funds were transferred.

- For each transfer (except deposits of cash, or a check , draft or similar paper instrument to the consumer's account) initiated at an electronic terminal, the terminal location as required for the receipt under Section 205.9(a)(5).

- Name of any third party payee or payor.

- Account number(s).

- Total amount of any fees and charges, other than a finance charge as defined by Regulation Z, assessed during the period for making EFTs, the right to make EFTs, or for account maintenance.

- Balance in the account at the beginning and close of the statement period.

- Address and telephone number to be used by the consumer for inquiries or notice of errors. If the financial institution has elected to send the abbreviated error notice with every periodic statement, the address and telephone number may appear on that document.

- If the financial institution has provided a telephone number which the consumer can use to find out whether or not a preauthorized transfer has taken place, that telephone number.

Exceptions to the Periodic Statement Requirement for Certain Accounts

Passbook accounts. Where a consumer's passbook may not be accessed by an EFT other than preauthorized transfers to the account, a periodic statement need not be sent, provided that the financial institution updates the consumer's passbook or provides the required information on a separate document at the consumer's request. To update the passbook, the amount and date of each EFT made since the passbook was last presented must be listed (Section 205.9(c)(1)(i)). For other accounts that may be accessed only by preauthorized transfers to the account, the financial institution must send a periodic statement at least quarterly (Section 205.9(c)(1)(ii)).

Transfers between accounts. If a transfer occurs between two accounts of the consumer at the same financial institution, the transfer need only be documented for one of the two accounts (Section 205.9(c)(2)). A preauthorized transfer between two accounts of the consumer at the same financial institution is subject to the Section 205.9(c)(1) rule on preauthorized transfers and not the Section 205.9(c)(2) rule on intra-institutional transfers (Section 205.9(c)(3)).

Documentation for Foreign-initiated transfers. If an EFT is initiated outside the United States, the financial institution need not provide a receipt or a periodic statement reflecting the transfer if it treats an inquiry for clarification or documentation as a notice of error (Section 205.9(d)).

Alternatives to Periodic Statements for Financial Institutions Offering Payroll Card Accounts - Section 205.18

This section provides an alternative to providing periodic statements for payroll card accounts if financial institutions make the account information available to consumers by specific means. In addition, this section clarifies how financial institutions that do not provide periodic statements for payroll card accounts can comply with the Regulation E requirements relating to initial disclosures, the annual error resolution notice, liability limits, and the error resolution procedures.

Typically, employers and third-party service providers do not meet the definition of a "financial institution" subject to the regulation because they neither (i) hold payroll card accounts nor (ii) issue payroll cards and agree with consumers to provide EFT services in connection with payroll card accounts. However, to the extent an employer or a service provider undertakes either of these functions, it would be deemed a financial institution under the regulation (Staff Commentary 205.18(a)-2).

Alternative to Periodic Statements. A financial institution does not need to furnish periodic statements required by Section 205.9(b) if the financial institution makes available to the consumer the following:

- The account balance, through a readily available telephone line.
- An electronic history of account transactions covering at least 60 days preceding the date the consumer electronically accesses the account.
- A written history of the account transactions provided promptly in response to an oral or written request and covering at least 60 days preceding the date the financial institution receives the consumer's request (Section 205.18(b)(1)).

The history of account transactions must include the same type of information required on periodic statements under Section 205.9(b) (Section 205.18(b)(2)).

Requirements to Comply with Regulation E. If a financial institution provides an alternative to periodic statements under Section 205.18(b), it must comply with the following:

- Modify the initial disclosures under 205.7(b) by disclosing:
  - — A telephone number that the consumer may call to obtain the account balance; the means by which the consumer can obtain an electronic account history, such as the address of an Internet website; and a summary of the consumer's right to receive a written account history upon request (in place of the summary of the right to receive a periodic statement required by Section 205.7(b)(6)), including a telephone number to call to request a history. The disclosure required by Section 205.18(c)(1)(i) may be made by providing a notice substantially similar to the notice contained in paragraph A-7(a) in Appendix A of Part 205.

— A notice concerning error resolution that is substantially similar to the notice contained in paragraph A-7(b) in Appendix A, in place of the notice required by Section 205.7(b)(10).

- Provide an annual error resolution notice that is substantially similar to the notice contained in paragraph (b) to A-7 - Model Clauses for Financial Institutions Offering Payroll Card Accounts in Appendix A of Part 205, in place of the notice required by Section 205.8(b). Alternatively, a financial institution may include on or with each electronic and written history provided in accordance with Section 205.18(b)(1), a notice substantially similar to the abbreviated notice for periodic statements contained in paragraph A-3(b) in Appendix A, modified as necessary to reflect the error-resolution provisions set forth in this section.

- Limits on consumer liability.

— For purposes of Section 205.6(b)(3), the 60-day period for reporting any unauthorized transfer begins on the earlier of:

⇒ The date the consumer electronically accesses the consumer's account under Section 205.18(b)(1)(ii), provided that the electronic history made available to the consumer reflects the transfer; or

⇒ The date the financial institution sends a written history of the consumer's account transactions requested by the consumer under Section 205.18(b)(1)(iii) in which the unauthorized transfer is first reflected.

