eligible for importation, APHIS will issue an import permit indicating the applicable conditions for importation. An import permit does not guarantee that any live fish, fertilized eggs, or gametes will be allowed entry into the United States; the fish, fertilized eggs, or gametes will be allowed to enter the United States only if they meet all applicable requirements of the permit and regulations.

(Approved by the Office of Management and Budget under control number 0579–0301)

§ 93.904 Health certificate for live fish, fertilized eggs, and gametes.

(a) *General.* All live fish, fertilized eggs, and gametes of SVC-susceptible species that are imported from any region of the world must be accompanied by a health certificate issued by a full-time salaried veterinarian of the national government of the exporting region, or issued by a certifying official and endorsed by the competent authority of that country. The health certificate must be written in English or contain an English translation. The health certificate will be valid for 30 days from the date of issuance. The health certificate for the live fish, fertilized eggs, or gametes must state that:

(1) The live fish, fertilized eggs, or gametes were inspected by the veterinarian or certifying official who issued the certificate within 72 hours prior to shipment, and were found to be free of any clinical signs of disease consistent with SVC; and

(2) The live fish, fertilized eggs, or gametes covered by the health certificate meet the requirements of this section.

(b) *Surveillance.* The live fish, fertilized eggs, or gametes must meet the following conditions to be eligible for importation into the United States:

(1) The live fish, fertilized eggs, or gametes must originate in a region or establishment which conducts a surveillance program for SVC under the supervision of the competent authority.

(2) The region or establishment must demonstrate freedom from SVC through a minimum of 2-years' continuous health history, supported by laboratory testing by a pathogen detection facility approved for SVC viral assays by the competent authority.

(3) SVC-susceptible fish populations in the region or establishment must be tested at least twice annually, with at least 3 months between the tests and at times or under environmental conditions that would facilitate the detection of SVCV if it were present. Sampling procedures must utilize an assumed pathogen prevalence of 2 percent, with a corresponding confidence level of 95 percent. Samples must be collected and submitted by a certifying official or veterinarian recognized by the competent authority. The standard screening method for SVC must include isolation of SVCV in cell culture, using either the epithelioma papulosum cyprini (EPC) or fathead minnow (FHM) cell lines. However, the Administrator may authorize other assays for SVCV detection in lieu of virus isolation through cell culture, if the Administrator determines that such assays provide equivalent assurance of the SVC status of an exporting region or establishment. All viral testing results must be negative.

(c) *Shipping containers.* All live fish, fertilized eggs, and gametes must be shipped to the United States in new containers or in used containers that have been cleaned and disinfected in accordance with this section.

(1) Cleaning and disinfection of shipping containers must take place under the supervision of the veterinarian or certifying official who issues the health certificate.

(2) Cleaning and disinfection must be sufficient to neutralize any SVC virus to which shipping containers may have been exposed. Acceptable disinfection procedures include individual or combination treatments with: Solutions having a pH of 12 or higher or 3 or lower with a contact time of at least 10 minutes; heat at or above 56° C for at least 15 minutes; chlorine solutions having a concentration of at least 500 ppm with a contact time of at least 10 minutes; iodine solutions having a concentration of at least 100 ppm with a contact time of at least 10 minutes; ultraviolet exposure (254 nm; min exposure of 10,000 microwatt seconds/cm^2); or other disinfectants such as Virkon used according to the manufacturer's directions. The Administrator may authorize other procedures if the Administrator determines they are adequate to neutralize the SVC virus.

(3) Cleaning and disinfection protocols must be referenced in the health certificate or in a separate cleaning and disinfection certificate accompanying the shipment to the U.S. port of entry.

(Approved by the Office of Management and Budget under control number 0579–0301)

§ 93.905 Declaration and other documents for live fish, fertilized eggs, and gametes.

(a) For all live fish, fertilized eggs, and gametes offered for importation under this subpart, the importer or his or her agent must submit the following documents to the collector of customs for use by the port veterinarian:

(1) All permits, certificates, or other documentation required by this subpart; and

(2) Two copies of a declaration that lists the port of entry, the name and address of the importer, the name and address of the broker, the origin of the live fish, fertilized eggs, or gametes, the number, species, and the purpose of the importation, the name of the person to whom the fish will be delivered, and the location of the place to which such delivery will be made.

(b) [Reserved]

(Approved by the Office of Management and Budget under control number 0579–0301)

§ 93.906 Inspection at the port of entry.

(a) All live fish, fertilized eggs, and gametes of SVC-susceptible species imported from any part of the world must be presented for inspection at a port of entry designated under § 93.902. The APHIS port veterinarian must be notified at least 72 hours in advance of the arrival in the United States of a shipment of live fish, fertilized eggs, or gametes of SVC-susceptible species. Any shipment of live SVC-susceptible fish species that the port veterinarian determines to exhibit clinical signs consistent with SVCV infection or disease, or any shipments of live fish, fertilized eggs, and gametes of SVC-susceptible species that otherwise do not meet the requirements of this subpart, shall be refused entry.

(b) Shipments refused entry, unless exported within a time fixed in each case by the Administrator, and in accordance with other provisions he or she may require in each case for their handling, shall be disposed of as the Administrator may direct.

(Approved by the Office of Management and Budget under control number 0579–0301)

Done in Washington, DC, this 24th day of August 2006.

Kevin Shea,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. E6–14478 Filed 8–29–06; 8:45 am]

BILLING CODE 3410–34–P

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: Final rule.

SUMMARY: The Board is amending Regulation E, which implements the

Electronic Fund Transfer Act, and the official staff commentary to the regulation, which interprets the requirements of Regulation E. The final rule provides that Regulation E covers payroll card accounts that are established directly or indirectly through an employer, and to which transfers of the consumer's salary, wages, or other employee compensation are made on a recurring basis. The final rule also provides financial institutions with an alternative to providing periodic statements for payroll card accounts if they make account information available to consumers by specified means.

