

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 205

[Regulation E; Docket No. R-1247]

#### Electronic Fund Transfers

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Interim final rule; request for public comment.

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**SUMMARY:** The Board is amending Regulation E, which implements the Electronic Fund Transfer Act, and the official staff commentary to the regulation. The commentary interprets the requirements of Regulation E to facilitate compliance primarily by financial institutions that offer electronic fund transfer services to consumers.

The interim final rule provides that payroll card accounts established directly or indirectly by an employer on behalf of a consumer to which electronic fund transfers of the consumer's salary, wages, or other employee compensation are made on a recurring basis are accounts covered by Regulation E.

**DATES:** This interim final rule is effective July 1, 2007. Comments must be received on or before [Insert date that is 60 days after the date of publication in the Federal Register].

**ADDRESSES:** You may submit comments, identified by Docket No. R-1247, by any of the following methods:

- Agency Web Site: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov). Include the docket number in the subject line of the message.
- FAX: (202) 452-3819 or (202) 452-3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20<sup>th</sup> Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at [www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm](http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm) as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed

electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

**FOR FURTHER INFORMATION CONTACT:** Ky Tran-Trong, Senior Attorney, or Daniel G. Lonergan or David A. Stein, Counsels, 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 users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

## **SUPPLEMENTARY INFORMATION:**

### **I. Statutory Background**

The Electronic Fund Transfer Act (EFTA or Act) (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 EFTA is implemented by the Board's Regulation E (12 CFR part 205). Examples of types of transfers covered by the Act and regulation include transfers initiated through an automated teller machine (ATM), point-of-sale (POS) terminal, automated clearinghouse (ACH), telephone bill-payment plan, or remote banking service. The Act and regulation require disclosure of terms and conditions of an EFT service; documentation of EFTs by means of terminal receipts and periodic account activity statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized EFTs. Further, the Act and regulation also prescribe restrictions on the unsolicited issuance of ATM cards and other access devices.

The official staff commentary (12 CFR part 205 (Supp. I)) is designed to facilitate compliance and provide protection from liability under Sections 915 and 916 of the EFTA for financial institutions and persons subject to the Act. 15 U.S.C. 1693m(d)(1). The commentary is updated periodically to address significant questions that arise.

### **II. Background and Overview of Comments Received**

Payroll cards have become increasingly popular with some employers, financial institutions, and payroll service providers as a means of providing a consumer's wages or other recurring compensation payments – assets that the consumer is able to access and spend via an access device that provides functionality comparable to that of a debit card. Typically, an employer, in conjunction with a bank, will provide the employee with a plastic card with a magnetic stripe; this card accesses an account (or subaccount) assigned to the individual employee. Each payday, the employer credits this account for the amount of the employee's compensation instead of providing the employee with a paper check or making a direct deposit of salary to the employee's checking account. The employee-consumer can use the payroll card to withdraw his or her funds at an ATM, and to make purchases at POS (and possibly get cash back). Some payroll cards may offer features such as convenience checks and electronic bill payment. Payroll cards are often marketed to employers as an effective means of providing wages to employees

who lack a traditional banking relationship. For “unbanked” consumers, payroll card products can serve as substitutes for traditional transaction accounts at a financial institution.

On September 17, 2004, the Board published a notice of proposed rulemaking in the Federal Register (69 FR 55,996) (September 2004 proposal) to provide, among other things, that the term “account” under Regulation E includes payroll card accounts established by an employer for the purpose of providing an employee’s compensation on a recurring basis. A payroll card account would be subject to the regulation whether it is operated or managed by the employer, a third-party payroll processor, or a depository institution.

The Board received approximately 120 comment letters on the September 2004 proposal, nearly 50 of which specifically commented on the proposed revisions addressing payroll card accounts. Comments were received from a variety of industry commenters, including banks, thrifts, credit unions, and industry trade associations. Comments were also received from consumer groups and individual consumers.

Industry commenters generally agreed that it was appropriate to cover payroll card accounts under Regulation E, but urged the Board not to cover other stored-value products so as not to discourage the continued evolution of such products. Most industry commenters also asserted that not all provisions of Regulation E should apply to payroll card accounts. In particular, industry commenters stated that institutions should not be required to provide paper periodic statements. These commenters cited various reasons, including that other means of accessing balance and transaction information, such as via a telephone and the Internet, provided more useful and timely information to consumers at less cost to financial institutions. Industry commenters also stated that payroll card users are often unbanked and chiefly interested in obtaining balance information and, further, that this population was typically transient, making paper statements difficult to deliver. Consumer groups urged the Board to expand the scope of the proposal to cover any stored-value product that is marketed or used as an account substitute, or that is used to receive payments of significant household funds, such as workers’ compensation or unemployment benefits.

A final rule addressing the other proposed provisions addressing electronic check conversion transactions and other matters in the September 2004 proposal is published elsewhere in this Federal Register.

### **III. Summary of the Interim Final Rule**

The Board has modified the proposed rule in light of the comments received. In order to give interested parties an opportunity to comment on the modifications made, and, in particular, on the alternative means to provide periodic statement information, the Board is publishing this interim final rule for comment.

Under the interim final rule, payroll card accounts are defined as “accounts” for purposes of coverage under Regulation E, and include those accounts directly or indirectly established by an employer to which EFTs of the consumer’s wages or other compensation are made on a recurring basis. The interim final rule incorporates a new § 205.18 to grant financial institutions flexibility in how to provide certain account transaction information to payroll card users. Under the new section, financial institutions would be granted an alternative to regularly providing paper periodic statements. In particular, instead of providing paper periodic statements under § 205.9, an institution would: (1) make available to the consumer balance information through a readily available telephone line; (2) make available to the consumer an electronic history (such as via the Internet) of the consumer’s account transactions covering at least a period of 60 days prior to the consumer’s oral or written request; and (3) provide promptly upon the consumer’s request, a written history of the consumer’s account transactions covering at least a period of 60 days prior to the request. The history of account transactions provided electronically or upon request would set forth the same type of information required to be provided on paper periodic statements otherwise required under Regulation E, including information about any fees for EFTs imposed during the period in connection with the payroll card account.

The comments received on the proposal, and the Board’s response to the comments, are discussed in the following section-by-section analysis. As discussed below, the Board is adopting these rules as interim final rules so that interested parties may comment on the new requirements. The effective date of the interim final rule is July 1, 2007.