— A financial institution may limit the consumer's liability for an unauthorized transfer as provided under Section 205.6(b)(3) for transfers reported by the consumer within 120 days after the transfer was credited or debited to the consumer's account.

- Comply with error resolution requirements.

— An error notice is considered timely, and the financial institution must comply with the requirements of Section 205.11, if the financial institution receives notice from the consumer no later than the earlier of:

⇒ 60 days after the date the consumer electronically accesses the consumer's account under Section 205.18(b)(1)(ii), provided that the electronic history made available to the consumer reflects the alleged error; or

⇒ 60 days after the date the financial institution sends a written history of the consumer's account transactions requested by the consumer under Section 205.18(b)(1)(iii) in which the alleged error is first reflected.

— Alternatively, a financial institution complies with the error resolution requirements in Section 205.11 if it investigates any oral or written notice of an error from the consumer that is received by the financial institution within 120 days after the transfer allegedly in error was credited or debited to the consumer's account.

VI. Other Requirements

Preauthorized Transfers - Section 205.10

A preauthorized transfer may be either a credit to, or a debit from, an account.

Preauthorized transfers to a consumer's account. When an account is scheduled to be credited by a preauthorized EFT from the same payor at least once every 60 days, the financial institution must provide some form of notice to the consumer so that the consumer can find out whether or not the transfer occurred (Section 205.10(a)). The notice requirement will be satisfied if the payor provides notice to the consumer that the transfer has been initiated. If the payor does not provide notice, the financial institution must adopt one of three alternative procedures for giving notice.

> A preauthorized transfer may be either a credit to, or a debit from, an account.

- The financial institution may give the consumer oral or written notice within two business days after a preauthorized transfer occurs.
- The financial institution may give the consumer oral or written notice, within two business days after the preauthorized transfer was scheduled to occur, that the transfer did not occur.
- The financial institution may establish a readily available telephone line[10] that the consumer may call to find out whether a preauthorized transfer has occurred. If the financial institution selects this option, the telephone number must be disclosed on the initial disclosures and on each periodic statement.

The financial institution need not use any specific language to give notice but may not simply provide the current account balance (Staff Commentary 205.10(a)(1)-1). The financial institution may use different methods of notice for different types of preauthorized transfers and need not offer consumers a choice of notice methods (Staff Commentary 205.10(a)(1)-2).

[10] The telephone line must be "readily available" so that consumers calling to inquire about transfers are able to have their calls answered reasonably promptly during normal business hours. During the initial call in most cases and within two business days after the initial call in all cases, the financial institution should be able to verify whether the transfer was received (Staff Commentary 205.10(a)(1)-5). Within its primary service area, a financial institution must provide a local or toll-free telephone number (Staff Commentary 205.10(a)(1)-7).

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

Preauthorized transfers from a customer's account. Preauthorized transfers from a consumer's account may only be authorized by the consumer in writing and signed or similarly authenticated by the consumer (Section 205.10(b)). Signed, written authorizations may be provided electronically, subject to the E-Sign Act (Staff Commentary 205.10(b)-5). In all cases, the party that obtains the authorization from the consumer must provide a copy to the consumer. If a third party payee fails to obtain an authorization in writing or fails to provide a copy to the consumer, the third party payee and not the financial institution has violated Regulation E (Staff Commentary 205.10(b)-2).

Stop payments. Consumers have the right to stop payment of preauthorized transfers from accounts. The consumer must notify the financial institution orally or in writing at any time up to three business days before the scheduled date of the transfer (Section 205.10(c)(1)). The financial institution may require written confirmation of an oral stop payment order to be made within 14 days of the consumer's oral notification. If the financial institution requires a written confirmation, it must inform the consumer at the time of the oral stop payment order that written confirmation is required and provide the address to which the confirmation should be sent. If the consumer fails to provide written confirmation, the oral stop payment order ceases to be binding after 14 days (Section 205.10(c)(2)).

Notice of transfers varying in amount. If a preauthorized transfer from a consumer's account varies in amount from the previous transfer under the same authorization or the preauthorized amount, either the financial institution or the designated payee must send to the consumer a written notice, at least 10 days before the scheduled transfer date, of the amount and scheduled date of the transfer (Section 205.10(d)(1)). The consumer may elect to receive notice only when the amount varies by more than an agreed amount or falls outside a specified range (Section 205.10(d)(2)). The range must be an acceptable range that the consumer could reasonably anticipate (Staff Commentary 205.10(d)(2)-1). The financial institution does not violate Regulation E if the payee fails to provide sufficient notice (Staff Commentary 205.10(d)-1).

Compulsory use. The financial institution may not make it a condition for an extension of credit that repayment will be by means of preauthorized EFT, except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account (Section 205.10(e)(1)). The financial institution may offer a reduced APR or other cost-related incentive for an automatic payment feature as long as the creditor offers other loan programs for the type of credit involved (Staff Commentary 205.10(e)(1)-1)[11].