DATES: This final rule is effective July 1, 2007.

FOR FURTHER INFORMATION CONTACT: Ky Tran-Trong, Senior Attorney, or David A. Stein or John C. Wood, Counsels, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 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 (15 U.S.C. 1693 *et seq.*) (EFTA or Act), 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 provide for 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. The Act and regulation also restrict the unsolicited issuance of ATM cards and other access devices.

The official staff commentary (12 CFR part 205 (Supp. I)), which interprets the requirements of Regulation E, is designed to facilitate compliance and provide protection from liability under Sections 915 and 916 of the EFTA for financial institutions and other 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 through an access device that provides functionality comparable to a debit card. Typically, an employer will arrange with a bank or a third-party service provider to make available to its employees a magnetic stripe-backed card; 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 or deposit account. The employee then can use the payroll card to withdraw the 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 a cost-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. Under the September 2004 proposal, 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 nearly 50 comment letters on the proposed revisions addressing payroll card accounts.

Both industry and consumer group commenters generally reacted favorably to the September 2004 proposal, agreeing that coverage of payroll card accounts under Regulation E was appropriate. Consumer groups further urged the Board to expand the scope of the proposal to cover any stored-value card 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.

Most industry commenters urged the Board to grant financial institutions relief from the requirement to provide paper periodic statements. These commenters cited various reasons, including that other means of accessing balance and transaction information, such as by telephone or through the Internet, provided more useful and timely information to consumers at less cost to financial institutions.

On January 10, 2006, the Board published an interim final rule in the **Federal Register** (71 FR 1,473) (interim rule), that adopted the proposed treatment of payroll card accounts as ''accounts'' for purposes of coverage under Regulation E. In response to commenters' suggestions, the interim rule included a new § 205.18 which granted financial institutions an alternative means to provide account transaction information to payroll card users instead of providing periodic statements. Specifically, a financial institution could provide account information by: (1) Making balance information available to the consumer through a readily available telephone line; (2) making available to the consumer an electronic history of the consumer's account transactions, such as through an Internet Web site, covering a period of at least 60 days; *and* (3) providing promptly upon the consumer's request, a written history of the consumer's account transactions covering a period of at least 60 days prior to the request. The interim rule included additional revisions regarding initial disclosures, error resolution rights, and other consumer protections. To give interested parties an opportunity to comment on these modifications, particularly the alternative means of providing account information, the Board requested additional comment on the interim rule.

The Board received approximately 30 comment letters on the interim rule. A variety of business entities, including banks, credit unions, payroll services providers, and industry trade associations, provided comments. Consumer groups and a state attorney general also provided comments. This section provides a brief overview of the comments received. The section-by-section analysis discusses specific comments, and sets forth the Board's analysis of those comments, in more detail.

Many commenters addressed the scope of the interim rule. Industry commenters generally continued to support the Board's coverage of payroll card accounts under Regulation E. Several industry commenters urged the Board not to extend the scope of the rule to cover additional stored-value, or prepaid, products, as this could discourage the continued evolution of such products. However, other industry commenters recommended that the interim rule's definition of ''payroll card account'' be extended to cover other card products to which a consumer might elect to add his or her salary by direct deposit and which are not necessarily ''established by an employer.'' A few industry commenters also expressed concern about the proposal to treat employers who make payroll cards available to their employees as financial institutions subject to the regulation. Consumer groups urged the Board to engage immediately in a separate rulemaking to provide specifically that Regulation E covers any card product that is marketed or used as an account substitute, or to any card product used to receive payments of significant household funds, such as workers' compensation or unemployment benefits.

Commenters also addressed the appropriateness of the interim rule's alternative to providing paper periodic statements. Most industry commenters commended the Board's grant of relief from the requirement to provide paper periodic statements if account information is available through alternative means, but many asked for clarification or proposed specific changes regarding the alternative methods of delivery. A few industry commenters asked the Board to provide similar relief for other types of card accounts, such as accounts to which government benefits are deposited on a recurring basis. In contrast, consumer groups asserted that full Regulation E protections should apply to payroll card accounts, including the requirement to provide paper periodic statements. These groups stated that paper periodic statements would enable consumers to track their balances and transactions more effectively.

III. Summary of the Final Rule

The Board is revising Regulation E substantially as published in the January 2006 interim rule, with one significant revision regarding the scope of entities that are subject to the regulation with respect to payroll card accounts and a few additional clarifying modifications.

Under the final rule, payroll card accounts specifically are included in the definition of ''account'' for purposes of Regulation E. A ''payroll card account'' is defined as an account directly or indirectly established through an employer to which transfers of the consumer's wages or other compensation are made on a recurring basis. Section 205.18 of the final rule grants financial institutions flexibility in providing certain account information to payroll card users. In particular, a financial institution need not provide periodic statements under § 205.9 if the institution: (1) Makes available balance information to the consumer through a readily available telephone line; (2) makes available to the consumer an electronic history, such as through an Internet Web site, of the consumer's account transactions covering a period of at least 60 days preceding the date the consumer electronically accesses the account; and (3) upon the consumer's oral or written request, promptly provides a written history of the consumer's account transactions covering a period of at least 60 days prior to the request. The history of account transactions provided electronically or upon request must set forth the same type of information required on periodic statements under Regulation E, including information about any fees for EFTs imposed during the 60-day period.

Unlike the approach set forth in the interim final rule, the final rule would generally not cover employers and third-party service providers as ''financial institutions'' under the regulation because they typically do not hold payroll card accounts, or issue payroll cards and agree to provide EFT services to payroll card holders. However, if an employer or a service provider were to undertake either of these functions, it would become a financial institution subject to the rule.

