

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

An institution need not provisionally credit the account if:

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

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

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

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

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

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

Relation to State Law – §205.12

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

The EFTA governs:

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

The TILA governs:

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

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

Administrative Enforcement – §205.13 and §917

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

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

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

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

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

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

Electronic Fund Transfer of Government Benefits – §205.15

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

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

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

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

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

Disclosures at Automated Teller Machines - §205.16

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

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

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

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

Requirements for Electronic Communications - §205.17

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

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

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

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

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