[11] This section also prohibits anyone from requiring the establishment of an account for receipt of EFTs with a particular financial institution either as a condition of employment or the receipt of a government benefit (Section 205.10(e)(2)). However, the employer may require direct deposit of salary, as long as the employee may choose the financial institution that will accept the direct deposit, or limit direct deposits to one financial institution as long as the employee may choose to receive salary by other means (*e.g.*, check or cash) (Staff Commentary 205.10(e)(2)-1).

Services Offered by Provider Not Holding Consumer's Account - Section 205.14

A person who provides EFT services to a consumer but does not hold the consumer's account is a service provider subject to Section 205.14 if the person issues an access device that the consumer can use to access the account and no agreement exists between the person and the account-holding financial institution. Transfers initiated by a service provider are often cleared through an automated clearinghouse (ACH).

The responsibilities of the service provider are set forth in Sections 205.14(b)(1) and (2). The duties of the account-holding financial institution with respect to the service provider are found in Sections 205.14(c)(l) and (2).

Electronic Fund Transfer of Government Benefits - Section 205.15

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

VII. Relation to Other Laws - Section 205.12

This section describes the relationship between the EFTA and the Truth in Lending Act (TILA). The section also provides procedures for states to apply for exemptions from the requirements of the EFTA or Regulation E for any class of EFTs within the state.

The EFTA governs the following:

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

The TILA governs all of the following:

- The issuance of credit cards as defined in Regulation Z.
- The addition of a credit feature to a debit card or other access device.
- The issuance of dual debit/credit cards, except for access devices whose only credit feature is a pre-existing agreement to cover account overdrafts or to maintain a minimum account balance.

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

VIII. Administrative Enforcement, Record Retention - Section 205.13

Section 917 of the EFTA sets forth the federal agencies responsible for enforcing compliance with the provisions of the Act.

Record retention. Financial institutions must maintain evidence of compliance with the EFTA and Regulation E for at least two years. The agency supervising the financial institution may extend this period. The period may also be extended if the financial institution is subject to an action filed under Sections 910, 915 or 916(a) of the EFTA, which generally apply to the financial institution's liability under the EFTA and Regulation E. Persons subject to the EFTA who have actual notice that they are being investigated or subject to an enforcement proceeding must retain records until disposition of the proceeding.

Records may be stored on microfiche, microfilm, magnetic tape, or in any other manner capable of accurately retaining and reproducing the information.

IX. Miscellaneous

EFTA contains several additional provisions that are not directly reflected in the language of Regulation E. Most significantly, 15 USC 1693*l* provides that the consumer may not waive by agreement any right conferred, or cause of action created, by the EFTA. However, the consumer and another person may provide by agreement greater consumer protections or additional rights or remedies than those provided by EFTA. In addition, the consumer may sign a waiver in settlement of a dispute.

If a third party payee has agreed to accept payment by EFT, the consumer's obligation to pay is suspended during any period in which a system malfunction prevents an EFT from occurring (15 USC 1693j). However, the payee may avoid that suspension by making a written request for payment by means other than EFT.

Failure to comply with the requirements of EFTA can result in civil and criminal liability, as outlined in 15 USC 1693m and 15 USC 1693n. Financial institutions may also be liable for damages under 15 USC 1693h due to failure to complete an EFT or failure to stop a preauthorized transfer when instructed to do so.

<u>Model disclosure clauses and forms (12 CFR 205, Appendix A)</u> Appendix A of Regulation E contains model clauses and forms that financial institutions may use to comply with the requirement disclosure requirements of Regulation E. Use of the model forms is optional and a financial institution may make certain changes to the language or format of the model forms without losing the protection from civil and criminal liability under Sections 915 and 916 of the EFTA. The model forms are:

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

REFERENCES

Laws

15 USC 1693 et seq.	Electronic Fund Transfer Act
15 USC 7001 et seq.	Electronic Signatures in Global and National Commerce

Regulations

12 CFR Part 205	Electronic Fund Transfers

Electronic Fund Transfer Act Program

Examination Objectives

To determine the financial institution's compliance with Regulation E.

To assess the quality of the financial institution's compliance risk management systems and its policies and procedures for implementing Regulation E.

To determine the reliance that can be placed on the financial institution's internal controls and procedures for monitoring the financial institution's compliance with Regulation E.

To direct corrective action when violations of law are identified or when the financial institution's policies or internal controls are deficient.

Examination Procedures

Level I

WKP.REF.

1. Through a review of all written policies and procedures, management's self-assessments, customer complaints, prior examination reports, and any compliance audit material, including work papers and reports, determine whether:

   - The scope of the audit addresses all provisions as applicable.
   - Management has taken corrective actions to follow-up on previously identified deficiencies.
   - The testing includes samples covering all product types and decision centers.
   - The work performed is accurate.
   - Significant deficiencies and their causes are included in reports to management and/or to the Board of Directors.
   - The frequency of review is appropriate.

2. Through discussions with management and review of available information, determine whether the financial institution's internal controls are adequate to ensure compliance in Regulation E area under review. Consider the following:

Exam Date:	
Prepared By:	
Reviewed By:	
Docket #:	

WKP. REF.

- Organization charts
- Process flowcharts
- Policies and procedures
- Account documentation
- Checklists
- Computer program documentation.