In addition, the final rule clarifies how financial institutions that do not provide periodic statements under § 205.9 can comply with the error resolution procedures in § 205.11 of Regulation E. As provided in the interim rule, a consumer's 60-day period to report errors begins on the earlier of the date the consumer electronically accesses the account (provided that information about the alleged error is made available to the consumer) or the date the financial institution sends a written history including that transaction. To assist institutions that may not, or are unable to, track when consumers electronically access their accounts, the final rule also provides that institutions can comply with the error resolution provisions if they allow a consumer to report an error up to 120 days after the date the transaction allegedly in error was credited or debited to the consumer's account. As explained in more detail in the section-by-section analysis, this approach allows an institution to comply with the regulation without tracking when consumers electronically access their account information and, at the same time, ensures that consumers will have at least 60 days from the date of every transaction listed in the electronic or written statement to report an error. A similar clarification is provided with respect to the liability provisions in § 205.6.

The effective date of the final rule with respect to the payroll card provisions 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 final rule, the term ''account'' in § 205.2(b) is revised to include a ''payroll card account,'' which is defined as an account directly or indirectly established through an employer to which transfers of the consumer's wages, salary, or other employee compensation are made on a recurring basis. A payroll card account is an account subject to the regulation whether the account is operated or managed by the employer, a third-party payroll processor, or a depository institution.

Many industry commenters agreed that the scope of the rule was appropriately limited to payroll card accounts as defined in the interim rule, and stated that a rule with broader coverage could stifle the development of other stored-value, or prepaid, card products. One such commenter urged the Board to state expressly in the commentary that other card products offered by third parties that may be used by consumers to access their salary are not covered by the regulation.

Several industry commenters, however, asserted that the final rule should be revised, or interpreted, to cover other card products that may also be used primarily to access recurring deposits of salary, even if they are established by a consumer without the involvement of an employer. In this regard, a few commenters noted that some depository institutions offer payroll card products directly to consumers who may not want to

manage, or who may not qualify for, a traditional deposit account and whose employers may not offer a payroll card option. These commenters observed that, like the payroll card accounts covered by the interim rule, these products may permit only electronic deposits of salary and wages and allow access to funds only by means of a card.

A few industry commenters urged the Board to extend the rule to also cover general spending cards that permit a consumer to add value through a variety of means, including through direct deposits of salary. Some industry commenters asked the Board to clarify the status of Regulation E coverage for other card products, such as cards used to deliver health benefits or to deliver government-managed or directed consumer payments, such as child support, unemployment insurance, and workers' compensation.

Consumer groups supported coverage of payroll card accounts, but stated that consumer protection could be strengthened by also covering card products used to receive one-time payments of wages, salary, and other compensation, which, in their view, should be similarly protected from unauthorized use under Regulation E. Consumer groups also urged the Board to initiate a separate rulemaking to cover additional cards used to deliver important household funds, such as emergency benefit payments, income tax refunds, or loan proceeds, as well as other cards marketed or used as deposit account substitutes.

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.'' As explained in the interim rule, in light of the characteristics of payroll cards, the Board believes it is appropriate to exercise its authority under Sections 903(2) and 904(d) of the EFTA to classify payroll card accounts as ''accounts'' for purposes of Regulation E.[1] 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 same kinds of access devices, electronic terminals, and networks as do other EFT services historically covered by the EFTA.

Section 205.2(b)(2) is generally adopted as set forth in the interim rule and provides that the term ''account'' includes a ''payroll card account,'' which is an account that is directly or indirectly established through an employer, and to which EFTs of the consumer's wages, salary, or other employee compensation are made on a recurring basis. (Former § 205.2(b)(2) was previously redesignated under the interim final rule as § 205.2(b)(3).) The definition generally includes a payroll card account that represents the means by which an employer regularly pays the employee's wages, salary, or other form of employee compensation and would include, for example, card accounts for seasonal workers or employees that are paid on a commission basis. Coverage under Regulation E applies whether the account is operated or managed by an employer, a third-party payroll processor, or a depository institution. However, as further discussed below under § 205.18(a), the fact an employee is paid by payroll card account through the employment relationship would not make the employer a financial institution subject to the regulation unless the employer holds payroll card funds, or issues the payroll card and agrees with the employee to provide EFT services. The definition has been revised to refer to accounts established ''through'' an employer, rather than ''by'' an employer as in the interim rule to clarify what a payroll card account is, regardless of which entities are covered as financial institutions with respect to the account. In addition, the reference in the definition to a payroll card account that is established ''on behalf of a consumer'' has been deleted as unnecessary.

A few industry commenters observed that an employer may elect to provide bonuses or other incentive-based payments on a non-recurring basis more than once during a year on a card used only for that purpose. Thus, these commenters urged that the Board clarify that the term ''payroll card account'' does not include cards used to disburse such ''isolated or limited'' payments. The Board agrees with commenters' suggestions and has revised comment 2(b)–2 to clarify that the term ''payroll card account'' generally does not include a card used solely to disburse bonuses or other incentive-based payments because such payments are unlikely to be the consumer's primary source of salary or compensation. In contrast, the term would include card accounts that receive deposits of commission-based payments paid to an employee, even if not made on regular intervals (for example, if based on sales), because such payments are typically the primary means by which that employee receives his salary or other compensation. *See also* § 205.2(b)(2). Comment 2(b)–2 further clarifies that cards exclusively used to disburse payments other than compensation, such as petty cash or travel expenses, are not ''payroll card accounts.'' Nevertheless, to the extent bonuses or other incentive-based payments, payments to reimburse travel expenses, or any other deposits of funds (for example, if a consumer is permitted to add his or her funds) are transferred to an account that otherwise meets the definition of a payroll card account, such transfers are EFTs covered by the regulation.

