

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: Final rule.

SUMMARY: The Board is publishing revisions to Regulation E, which implements the Electronic Fund Transfer Act. The revisions implement amendments to the act 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 that impose a fee for providing electronic fund transfer services to post a notice 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 provide initial disclosures, including a notice that a fee may be imposed for electronic fund transfers initiated at an ATM operated by another entity.

DATES: This rule is effective March 9, 2001; however, to provide adequate time to make any necessary systems changes, mandatory compliance date is delayed until October 1, 2001.

FOR FURTHER INFORMATION CONTACT: John C. Wood, Counsel, or David A. Stein, Attorney, 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.

SUPPLEMENTARY INFORMATION:

I. The Electronic Fund Transfer Act

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 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 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

The Gramm-Leach-Bliley Act (GLBA), Pub. L. 106-102, 113 Stat. 1338, amended the EFTA. Sections 702, 703, and 705 of the GLBA require disclosure of ATM fees (sometimes referred to as "surcharges") imposed by ATM operators. 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 EFT services is required to post a notice of that fact in a prominent and conspicuous location on or at the ATM. 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 at the time a consumer signs up for EFT services. 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. Revisions to Regulation E Implementing the GLBA Amendments to the EFTA

In July 2000, the Board published proposed revisions to Regulation E to implement the EFTA amendments made by the GLBA. (65 FR 44481, July 18, 2000.) The proposal paralleled the

statutory provisions for the most part. The Board received approximately 50 comment letters. The majority of comments on the proposed revisions were from financial institutions and industry associations. Several commenters requested action outside the scope of the Board's authority, such as deleting the statutory requirement to post a sign about fees at the ATM as unnecessary and burdensome or prohibiting ATM surcharges.

In general, most commenters supported the Board's proposed revisions. Many industry commenters, however, requested a longer period than 30 days after issuance to comply with a final rule. They stated that while the proposed revisions will not require extensive software or other system changes, ATM operators will need more than 30 days to implement them. In response to comments received, the mandatory compliance date for the final rule is October 1, 2001.

Pursuant to its authority under section 904(a) of the EFTA, the Board is adopting a final rule amending Regulation E to implement sections 702 and 703 of the GLBA. The final rule is substantially similar to the proposal with some technical and editorial revisions. To facilitate compliance, a new § 205.16 addresses in a single location most of the rules related to disclosure of fees by ATM operators. Below is a section-by-section analysis of the final rule.

IV. Section-by-Section Analysis of the Final Rule

Section 205.3 -- Coverage

3(b) Electronic Fund Transfer

Section 205.3(b) generally defines the term "electronic fund transfer." The GLBA treats a balance inquiry as an EFT for purposes of the ATM fee disclosure requirement. Therefore, the proposed rule added balance inquiries at ATMs to the list of examples of an EFT in paragraph (b), but only for purposes of ATM fee disclosure requirements. Based on comments, the final rule does not include a balance inquiry as an example of an "electronic fund transfer," since such an inquiry does not fit within the literal definition of a "fund transfer."

Section 205.7 -- Initial Disclosures

7(b) Content of Disclosures

Section 205.7(b) is revised substantially as proposed 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 imposed 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 notice that a fee may be imposed for an EFT or balance inquiry at an ATM by an ATM operator or by a national, regional, or local network used to complete the transfer.

The Board solicited 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. Many commenters, including network owners, indicated that while networks currently charge an interchange fee to a financial institution whose customers use the network, they do not separately impose a fee on the consumer.

Commenters requested clarification that reference to network-imposed fees may be excluded from the disclosure in paragraph § 205.7(b)(11), if networks are not imposing fees on consumers. Disclosures are generally required only to the extent applicable. Therefore, an institution may omit any reference to a network fee if the disclosure does not apply to the consumer's account. Model language in Appendix A-2 regarding ATM fees is amended to reflect this flexibility. If networks begin to impose fees on consumers to complete an EFT or a balance inquiry, institutions that choose to exclude the reference to network fees from their section 7(b) disclosures will be required to send a change-in-terms notice to account holders who contract for EFT services on or after October 1, 2001.

Section 205.16 -- Disclosures at Automated Teller Machines

A new § 205.16 is added, as proposed, to implement section 702 of the GLBA. Section 205.16(a) defines ATM operator. The ATM disclosure requirements are set forth in §§ 205.16(b) and (c).

