
THE LAW OF ELECTRONIC FUNDS TRANSFER

by
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VOLUME II

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Library of Congress Catalogue No. 79-116476

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Robert C. Zimmer and Theresa A. Einhorn are lawyers who specialize in financial institution, commercial, corporate and antitrust law. In addition to *The Law of Electronic Funds Transfer*, Mr. Zimmer and Ms. Einhorn have published several articles regarding the financial services industry, in both legal and trade publications. They periodically address financial industry lawyers and executives on various subjects affecting both providers and consumers of financial services.

FEDERAL REGULATIONS

COMPTROLLER OF THE CURRENCY: DATA PROCESSING ACTIVITIES OF NATIONAL BANKS 2 C.F.R. § 7.3500

7.3500. Use of data processing equipment and furnishing of data processing services.

It is the opinion of the Comptroller that, in general, data processing is a technology rather than a service distinct or different from the underlying services or functions to which the technology is applied. A national bank may use data processing equipment and technology to perform for itself and others all services expressly or incidentally authorized under the statutes applicable to national banks.

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OFFICE OF THRIFT SUPERVISION REGULATIONS: FUNDS TRANSFER SERVICES 12 C.F.R. §545.17 and 533.1

§545.17 Funds transfer services.

A Federal savings association is authorized to transfer, with or without fee, its customers' funds from any account (including a line of credit) of the customer at the Federal savings association or at another financial intermediary to third parties or other accounts of the customer on the customer's order or authorization by any mechanism or device, including cashier's checks, conforming with applicable laws and established commercial practices.

§533.1 Electronic fund transfers subject to Regulation E.

Any electronic fund transfer, as that term is defined by section 903 of the Electronic Fund Transfer Act (15 U.S.C. 1693 *et seq.*) and §205.2 of Regulation E of the Federal Reserve Board (12 C.F.R. 205.2), provided by any savings association is subject to the provisions of the Electronic Fund Transfer Act and Regulation E.

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- (ii) requests validation of an access device issued on an unsolicited basis; or
- (iii) receives an access device issued in renewal of, or in substitution for, an accepted access device, whether such access device is issued by the initial financial institution or a successor.
- (b) "Account" means a demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held either directly or indirectly by a financial institution and established primarily for personal, family, or household purposes.
- (c) "Act" means the Electronic Fund Transfer Act (Title IX of the Consumer Credit Protection Act, 15 U.S.C. 1601 et seq.).
- (d) "Business day" means any day on which the offices of the consumer's financial institution are open to the public for carrying on substantially all business functions.
- (e) "Consumer" means a natural person.
- (f) "Credit" means the right granted by a financial institution to a consumer to defer payment of debt, incur debt and defer its payment, or purchase property or services and defer payment therefor.
- (g) "Electronic fund transfer" means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, that is initiated through an electronic terminal, telephone, or computer or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit an account. The term includes, but is not limited to, point-of-sale transfers, automated teller machine transfers, direct deposits or withdrawals of funds, and transfers initiated by telephone. It includes all transfers resulting from debit card transactions, including those that do not involve an electronic terminal at the time of the transaction. The term does not include payments made by check, draft, or similar paper instrument at an electronic terminal.
- (h) "Electronic terminal" means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. The term includes, but is not limited to, point-of-sale terminals, automated teller machines, and cash dispensing machines.
- (i) "Financial institution" means a State or National bank, a State or Federal savings and loan association, a State or Federal mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer. The term also includes any person who issues an access device and agrees with a consumer to provide electronic fund transfer services.
- (j) "Preauthorized electronic fund transfer" means an electronic fund transfer authorized in advance to recur at substantially regular intervals.

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(d) *Relation to Truth in Lending.* (1) A consumer's liability for an unauthorized electronic fund transfer shall be determined solely in accordance with this section if the electronic fund transfer

(i) was initiated by use of an access device that is also a credit card as defined in 12 CFR 226.2(a)(15), or

(ii) involves an extension of credit under an agreement between a consumer and a financial institution to extend the credit when the consumer's account is overdrawn or to maintain a specified minimum balance in the consumer's account.

(2) A consumer's liability for unauthorized use of a credit card that is also an access device but that does not involve an electronic fund transfer shall be determined solely in accordance with the Truth in Lending Act and 12 C.F.R. Part 226 (Regulation Z).

§ 205.7 Initial Disclosure of Terms and Conditions

(a) *Content of disclosures.* At the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving a consumer's account, a financial institution shall disclose to the consumer, in a readily understandable written statement that the consumer may retain, the following terms and conditions of the electronic fund transfer service, as applicable:

(1) A summary of the consumer's liability under § 205.6, or other applicable law or agreement, for unauthorized electronic fund transfers and, at the financial institution's option, the advisability of promptly reporting loss or theft of the access device or unauthorized transfers.

(2) The telephone number and address of the person or office to be notified when the consumer believes that an unauthorized electronic fund transfer has been or may be made.

(3) The financial institution's business days, as determined under § 205.2(d).

(4) The type of electronic fund transfers that the consumer may make and any limitations on the frequency and dollar amount of transfers. The details of the limitations need not be disclosed if their confidentiality is essential to maintain the security of the electronic fund transfer system.