#### **IV. Section-by-Section Analysis**

##### **Section 205.2 Definitions**

##### **2(b) Account**

The EFTA and Regulation E apply to any EFT that authorizes a financial institution to debit or credit a consumer’s asset account. Under the proposed rule, the term “account” in § 205.2(b)(3) would be revised to include a “payroll card account” directly or indirectly established by an employer on behalf of a consumer to which EFTs of the consumer’s wages, salary, or other employee compensation are made on a recurring basis. A payroll card account would be subject to the regulation whether the account is operated or managed by the employer, a third-party payroll processor, or a depository institution. The interim final rule redesignates current § 205.2(b)(2) as § 205.2(b)(3) and adopts the definition of payroll card accounts as proposed under § 205.2(b)(2).

Overall, the majority of commenters supported coverage of payroll card accounts under Regulation E. Many industry commenters agreed that Regulation E coverage was appropriate for payroll cards, but urged the Board to narrowly define payroll cards so as to include only those types of products that are truly intended to serve as “accounts.” In

this regard, some industry commenters were concerned that an overly broad definition of payroll cards might have the effect of stifling the development of emerging stored-value card products.

A few industry commenters objected to the characterization of payroll cards as “accounts” or “account substitutes,” asserting that funds are added to payroll card accounts in a more limited manner than they are to traditional deposit accounts. (With a payroll card, funds can often be added to the account only by the employer and not the employee.) These industry commenters believed that payroll cards were more appropriately characterized as “payment substitutes” because they provide a means for replacing paper checks.

Consumers and consumer groups supported the proposal’s broad coverage of financial institutions, employers, and providers, and stated that all Regulation E protections, including the provision of periodic statements, should apply to payroll card accounts. These commenters also recommended broadening the scope of the rule to encompass all cards “marketed as substitutes” for a bank account, as well as cards that are used to receive payments of significant household funds, such as workers’ compensation, unemployment benefits, social security payments, or tax refunds.

By express definition, the coverage of EFT services under the EFTA and Regulation E depends upon whether a transaction involves an EFT to or from a consumer’s account. Section 903(2) of the EFTA defines an “account” as a “demand deposit, savings deposit, or other asset account . . . as described in regulations of the Board, established primarily for personal, family, or household purposes.” The definition is broad and is not limited to traditional checking and savings accounts.<sup>1</sup> Under Section 904(d) of the EFTA, “[i]f EFT services are made available to consumers by a person other than a financial institution holding a consumer’s account, the Board shall by regulation assure that the disclosures, protections, responsibilities, and remedies created by [the EFTA] are made applicable to such persons and services.” Congress has clearly expressed its expectation that the Board’s regulation would keep pace with new services and assure that the Act’s basic protections continue to apply to such services.<sup>2</sup>

In light of the characteristics of payroll card accounts, the Board believes it is appropriate to exercise its authority under Sections 903(2) and 904(d) of the EFTA and determine that payroll card accounts are appropriately classified as “accounts” for purposes of Regulation E. Payroll card accounts are assigned to an identifiable consumer and represent a recurring stream of payments that is likely the primary source of the consumer’s income. They are replenished on a recurring basis and designed for ongoing use at multiple locations and for multiple purposes. Payroll card accounts utilize the

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<sup>1</sup> The EFTA’s legislative history evidences a clear Congressional intent to define the term “account” broadly to ensure that “all persons who offer equivalent EFT services involving any type of asset account are subject to the same standards and consumers owning such accounts are assured of uniform protection.” S. Rep. No. 915, 95<sup>th</sup> Cong., 2d Sess. 9 (1978).

<sup>2</sup> See *id.*; S. Rep. No. 1273, 95<sup>th</sup> Cong., 2d Sess. 9-10, 25-26 (1978).

same kinds of access devices, electronic terminals, and networks as do other EFT services historically covered by the EFTA.

The interim final rule adopts a new § 205.2(b)(2) to provide that the term “account” includes a “payroll card account” directly or indirectly established by an employer on behalf of a consumer to which EFTs of the consumer’s wages, salary, or other employee compensation are made on a recurring basis. (Current § 205.2(b)(2) is re-designated as § 205.2(b)(3).) Coverage under Regulation E applies whether the account is operated or managed by the employer, a third-party payroll processor, or a depository institution. The definition is unchanged from the proposal.

The definition generally includes a payroll card account that represents the means by which an employer regularly pays the employee’s salary or other form of compensation, and would include, for example, card accounts for seasonal workers or employees that are paid on a commission basis. Moreover, the fact that an employee may only remain in the employer’s hire for a short period of time, including just one pay cycle, does not negate coverage, so long as the employer intended to make recurring payments to the payroll card account. However, if the employer only pays the employee by adding funds to an “account” accessible by a card in isolated or limited instances – for example, in final-paycheck situations, or only in emergency situations when the customary, non-payroll-card method of payment does not work – but otherwise intends to regularly pay the employee by another method, such as by paper check or direct-deposit, such a card “account” would not fall within the definition of a payroll card account.

Payroll card accounts also are covered under the interim final rule whether the funds are held in individual employee accounts or in a pooled account with some form of “subaccounting” maintained by a depository institution (or by a third party) that enables a determination of the amounts of money owed to particular employees. Although some commenters suggested that the manner in which such funds are held should determine whether a particular payroll card account falls within the rule, the Board has determined to adopt the definition as proposed, because it will assure broad and uniform application and compliance, and minimize potential circumvention of the rule. The Board further believes there is no substantive difference between a subaccount and an individual account for purposes of determining whether Regulation E coverage is appropriate.

As stated in the proposal, the Board is limiting the scope of this interim final rule to payroll card products. Thus, for example, “gift” cards issued by a merchant that can be used to purchase items in the merchant’s store would not be covered by the interim final rule. In addition, comment 2(b)-2 clarifies that cards to which only one-time transfers of salary-related payments are made (e.g., to pay an annual bonus), or cards exclusively used to disburse non-salary-related payments, such as petty cash or travel per diem cards, are not covered. To the extent one-time bonus payments, payments to reimburse travel expenses, or any other payment of funds (e.g., if a consumer is permitted to add his or her funds) are transferred to or from a payroll card account, however, such transfers would be considered EFTs covered by the regulation. Current comment 2(b)-2 addressing examples of accounts not covered by Regulation E is redesignated as comment 2(b)-3.

Some consumer group commenters urged the Board to apply Regulation E to all card products to which an individual might transfer by direct deposit some portion of his or her wages, even if such cards are not “payroll card accounts” directly or indirectly established by an employer. These commenters asserted that such general spending cards are marketed as account substitutes and therefore should be covered under the regulation. Consumer groups also urged the Board to cover stored-value products that may be used by some consumers to hold important household funds or assets, such as workers’ compensation, unemployment benefits or tax refunds.

