

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R-1077]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment proposed revisions to Regulation E, which implements the Electronic Fund Transfer Act (EFTA). The proposed revisions implement amendments to the EFTA contained in the Gramm-Leach-Bliley Act that require the disclosure of certain fees associated with automated teller machine (ATM) transactions. The amendments require ATM operators who impose a fee for providing electronic fund transfer services to disclose this fact in a prominent and conspicuous location on or at the ATM. The operator must also disclose that a fee will be imposed and the amount of the fee, either on the screen of the machine or on a paper notice before the consumer is committed to completing the transaction. In addition, when the consumer contracts for an electronic fund transfer service, financial institutions are required to disclose that a fee may be imposed for electronic fund transfers initiated at an ATM owned by another entity.

DATES: Comments must be received by August 18, 2000.

ADDRESSES: Comments, which should refer to Docket No. R-1077, may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551 or mailed electronically to regs.comments@federalreserve.gov. Comments addressed to Ms. Johnson also may be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP-500 between 9:00 a.m. and 5:00 p.m., pursuant to the Board's Rules Regarding the Availability of Information, 12 CFR part 261.12.

FOR FURTHER INFORMATION CONTACT: Kyung H. Cho-Miller or Natalie E. Taylor, Counsel, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, at (202) 452-2412 or (202) 452-3667. For the hearing impaired only, contact Janice Simms, Telecommunications Device for the Deaf (TDD), at (202) 872-4984.

SUPPLEMENTARY INFORMATION:

I. The Electronic Fund Transfer Act

The Electronic Fund Transfer Act (EFTA), 15 U.S.C. 1693 *et seq.*, enacted in 1978, provides a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer (EFT) systems. The Board's Regulation E (12 CFR part 205) implements the act. Types of transfers covered by the act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale terminal, automated clearinghouse, telephone bill-payment plan, or home-banking program. The act and regulation prescribe restrictions on the unsolicited issuance of ATM cards and other access devices; disclosure of terms and conditions of an EFT service; documentation of EFT services by means of terminal receipts and periodic account statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized EFT services.

The Official Staff Commentary (12 CFR part 205 (Supp. I)) interprets the regulation, and provides guidance to financial institutions in applying the regulation to specific transactions. The commentary is a substitute for individual staff interpretations; it is updated periodically, as necessary, to address significant questions that arise.

EFTA coverage is not limited to traditional financial institutions holding consumers' asset accounts. For EFT services made available by entities other than an account-holding financial institution, the act directs the Board to assure, by regulation, that the provisions of the act are made applicable.

II. The Gramm-Leach-Bliley Amendments to the EFTA

On November 12, 1999, the Gramm-Leach-Bliley Act (GLBA) became law (Pub. L. 106-102, 113 Stat. 1338). Sections 702, 703, and 705 of the GLBA contain amendments to the EFTA. The amendments require disclosure of ATM fees (sometimes referred to as "surcharges") imposed by ATM operators on consumers who hold accounts at other financial institutions. Many ATM operators including financial institutions that impose such a fee, currently disclose information about the fee to satisfy existing regulatory and network requirements.

Section 702 of the GLBA amends section 904(d) of the EFTA regarding services provided by entities other than the account-holding institution. An ATM operator that imposes a fee on a consumer for providing EFT services is required to provide notice of that fact in a prominent and conspicuous location on or at the ATM on which the EFT is initiated. The ATM operator must also disclose that a fee will be imposed and the amount of the fee, either on the screen of the ATM or on a paper notice, before the consumer is committed to completing the transaction. No fee may be imposed unless proper notice is provided and the consumer elects to complete the transaction.

Section 703 of the GLBA amends section 905(a) of the EFTA regarding the disclosure of terms and conditions. The financial institution holding the consumer's account must include in its initial disclosures a notice that a fee may be imposed by (1) an

ATM operator not holding the consumer's account, or (2) any national, regional, or local network used to complete the transaction.

Section 705 of the GLBA amends section 910 of the EFTA regarding liability of financial institutions. ATM operators are not liable for failing to comply with the requirement to post notice if the notice posted at an ATM is subsequently removed, damaged, or altered by any person other than the ATM operator.

III. Proposed Revisions to Regulation E

Pursuant to its authority under section 904(a) of the EFTA, the Board is proposing amendments to Regulation E to implement sections 702 and 703 of the GLBA. Section 705, like other statutory provisions regarding liability, would not be made part of the regulation.

To ease compliance, the Board proposes to add a new § 205.16 to address in a single location the rules related to disclosure of surcharges by ATM operators. Below is a section-by-section analysis of the proposed amendments including proposed revisions to §§ 205.3 and 205.7. A cross-reference would also be added to the Official Staff Commentary to existing § 205.9(a)(1). The Board contemplates issuing a final rule in early fall that would be effective 30 days thereafter.