The fact that an employee only remains in the employer's hire for a short time, for example, a few pay cycles, does not negate coverage, so long as the employer intended to make recurring payments to the payroll card account. However, if the employer only transmits funds to an account accessible by a card in isolated instances—for example, in final-payment situations, or in emergency situations when other payment methods are unavailable, such a card ''account'' would not fall within the definition of a payroll card account. *See also* comment 2(b)–2. In these cases, the Board believes that the costs of applying Regulation E's protections and providing disclosures for a card serving a one-time or limited use would outweigh any incremental benefit to consumers.

As noted in the supplemental information to the interim rule, a payroll card account is covered under the final rule whether the underlying 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) to enable a determination of the amounts of money owed or attributed to particular employees. *See* 71 FR at 1,475. This approach assures uniform application and minimizes potential circumvention of the rule.

The Board's final rule limits the scope of the payroll card account definition to payroll card accounts established

[1] 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.''

directly or indirectly through an employer. Thus, the term ''payroll card account'' does not include accounts directly established by a consumer at a depository institution without the involvement of an employer, even if the depository institution limits the account to receiving direct deposits of recurring payments of salary or other compensation. The requirement that a payroll card account be established through a consumer's employer creates a bright-line test for determining which accounts are subject to special rules regarding payroll card accounts. Moreover, it would be difficult for financial institutions and others to distinguish an account directly established by a consumer to receive deposits of salary (without the involvement of an employer) from a ''traditional'' deposit account opened by a consumer. As a result, the definition of a payroll card account is limited as explained above. Accounts established directly by a consumer at a depository institution are fully covered by Regulation E because they fall within the existing definition of ''account'' in § 205.2(b)(1).

Gift cards issued by merchants that can be used to purchase items in the merchant's store are not covered by Regulation E. The regulation also does not cover general spending cards to which a consumer *might* transfer by direct deposit some portion of the consumer's wages. Although consumers might choose to send some or all of their salary or other compensation by direct deposit into a general spending card account, the consumer also may use these products for other purposes or for limited periods of time, like gift cards or other stored-value, or prepaid, cards. Consumers would derive little benefit from receiving full Regulation E protections for cards that may only be used for limited purposes or on a short-term basis, and which may hold minimal funds, while the issuer's costs of compliance with Regulation E might be significant. In contrast, for payroll card accounts that are established through an employer, 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 addition, cards used solely for health-related expenses—such as cards linked to flexible spending accounts, health savings accounts or health reimbursement arrangements—are not covered by the regulation, whether funded by the employer or the employee. The Board will continue to monitor the development of the prepaid card market and could reconsider whether the current treatment of these products under Regulation E remains appropriate over time. *But see* 62 FR 43,467, 43,468 (August 14, 1997) (stating that accounts established by a government agency for distributing state or local employment-related benefits, such as unemployment benefits, are electronic benefit transfer (EBT) accounts covered by § 205.15).

Former comment 2(b)–2, which addresses examples of accounts not covered by Regulation E, was previously redesignated under the interim rule as comment 2(b)–3.

Section 205.18 Requirements for Financial Institutions Offering Payroll Card Accounts

In the interim rule, the Board proposed to grant financial institutions relief from the requirement to provide periodic statements for payroll card accounts, provided that the financial institution makes account information available to the consumer through certain alternative means. The final rule adopts the approach set forth in the interim rule substantially as proposed, with a few clarifying changes to address commenters' concerns. In addition, the final rule applies the general definition of ''financial institution'' to describe the entities subject to the payroll card requirements. Thus, unlike the approach in the interim rule, employers and third-party service providers will generally not be covered as financial institutions under the regulation because they typically do not hold payroll card accounts, or issue payroll cards and agree with a consumer to provide EFT services.

Financial institutions covered under the rule are not required to provide periodic statements for payroll card accounts if they provide specified account information by telephone, electronically, and, upon the consumer's request, in writing. Section 205.18 of the final rule further addresses the requirements governing initial disclosures, the issuance of access devices, error resolution, and limitations on liability under the modified approach.

18(a) Coverage

The final rule adopts the existing definition of ''financial institution'' in § 205.2(i) to identify the entities that are subject to the regulation with respect to a payroll card account. *See* § 205.2(i). Thus, unlike the interim rule, employers and service providers typically would be excluded from the scope of the regulation because they are unlikely to either hold payroll card accounts or issue payroll cards and agree to provide EFT services to payroll card account holders. Except as modified by § 205.18, all provisions of Regulation E apply to financial institutions with respect to payroll card accounts in the same manner and to the same extent that they apply with respect to other accounts subject to the regulation.

Under one typical payroll card model, an employer contracts with a depository institution to provide payroll cards to its employees. In many cases, the depository institution may use a third-party service provider to perform some or a substantial proportion of the compliance duties (*e.g.*, in a turnkey arrangement), including mailing account terms and conditions and providing error resolution services. Or, the depository institution may elect to perform all of the compliance duties in-house. Under another payroll card model, the employer may contract directly with the third-party service provider for the payroll card program. Under both arrangements, a depository institution's participation in the payroll card program will be necessary both to hold the underlying funds as well as to issue the payroll card itself. In addition, the account relationship will generally be between the issuing bank and the employee, regardless of whether it is the bank or a service provider that is ultimately responsible for performing a particular compliance obligation. An employer's involvement in a particular payroll card program is likely to be limited to providing initial payroll card account disclosures on behalf of the depository institution or service provider.

Under the interim rule, an entity would have been treated as a financial institution if it directly or indirectly held a payroll card account or directly or indirectly issued a payroll card. Thus, employers that provided payroll cards to their employees would have been subject to the regulation because the scope of coverage did not require a person issuing an access device for a payroll card account to also agree with a consumer to provide EFT services. Similarly, a service provider would have been treated as a financial institution if it indirectly issued payroll cards through a bank. *See* 71 FR at 1,477.