The Board has not expanded the interim final rule in the manners suggested. Payroll cards are established directly or indirectly by an employer for the express purpose of receiving on a long-term basis, recurring payments of a consumer’s wages, salary or other compensation. Accordingly, there is a greater likelihood that the account will serve as a consumer’s principal transaction account, and hold significant funds for an extended period of time. In contrast, general spending cards are established by the individual consumer, and while the consumer might choose to deposit some portion of salary (as well as other funds) onto a general spending card, the consumer also may use these products like gift cards or other stored-value or prepaid cards. Under the latter situation, consumers would derive little benefit from receiving full Regulation E protections for a card that may only be used on a limited, short-term basis and which may hold minimal funds, while the costs of providing Regulation E initial disclosures, periodic statements and error resolution rights would be quite significant for the issuer. In addition, coverage of such products could impede the development of other card products generally. Similarly, although some card products may be used to transfer significant or important sums to a consumer, these products are generally designed to make one-time or a limited number of payments to consumers, and are not intended to be used on a long-term basis. Given these above considerations, the Board has determined to limit the scope of the interim final rule to payroll card accounts. The Board will monitor the development of other card products and may reconsider Regulation E coverage as these products continue to develop.

### **Section 205.18 Requirements for Financial Institutions Offering Payroll Card Accounts**

In the proposal, the Board proposed that all of the Regulation E provisions, including initial disclosures, periodic statements, error resolution procedures, and other consumer protections, would apply to payroll card accounts. Industry commenters, however, disagreed with the Board’s suggestion that all provisions of Regulation E coverage should apply to payroll card accounts. In particular, most industry commenters stated that the requirement to deliver periodic statements under § 205.9 should not apply to payroll card accounts. Instead, industry commenters suggested that entities offering payroll cards should be subject to rules similar to those contained in § 205.15 of Regulation E for accounts established for the electronic transfer of government benefits (electronic benefit transfer, or EBT, accounts), which provide for alternative means of providing account information.

Industry commenters commonly cited one or more of the following justifications for not requiring paper periodic statements: (1) some payroll card holders are transient, complicating the mailing of statements; (2) payroll card holders are sufficiently informed about their accounts by “real-time” balance and recent-transaction information available by other means, such as on-line, through telephone voice-response units, or ATMs; (3) payroll cards seek to eliminate employer paper payroll costs, and a mailed statement could reduce expected savings to employers; (4) the cost of mailing statements could increase payroll card fees, potentially lowering both employer as well as employee interest in using the cards; and (5) imposing a costly regulatory requirement could inhibit the development of a card product that is safer for employees than carrying cash, potentially cheaper than using a check-casher, and is a potential means for transitioning the unbanked to a full banking relationship.

In contrast, consumer group commenters asserted that payroll card accounts should be treated the same as other consumer accounts for all purposes under the EFTA, including the requirement to provide paper periodic statements. These commenters noted that periodic statements assist consumers in tracking their account balances and transactions and, importantly, allow consumers to discover unauthorized transfers or other errors involving their accounts.

The periodic statement requirement is an important aspect of the EFTA’s protections. When it addressed EBT programs in 1994, the Board recognized that periodic statements are a central component of Regulation E’s disclosure scheme. However, in the EBT final rule, the Board exercised its exception authority under Section 904(c) of the EFTA to provide relief from the requirement to provide a periodic statement if: (1) account balance information is made available to benefit recipients via telephone and electronic terminals; and (2) a written account history is provided upon request. The Board determined that granting EBT providers relief from the periodic statement requirements was appropriate in light of the availability of other means of obtaining account information to benefit recipients, the limited types of transactions involved for EBT accounts, and the expense of routinely mailing monthly statements to all recipients given the low margins associated with administering EBT programs. See 59 FR 10,678, 10,681 (March 7, 1994).

As part of this rulemaking, the Board has conducted focus group testing of identified payroll card holders to obtain information regarding how actual payroll card users manage and use their accounts in order to better understand their account information needs. Participants in the Board-sponsored focus groups included both consumers who received paper periodic statements for their payroll card accounts, and those who did not.

Generally, focus group participants found their cards convenient to use, and most used their cards not only to withdraw cash, but also to make purchases on a regular basis. A significant number of participants believed that receiving pay on payroll cards is more convenient than receiving a paper paycheck each pay period, although a few participants

expressed a preference for receiving tangible, paper evidence of pay each pay period. Many participants, particularly those that do not have a checking account, have all of their pay deposited onto their payroll card and pay all of their expenses from the account. Other participants used the payroll card as a small savings account, while paying all of their expenses out of another bank account.

The majority of focus group participants regularly checked their balances over the telephone, or checked balance and transaction information on-line, some multiple times per week. Although some limited transaction information was available through the telephone, most focus group participants chose not to access their transaction information by phone. Participants indicated that more transaction information was available on-line than was available via the telephone, which made verification of transactions easier on-line.

For those participants who received paper periodic statements, most stated that they generally filed their statements as a record of account activity, but otherwise rarely used them to track transactions or look for errors. The lack of periodic statement use was generally attributed to the fact that the participants monitored their payroll account information more frequently during the month via the telephone or on-line, and thus, participants felt that they did not need to review their statement when it arrived. While a few participants wanted to receive or to continue to receive paper statements, others indicated a clear preference for using alternative means of obtaining account information, in particular on-line and by phone, to monitor account activity and avoid errors.

The Board notes that nearly all of the focus group participants had some means of on-line access; consequently the participants may not be representative of the current or future payroll card holder population overall with respect to their ability to access account information on-line. Nevertheless, the Board believes that the focus groups provided helpful insight regarding how consumers use and manage their payroll card accounts.

After a review of the comments and data from the focus groups, and further analysis, the Board has concluded that it is appropriate to provide flexibility in connection with the periodic statement requirement for payroll card accounts. As was the case when the Board considered rules governing EBT products in 1994, the Board is persuaded at this time that the alternative methods of providing account transaction information currently made available by many payroll card providers can give payroll card users a means of tracking their account balances and transactions that is comparable to that provided by paper periodic statements. Moreover, information obtained via the telephone or on-line is typically updated on a daily basis, in contrast to periodic statements which only provide information as of the end of each statement cycle. Thus, consumers using telephone and on-line methods often have access to more timely information through these methods. Access to more timely information may be particularly critical to consumers who may need to track their account balances on a transaction-by-transaction basis to ensure they do not overdraw their accounts.