Section 205.3 – Coverage

3(b) Electronic Fund Transfer

Section 205.3(b) generally defines the term “electronic fund transfer.” Proposed paragraph (b)(6) would add balance inquiries at ATMs to the list of examples of an EFT. A balance inquiry would only be considered an EFT for purposes of proposed § 205.16. Thus, balance inquiries at ATMs would be subject to the new ATM fee disclosure requirements, but would not otherwise be subject to Regulation E requirements.

Section 205.7 -- Initial Disclosures

7(b) Content of Disclosures

Section 205.7(b) would be revised to implement section 703 of the GLBA. At the time a consumer contracts for an EFT service or before the first EFT, a financial institution is required to provide initial disclosures related to the EFT service, such as fees and a summary of the consumer's liability for unauthorized transfers. Section 703 of the GLBA amends section 905(a) of the EFTA by adding to the initial disclosures a provision that a fee may be imposed by an ATM operator not holding the consumer's account and by a national, regional, or local network used to complete the transfer. If a financial institution's disclosures do not currently include such a provision, it may comply with the new requirement by including an insert regarding ATM surcharges. The Board solicits specific comment on whether national, regional, or local networks separately impose fees and, thus, should be distinguished or whether it is sufficient to refer to “any network” in the disclosures as an alternative to the statutory language, as the

proposal provides. In addition, the proposed language would capture national networks that impose a surcharge and that operate internationally.

Section 205.16 -- Disclosures at Automatic Teller Machines

A new § 205.16 would be added to implement generally section 702 of the GLBA. Proposed § 205.16 (a) defines ATM operator and provides, for purposes of this section, that a balance inquiry is an EFT. The proposal does not incorporate the definition for host transfer services contained in section 702 of the GLBA, as it seems unnecessary to do so.

Proposed §§ 205.16(b) and (c) set forth the ATM disclosure requirements. The disclosure required on the screen or on a paper notice does not apply to any ATM operator that lacks the technical capability to provide such information.

Appendix A to Part 205 -- Model Disclosure Clauses and Forms

Model language that reflects the new disclosure in proposed § 205.7(b)(11) regarding fees that may be imposed by an ATM operator and by any network would be added to appendix A-2.

IV. Proposed Revisions to the Official Staff Commentary

Section 205.9 -- Receipts at Electronic Terminals; Periodic Statements

Section 205.9(a)(1) requires financial institutions that include in the transaction amount a fee for completing an EFT at an electronic terminal to disclose the amount of the fee on the receipt and to display it on or at the terminal. Comment 9(a)(1)-1, which provides guidance on complying with the disclosure requirement, would be revised to provide a cross-reference to the notice requirements in proposed § 205.16(b) for ATM operators.

V. Form of Comment Letters

Comment letters should refer to Docket No. R-1077, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3 ½ inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

VI. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act and section 904(a)(2) of the EFTA, the Board has reviewed the proposed amendments to Regulation E. The proposal would impose a disclosure requirement on account-holding financial institutions with respect to ATM surcharges and a notice requirement on ATM operators.

The proposal exempts ATMs lacking technical capabilities from certain notice requirements until December 31, 2004.

The proposed amendments are not expected to have any significant impact on small entities. Many financial institutions that impose a fee for carrying out an EFT at an ATM already disclose the fee on a receipt and on the screen of a terminal or at the electronic terminal to satisfy existing requirements under § 205.9(a)(1). The proposed amendment would require that the notification regarding the fee be posted at the terminal and on the screen. The notice, however, is generic and can easily be programmed to be viewed on the screen and posted once at the terminal. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

VII. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB number. The OMB control number is 7100-0200.

The collection of information requirements that are relevant to this proposed rulemaking are in 12 CFR part 205 and in Appendix A. This information is mandatory (15 U.S.C. 1693 *et seq.*) to evidence compliance with the requirements of Regulation E and the Electronic Fund Transfer Act (EFTA). The revised requirements would be used to ensure adequate disclosure of fees imposed for electronic fund transfers at ATMs owned by a party other than the account-holding financial institution. The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are also required to retain records for 24 months. This regulation applies to all types of financial institutions, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions are not expected to increase the ongoing annual burden of Regulation E. With respect to state member banks, it is estimated that there are 851 respondents/recordkeepers and an average frequency of about 85,800 responses per respondent each year. Therefore the current amount of annual burden is estimated to be approximately 462,800 hours. Using the same hourly cost, the Federal Reserve estimates that there would be associated start up cost ranging from \$1,600 to \$5,000 per respondent, depending on size and location, for changing disclosures (or disclosure producing software) to include disclosures relating to ATM surcharges and for posting a notice regarding the surcharge at either the ATM or on the screen of the ATM.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises; however, any information obtained by the Federal Reserve may

be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522 (b)(4), (6) and (8)). The disclosures and information about error allegations are confidential between institutions and the customer.