Two commenters, one representing card issuers and a second representing specialists in corporate treasury functions, observed that most employers will not have expertise in complying with the regulation, and thus requested that the Board exclude employers from coverage under § 205.18(a) entirely. In particular, these commenters asserted that the compliance burden could be a

disincentive for some employers to offer payroll cards as a payment option for their employees. In this regard, a few commenters asserted that even if employers shift compliance duties to a third-party service provider by contract, the employer might still be liable for that party's failure to comply. In contrast, consumer groups agreed with the interim rule's treatment of all entities participating in card distribution, card processing, or transfer of payroll card funds as financial institutions.

Upon further consideration and analysis of the issue, the Board is revising § 205.18(a) to use the same definition of ''financial institution'' with respect to payroll card accounts that applies to other types of accounts to determine which entities providing payroll card services are covered under the rule. *See* § 205.2(i). Thus, an entity would be deemed a ''financial institution'' with respect to a payroll card account if it holds the payroll card account or if it issues a payroll card and agrees with the consumer to provide EFT services. Accordingly, the depository institution holding the funds will always be treated as a financial institution under the rule, but employers and service providers typically will not be covered because they generally do not hold payroll card accounts or issue payroll cards and agree with a consumer to provide EFT services.

Because payroll card account holders will, at a minimum, be able to assert their Regulation E rights against the depository institution holding their account in all cases, the Board believes that there would be little, if any, benefit of also covering employers under Regulation E. Under the interim rule's approach, employer coverage might lead employers who are generally unfamiliar with Regulation E's requirements to incur additional compliance costs and risk. The Board believes the imposition of such costs and risks on employers who neither hold payroll card accounts nor issue payroll cards could deter some employers from adopting payroll cards. Accordingly, under the final rule, if an employer arranges or contracts with a depository institution or third-party payroll services provider to pay its employees by payroll card account, the employer would not be a ''financial institution'' subject to the regulation.

Similarly, based upon the Board's understanding of how payroll card programs are structured, while a third-party service provider may perform some, most, or even all of the compliance duties for a particular payroll card program, it will neither hold payroll card accounts nor issue the payroll card itself. Thus, a third-party service provider typically would not be deemed a financial institution subject to the regulation. New comment 18(a)–2 sets forth the preceding discussion of how the final rule applies to employers and service providers. The comment also states that to the extent that an employer or a service provider undertakes to hold payroll card accounts or issue payroll cards and agree with a consumer to provide EFT services, it would become a financial institution subject to the regulation.

To the extent that more than one party (*e.g.*, a depository institution and a third-party service provider) each qualify as a financial institution with respect to the same payroll card account, those parties may contract among themselves to ensure compliance with the final rule. *See also* § 205.4(e) (stating that institutions providing EFT services jointly may contract among themselves to allocate requirements under the regulation). Thus, for example, disclosure obligations satisfied by one party, such as a service provider, would satisfy the disclosure obligations for any other financial institution with respect to that payroll card account. However, if the party that has contractually agreed to satisfy a compliance obligation fails to do so, each of the parties would be accountable under the EFTA and the final rule. These parties could also allocate among themselves the financial obligation for any liability resulting from the failure.

The final rule includes comment 18(a)–1 as proposed to clarify that a financial institution may issue an access device for a payroll card account only in response to an oral or written request for the device, or as a renewal or substitute of an accepted access device. *See* § 205.5(a). The comment further clarifies that a consumer is deemed to request an access device when the consumer chooses to receive his or her compensation through a payroll card account. The compulsory use prohibition in § 205.10(e) would not be violated as long as a job applicant is not required to establish a payroll card account as a condition of employment.

One commenter asked the Board to clarify whether an employer may include an unactivated payroll card with materials provided to employees about the terms and conditions of the payroll card account. Such a procedure would not violate Regulation E, provided that the terms and conditions for issuing an *unsolicited* access device as provided under § 205.5(b) are satisfied and the consumer retained the option to receive compensation by means other than the payroll card account.

18(b) Alternative to Periodic Statement

General Provisions

In the September 2004 proposal, the Board proposed that all provisions of Regulation E should apply to payroll card accounts in the same manner that they apply to other accounts, including the requirement to provide periodic statements. Most industry commenters urged the Board to permit entities offering payroll cards an alternative means of providing account information similar to the rules in § 205.15 of Regulation E for accounts established for the electronic transfer of government benefits (EBT accounts). The January 2006 interim rule granted relief from the requirement to provide periodic statements under § 205.9(b), provided that financial institutions make account information available by telephone, electronically, and, upon the consumer's request, in writing. The final rule adopts this approach. Some modifications have been made to clarify certain issues raised by commenters.

Industry commenters strongly supported the Board's decision to provide relief from the periodic statement requirement for payroll card accounts. Many stated that the alternative set forth in the interim rule strikes an appropriate balance between the needs of consumers and the costs to employers and institutions. A few industry commenters urged the Board to provide similar relief for other types of accounts that receive recurring payments, including accounts established by consumers at depository institutions without the involvement of an employer that only receive deposits of employee compensation and accounts funded solely by government benefit payments. One commenter recommended that the Board grant relief from the periodic statement requirements for all retail payment cards, including general spending cards, to the extent such cards may be covered under Regulation E. Another commenter suggested that the Board consider the adoption of a similar approach for the delivery of information for accounts generally under Regulation E, as well as for accounts and other banking products under other consumer financial services regulations (*e.g.*, Regulations Z and DD).

In contrast, consumer group commenters asserted that payroll card accounts should be given the same protections as are provided for other consumer accounts under the EFTA, including the right to paper periodic

statements. Consumer group commenters noted that periodic statements assist consumers in tracking their account balances and transactions and discovering unauthorized transfers or other errors involving their accounts. One state attorney general recognized that some employees are transient but recommended that the Board require periodic statements for any consumer that can provide a mailing address to the employer.