The Board has also weighed the potential burden of requiring all financial institutions to provide paper periodic statements against the benefit consumers who prefer these statements would obtain from such statements. Since financial institutions are not currently required to provide paper statements for payroll card accounts, such a requirement would impose considerable one-time implementation costs on financial institutions that currently provide payroll card accounts, and possibly discourage other financial institutions from offering payroll card accounts. Accordingly, after also taking into consideration the alternative methods available to consumers for obtaining payroll card account information, the Board concludes that granting relief from the periodic statement requirement for payroll card accounts is appropriate.

Section 205.18 of the interim final rule adopts an approach for providing account information for payroll card accounts similar to that used for EBT products under § 205.15, with certain modifications to address issues relating to periodic statements and error resolution procedures and notices. This new section allows financial institutions to use alternative means to provide account information where an institution chooses not to provide periodic statements under § 205.9(b). Section 205.18 also addresses the requirements governing periodic statements, initial disclosures, error resolution and the annual error resolution notice, the issuance of access devices, and limitations on liability. Except as modified by this section, all other provisions of Regulation E apply to payroll card accounts.

### **18(a) Coverage**

Section 205.18(a) describes the entities that must comply with Regulation E with respect to the provision of payroll card accounts. A person is a financial institution subject to the regulation if it directly or indirectly holds a payroll card account or issues an access device to a consumer for use in initiating an EFT from a payroll card account. The scope of coverage set forth in this paragraph differs from the scope under the definition of “financial institution” under § 205.2(i) because it does not require that a person issuing an access device for a payroll card account to also agree with a consumer to provide EFT services in order to be covered. As stated in the supplementary information in the proposal, the Board intends to cover employers to the extent they are involved in the transfer of funds to the payroll card account or in the issuance of the card. See 69 FR at 55,999. Thus, the Board believes that this clarification is necessary to extend coverage under the interim final rule to employers that issue payroll cards to their employees, but who may not otherwise provide EFT services to their employees using those cards. However, the mere fact that a consumer has elected to make direct deposits of salary to a checking or savings account that the consumer has separately established would not make an employer a financial institution for purposes of this rule.

Section 205.18(a) further states that, except as provided in § 205.18, the person must comply with all applicable requirements of the act and regulation with respect to payroll card accounts. Comment 18(a)-1 illustrates this provision in the context of issuing access devices under § 205.5, and states that a financial institution may issue an access device for a payroll card account consumer only in response to an oral or written

request for the device or as a renewal or substitute of an accepted access device. The comment further clarifies that a consumer is deemed to request an access device when the consumer chooses to receive his or her salary through a payroll card account. Although some commenters stated that a consumer should be deemed to apply for a payroll card account when the consumer submits an application for employment, such a rule could be inconsistent with the compulsory use prohibition in § 205.10(e)(2).

To the extent more than one party is a “financial institution” under the rule with respect to a particular payroll card account, such parties may contract among themselves pursuant to the jointly provided services provision under § 205.4(e) to ensure compliance with the interim final rule. For example, if an employer, by agreement, issues a payroll card to a consumer and opens an account at a bank into which the employer deposits the consumer’s wages and from which the consumer can access funds by using the card, then both the employer and the bank would qualify as a financial institution with respect to that consumer’s payroll card account. Similarly, if an employer contracts with a third party processor or service provider to issue the access device for the payroll card account, the third party processor or service provider would also be a financial institution with respect to that payroll card account. Disclosure obligations satisfied by one party, such as a service provider, for a payroll card account would satisfy any disclosure obligations for any other financial institution with respect to that payroll card account. Although several commenters expressed concern that more than one entity may qualify as a “financial institution,” no significant reasons were offered to explain why § 205.4(e) is inadequate in the payroll card account context.

### **18(b) Alternative to Periodic Statement**

Section 205.18(b) provides financial institutions flexibility in providing account information to consumers. Financial institutions may elect to provide periodic statements under § 205.9 as they would for other accounts. As an alternative to providing periodic statements, institutions may instead: (1) make available to the consumer the account balance through a readily available telephone line; (2) make available to the consumer an electronic history (such as via an Internet web site) of the consumer’s account transactions that covers at least 60 days preceding the date the consumer electronically accesses the account; and (3) provide promptly upon the consumer’s oral or written request, a written history of the consumer’s account transactions that covers at least 60 days preceding the date of receipt of the consumer’s request. As further explained below in the context of error resolution time frames, a consumer “electronically accesses” an account once the consumer enters a user identification code or a password or otherwise complies with a security procedure used by an institution to verify the consumer’s identity.

Consistent with the EBT rule, and as for EFT systems generally, a readily available telephone line is a local or toll-free line available at least during standard business hours. Institutions may of course choose to provide recipients with a line available 24 hours. See 59 FR at 10,681. The readily available phone line may be automated, in which case institutions will likely provide 24-hour access to balance

information. Model Form A-7(a), discussed below, sets forth a model clause that institutions may use to inform consumers about how to access their account information, including the telephone number that consumers may call to obtain balance information.

The requirement to provide a written history of account transactions promptly upon the consumer's oral or written request addresses the possibility that some consumers may have limited on-line access. The Board anticipates that, in general, written histories will be sent the same day or soon after the consumer makes an oral request, and within a few days after the consumer's request in writing is received by an institution (to account for any time lags that may arise in routing the consumer's written request to the appropriate person). Institutions may also provide a specific telephone number or address for consumers to request a written history of account transactions. Comment is solicited as to whether the option to obtain a written history of account transactions is necessary or appropriate.

The Board recognizes that requiring financial institutions to provide 60 days' worth of account transaction information differs from the rule in § 205.9(b), which requires financial institutions to provide transaction information for EFTs that have occurred during a monthly cycle. The Board nevertheless believes that 60 days is appropriate for payroll card accounts because, unlike for accounts generally under Regulation E, institutions will not be required to send a statement of account transactions to consumers with payroll card accounts on a regular basis. Without a longer time period for account transactions, some payroll card account holders might waive their right to assert an error under § 205.11 if they do not access their transaction history on at least a monthly basis. The Board further notes that the requirement to provide a 60-day account history is also the time period used in the EBT rule.

To ensure that consumers are able to review their account transactions and to effectively exercise their error resolution rights, § 205.18(b)(2) of the interim final rule requires the same type of account transaction information to be provided to consumers that is set forth under § 205.9(b)(1)–(6), whether the history of account transactions is provided electronically or in writing. For example, consumers must be provided with information about fees incurred in connection with EFTs and payroll card accounts.

Comment is solicited as to whether additional transaction information should be provided to payroll card users, or whether certain information should be excluded from the history of account transactions. Comment is also solicited regarding the feasibility of providing consumers with a rolling history of 60 days' worth of transactions.