3. Through a review of the financial institution's training materials, determine whether:

- The financial institution provides appropriate training to individuals responsible for Regulation E compliance and operational procedures.
- The training is comprehensive and covers the various aspects of Regulation E that apply to the individual financial institution's product offerings and operations.

LEVEL II

If upon conclusion of the management and policy-related examination procedures, you note procedural weaknesses or other risks requiring further investigation, conduct transaction testing, as necessary, using the following examination procedures. Use your judgment in deciding the size of each sample of deposit account disclosures, notices, and advertisements. Increase the sample size until you are confident you have sufficiently reviewed all aspects of the financial institution's activities and policies subject to the regulation.

1. Obtain and review copies of the following:

- Disclosure forms.
- Account agreements.
- Procedural manuals and written policies.

Exam Date:	
Prepared By:	
Reviewed By:	
Docket #:	

WKP. REF.

- Merchant agreements.
- Automated teller machine receipts and periodic statements.
- Error resolution statements/files.
- Form letters used in case of errors or questions concerning an account.
- Any agreements with third parties allocating compliance responsibilities.
- Consumer complaint files.

2. Determine the extent and adequacy of the financial institution's policies, procedures, and practices for ensuring compliance with the regulation. In particular, verify that:

   - Access devices are issued in compliance with the regulation (12 CFR 205.5(b)). Required disclosures are given at time the account is opened or prior to the first EFT (12 CFR 205.4 and 205.7(c)). Unauthorized transfer claims are processed in compliance with the regulation (12 CFR 205.6 and 205.11).
   - Liability for unauthorized transfer claims is assessed in compliance with the regulation (12 CFR 205.6).
   - Negligence is not a factor in determining customer liability. The deposit agreement may not impose greater liability than Regulation E provides but may provide for less consumer liability (12 CFR 205.6).
   - Preauthorized debits and credits comply with the regulation (12 CFR 205.10).

3. If the financial institution has changed the terms or conditions since the last examination that required a written notice to the customer, determine that the institution provided the proper notice in a timely manner (12 CFR 205.8(a)).

4. Review a sample of periodic statements to determine that they contain sufficient information for the consumer to identify transactions adequately and that they otherwise comply with regulatory requirements (12 CFR 205.9).

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5. Verify that the financial institution does not require compulsory use of EFTs, except as authorized (12 CFR 205.10(e)).

6. Review documents relating to a sample of unauthorized transfers, lost or stolen ATM cards, and EFT consumer complaints, and their respective periodic statements. During this review:

- Evaluate the financial institution's compliance with its error resolution procedures to isolate any apparent deficiencies in the financial institution's operations and to ensure that the institution follows its policies for unauthorized transfers (12 CFR 205.6 and 205.11).
- Determine whether the financial institution investigates alleged errors and notifies consumers of the results within allotted time frames and, when appropriate, provisionally re-credits the account (12 CFR 205.11(c)).
- Verify that the financial institution follows regulatory procedures after it completes its investigation and determines either that an error occurred (12 CFR 205.11(c)(1)) or that no error occurred (12 CFR 205.11(d)).

7. Review a periodic statement for *each* type of account in which electronic fund transfers occur to make sure that the statements comply with the requirements of the regulation (12 CFR 205.9(b)).

8. Review ATM and point-of-sale transfer receipts to determine whether they provide a clear description of the transaction (12 CFR 205.9(a)).

9. Determine that the financial institution is maintaining records of compliance for a period of not less than two years from the date disclosures are required to be made or action is required to be taken (12 CFR 205.13(b)).

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10. If the financial institution maintains payroll card accounts, review a sample of the payroll card accounts. If the financial institution does not provide periodic statements under 12 CFR 205.9(b) for these accounts, verify that the institution makes available the account balance by telephone, an electronic history of account transactions, and (upon request) a written history of account transactions (12 CFR 205.18(b)).

11. If the financial institution maintains payroll card accounts, verify that the financial institution complies with the modified requirements with respect to the required initial disclosures, error resolution notices, limitations on liability, and error resolution procedures (12 CFR 205.18(c)).

12. If the financial institution operates one or more ATMs for which it charges a fee for use, determine that the financial institution provides notice of the fee and the amount of the fee both on the machine and/or the screen or paper before the consumer is committed to paying the fee (12 CFR 205.16).

EXAMINER'S SUMMARY, RECOMMENDATIONS AND COMMENTS

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Electronic Fund Transfer Act

Questionnaire

This questionnaire can be used to review audit work papers, to evaluate financial institution policies, to perform transaction testing, and to train as appropriate. Complete only those aspects of the checklist that specifically relate to the issue being reviewed, evaluated, or tested, and retain those completed sections in the work papers.

When reviewing audit, evaluating financial institution policies, or performing transaction testing, a "No" answer indicates a possible exception/deficiency and you should explain it in the work papers. If a line item is not applicable within the area you are reviewing, indicate by using "NA."