Some ATM operators only impose a fee for a specific type of transfer such as a cash withdrawal, and not for a balance inquiry. In such cases, the notice in § 205.16(b)(1) may contain a general statement that a fee will be imposed for providing EFT services or may specify the type of service for which a fee is imposed. If a financial institution provides a specific notice, and subsequently imposes fees on a broader category of transactions, the notice must be revised to reflect changes in an ATM operator's practice. Comment 16(b)(1)-1 is added to provide this guidance.

Several commenters requested guidance on how the requirements in § 205.4(a), that disclosures be clear and readily understandable and in a form the consumer may keep, apply to the ATM disclosure requirements. The notice required to be posted on or at the ATM under § 205.16(c)(1) must be placed in a prominent and conspicuous location. The “clear and readily understandable” standard applies to the content of the notice.

Regulation E provides that disclosures required to be given to a consumer must generally be in a retainable format. The notices posted on the screen (and, of course, those provided on or at the ATM) need not be in retainable format. If a paper notice is provided to comply with § 205.16(c)(2), the notice must be provided in a form that may be retained by the consumer.

Based on the comments received, § 205.16(c) is revised from the proposed language to clarify that two notices are required—one on or at the ATM and another on the screen or in paper form. Editorial changes are for clarity; no substantive change is intended.

Section 205.16(d) provides, in accordance with the statute, that the requirement for a disclosure on the screen or on a paper notice does not apply—through December 31, 2004—to any ATM that lacks the technical capability to provide such information. Commenters noted that many ATM operators are already providing notices about ATM fees in compliance with state law or network rules and guidelines. A few commenters urged the Board to eliminate the temporary exemption. The exemption is statutory and is adopted as proposed. The burden of proof rests on any ATM operator relying on the temporary exemption.

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

Model language added to Appendix A-2 reflects the new disclosure in § 205.7(b)(11) regarding fees that may be imposed by an ATM operator and by any network. Brackets indicate that institutions may omit terms and conditions not applicable to the consumer's account, such as fees imposed directly by networks.

V. Revisions to the Official Staff Commentary

Section 205.7 -- Initial Disclosures

Comment 7(b)(5)-3 to § 205.7(b)(5), which addresses interchange system fees, is revised to provide a cross-reference to § 205.7(b)(11).

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, is revised to provide a cross-reference to the notice requirements in § 205.16 for ATM operators. The cross-reference is intended to alert financial institutions of additional requirements in § 205.16. In addition, a new comment 9(a)(1)-2 is added to give guidance on the relationship between § 205.9(a)(1) and § 205.16.

Section 205.16 -- Disclosures at Automated Teller Machines

Comment 16(b)(1)-1 is added to clarify that an institution may state generally that a fee will be imposed for providing EFT services or may specify the type of service for which a fee is imposed.

VI. 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 amendments to Regulation E. The amendments impose disclosure requirements on ATM operators and account-holding financial institutions about ATM fees. In accordance with the GLBA, the final rule exempts ATMs lacking technical capabilities from certain notice requirements until December 31, 2004.

The amendments are not expected to have any significant impact on small entities. Many financial institutions that impose a fee for carrying out a transaction at an ATM already disclose the fee to satisfy existing requirements under § 205.9(a)(1). The amendment would require that a disclosure regarding the fee be posted at the terminal and on the screen. The notice is generic, however, and can easily be programmed for display on the screen and at the terminal.

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 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, an information collection unless it displays a currently valid OMB number. The OMB control number for Regulation E is 7100-0200.

The information collection requirements relevant to this rulemaking are in 12 CFR part 205 and Appendix A. This information collection 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 help 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 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 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 884 respondents/recordkeepers and an average frequency of about 85,800 responses per respondent each year. The current annual burden is estimated to be approximately 480,786 hours. The Federal Reserve estimates that there would be associated start-up cost of \$3,500 with a range 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 on or at the ATM and 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 Board has a continuing interest in the public's opinion of the Federal Reserve's collections of information. Comments regarding the burden estimates, or any other aspect of this collection of information, including suggestions for reducing the burden estimate, may be sent at any time to: Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, N.W., Washington, DC 20551; and to the Office of Management and Budget, Paperwork Reduction Project (7100-0200), Washington, DC 20503.

List of Subjects

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

For the reasons set forth in the preamble, the Board amends 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. Section 205.7 is revised by adding a new paragraph (b)(11) to read as follows:

§ 205.7 Initial disclosures.