The Federal Reserve requests comments from institutions, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this proposed regulation would be effective. Comments are invited on: (a) the cost of compliance; (b) ways to enhance the quality, utility, and clarity of the information to be disclosed; (c) ways to minimize the burden of disclosure on respondents, including through the use of automated disclosure techniques or other forms of information technology; and (d) capital and start up costs and costs of operations, maintenance, and purchase of services to provide information. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0200), Washington, DC 20503, with copies of such comments sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

List of Subjects

Consumer protection, Electronic fund transfers, Federal Reserve System, Reporting and record keeping requirements.

Text of Proposed Revisions

Certain conventions have been used to highlight proposed changes to Regulation E. New language is shown inside bold-faced arrows, deletions inside bold-faced brackets.

For the reasons set forth in the preamble, the Board proposes to amend Regulation E, 12 CFR part 205, as set forth below:

PART 205 -- ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 205 would continue to read as follows:

Authority: 15 U.S.C. 1693-1693r.

2. Under Section 205.3—Coverage, paragraph (b) would be revised;
3. Under Section 205.7—Initial Disclosures, new paragraph (b)(11) would be added;
4. A new Section 205.16—Disclosures at Automatic Teller Machines, would be added; and
5. Under Appendix A, in A-2 a new paragraph (j) would be added
6. In Supplement I to Part 205, under Section 205.9—Receipts at Electronic Terminals; Periodic Statements, under Paragraph 9(a)(1)—Amount, paragraph 1. would be revised.

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

§ 205.3 Coverage.

* * * * *

(b) Electronic fund transfer. The term electronic fund transfer means any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes, but is not limited to:

- (1) Point-of-sale transfers;
- (2) Automated teller machine transfers;
- (3) Direct deposits or withdrawals of funds;
- (4) Transfers initiated by telephone; [and]
- (5) Transfers resulting from debit card transactions, whether or not initiated through an electronic terminal[.];< and
- (6) Balance inquiries at automated teller machines for purposes of § 205.16.=

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§ 205.7 Initial disclosures.

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(b) Content of disclosures. * * *

<(11) ATM surcharge. A notice that a fee may be imposed by an automated teller machine operator as defined in § 205.16(a)(1), when the consumer initiates an electronic fund transfer or makes a balance inquiry at an automated teller machine operated by a non-accountholding financial institution, and by any network used to complete the transaction.=

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<§ 205.16 Disclosures at automatic teller machines.

(a) Definitions. (1) Automated teller machine operator means any person that operates an automated teller machine at which a consumer initiates an electronic fund transfer as defined in § 205.3(b), and that does not hold the account from which the transfer is made.

(2) Balance inquiry as EFT. For purposes of this section, the term electronic fund transfer includes a transaction that involves a balance inquiry initiated by a consumer.

(b) General. An automated teller machine operator that imposes a fee on a consumer for initiating an electronic fund transfer shall:

- (1) Provide notice that a fee will be imposed; and
- (2) Disclose the amount of the fee.

(c) Notice requirement. (1) On the machine. Notice required by paragraph

(b)(1) of this section shall be posted in a prominent and conspicuous location on or at the automatic teller machine.

(2) Screen or paper notice. The notice required by paragraph (b) of this section shall be given to the consumer, either by showing it on the screen of the automatic teller machine or by printing out a paper notice, before the consumer is irrevocably committed to completing the transaction.

(d) Temporary exemption. The notice requirement in paragraph (c)(2) of this section does not apply to any automated teller machine that lacks the technical capability to provide such information until December 31, 2004.

(e) Imposition of fee. An automated teller machine operator may impose a fee on a consumer for initiating an electronic fund transfer only if

(1) The consumer receives the notice required under paragraph (c) of this section, and

(2) The consumer elects to continue the transaction after receiving such notice.=

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APPENDIX A TO PART 205—MODEL DISCLOSURE CLAUSES AND FORMS

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A-2—MODEL CLAUSES FOR INITIAL DISCLOSURES (§ 205.7(b))

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<(j) ATM surcharges (? 205.7(b)(11)). When you use an ATM not owned by us, you may be charged a fee by the ATM operator or any network used to complete the transfer (and you may be charged a fee for a balance inquiry).=

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SUPPLEMENT I TO PART 205—OFFICIAL STAFF INTERPRETATIONS

SECTION 205.9—RECEIPTS AT ELECTRONIC TERMINALS; PERIODIC STATEMENTS

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Paragraph 9(a)(1)—Amount

1. Disclosure of transaction fee. The required display of a fee amount on or at the terminal may be accomplished by displaying the fee on a sign at the terminal or on the terminal screen for a reasonable duration. Displaying the fee on a screen provides adequate notice, as long as consumers are given the option to cancel the transaction after

receiving notice of a fee. <(See § 205.16(c) for the notice requirements applicable to ATM operators that impose a fee for providing EFT services.)=

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By order of the Board of Governors of the Federal Reserve System, July 7, 2000.

Jennifer J. Johnson,
Secretary of the Board