

Electronic Fund Transfer Act¹

Introduction

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

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

Exemptions – §205.3(c)

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

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

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

Special Requirements – §205.4

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

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

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

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

Issuance of Access Devices – §205.5

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

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

VI. Deposits — EFTA

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

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

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

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

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

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

Liability of Consumers for Unauthorized Transfers – §205.6

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

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