When the Board addressed EBT programs in 1994, it recognized that periodic statements are a central component of Regulation E's disclosure scheme. However, the Board granted EBT providers relief from the periodic statement requirement in light of the limited types of transactions involved, the availability of other means to obtain account information for benefit recipients, and the expense of routinely mailing monthly statements to all recipients. *See* 59 FR 10,678, 10,681 (March 7, 1994). Similarly, the Board is exercising its authority under Section 904(c) of the EFTA to grant financial institutions flexibility in connection with the periodic statement requirement for payroll card accounts.

In addition to the comments received on the September 2004 proposal and the January 2006 interim rule, the Board considered data it collected during focus group testing of payroll card holders during the fall of 2005. As described in more detail in the supplemental information for the interim rule, the majority of focus group participants regularly checked their balances over the telephone or checked balance and transaction information on-line; some checked their accounts through these methods multiple times per week. Most focus group participants who received paper periodic statements stated that they generally kept their statements as a record of account activity but otherwise rarely used them to track transactions or look for errors. Participants generally attributed their lack of statement use to the fact that they monitored their account information frequently during the month by the telephone or on-line. While a few participants wanted to receive paper statements, most indicated a clear preference for using alternative means of monitoring account activity, in particular by phone and on-line. *See* 71 FR at 1,476.

As with EBT products, the Board is persuaded that the alternative methods of providing account transaction information currently used by many payroll card providers are comparable to, and in some respects, better than, paper periodic statements. Information available by telephone or on-line is updated routinely, 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, which may assist consumers in more effectively tracking transactions to avoid overdrawing their accounts.

The Board also has weighed the potential burden and benefits of requiring financial institutions to provide periodic statements. Such a requirement could impose considerable one-time implementation costs, as well as ongoing costs for mailing such statements, on financial institutions currently offering such accounts and could discourage other financial institutions from offering them in the future. Weighing these considerations along with the alternative methods available to consumers for obtaining account information and consumers' actual account-monitoring practices, the Board concludes that granting relief from the periodic statement requirement for payroll card accounts is appropriate.

Section 205.18(b) of the final rule provides financial institutions flexibility either to provide periodic statements under § 205.9 as they would for other accounts or, as an alternative, to: (1) Make balance information available through a readily available telephone line; (2) make available an electronic history of the consumer's account transactions, such as through an Internet web site, that covers at least 60 days preceding the date the consumer electronically accesses the account; *and* (3) provide promptly upon request a written history of the consumer's account transactions, covering at least 60 days preceding the date the institution receives the consumer's request. As further explained below in the discussion about the error resolution and liability limit 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.

The final rule does not provide relief from the requirement to provide paper periodic statements for other types of accounts. However, the Board will continue to monitor this issue and may reassess whether it would be appropriate to propose such relief in the future.

Readily Available Telephone Line

The Board stated in the supplementary information for the interim rule that a readily available telephone line for providing balance information must be a local or toll-free line that, at a minimum, is available during standard business hours. Consumer groups and the state attorney general that commented suggested that the telephone line should be operable beyond standard business hours in each time zone so that employees have sufficient time to access their account information when they are not at work. Consumer groups also urged the Board to require institutions to provide transaction information by telephone.

As in the interim rule, the final rule requires that institutions, at a minimum, make available a local or toll-free line for consumers to obtain their available balance during standard business hours. The Board expects that, in most cases, institutions will provide 24-hour access to balance information through an automated line, which would ensure that employees can access balance information at their convenience. Because the Board believes it may be operationally difficult for some institutions to include 60 days' worth of transactions through a telephone system, the final rule does not require institutions to provide information about specific transactions by telephone. In addition, the Board's focus group testing indicated that while limited transaction information was available through the telephone, most consumers chose not to access transaction information in that manner. *See* 71 FR at 1,476.

Model Form A–7(a), discussed below, contains a model clause that institutions may use to inform consumers at account-opening about how to access their account information, including a reference to the telephone number that consumers may call to obtain this information. Consumer groups urged the Board to also require that institutions print the telephone number on each payroll card as a reminder for consumers. The Board is aware that many payroll cards already display the telephone number for obtaining account information on the back of the card and, therefore, the Board has chosen not to impose such a requirement in the final rule. If the Board learns in the future, however, that consumers are unaware of the ability to obtain account information by telephone, the Board will consider whether additional protections are needed.

Electronic History

For transaction histories provided electronically, institutions are not limited to using an Internet Web site to comply with the rule. However, because electronic histories are disclosures

under Regulation E, they must be provided in a form that the consumer may keep, as is required for disclosures generally under § 205.4(a)(1). A new comment 18(b)–2 explains that financial institutions satisfy this requirement if the electronic history is available in a format that is capable of being retained by the consumer. For example, an institution would satisfy the requirement if it provides a history at an Internet Web site in a format that is capable of being printed or downloaded using an Internet web browser.

A few industry commenters asked the Board to clarify that ATM access to a transaction history constitutes an acceptable means of providing an electronic history of transactions. Although the Board is unaware of any ATMs that currently offer the option of printing transaction histories of at least 60 days, institutions would be able to provide an electronic history at an ATM if consumers were able to print a copy of all the required information at the ATM.

Written History Upon Consumer's Request

The Board solicited comment on whether the requirement to provide a written history of transactions upon the consumer's oral or written request was a necessary or appropriate protection. Consumer groups and most industry commenters stated that the option to obtain a written history of transactions was both necessary and appropriate because some consumers may not be able to access the information electronically. However, a few industry commenters believed that institutions should be given flexibility in the manner in which they provide transaction information and that, accordingly, the rule should not require institutions to provide both an electronic *and* a written history.

The final rule retains the requirement that a financial institution mails or delivers a written history of account transactions promptly upon the consumer's oral or written request to address the possibility that some consumers may have limited on-line access. An institution would not satisfy the requirement to provide a written history by making a printed history available at an ATM because it does not ensure that a consumer is able to obtain a written history in all cases (for example, if the ATM is located in an inconvenient location).