Underline the applicable use: **Audit** **Financial Institution Policies** **Transaction Testing**

	Yes	No	NA
12 CFR 205.5 - Issuance of Access Devices			
1. Do the financial institution's policies, practices, and procedures allow that validated access devices are issued only:			
• In response to oral or written requests (12 CFR 205.5(a)(1)) or	☐	☐	☐
• As a renewal or substitution for an accepted access device? (12 CFR 205.5(a)(2))	☐	☐	☐
2. Do the financial institution's policies, practices, and procedures allow that unsolicited access devices are issued only when the devices are:			
• Any access device that was used as an accepted access device?	☐	☐	☐
• The institution has provided a means to identify the consumer to whom it was issued?	☐	☐	☐
• The institution has provided the disclosures required by Section 205.7(b)(l), (2), and (3)?	☐	☐	☐
• Not validated? (12 CFR 205.5(b)(1))	☐	☐	☐
• Accompanied by a clear explanation that they are not validated and how they may be disposed of if validation is not desired? (12 CFR 205.5(b)(2))	☐	☐	☐
• Accompanied by the initial disclosures required by 12 CFR 205.7? (12 CFR 205.5(b)(3))	☐	☐	☐

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	Yes	No	NA
• Validated only in response to a consumer's request and after the financial institution has verified the consumer's identity by reasonable means (e.g., photograph, fingerprint, personal visit, signature)? (12 CFR 205.5(b)(4) and Staff Commentary)	☐	☐	☐

12 CFR 205.6 – Consumer Liability for Unauthorized Electronic Fund Transfers

3. Does the financial institution impose liability on the consumer for unauthorized transfers only if: (12 CFR 205.6(a))

	Yes	No	NA
• Any access device that was used was an accepted access device?	☐	☐	☐
• The institution has provided a means to identify the consumer to whom it was issued?	☐	☐	☐
• The institution has provided the disclosures required by Section 205.7(b)(l), (2), and (3)?	☐	☐	☐
4. Does the financial institution NOT rely on consumer negligence or the deposit agreement to impose greater consumer liability for unauthorized EFTs than is permitted under Regulation E? (Staff Commentaries 205.6(b)-1 and -2)	☐	☐	☐
5. If a consumer notifies the financial institution within two business days after learning of the loss or theft of an access device, does the financial institution limit the consumer's liability for unauthorized EFTs to the lesser of $50 or actual loss? (12 CFR 205.6(b)(1))	☐	☐	☐

6. If a consumer does not notify the financial institution within two business days after learning of the loss or theft of an access device, does the institution limit the consumer's liability for unauthorized EFTs to the lesser of $500 or the sum of (12 CFR 205.6(b)(2)):

	Yes	No	NA
• $50 or the amount of unauthorized EFTs that occurred within the two business days, whichever is less;	☐	☐	☐

PLUS

	Yes	No	NA
• The amount of unauthorized EFTs that occurred after the close of two business days and before notice to the financial institution (provided the financial institution establishes that these transfers would not have occurred had the consumer notified the financial institution within that two-day period)?	☐	☐	☐

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		Yes	No	NA
7.	If a consumer notifies the financial institution of an unauthorized EFT within 60 calendar days of transmittal of the periodic statement upon which the unauthorized EFT appears, does the financial institution not hold the consumer liable for the unauthorized transfers that occur after the 60-day period? (12 CFR 205.6(b)(3))	☐	☐	☐
8.	If a consumer does not notify the financial institution of an unauthorized EFT within 60 calendar days of transmittal of the periodic statement upon which the unauthorized EFT appears, does the financial institution ensure that the consumer's liability does not exceed the amount of the unauthorized transfers that occur after the close of the 60 days and before notice to the financial institution, if the financial institution establishes that the transfers would not have occurred had timely notice been given? (12 CFR 205.6(b)(3))	☐	☐	☐
9.	If a consumer notifies the financial institution of an unauthorized EFT within the timeframes discussed in questions 7or 8 and the consumer's access device is involved in the unauthorized transfer, does the financial institution hold the consumer liable for amounts as set forth in 12 CFR 205.6(b)(1) or (2) (discussed in questions 5 and 6)? (12 CFR 205.6(b)(3)) *Note:* The first two tiers of liability (as set forth in 12 CFR 205.6(b)(1) and (2) and discussed in questions 5 and 6) do not apply to unauthorized transfers from a consumer's account made without an access device. (Staff Commentary 205.6(b)(3)-2)	☐	☐	☐
10.	Does the financial institution extend the 60-day time period by a reasonable amount, if the consumer's delay in notification was due to extenuating circumstance? (12 CFR 205.6(b)(4))	☐	☐	☐
11.	Does the financial institution consider notice to be made when the consumer takes steps reasonably necessary to provide the institution with pertinent information, whether or not a particular employee or agent of the institution actually received the information? (12 CFR 205.6(b)(5)(i))	☐	☐	☐
12.	Does the financial institution allow the consumer to provide notice in person, by telephone, or in writing? (12 CFR 205.6(b)(5)(ii))	☐	☐	☐
13.	Does the financial institution considers written notice to be given at the time the consumer mails or delivers the notice for transmission to the institution by any other usual means? (12 CFR 205.6(b)(5)(iii))	☐	☐	☐