### **18(c) Modified Requirements**

#### **Initial disclosures and annual error-resolution notice**

For financial institutions that do not furnish periodic statements, § 205.18(c) sets forth provisions clarifying how to satisfy the requirements relating to disclosures, liability limits, and error resolution procedures under Regulation E. Section 205.18(c)(1)

generally sets forth modified disclosures that a financial institution must provide in addition to or in lieu of required initial disclosures under § 205.7(b). Section 205.18(c)(1)(i) requires financial institutions to include in the initial disclosures for payroll card accounts the means by which a consumer can access information about his or her account, including the telephone number that the consumer may call to obtain his or her account balance, and information on how the consumer can electronically obtain a history of account transactions, such as the address of an Internet web site. Institutions must also include in their initial disclosures, in place of the disclosure required by § 205.7(b)(6), a summary of the consumer's right to obtain a written history of account transactions upon request, including a telephone number to call to request a history. Section 205.18(c)(1)(ii) requires financial institutions to provide in initial disclosures a notice explaining the error resolution rights associated with payroll card accounts in place of the notice required by § 205.7(b)(10).

Section 205.18(c)(2) requires financial institutions to provide an annual notice describing error-resolution rights, in place of the notice required by § 205.8(b). The interim final rule provides Model Forms which financial institutions may use to facilitate compliance with the interim final rule in paragraph A-7 in appendix A to Part 205.

#### Limitations on liability and error resolution

Sections 205.18(c)(3) and (4) of the interim final rule explain the application of the regulation's limitations on liability and error resolution procedures when a financial institution opts not to provide paper periodic statements. Section 205.18(c)(3) specifies two different triggers for beginning the 60-day period for limiting liability for unauthorized EFTs, depending on when and how the consumer has obtained a history of his or her account transactions. If the consumer obtains transaction information electronically under § 205.18(b)(1)(ii), the 60-day period begins on the date the account is electronically accessed by the consumer. If the consumer has requested a written history of his or her account transactions under § 205.18(b)(1)(iii), the 60-day period begins on the date the institution sends the written history. The interim final rule specifies that the applicable 60-day period for reporting an unauthorized EFT begins on the earlier of these two dates to clarify when the 60-day period begins to run where a consumer reviews his account transactions for errors both electronically as well as using a written history the consumer has requested. For example, assume that a consumer reviews his or her transactions on-line on June 1, and subsequently requests a written history on June 5, which is sent by the financial institution that day. In this case, the consumer's 60-day period for asserting an unauthorized EFT appearing both electronically and on the written history begins running on June 1 when the consumer first electronically accessed the account. As further explained below in the context of error resolution procedures, in order for the 60-day period to begin running, the unauthorized transfer must have been available for the consumer to review when the consumer electronically accessed his or her account, or when the consumer obtained a written history of account transactions.

Section 205.18(c)(4) establishes a similar rule for establishing when the 60-day period for reporting an error begins for purposes of the error resolution procedures set forth in § 205.11, depending upon how the consumer has obtained the history of his or her account transactions on which an error appears. Accordingly, a financial institution must comply with the error resolution requirements set forth in § 205.11 if it receives a consumer's oral or written notice of error no later than 60 days after the earlier of: (1) the date the consumer electronically accesses his or her account under § 205.18(c)(1)(ii); or (2) the date the institution sends a written history of the consumer's account transactions that has been requested under § 205.18(b)(1)(iii) in which the error is first reflected. The first trigger further requires that the financial institution has made available to the consumer information about the EFT for which the consumer asserts an error on the date that the consumer electronically accesses his or her account (e.g., by posting the information about the transfer on an Internet web site).

With respect to electronic access, the Board does not intend for the 60-day periods for liability limits and error resolution to begin running if the consumer merely, for example, visits an Internet web site where his or her account information and other information can be retrieved. Rather, the 60-day period would begin once the consumer enters a user identification code or a password or otherwise complies with a security procedure used by an institution to verify the consumer's identity. However, the interim final rule does not require institutions to determine whether the consumer has in fact accessed information about specific transactions involving the consumer's payroll card account to trigger the beginning of the 60-day period for liability limits and error resolution rights. The Board also notes that, in contrast to the EBT rule, the 60-day period is not triggered when a consumer obtains balance information via the telephone.

Comment is requested regarding the feasibility of determining when a consumer has electronically accessed his or her account. Comment is also requested regarding whether other means of triggering the 60-day time periods for establishing liability for unauthorized EFTs or for error resolution may be appropriate. In particular, comment is requested regarding the feasibility of determining when a consumer has accessed specific transaction information about his or her payroll card account where the consumer can also access other personal information connected to his or her employment (e.g., health benefits or insurance) on the same Internet web site.

#### Example

As discussed above, the history of account transactions provided under § 205.18(c)(1), whether provided electronically or in writing, must cover at least 60 days preceding the date of the institution's receipt of a request for the history by the consumer. Thus, assume, for example, that a consumer uses a password to electronically access his or her payroll card account, or is sent a written history the consumer has requested, on June 1. The history of account transactions provided electronically or sent to the consumer must cover a period of at least 60 days prior to June 1, and would include any EFTs occurring between April 2 and May 31. Assuming that the consumer did not previously access or receive account information reflecting the covered EFTs, the

consumer would have 60 days, or until July 30, to assert any unauthorized EFTs or other errors occurring between April 2 and May 31 to preserve his or her rights under §§ 205.6 and 205.11 with respect to those transfers.

In the example, suppose the consumer electronically accesses his or her account on June 1 and discovers an error that occurred on May 10. In this case, the consumer must provide notice of that error to the institution by July 30 to trigger the institution's obligation to investigate the error. Thus, although the consumer has 60 days following the date he or she obtains the history of account transactions to assert any errors appearing on that history, it does not necessarily mean that the consumer has 60 days following the date of the error to provide notice of that error to the institution. Accordingly, if the consumer provides a notice of the May 10 error after July 30, the institution is not required to comply with the procedures and time limits in § 205.11 for investigating the error. See comment 11(b)-7. Nevertheless, if the error involves an unauthorized EFT, liability for the unauthorized transfer may not be imposed on the consumer unless the institution satisfies the requirements of § 205.6.