The Board anticipates that, in general, written histories will be sent the next business day or soon after the institution receives the consumer's oral or written request. Institutions also may designate a specific telephone number for consumers to call and a specific address for consumers to write to request a written copy of account transactions. A few industry commenters asked whether a financial institution could charge a fee if a consumer makes frequent or multiple requests for copies of account statements within a short time frame. Although the final rule does not address the issue, the Board believes that charging fees to consumers who make occasional requests for written histories could have a chilling effect on consumers' ability to obtain information about transactions and thus, to exercise their error resolution rights.

Sixty-Day Transaction History

Most industry commenters stated that the requirement to provide 60 days of transactions was appropriate regardless of the means by which the account history is provided. Some industry commenters observed that many institutions provide up to 12 months of transactions on their Internet Web sites. However, a trade association representing community banks noted that some of its members currently can only provide a 30-day or a 45-day account history and expressed concern that these members would not be able to take advantage of the alternative to providing periodic account statements. A few industry commenters stated that providing a rolling 60-day transaction history might pose operational difficulties for those institutions that have developed systems that provide transaction histories only for specific statement cycles. One commenter asked the Board to clarify whether account histories must include transactions that have not yet posted to the account.

The final rule requires institutions to provide 60 days of transaction information, as proposed. Thus, if the consumer electronically accesses his or her account, the history must cover at least the preceding 60 days. Similarly, if the consumer requests a written history of transactions, the written history must cover at least 60 days preceding the date of the institution's receipt of that request.

The Board believes the 60-day requirement is appropriate for payroll card account holders because these consumers will not automatically be sent a statement that sets forth transaction information for each transfer occurring during a monthly cycle as they would for most other accounts covered by Regulation E. For those payroll card holders who do not access or request a copy of their transaction history at least on a monthly basis, the 60-day requirement is intended to help them avoid inadvertently losing their right to assert an error under § 205.11. New comment 18(b)–1 clarifies that a financial institution must include a transaction in the account history only if the transaction has posted to the payroll card account.

Section 205.18(b)(2) of the final rule requires that the account history provided under this section, whether provided electronically or in writing, contain the same type of account information that would be provided in a periodic statement under § 205.9(b)(1)–(6), including information about fees, account balances, and an address and telephone number for inquiries. Although a few commenters expressed concern that requiring all the information typically included on periodic statements could impose significant and costly systems changes, the Board believes such a requirement is necessary to ensure that consumers receive comparable account information regardless of whether they receive periodic statements or transaction histories under the alternative procedures in this final rule. The Board also believes that requiring that the same information be provided for payroll card accounts as for other accounts should facilitate institutions' ability to use the same systems for delivering account information and minimize the need to construct new systems.

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 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). Commenters did not address this provision, and the Board has adopted § 205.18(c)(1) of the interim rule with minor revisions for clarity.

Section 205.18(c)(1)(i) requires the initial disclosures for payroll card accounts to disclose the means by which consumers can access information about their account, including the telephone number that may be used to obtain the account balance, and information about how an electronic history of account transactions can be obtained, such as the address of an Internet Web site. The initial disclosures also must include 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 written history, in place of the summary of the consumer's right to receive periodic statements pursuant to § 205.7(b)(6). Under § 205.18(c)(1)(ii), the initial disclosures must contain a notice explaining the error resolution rights associated with payroll card accounts in place of the error resolution notice required by § 205.7(b)(10). In addition to these disclosures, institutions must also provide the other required disclosures set forth in § 205.7, including the disclosures explaining the consumer's liability for unauthorized EFTs and the fees imposed for EFTs or for the right to make transfers.

The final rule provides Model Clauses that financial institutions may use to facilitate compliance with the initial disclosure requirements, located in section A–7 of Appendix A to Part 205. Institutions choosing to utilize model clauses for initial disclosures will also have to modify paragraph (a) in section A–2 of Appendix A to Part 205 as appropriate to explain the consumer liability provisions if they opt not to provide periodic statements under this rule.

Section 205.18(c)(2) of the interim rule required financial institutions to provide an annual notice describing error-resolution rights substantially similar to the notice contained in section A–7(b) in Appendix A in place of the notice required by § 205.8(b). Several industry commenters urged the Board to give financial institutions the option to provide an abbreviated notice on a regular basis, as is currently permitted on periodic statements under § 205.8(b). These commenters believed an abbreviated notice could be provided when providing balance information by telephone, or when providing an account history electronically or in writing. In particular, some industry commenters noted that it was difficult to provide error resolution notices by mail to transient employees. The Board agrees that the approach suggested by these commenters is likely to provide payroll card users with information about their error resolution rights on a more timely basis, that is, when consumers are reviewing their history of account transactions. Accordingly, the final rule is revised to permit institutions to provide a notice similar to the abbreviated notice provided in Appendix A–3(b). Institutions must modify this notice to reflect the error resolution time frames and procedures set forth in this final rule. The abbreviated notice would have to be provided on each history of transactions, whether provided electronically or in writing upon the consumer's request, in lieu of the annual error resolution notice. The Board does not believe that it would be appropriate to permit the abbreviated notice to be provided exclusively through a telephone line because consumers would not be able to retain a copy of the notice.

Limitations on Liability and Error Resolution

Sections 205.18(c)(3) and (4) of the final rule are substantively similar to the interim rule and explain the limitations on liability and error resolution procedures for payroll card accounts when a financial institution does not provide periodic statements but instead follows the modified requirements. To address the concerns of some commenters about potential operational difficulties in determining when the liability limit and error resolution time frames begin to run, the final rule has been revised to provide a safe harbor that will satisfy the timing requirements in all instances.

As proposed in the interim rule, the final rule contains two different triggers for beginning the 60-day period for limiting liability for unauthorized EFTs in § 205.18(c)(3), 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. In either case, in order for the 60-day period to begin running, the alleged unauthorized transaction must be reflected in the electronic history or on the written history provided to the consumer. If a consumer accesses an electronic history and also requests a written history, both of which reflect information about the disputed transaction, the applicable 60-day period for reporting an unauthorized EFT begins on the earlier of these two events.