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		Yes	No	NA
14.	Does the financial institution consider notice given when it becomes aware of circumstances leading to the reasonable belief that an unauthorized transfer to or from the consumer's account has been or may be made? (12 CFR 205.6(b)(5)(iii))	☐	☐	☐
15.	Does the financial institution limit the consumer's liability to a lesser amount than provided by 12 CFR 205.6, when state law or an agreement between the consumer and the financial institution provide for such an amount? (12 CFR 205.6(b)(6))	☐	☐	☐

12 CFR 205.7 - Initial Disclosures

		Yes	No	NA
16.	Does the financial institution provide the initial disclosures at the time a consumer contracts for an EFT service or before the first EFT is made involving the consumer's account? (12 CFR 205.7(a))	☐	☐	☐
17.	Do the financial institution's initial disclosures provide the following information, as applicable:			
	• A summary of the consumer's liability for unauthorized transfers under 12 CFR 205.6 or under state or other applicable law or agreement? (12 CFR 205.7(b)(1))	☐	☐	☐
	• The telephone number and address of the person or office to be notified when the consumer believes that an unauthorized EFT has been or may be made? (12 CFR 205.7(b)(2))	☐	☐	☐
	• The financial institution's business days? (12 CFR 205.7(b)(3))	☐	☐	☐
	• The type of EFTs the consumer may make and any limits on the frequency and dollar amount of transfers? (If details on the limits on frequency and dollar amount are essential to maintain the security of the system, they need not be disclosed.) (12 CFR 205.7(b)(4))	☐	☐	☐
	• Any fees imposed by the financial institution for EFTs or for the right to make transfers? (12 CFR 205.7(b)(5))	☐	☐	☐
	• A summary of the consumer's right to receive receipts and periodic statements, as provided in 12 CFR 205.9, and notices regarding preauthorized transfers as provided in 12 CFR 205.10(a) and 205.10(d)? (12 CFR 205.7(b)(6))	☐	☐	☐

		Yes	No	NA
	• A summary of the consumer’s right to stop payment of a preauthorized EFT and the procedure for placing a stop payment order, as provided in 12 CFR 205.10(c)? (12 CFR 205.7(b)(7))	☐	☐	☐
	• A summary of the financial institution’s liability to the consumer for its failure to make or to stop certain transfers under the EFTA? (12 CFR 205.7(b)(8))	☐	☐	☐
	• The circumstances under which the financial institution, in the ordinary course of business, may disclose information to third parties concerning the consumer’s account? (12 CFR 205.7(b)(9))	☐	☐	☐
	• An error resolution notice that is substantially similar to the Model Form A-3 in appendix A? (12 CFR 205.7(b)(10))	☐	☐	☐
	• A notice that a fee may be imposed by an ATM operator (as defined in section 205.16(a)) when the consumer initiates an EFT or makes a balance inquiry and by any network used to complete the transaction? (12 CFR 205.7(b)(11))	☐	☐	☐
18.	Does the financial institution provide disclosures at the time a new EFT service is added, if the terms and conditions of the service are different than those initially disclosed? (12 CFR 205.7(c))	☐	☐	☐

12 CFR 205.8 - Change-in-Terms Notice; Error Resolution Notice

		Yes	No	NA
19.	If the financial institution made any changes in terms or conditions required to be disclosed under section 205.7(b) that would result in increased fees, increased liability, fewer types of available EFTs, or stricter limits on the frequency or dollar amount of transfers, did the financial institution provide a written notice to consumers at least 21 days prior to the effective date of such change? (12 CFR 205.8(a))	☐	☐	☐
20.	Does the financial institution provide either the long form error resolution notice at least once every calendar year or the short form error resolution notice on each periodic statement? (12 CFR 205.8(b))	☐	☐	☐

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Yes No NA

12 CFR 205.9 - Receipts at Electronic Terminals; Periodic Statements

21. Does the financial institution makes receipts available to the consumer at the time the consumer initiates an EFT at an electronic terminal? The financial institution is exempt from this requirement for EFTs of $15 or less. (12 CFR 205.9(a) and (e)) ☐ ☐ ☐

22. Do the receipts contain the following information, as applicable:

- The amount of the transfer? (12 CFR 205.9(a)(1)) ☐ ☐ ☐
- The date the transfer was initiated? (12 CFR 205.9(a)(2)) ☐ ☐ ☐
- The type of transfer and the type of account to or from which funds were transferred? (12 CFR 205.9(a)(3)) ☐ ☐ ☐
- A number or code that identifies the consumer's account or the access device used to initiate the transfer? (12 CFR 205.9(a)(4)) ☐ ☐ ☐
- The terminal location where the transfer is initiated? (12 CFR 205.9(a)(5)) ☐ ☐ ☐
- The name or other identifying information of any third party to or from whom funds are transferred? (12 CFR 205.9(a)(6)) ☐ ☐ ☐

23. Does the financial institution send a periodic statement for each monthly cycle in which an EFT has occurred? If no EFT occurred, does the financial institution send a periodic statement at least quarterly? (12 CFR 205.9(b)) ☐ ☐ ☐

