

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

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

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

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

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

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

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

Examination Objectives

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

Examination Procedures

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

VI. Deposits — EFTA

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