(5) Any charges for electronic fund transfers or for the right to make transfers.

(6) A summary of the consumer's right to receive documentation of electronic fund transfers, as provided in § § 205.9, 205.10(a), and 205.10(d).

(7) A summary of the consumer's right to stop payment of a preauthorized

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(b) *Periodic statements.* For any account to or from which electronic fund transfers can be made, the financial institution shall mail or deliver a statement for each monthly or shorter cycle in which an electronic fund transfer has occurred, but at least a quarterly statement if no transfer has occurred. The statement shall include the following, as applicable:

(1) For each electronic fund transfer occurring during the cycle,⁴

(i) The amount of the transfer. If a transfer charge was added at the time of initiation by the owner or operator of an electronic terminal in accordance with paragraph (a)(1) of this section, that charge may be included in the amount of the transfer.

(ii) The date the transfer was credited or debited to the consumer's account.

(iii) The type of transfer and the type of the consumer's account(s) to or from which funds were transferred.

(iv) For each transfer initiated by the consumer at an electronic terminal, the location that appeared on the receipt or, if an identification (such as a code or terminal number) was used, that identification and one of the following descriptions of the terminal's location:^{4a}

(A) The address, including number and street (the number may be omitted if the street alone uniquely identifies the terminal location) or intersection, city, and state or foreign country;⁵

(B) A generally accepted name for a specific location (such as a branch of the financial institution, a shopping center, or an airport), city, state or foreign country,⁶ or

(C) The name of the entity, at whose place of business the terminal is located or which owns or operates the terminal (such as the financial institution⁷ or the seller of goods or services), city, and state or foreign country.⁸

⁴The information required by paragraph (b)(1) of this section may be provided on accompanying documents. Codes explained on the statement or on accompanying documents are acceptable.

^{4a}A financial institution need not identify the terminal location for deposits of cash, checks, drafts, or similar paper instruments at electronic terminals.

⁵The city and state may be omitted if all the terminals owned or operated by the financial institution providing the statement (or by the system in which it participates) are located in the same city. The state may be omitted if all the terminals owned or operated by the financial institution providing the statement (or by the system in which it participates) are located in that state. The state may also be omitted for transfers occurring at terminals within 50 miles of the financial institution's main office.

⁶See footnote 5.

⁷If the financial institution providing the statement owns or operates terminals at more than one location, it shall describe the location of its electronic terminals by use of paragraphs (b)(1)(iv)(A) or (B) of this section.

⁸See footnote 5.

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- (v) The name of any third party to or from whom funds are transferred.⁹
- (2) The number(s) of the consumer's account(s) for which the statement is issued.
- (3) The amount of any fees or charges, other than a finance charge under 2 CFR 226.7(f), assessed against the account during the statement period for electronic fund transfers or the right to make such transfers, or for account maintenance.
- (4) The balances in the consumer's account(s) at the beginning and at the close of the statement period.
- (5) The address and telephone number to be used for inquiry or notice of errors, preceded by "Direct Inquiries To:" or similar language. Alternatively, the address and telephone number may be provided on the notice or error resolution procedures set forth in § 205.8(b).
- (6) If the financial institution uses the notice procedure set forth in § 205.10 (a)(1)(iii), the telephone number the consumer may call to ascertain whether a preauthorized transfer to the consumer's account has occurred.
- (c) *Documentation for certain passbook accounts.* In the case of a consumer's passbook account which may not be accessed by any electronic fund transfers other than preauthorized transfers to the account,^{9a} the financial institution may, in lieu of complying with paragraph (b) of this section, upon presentation of the consumer's passbook, provide the consumer with documentation by entering in the passbook or on a separate document, the amount and date of each electronic fund transfer made since the passbook was last presented.
- (d) *Periodic statements for certain non-passbook accounts.* If a consumer's account other than a passbook account may not be accessed by any electronic fund transfers other than preauthorized transfers to the account,^{9a} the financial institution need provide the periodic statement required by paragraph (b) of this section only quarterly.
- (e) *Use of abbreviations.* A financial institution may use commonly accepted or readily understood abbreviations in complying with the documentation requirements of this section.

⁹A financial institution need not identify third parties whose names appear on checks, drafts, or similar paper instruments deposited to the consumer's account at an electronic terminal.

^{9a}Accounts that are also accessible by the intra-institutional transfers described in paragraph (h) of this section may continue to be documented in accordance with paragraph (c) or (d) of this section.

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§ 205.10 Preauthorized Transfers

(a) *Preauthorized transfers to a consumer's account.* (1) Where a consumer's account is scheduled to be credited by a preauthorized electronic fund transfer from the same payor at least once every 60 days, except where the payor provides positive notice to the consumer that the transfer has been initiated, the financial institution shall provide notice by one of the following means:

(i) The institution shall transmit oral or written notice to the consumer, within 2 business days after the transfer, that the transfer occurred;

(ii) The institution shall transmit oral or written notice to the consumer, within 2 business days after the date on which the transfer was scheduled to occur, that the transfer did not occur; or

(iii) The institution shall provide a readily available telephone line that the consumer may call to ascertain whether or not the transfer occurred; and shall disclose the telephone number on the initial disclosures required by § 205.7 and on each periodic statement.