24. Does the periodic statement contain the following information, as applicable:

- Transaction information for each EFT occurring during the cycle, including the amount of transfer, date of transfer, type of transfer, terminal location, and name of any third party transferor or transferee? (12 CFR 205.9(b)(1)) ☐ ☐ ☐
- Account number? (12 CFR 205.9(b)(2)) ☐ ☐ ☐
- Fees? (12 CFR 205.9(b)(3)) ☐ ☐ ☐
- Account balances? (12 CFR 205.9(b)(4)) ☐ ☐ ☐
- Address and telephone number for inquiries? (12 CFR 205.9(b)(5)) ☐ ☐ ☐

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	Yes	No	NA
• Telephone number to ascertain preauthorized transfers, if the financial institution provides telephone notice under 12 CFR 205.10(a)(1)(iii)? (12 CFR 205.9(b)(6))	☐	☐	☐

12 CFR 205.10 - Preauthorized Transfers

	Yes	No	NA
25. If a consumer's account is to be credited by a preauthorized EFT from the same payor at least once every 60 days (and the payor does not already provide notice to the consumer that the transfer has been initiated) (12 CFR 205.10(a)(1)), does the financial institution do one of the following:			
• Provide oral or written notice, within two business days, after the transfer occurs? (12 CFR 205.10(a)(1)(i))	☐	☐	☐
• Provide oral or written notice, within two business days after the transfer was scheduled to occur, that the transfer did or did not occur? (12 CFR 205.10(a)(1)(ii))	☐	☐	☐
• Provide a readily available telephone line that the consumer can call to determine if the transfer occurred and that telephone number is disclosed on the initial disclosure of account terms and on each periodic statement? (12 CFR 205.10(a)(1)(iii))	☐	☐	☐
26. Does the financial institution credit the amount of a preauthorized transfer as of the date the funds for the transfer are received? (12 CFR 205.10(a)(3))	☐	☐	☐
27. Does the financial institution ensure that an authorization is obtained for preauthorized transfers from a consumer's account by a written, signed or similarly authenticated authorization, and is a copy of the authorization provided to the consumer? (12 CFR 205.10(b))	☐	☐	☐
28. Does the financial institution allow the consumer to stop payment on a preauthorized EFT by oral or written notice at least three business days before the scheduled date of the transfer? (12 CFR 205.10(c)(1))	☐	☐	☐
29. If the financial institution requires that the consumer give written confirmation of an oral stop-payment order within 14 days, does the financial institution inform the consumer, at the time they give oral notification, of the requirement and provide the address where they must send the written confirmation?	☐	☐	☐

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Yes No NA

Note: An oral stop-payment order ceases to be binding after 14 days if the consumer fails to provide the required written confirmation. (12 CFR 205.10(c)(2))

30. Does the financial institution inform, or ensure that third party payees inform, the consumer of the right to receive notice of all varying transfers? ☐ ☐ ☐

    OR

    Does the financial institution give the consumer the option of receiving notice only when a transfer falls outside a specified range of amounts or differs from the most recent transfer by an agreed–upon amount? (12 CFR 205.10(d)(2)) ☐ ☐ ☐

31. If the financial institution or third party payee is obligated to send the consumer written notice of the EFT of a varying amount, does the financial institution ensure that:

    - The notice contains the amount and date of transfer? ☐ ☐ ☐
    - The notice is sent at least 10 days before the scheduled date of transfer? (12 CFR 205.10(d)(1)) ☐ ☐ ☐

32. Does the financial institution not condition an extension of credit to a consumer on the repayment of loans by preauthorized EFT, except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account? (12 CFR 205.10(e)(1)) ☐ ☐ ☐

33. Does the financial institution not require a consumer to establish an account for EFTs with a particular institution as a condition of employment or receipt of government benefits? (12 CFR 205.10(e)(2)) ☐ ☐ ☐

12 CFR 205.11 - Procedures for Resolving Errors

34. Does the financial institution have procedures to investigate and resolve all oral or written notices of error received no later than 60 days after the institution sends the periodic statement or provides passbook documentation? (12 CFR 205.11(b)(2)) ☐ ☐ ☐

35. If the financial institution requires written confirmation of an error within 10 business days of an oral notice, does the financial institution inform the consumer of this requirement and provide the address where the written confirmation must be sent? (12 CFR 205.11(b)(2)) ☐ ☐ ☐

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36.	Does the financial institution have procedures to investigate and resolve alleged errors within 10 business days, except as otherwise provided in 12 CFR 205.11(c)? (12 CFR 205.11(c)(1))	☐	☐	☐
	Note: The time period is extended in certain circumstances. (12 CFR 205.11(c)(3))			
37.	Does the financial institution report investigation results to the consumer within three business days after completing its investigation and correct any error within one business day after determining that an error occurred? (12 CFR 205.11(c)(1))	☐	☐	☐
38.	If the financial institution is unable to complete its investigation within 10 business days, does the financial institution have procedures to investigate and resolve alleged errors within 45 calendar days of receipt of a notice of error; and:			
	• Does the financial institution provisionally credit the consumer's account in the amount of the alleged error (including interest, if applicable) within 10 business days of receiving the error notice (however, if the financial institution requires, but does not receive, written confirmation within 10 business days, the financial institution is not required to provisionally credit the consumer's account)?	☐	☐	☐
	• Within two business days after granting any provisional credit, does the financial institution inform the consumer of the amount and date of the provisional credit and gives the consumer full use of the funds during the investigation?	☐	☐	☐
	• Within one business day after determining that an error occurred, does the financial institution correct the error? And	☐	☐	☐
	• Does the financial institution report the results to the consumer within three business days after completing its investigation including, if applicable, notice that a provisional credit has been made final? (12 CFR 205.11(c))	☐	☐	☐
	Note: The time period is extended in certain circumstances. (12 CFR 205.11(c)(3))			
39.	If a billing error occurred, does the financial institution not impose a charge related to any aspect of the error-resolution process? (Staff Commentary 205.11(c)-3)	☐	☐	☐