* * * * *

(b) Content of disclosures. * * *

(11) ATM fees. 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, and by any network used to complete the transaction.

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3. A new § 205.16 is added to read as follows:

§ 205.16 Disclosures at automated teller machines.

(a) Definition. Automated teller machine operator means any person that operates an automated teller machine at which a consumer initiates an electronic fund transfer or a balance inquiry and that does not hold the account to or from which the transfer is made, or about which an inquiry is made.

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

(1) Provide notice that a fee will be imposed for providing electronic fund transfer services or a balance inquiry; and

(2) Disclose the amount of the fee.

(c) Notice requirement. An automated teller machine operator must comply with the following:

(1) On the machine. Post the notice required by paragraph (b)(1) of this section in a prominent and conspicuous location on or at the automated teller machine; and

(2) Screen or paper notice. Provide the notice required by paragraphs (b)(1) and (b)(2) of this section either by showing it on the screen of the automated teller machine or by providing it on paper, before the consumer is committed to paying a fee.

(d) Temporary exemption. Through December 31, 2004, 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.

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

(1) The consumer is provided the notices required under paragraph (c) of this section, and

(2) The consumer elects to continue the transaction or inquiry after receiving such notices.

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4. Under Appendix A, A-2 is revised by adding a new paragraph (j) to read as follows:

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 fees (§ 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] (and you may be charged a fee for a balance inquiry even if you do not complete a fund transfer).

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5. In Supplement I to Part 205, the following amendments would be made:
 - a. Under Section 205.7—Initial Disclosures, under Paragraph 7(b)(5)—Fees, paragraph 3. is revised;
 - b. Under Section 205.9—Receipts at Electronic Terminals; Periodic Statements, under Paragraph 9(a)(1)—Amount, paragraph 1. is revised and a new paragraph 2 is added; and
 - c. A new Section 205.16—Disclosures at Automated Teller Machines is added.

The additions and revision read as follows:

SUPPLEMENT I TO PART 205—OFFICIAL STAFF INTERPRETATIONS

SECTION 205.7—INITIAL DISCLOSURES

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7(b) Content of Disclosures

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Paragraph 7(b)(5)—Fees

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3. Interchange system fees. Fees paid by the account-holding institution to the operator of a shared or interchange ATM system need not be disclosed, unless they are imposed on the consumer by the account-holding institution. Fees for use of an ATM that are debited directly from the consumer's account by an institution other than the account-holding institution (for example, fees included in the

transfer amount) need not be disclosed. (See § 205.7(b)(11) for the general notice requirement regarding fees that may be imposed by ATM operators and by a network used to complete the transfer.)

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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 a consumer is given the option to cancel the transaction after receiving notice of a fee. (See § 205.16 for the notice requirements applicable to ATM operators that impose a fee for providing EFT services.)

2. Relationship between § 205.9(a)(1) and § 205.16. The requirements of §§ 205.9(a)(1) and 205.16 are similar but not identical.

i. Section 205.9(a)(1) requires that if the amount of the transfer as shown on the receipt will include the fee, then the fee must be disclosed either on a sign on or at the terminal, or on the terminal screen. Section 205.16 requires disclosure both on a sign on or at the terminal (in a prominent and conspicuous location) and on the terminal screen. Section 205.16 permits disclosure on a paper notice as an alternative to the on-screen disclosure.

ii. The disclosure of the fee on the receipt under § 205.9(a)(1) cannot be used to comply with the alternative paper disclosure procedure under § 205.16, if the receipt is provided at the completion of the transaction because, pursuant to the statute, the paper notice must be provided before the consumer is committed to paying the fee.

iii. Section 205.9(a)(1) applies to any type of electronic terminal as defined in Regulation E (for example, to POS terminals as well as to ATMs), while § 205.16 applies only to ATMs.

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SECTION 205.16—DISCLOSURES AT AUTOMATED TELLER MACHINES

16(b) General

Paragraph 16(b)(1)

1. Specific notices. An ATM operator that imposes a fee for a specific type of transaction such as a cash withdrawal, but not a balance inquiry, may provide a general statement that a fee will be imposed for providing EFT services or may specify the type of EFT for which a fee is imposed.

By order of the Board of Governors of the Federal Reserve System, February 28, 2001.

(signed) Jennifer J. Johnson

Jennifer J. Johnson,
Secretary to the Board