

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R-0959]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is publishing amendments to Regulation E (Electronic Fund Transfers). The revisions implement an amendment to the Electronic Fund Transfer Act (EFTA), contained in the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, that exempts certain electronic benefit transfer (EBT) programs from the EFTA. Generally, EBT programs involve the issuance of access cards and personal identification numbers to recipients of government benefits so that they can obtain their benefits through automated teller machines and point-of-sale terminals. The Board's amendments to Regulation E exempt needs-tested EBT programs that are established or administered by state or local government agencies. Federally administered EBT programs and state and local employment-related EBT programs (such as state pension programs) remain covered by Regulation E subject to modified requirements.

EFFECTIVE DATE: September 15, 1997.

FOR FURTHER INFORMATION CONTACT: Jane Jensen Gell, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452-3667; for users of Telecommunications Device for the Deaf (TDD) only, contact Diane Jenkins at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

I. Background

EFT Act and Regulation E

Regulation E implements the Electronic Fund Transfer Act (EFTA). The act and regulation cover any consumer electronic fund transfer (EFT) initiated through an automated teller machine (ATM), point-of-sale (POS) terminal, automated clearinghouse, telephone bill-payment system, or home banking program. The act and Regulation E establish rules that govern these

and other EFTs. The rules restrict the unsolicited issuance of ATM cards and other access devices; require disclosure of terms and conditions of an EFT service; document EFTs by means of terminal receipts and periodic account statements; limit consumer liability for unauthorized transfers; and establish procedures for error resolution.

The EFTA is not limited to traditional financial institutions holding consumers' 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. The regulation also applies to entities that issue access devices and enter into agreements with consumers to provide EFT services.

Electronic Benefit Transfer Programs

Electronic benefit transfer (EBT) programs are designed to deliver government benefits such as food stamps, supplemental security income (SSI), and social security. These systems function much like commercial systems for EFT. Eligible recipients receive magnetic-stripe cards and personal identification numbers and they access benefits through electronic terminals. In the case of cash benefits such as SSI, the terminals may include ATMs that are part of existing commercial networks; for food stamp benefits, POS terminals in grocery stores are typically used.

EBT offers numerous advantages over paper-based delivery systems, both for recipients and for program agencies. For recipients, these advantages include faster access to benefits, greater convenience in terms of times and locations for obtaining benefits, improved security because funds may be accessed as needed, lower costs because recipients avoid check-cashing fees, and greater privacy and dignity. For agencies, EBT programs offer a system that can more efficiently deliver benefits for both state and federal programs by reducing the cost of benefit delivery, facilitating the management of program funds, and helping to reduce fraud.

In March 1994, the Board amended Regulation E to bring EBT programs expressly within its coverage. 59 FR 10678 (March 7, 1994). The special provisions, contained in § 205.15, apply most of the requirements of the regulation--including those relating to liability for unauthorized transactions and to error resolution--with some modifications. The major exception related to providing periodic statements of account activity: EBT programs need not provide periodic statements as long as (1) account balance information is made available to benefit recipients via telephone and electronic terminals and (2) a written account history is given upon request.

The basic premise underlying the Board's 1994 amendments to Regulation E was that all consumers using EFT services should receive substantially the same protection under the EFTA

and Regulation E. To enable states to test and implement their EBT programs, the Board delayed the date of mandatory compliance to March 1, 1997.

II. Revised Regulatory Provisions

On August 22, 1996, the Congress enacted amendments to the EFTA as part of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996, a comprehensive welfare reform law (Pub. L. 104-193, 110 Stat. 2105). These amendments exempt "needs-tested" EBT programs established or administered under state or local law. ("Needs-tested" EBT programs generally take a recipient's income or other resources into account to determine the appropriate level of benefits.) The exemption was enacted by the Congress at the urging of state and local officials, who expressed concern about the costs of compliance with the EFTA and Regulation E. In particular, these officials believed that federal provisions limiting a recipient's liability for unauthorized transfers could raise serious budgetary problems at the state and local level.

In January, the Board issued a proposal to implement the exemption (62 FR 3242, January 22, 1997). Fifteen comments were received, generally in support of the amendments. Some commenters requested further clarification on certain technical issues. For example, clarification was requested on the treatment of SSI, a needs-tested benefit administered by the federal government through the Social Security Administration. Under the amendments to the EFTA, SSI benefits remain covered by the EFTA and Regulation E.