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		Yes	No	NA
40.	If the financial institution determines that no error occurred (or that an error occurred in a manner or amount different from that described by the consumer), does the financial institution send a written explanation of its findings to the consumer and note the consumer's right to request the documents the financial institution used in making its determination? (12 CFR 205.11(d)(1))	☐	☐	☐
41.	When the financial institution determines that no error (or a different error) occurred, does the financial institution notify the consumer of the date and amount of the debiting of the provisionally credited amount and the fact that the financial institution will continue to honor checks and drafts to third parties and preauthorized transfers for five business days (to the extent that they would have been paid if the provisionally credited funds had not been debited)? (12 CFR 205.11(d)(2))	☐	☐	☐

12 CFR 205.13 - Record Retention

		Yes	No	NA
42.	Does the financial institution maintain evidence of compliance with the requirements of the EFTA and Regulation E for a period of two years? (12 CFR 205.13(b))	☐	☐	☐

12 CFR 205.16 - Disclosures at Automated Teller Machines (ATM)

		Yes	No	NA
43.	If the financial institution operates an ATM and imposes a fee on a consumer for initiating an EFT or balance inquiry, does the financial institution provide notice that a fee will be imposed and disclose the amount of the fee? (12 CFR 205.16(b))	☐	☐	☐
44.	Does the financial institution post the notice required by section 205.16(b) in a prominent and conspicuous location on or at the ATM? (12 CFR 205.16(c)(1))	☐	☐	☐
45.	Does the financial institution provide the notice required by section 205.16(b) either by showing it on the ATM screen or by providing it on paper before the consumer is committed to paying a fee? (12 CFR 205.16(c)(2))	☐	☐	☐

12 CFR 205.18 - Payroll Card Accounts

46. If the financial institution offers payroll card accounts, does the financial institution EITHER provide periodic statements as required by 12 CFR 205.9(b) OR make available to the consumer:

	Yes	No	NA
• The account balance, through a readily available telephone line, AND	☐	☐	☐
• An electronic history of the consumer's account transactions, such as through an Internet Web site, that covers at least 60 days preceding the date the consumer electronically accesses the account, AND	☐	☐	☐
• A written history of the consumer's account transactions that is provided promptly in response to an oral or written request and that covers at least 60 days preceding the date the financial institution receives the consumer's request? (12 CFR 205.18(b))	☐	☐	☐
Note: The history of account transactions must include the information set forth in section 205.9(b).			
47. Does the financial institution provide initial disclosures that include, at a minimum:			
• A telephone number that the consumer may call to obtain the account balance, the means by which the consumer can obtain an electronic account history, such as the address of an Internet Web site, and a summary of the consumer's right to receive a written account history upon request, including a telephone number to call to request a history, and	☐	☐	☐
• A notice concerning error resolution? (12 CFR 205.18(c)(1))	☐	☐	☐
48. Does the financial institution provide an annual notice concerning error resolution or, alternatively, an abbreviated notice with each electronic and written history? (12 CFR 205.18(c)(2))	☐	☐	☐
49. Does the financial institution begin the 60-day period for reporting any unauthorized transfer under 12 CFR 205.6(b)(3) on the earlier of the date the consumer electronically accesses the consumer's account after the electronic history made available to the consumer reflects the transfer; or the date the financial institution sends a written history of the consumer's account transactions requested by the consumer in which the unauthorized transfer is first reflected? (12 CFR 205.18(c)(3))	☐	☐	☐
Note: A financial institution may comply with the provision above by limiting the consumer's liability for an unauthorized transfer as provided under 12 CFR 205.6(b)(3) for any transfer reported by the consumer within 120 days after the transfer was credited or debited to the consumer's account.			

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		Yes	No	NA
50.	Does the financial institution comply with the error resolution requirements in response to an oral or written notice of an error from the consumer that is received by the earlier of 60 days after the date the consumer electronically accesses the consumer's account after the electronic history made available to the consumer reflects the alleged error; or 60 days after the date the financial institution sends a written history of the consumer's account transactions requested by the consumer in which the alleged error is first reflected? (12 CFR 205.18(c)(4)) *Note:* The financial institution may comply with the requirements for resolving errors by investigating any oral or written notice of an error from the consumer that is received by the institution within 120 days after the transfer allegedly in error was credited or debited to the consumer's account.	☐	☐	☐

COMMENTS

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