(2) A financial institution that receives a preauthorized transfer of the type described in paragraph (a)(1) of this section shall credit the amount of the transfer as of the day the funds for the transfer are received.

(b) *Preauthorized transfers from a consumer's account; written authorization.* Preauthorized electronic fund transfers from a consumer's account may be authorized by the consumer only in writing, and a copy of the authorization shall be provided to the consumer by the party that obtains the authorization from the consumer.

(c) *Consumer's right to stop payment.* A consumer may stop payment of a preauthorized electronic fund transfer from the consumer's account by notifying the financial institution orally or in writing at any time up to 3 business days before the scheduled date of the transfer. The financial institution may require written confirmation of the stop-payment order to be made within 14 days of an oral notification if, when the oral notification is made, the requirement is disclosed to the consumer together with the address to which confirmation should be sent. If written confirmation has been required by the financial institution, the oral stop-payment order shall cease to be binding 14 days after it has been made.

(d) *Notice of transfers varying in amount.* Where a preauthorized electronic fund transfer from the consumer's account varies in amount from the previous transfer relating to the same authorization, or the preauthorized amount, the financial institution or the designated payee shall mail or deliver, at least 10 days before the scheduled transfer date, a written notice of the amount and scheduled date of the transfer. If the financial institution or designated payee informs the consumer

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of the right to receive notice of all varying transfers, the consumer may elect to receive notice only when a transfer does not fall within a specified range of amounts or, alternatively, only when a transfer differs from the most recent transfer by more than an agreed-upon amount.

§ 205.11 Procedures for Resolving Errors

(a) *Definition of error.* For purposes of this section, the term “error” means:

- (1) An unauthorized electronic fund transfer;
- (2) An incorrect electronic fund transfer to or from the consumer’s account;
- (3) The omission from a periodic statement of an electronic fund transfer to or from the consumer’s account that should have been included;
- (4) A computational or bookkeeping error made by the financial institution relating to an electronic fund transfer;
- (5) The consumer’s receipt of an incorrect amount of money from an electronic terminal;
- (6) An electronic fund transfer not identified in accordance with the requirements of §§ 205.9 or 205.10(a); or
- (7) A consumer’s request for any documentation required by §§ 205.9 or 205.10(a), or for additional information or clarification concerning an electronic fund transfer. This includes any request for documentation, information, or clarification in order to assert an error within the meaning of paragraphs (a)(1) through (6) of this section. It does not include a routine inquiry about the balance in the consumer’s account or a request for duplicate copies of documentation or other information that is made only for tax or other record-keeping purposes.

(b) *Notice of error from consumer.* (1) A notice of an error is an oral or written notice from the consumer that

(i) Is received by the financial institution¹⁰ no later than 60 days after the institution

(A) Transmitted a periodic statement or provided documentation under § 205.9(c) on which the alleged error is first reflected; or

¹⁰A financial institution may require the consumer to give notice only at the telephone number or address disclosed by the institution, provided the institution maintains reasonable procedures to refer the consumer to the specified telephone number or address if the consumer attempts to give notice to the institution in a different manner.

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- (2) Make deposits to your (checking)(or)(savings) account.
- (3) Transfer funds between your checking and savings accounts whenever you request.
- (4) Pay for purchases at places that have agreed to accept the (card)(code).
- (5) Pay bills directly (by telephone) from your (checking)(or)(savings) account in the amounts and on the days you request.

Some of these services may not be available at all terminals.

(b) *Limitations on frequency of transfers.*

(1) You may make only [insert number, e.g., 3] cash withdrawals from our terminals each [insert time period, e.g., week].

(2) You can use your telephone bill-payment service to pay [insert number] bills each ([insert time period])(telephone call).

(3) You can use our point-of-sale transfer service for [insert number] transactions each [insert time period].

(4) For security reasons, there are (other) limits on the number of transfers you can make using our (terminals)(telephone bill-payment service)(point-of-sale transfer service).

(c) *Limitations on dollar amounts of transfers.*

(1) You may withdraw up to [insert dollar amount] from our terminals each ([insert time period])(time you use the (card)(code)).

(2) You may buy up to [insert dollar amount] worth of goods or services each ([insert time period])(time you use the (card)(code)) in our point-of-sale transfer service.

SECTION A(6)—DISCLOSURE OF CHARGES FOR TRANSFERS OR RIGHT TO MAKE TRANSFERS (§ 205.7(a)(5))

(a) *Per transfer charge.* We will charge you [insert dollar amount] for each transfer you make using our (automated teller machines)(telephone bill-payment service)(point-of-sale transfer service).

(b) *Fixed charge.* We will charge you [insert dollar amount] each [insert time period] for our (automated teller machine service)(telephone bill-payment service)(point-of-sale transfer service).

(c) *Average or minimum balance charge.* We will only charge you for using (automated teller machines)(telephone bill-payment service)(point-of-sale transfer

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