#### Additional issues

In addition to scope and periodic statement issues, commenters raised a few additional issues with respect to the proposal. As part of the proposal, the Board sought public comment on ongoing rulemaking efforts by the Federal Deposit Insurance Corporation (FDIC) to amend, revise, or interpret the meaning of the terms “deposit” with respect to stored-value or prepaid products, and possibly payroll card products.<sup>3</sup> The overwhelming majority of commenters urged the Board not to link its treatment of payroll card accounts under Regulation E to the FDIC's regulatory proposals. Many commenters also raised concerns that the treatment of payroll card products as “accounts” under Regulation E might make the Board, or other regulators, more likely to deem such products “accounts,” “deposits,” or “account relationships” for purposes of other laws (e.g., for customer identification procedures under the USA PATRIOT Act, for reserve requirements under the Board's Regulation D, for Truth in Savings Act purposes, and possibly for other issues under provisions of state law). The Board notes that the definition of “account” under the EFTA and Regulation E does not incorporate the definitions of “account” or “deposit” as described in other laws. Accordingly, the definition of “payroll card account” in this interim final rule is intended only to address coverage issues under Regulation E, and is not intended to address the definition of “account” for purposes of any other statute or regulation.

One large provider of payroll cards sought clarification as to whether a “dual function” payroll card account is covered under the rule. Under a dual function card account, part of the account holds employer-funded “corporate expense funds,” and the remaining segregated portion of the card holds employer-transmitted wages belonging to the employee. The Board believes the segregated corporate expense portion of the

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<sup>3</sup> See generally 70 FR 45,571 (August 8, 2005); 69 FR 20,558 (April 16, 2004) (FDIC proposals to clarify the insurance coverage of funds accessed through stored-value cards and other nontraditional access mechanisms).

account accessible by the card is not a “payroll card account” because the funds are not primarily for personal, family, or household purposes. The remaining funds that consist of the consumer’s wages would qualify as funds held in a “payroll card account.”

Several industry commenters requested that the Board clarify whether, or to what extent, the “compulsory use” provisions of Regulation E apply to payroll card accounts. Section 205.10(e)(2) prohibits a financial institution from requiring a consumer to establish an account with a particular institution for receipt of EFTs as a condition of employment or receipt of a government benefit. As clarified by the existing commentary, an employer may not require its employees to receive their salary by direct deposit to any particular institution, although an employer may: (1) require direct deposit of salary by electronic means if employees may choose the institution that will receive the direct deposit; or alternatively, (2) give the employee the choice of having his or her salary deposited at a particular institution designated by the employer, or receiving their salary by check or cash. The Board believes the compulsory use provisions apply to payroll card accounts because they are established as accounts for the receipt of EFTs of salary. However, provided that an employer does not require a consumer to obtain a payroll card account as the method of receiving pay, and permits, for example, a consumer to receive pay via direct deposit to a financial institution, the compulsory use prohibition should not be implicated.

Many providers of payroll card accounts urged the Board to provide a 12-month period in which to bring payroll card programs into compliance. Many consumer commenters believed that a six-month period is adequate. The effective date of the interim final rule is July 1, 2007. The Board anticipates that financial institutions will have at least one year following publication of a final rule on payroll card accounts to adjust their programs for compliance.

#### **A-7 – Model Clauses for Financial Institutions Offering Payroll Card Accounts**

Model Form A-7 is added to provide model clauses consistent with the new § 205.18 alternate provisions for financial institutions who offer payroll card accounts and who do not provide the periodic statement required under § 205.9(b). These clauses, which are modeled after similar clauses provided under Appendix A-5 for EBT accounts, are intended to provide model language to assist payroll card issuers in providing disclosure information with respect to obtaining account balances and account histories, as well as error resolution procedures. Comment 2 for Appendix A has been revised to make clear that the use of such clauses in making these disclosures in connection with payroll card accounts will protect a financial institution from liability under Sections 915 and 916 of the EFTA if the clauses accurately reflect the institution’s EFT services. Additionally, a typographical error has also been corrected in the interim final rule. Currently the comment references “205.15(d)(7),” when in fact the correct reference is “(d)(1).” As no subsection “(d)(7)” exists, an appropriate technical correction has been incorporated.

#### **V. Final Regulatory Flexibility Analysis**

The Board prepared a regulatory flexibility analysis as required by the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 et seq.) in connection with the September 2004 proposal. The Board received no comments on its regulatory flexibility analysis.

Under Section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under Section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board certifies that the rule will not have a significant economic impact on a substantial number of small entities.

1. Statement of the need for, and objectives of, the interim final rule. The EFTA was enacted to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund transfer systems. The primary objective of the EFTA is the provision of individual consumer rights with regard to electronic fund transfers. 15 U.S.C. 1693. The EFTA authorizes the Board to prescribe regulations to carry out the purpose and provisions of the statute. 15 U.S.C. 1693b(a). The EFTA expressly states that the Board's regulations may contain "such classifications, differentiations, or other provisions, . . . as, in the judgment of the Board, are necessary or proper to effectuate the purposes of [the EFTA], to prevent circumvention or evasion [of the act], or to facilitate compliance [with the EFTA]." 15 U.S.C. 1693b(c). The EFTA also states that "[i]f electronic fund transfer services are made available to consumers by a person other than a financial institution holding a consumer's account, the Board shall by regulation assure that the disclosures, protections, responsibilities, and remedies created by [the EFTA] are made applicable to such persons and services." 15 U.S.C. 1693b(d).

The Board is revising Regulation E to provide that payroll card accounts directly or indirectly established by an employer on behalf of a consumer to which EFTs of the consumer's wages, salary, or other employee compensation are made on a recurring basis are "accounts" subject to Regulation E. The Board believes that the revisions to Regulation E as discussed in the **Supplementary Information** are within Congress' broad grant of authority to the Board to adopt provisions that carry out the purposes of the statute.

2. Issues raised by comments in response to the initial regulatory flexibility analysis. In accordance with Section 3(a) of the RFA, the Board conducted an initial regulatory flexibility analysis in connection with the proposed rule. The Board did not receive any comments on its initial regulatory flexibility analysis with respect to the portions relating to payroll card accounts.

3. Small entities affected by the final rule. Employers, payroll card services providers and depository institutions are required to comply with the interim final rule under Regulation E to the extent that they are engaged in providing payroll card accounts to consumers. Based on available information, the interim final rule will apply to the

following institutions (numbers approximate): employers (5,000), payroll card services providers (40), and depository institutions (60), for a subtotal of approximately 5,100 institutions. The Board estimates that over 4,000 of these institutions could be considered small institutions with assets less than \$150 million.

All small entities that are engaged in providing payroll card accounts are affected by the requirements established by this interim final rule, including initial disclosures, error resolution procedures, and the provision of account information.

4. Recordkeeping, reporting, and compliance requirements. Institutions must provide an initial disclosure to payroll card account holders regarding the means by which the holder may obtain account information and the means by which the holder may resolve errors. In order to comply with the amendments to Regulation E, institutions must review their account-opening disclosures to ensure compliance with the regulation; and some institutions may be required to revise their disclosures. (The rule provides model disclosures to facilitate the revision of the disclosures and to ensure compliance.) In addition, if the institution elects not to provide periodic statements, the institution must establish systems for delivering account information electronically and by telephone. Institutions also will be required to implement error resolution provisions under the interim final rule to the extent that they do not currently have such procedures.