For cost efficiencies in the delivery of benefits, EBT programs may offer both federal and state benefits through the use of a single card. An EBT service provider requested clarification on how Regulation E applies when a card accesses benefits under multiple programs, some covered by and others exempt from Regulation E (for example, the Benefit Security Card® offered by the Southern Alliance of States). In this program, non-cash benefits (such as food stamps) are held in one account and cash benefits are held in a separate account. In the cash account, federally administered and state employment-related benefits (covered by Regulation E) may be pooled with state administered or established "needs-tested" benefits that are exempt from the regulation. Program agencies may allocate the withdrawal of a recipient's benefits from the pooled account in any manner they choose.

All federally administered benefits (and state employment-related benefits) accessed by the card from the pooled account must receive the protections provided by Regulation E. Agencies must ensure that the required disclosures concerning account balances, liability limits, error resolution procedures, and account histories clearly state how these protections apply with regard to a single card covering exempt and non-exempt programs. With regard to liability for

unauthorized use, liability limits apply to the extent that the loss is charged against covered benefits. Similarly, error resolution procedures apply to the federally administered benefits (and state employment-related benefits) covered under Regulation E. This interpretation will be incorporated in the Official Staff Commentary to Regulation E.

Based on the comments and further analysis, the Board has adopted a final rule exempting "needs-tested" EBT programs established or administered by state or local government agencies. Federally administered EBT programs and employment-related programs established by federal, state, or local governments (such as state pension programs) remain covered by Regulation E, subject to the modified rules established by section 205.15.

III. Section-by-Section Analysis of Amendments

SECTION 205.15 -- Electronic fund transfers of government benefits

Section 205.15 contains the rules that apply to EBT programs as defined by the regulation. It provides modified rules on the issuance of access devices, periodic statements, initial disclosures, liability for unauthorized use, and error resolution notices. Employment-related benefit programs established by federal, state, or local governments (as well as federally administered programs) remain subject to these modified rules.

15(a) Government agency subject to regulation

15(a)(1)

The act and regulation define coverage in terms of "financial institution," a term that applies to entities that provide EFT services to consumers whether these entities are banks, other depository institutions, or other types of organizations entirely. Paragraph (a)(1) specifies when a government agency is a financial institution for purposes of the act and regulation. This provision has been revised to exclude needs-tested benefits in a program established under state or local law or administered by a state or local agency, consistent with the 1996 statutory amendments.

15(a)(2)

The term "account" is defined generally in § 205.2(b). For purposes of EBT programs, "account" is defined in § 205.15(a)(2) to mean an account established by a government agency (or agencies) for distributing benefits to a consumer electronically, such as through ATMs or POS terminals, whether or not the account is directly held by the agency or a bank or other depository institution. For example, an "account" under this section includes the use of a database (containing the consumer's name and record of benefit transfers) that is accessed for verification purposes before a particular transaction is approved. Under the Board's final rule, the definition is revised to exclude needs-tested benefits in a program established under state or local law or administered by a state or local agency, consistent with the 1996 amendments to the EFTA.

Government benefits that remain covered include federally administered benefits such as social security and SSI and state and local benefits that are employment-related such as retirement and unemployment benefits.

IV. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603), the Board's Office of the Secretary has reviewed the amendments to Regulation E. The amendments, which establish an exemption for certain EBT programs established or administered by a state or local agency, are not expected to have a significant impact on small entities.

V. 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 final rule under the authority delegated to the Board by the Office of Management and Budget. The amendments provide an exemption for state-administered or state-established electronic benefit transfer programs; the amendments are not expected to affect the paperwork burden that the regulation imposes on state member banks or on other institutions.

An agency may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100-0200. The Board has a continuing interest in the public's opinions of the Federal Reserve's collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may be sent 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 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 as set forth below:

PART 205 -- ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for Part 205 is revised to read as follows:

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

2. Section 205.15 is amended by revising paragraph (a) to read as follows:

§ 205.15 Electronic fund transfer of government benefits.

(a) Government agency subject to regulation. (1) A government agency is deemed to be a financial institution for purposes of the act and this part if directly or indirectly it issues an access device to a consumer for use in initiating an electronic fund transfer of government benefits from an account, other than needs-tested benefits in a program established under state or local law or administered by a state or local agency. The agency shall comply with all applicable requirements of the act and this part, except as provided in this section.

(2) For purposes of this section, the term account means an account established by a government agency for distributing government benefits to a consumer electronically, such as through automated teller machines or point-of-sale terminals, but does not include an account for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency.

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By order of the Board of Governors of the Federal Reserve System, August 11, 1997.

(Signed) William W. Wiles

William W. Wiles
Secretary of the Board