After conducting focus group studies on the use of payroll cards and reviewing several of the payroll card products currently available, the Board understands that many small employers, payroll card services providers, and depository institutions that provide such products are currently providing account-opening disclosures for payroll card accounts, and generally have in place error resolution procedures. In addition, the Board understands that many, if not all, institutions providing payroll cards make information regarding those payroll card accounts available to the holders via telephone and electronic access. In light of the fact that the interim final rule codifies the current practices and procedures of many payroll card providers and provides an alternative to periodic statements, the Board concludes that the interim final rule will not have a substantial economic impact on small entities.

5. Other federal rules. The Board believes no federal rules duplicate, overlap, or conflict with the interim final revisions to Regulation E.

6. Steps taken to minimize the economic impact on small entities. The Board solicited comment about potential ways to reduce regulatory burden. Commenters urged the Board to eliminate the periodic statement requirement, asserting that other more cost-effective methods of providing transaction information could provide consumers with the information necessary to enable consumers to manage their payroll card accounts. In the interim final rule, financial institutions engaged in providing payroll card accounts may elect not to provide periodic statement in paper form if they make available balance information to consumers through a readily-available telephone line and make available account transaction information electronically, such as through an Internet web site.

These financial institutions will also be required to provide a written history of account transactions upon the consumer's request.

## **VI. Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The final rule contains requirements subject to the PRA. The collection of information that is required by this rule is found in 12 CFR 205.2(b)(2) and 205.18. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless the information collection displays a currently valid OMB control number. The OMB control number is 7100-0200. This information is required to provide benefits to consumers and is mandatory (15 U.S.C. 1693 *et seq.*). The respondents/recordkeepers are for-profit financial institutions, including small businesses. Institutions are required to retain records for 24 months.

All financial institutions involved in providing payroll card accounts to consumers (*i.e.*, employers, payroll card services providers, and depository institutions), of which there are approximately 5,100, potentially are affected by this collection of information because these institutions will be required to provide initial disclosures, account transaction histories, error resolution procedures, and other consumer protections, to consumers who receive their salaries through payroll card accounts as defined in § 205.2(b)(2).

The following estimates represent an average across all respondents and reflect variations among institutions based on their size, complexity, and practices. The other federal agencies are responsible for estimating and reporting to OMB the total paperwork burden for the institutions for which they have administrative enforcement authority. They may, but are not required to, use the Federal Reserve's burden estimate methodology.

The interim final rule provides disclosure obligations when one or more parties is involved in offering payroll card accounts as defined in § 205.2(b)(2) – whether the financial institution is an employer, a depository institution, or other third party involved in holding payroll card accounts or in the issuance of payroll cards. Such entities are required to fully comply with Regulation E, as amended by this interim final rule, and provide disclosure of basic terms, costs, and rights relating to electronic fund transfer services in connection with the payroll card account. Parties that jointly offer such accounts may contract among themselves to comply with the regulation by providing one set of disclosures. Certain information must be disclosed to consumers, including: initial and updated EFT terms, transaction information, the consumer's potential liability for unauthorized transfers, and error resolution rights and procedures.

The Federal Reserve estimates that of the 1,289 respondents regulated by the Federal Reserve that are required to comply with Regulation E, approximately 5

participate in payroll card programs. The Federal Reserve estimates that each respondent will take, on average, 8 hours (one business day) to reprogram and update their systems to provide initial disclosures to payroll card account holders. The Federal Reserve also estimates that each respondent will take, on average, 7 hours to reprogram and update systems to provide periodic statements, or to provide account information by other means. Finally, the Federal Reserve estimates that each respondent will take, on average, 8 hours (one business day) to develop error resolution procedures. The total annual burden for respondents regulated by the Federal Reserve for all of these disclosures is estimated to be 115 hours. Using the Federal Reserve's methodology, the total annual burden for all other institutions offering payroll card services is approximately 117,185 hours. The disclosures are standardized and machine-generated and do not substantively change from one individual account to another; thus, the average time for providing the disclosure to all consumers should be small.

The Federal Reserve's current annual burden for Regulation E disclosures is estimated to be 63,047 hours. The interim final rule would increase the total burden under Regulation E for all respondents regulated by the Federal Reserve by 115 hours, from 63,047 to 63,162 hours. (This burden estimate does not include the burden associated with the new disclosure requirements addressing electronic check conversion services and ATM disclosures as announced in a separate final rulemaking (Dockets No. R-1210 and R-1234).) Using the methodology explained above, the interim final rule would increase total burden under Regulation E for all other potentially affected entities by approximately 117,185 hours.

Because the records would be maintained by the institution and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

### **Text of Interim Final Revisions**

Comments are numbered to comply with **Federal Register** publication rules.

### **List of Subjects in 12 CFR Part 205**

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

For the reasons set forth in the preamble, the Board amends 12 CFR part 205 and the Official Staff Commentary, as follows:

### **Part 205 – ELECTRONIC FUND TRANSFERS (REGULATION E)**

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

**Authority:** 15 U.S.C. 1693b.

2. Section 205.2 is amended by redesignating paragraph (b)(2) as paragraph (b)(3) and adding a new paragraph (b)(2) as follows:

**§ 205.2 Definitions**

\* \* \* \* \*

(b)(1) Account means \* \* \*

(2) The term includes a “payroll card account” directly or indirectly established by an employer on behalf of a consumer to which electronic fund transfers of the consumer’s wages, salary, or other employee compensation are made on a recurring basis, whether the account is operated or managed by the employer, a third-party payroll processor, a depository institution or any other person. For rules governing payroll card accounts, see § 205.18.

\* \* \* \* \*

3. In Part 205 new § 205.18 is added as follows:

**§ 205.18 Requirements for Financial Institutions Offering Payroll Card Accounts**

(a) Coverage. A person is a financial institution for purposes of the act and this part if it directly or indirectly holds a payroll card account as described in § 205.2(b)(2) or directly or indirectly issues an access device to a consumer for use in initiating an EFT from a payroll card account. The person shall comply with all applicable requirements of the act and this part with respect to payroll card accounts except as provided in this section.

(b) Alternative to periodic statement.

(1) A financial institution need not furnish a periodic statement required by section 205.9(b) if the institution makes available to the consumer –

(i) The consumer’s account balance, through a readily available telephone line;

(ii) An electronic history, such as through an Internet web site, of the consumer’s account transactions that covers at least 60 days preceding the date the consumer electronically accesses the account; and

(iii) 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 of receipt of a request by the consumer.

(2) The history of account transactions provided under paragraphs (b)(1)(ii) and (iii) of this section must include the information set forth in section 205.9(b).

(c) Modified requirements. A financial institution that provides information under paragraph (b) of this section, shall comply with the following:

(1) Initial disclosures. The financial institution shall modify the disclosures under section 205.7(b) by disclosing –

(i) Account information. 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 (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 this paragraph (c)(1)(i) may be made by providing a notice substantially similar to the notice contained in section A-7 in appendix A of this part.

(ii) Error resolution. A notice concerning error resolution that is substantially similar to the notice contained in section A-7 in appendix A of this part, in place of the notice required by section 205.7(b)(10).

(2) Annual error resolution notice. The financial institution shall provide an annual notice concerning error resolution that is substantially similar to the notice contained in section A-7 in appendix A of this part, in place of the notice required by section 205.8(b).

(3) Limitations on liability. For purposes of section 205.6(b)(3), the 60-day period for reporting any unauthorized transfer that appears on a periodic statement shall begin on the earlier of –

(i) The date the consumer electronically accesses the consumer's account under paragraph (b)(1)(ii) of this section, provided that the information about the transfer was made available to the consumer at that time; or

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

(4) Error resolution. The financial institution shall comply with the requirements of section 205.11 in response to an oral or written notice of an error from the consumer that is received no later than 60 days after the earlier of –

(i) The date the consumer electronically accesses the consumer's account under paragraph (b)(1)(ii) of this section, provided that information about the transfer that gives rise to the alleged error was made available to the consumer at that time; or

(ii) The date the financial institution sends a written history of the consumer's account transactions requested by the consumer under paragraph (b)(1)(iii) of this section in which the error is first reflected.

\* \* \* \* \*

4. In Appendix A to Part 205, new Appendix A-7 – MODEL CLAUSES FOR FINANCIAL INSTITUTIONS OFFERING PAYROLL CARD ACCOUNTS (§ 205.18(c)) is added, as follows:

**APPENDIX A TO PART 205 – MODEL DISCLOSURE CLAUSES AND FORMS**

\* \* \* \* \*

**A-7 – MODEL CLAUSES FOR FINANCIAL INSTITUTIONS OFFERING PAYROLL CARD ACCOUNTS (§ 205.18(c))**

(a) Disclosure by financial institutions of information about obtaining account information for payroll card accounts. § 205.18(c)(1).

You may obtain information about the amount of money you have remaining in your payroll card account by calling [telephone number]. This information, along with a 60-day history of account transactions, is also available on-line at [Internet address].

You also have the right to obtain a 60-day written history of account transactions by calling [telephone number], or by writing us at [address].

(b) Disclosure of error-resolution procedures for financial institutions that provide alternative means of obtaining payroll card account information (§ 205.18(c)(1)(ii) and (c)(2)).

In Case of Errors or Questions About Your Payroll Card Account

Telephone us at [telephone number]

or

Write us at [address]

[or

E-mail us at [electronic mail address]]

as soon as you can, if you think an error has occurred in your payroll card account. We must hear from you no later than 60 days after the earlier of the date you electronically access your account or the date we sent the FIRST written history on which the error appeared. You may request a written history of your transactions at any time by [calling us at [telephone number] [writing us at [address]]]. You will need to tell us:

Your name and [payroll card account] number.

Why you believe there is an error, and the dollar amount involved.

Approximately when the error took place.

If you tell us orally, we may require that you send us your complaint or question in writing within 10 business days.

We will determine whether an error occurred within 10 business days after we hear from you and will correct any error promptly. If we need more time, however, we may take up to 45 days to investigate your complaint or question. If we decide to do this, we will credit your account within 10 business days for the amount you think is in error, so that you will have the money during the time it takes us to complete our investigation. If we ask you to put your complaint or question in writing and we do not receive it within 10 business days, we may not credit your account.

For errors involving new accounts, point-of-sale, or foreign-initiated transactions, we may take up to 90 days to investigate your complaint or question. For new accounts, we may take up to 20 business days to credit your account for the amount you think is in error.

We will tell you the results within three business days after completing our investigation. If we decide that there was no error, we will send you a written explanation.

You may ask for copies of the documents that we used in our investigation.

If you need more information about our error-resolution procedures, call us at [telephone number][the telephone number shown above] [[or visit [Internet address]]].

5. In Supplement I to Part 205, the following amendments are made:

a. Under Section 205.2 – Definitions, under 2(b) Account, paragraph 2. is redesignated as paragraph 3. and a new paragraph 2. is added;

b. A new Section 205.18 Requirements for Financial Institutions Offering Payroll Card Accounts is added;

c. Under APPENDIX A – Model Disclosure Clauses and Forms, paragraph 2. is revised.

\* \* \* \* \*

## **SUPPLEMENT I TO PART 205 – OFFICIAL STAFF INTERPRETATIONS**

### **Section 205.2 – Definitions**

2(a) \* \* \*

2(b) Account

1. \* \* \*

2. One-time EFT of salary-related payments. The term “payroll card account” does not include a card used for a one-time EFT of a salary-related payment, such as a bonus, or a card used solely to disburse non-salary-related payments, such as a petty cash or a travel per diem card. To the extent that one-time EFTs of salary-related payments and any other EFTs are transferred to or from a payroll card account, these transfers are EFTs covered by the act and regulation, even if the particular transfer itself does not represent wages, salary, or other employee compensation.

\* \* \* \* \*

Section 205.18 – Requirements for Institutions Offering Payroll Card Accounts

18(a) Coverage

1. Issuance of access device. Consistent with section 205.5(a), a financial institution may issue an 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 card account when the consumer chooses to receive his or her salary through a payroll card account.

APPENDIX A – MODEL DISCLOSURE CLAUSES AND FORMS

1. \* \* \*

2. Use of forms. The appendix contains model disclosure clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of sections 205.5(b)(2) and (b)(3), 205.6(a), 205.7, 205.8(b), 205.14(b)(1)(ii), 205.15(d)(1) and (d)(2), and 205.18(c)(1) and (c)(2). The use of appropriate clauses in making disclosures will protect a financial institution from liability under sections 915 and 916 of the act provided the clauses accurately reflect the institution’s EFT services.

\* \* \* \* \*

By order of the Board of Governors of the Federal Reserve System, December 30, 2005

Jennifer J. Johnson (signed)  
Jennifer J. Johnson,  
Secretary of the Board.