A similar rule is established in § 205.18(c)(4) for determining when the 60-day period begins for reporting an error under the procedures set forth in § 205.11. Thus, if a consumer obtains transaction information electronically under § 205.18(b)(1)(ii), the 60-day period for reporting an error begins on the date the account is electronically accessed by the consumer. If the consumer requests a written history of transactions under § 205.18(b)(1)(iii), the 60-day period begins on the date the institution sends the written history. Again, in either case, in order for the 60-day period to begin running, the alleged error must be reflected on the electronic history or on the written history provided to the consumer. Also, if the consumer both accesses an account electronically and requests a written history, the applicable 60-day period for reporting an alleged error begins on the earlier of these two events. Transactions that have not yet posted to the account do not trigger either the liability limit or the error resolution time frames.

Several industry commenters suggested alternate triggers for determining when the liability limit and error resolution time frames begin to run. For example, some industry commenters asserted that the 60-day period should begin running at the time information about a specific transfer is posted and becomes available to the consumer, regardless of when the consumer actually obtains the information. A few industry commenters suggested that the 60-day period should begin on the date of the transaction. Others stated that the 60-day period should begin when the consumer accesses an account balance by telephone. One industry commenter noted that the rule should provide certainty to financial institutions and merchants so that their systems need only retain information for a set period of time. In this regard, some industry commenters suggested that the Board clarify that a consumer's error resolution rights do not apply to a transaction more than 120 days old.

Safe Harbor

As proposed, the final rule provides that consumers' 60-day period to report an error with respect to a particular transaction begins on the date the consumer accesses the electronic history reflecting the alleged error or the date the institution sends a written history that includes that error, whichever is earlier. In response to comments received, the Board has revised the final rule to clarify institutions' options for compliance. A few industry commenters noted that some institutions may prefer to develop compliance systems that do not track consumers' access to their electronic history or when a written history is sent. The final rule provides a safe harbor to clarify that these institutions would comply with the error resolution provisions as long as they treat a notice of error as timely when it is received from the consumer

within 120 days after the transaction allegedly in error was credited or debited to the consumer's account. *See* § 205.18(c)(4)(ii). Providing consumers 120 days after the date a transaction has posted to a consumer's account to report an error ensures that the consumer will have at least 60 days to report an error even if the consumer first accesses the information on the last day that the transaction is required to be included in the account history. Institutions choosing to follow this practice would in most cases be affording consumers more than the minimum time period required by the regulation. A similar safe harbor is provided for reporting unauthorized transactions under § 205.18(c)(3)(ii).

New comment 18(c)–1 provides that institutions that choose to determine the consumers' reporting period in this way may still disclose the time period required by the regulation (as set forth in the Model Form in Appendix A–7). For example, an institution may disclose to payroll card account holders that the institution will investigate a notice of error provided within 60 days after the date the consumer electronically accesses an account or the date the institution sends a written history of transactions even if the institution actually provides a longer period of time for the consumer to report an error (*i.e.*, up to 120 days following the date a transaction has posted). Comment 18(c)–1 further states that an institution's summary of the consumer's liability (as required under § 205.7(b)(1)) may disclose that liability is based on the consumer providing notice of error within 60 days of the consumer electronically accessing an account or receiving a written history reflecting the error even if the institution may allow a consumer to assert a notice of error up to 120 days from the date of the posting of the alleged error.

Example

As discussed above, the history of account transactions provided under § 205.18(b)(1), whether provided electronically or in writing, must cover at least 60 days preceding the date that the information is made available or provided to the consumer. Thus, if a consumer accesses a payroll card account electronically, or is sent a written history, on June 1, then the history of transactions must cover a period of at least 60 days prior to June 1 and include any EFTs posted from April 2 through May 31. Assuming that the consumer did not previously access or receive account information reflecting transactions during April or May, the consumer must have at least 60 days, or until July 31, 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 resulting from a transaction that posted on May 10. In this case, under § 205.18(c)(4)(i), the consumer must provide notice of that error to the institution no later than July 31 to trigger the institution's obligation to investigate the error. If the consumer provides a notice of the May 10 error after July 31, the institution would not be required to comply with the procedures and time limits in § 205.11 for investigating the error. 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. *See* comment 18(c)–3, discussed below.

For an institution electing to apply the error resolution time frame set forth in § 205.18(c)(4)(ii), the institution would comply with the regulation if it treats a notice of error as timely if received within 120 days after the date of the May 10 transfer to report the alleged error, or by September 7.

Electronic Access

With respect to electronic access, the Board stated in the supplementary information to the interim rule that the 60-day periods for liability limits and error resolution would not begin running if the consumer merely visited an Internet Web site where account information and other information could be retrieved. Rather, the 60-day period would begin once the consumer entered a user identification code or a password or otherwise complied with a security procedure used by an institution to verify the consumer's identity before granting access to account information. The interim rule did not require institutions to determine whether the consumer has in fact accessed information about specific transactions before triggering the 60-day period for liability limits and error resolution rights.

Consumer groups and the state attorney general that commented urged the Board to revise the rule so that the liability limit and error resolution provisions are not triggered with respect to a transaction unless a consumer actually accesses information about that specific transaction. In contrast, the vast majority of industry commenters stated that such a requirement was impractical, and would require significant expense to implement the necessary system changes. Accordingly, many industry commenters urged the Board to retain the proposed interpretation clarifying that ''electronic access'' to an account means that the consumer has logged onto a secure portion of an institution's Web site.

The final rule follows the interim rule for purposes of determining when a consumer has electronically accessed an account. A rule requiring an institution to determine if a consumer has reviewed specific transactions would be operationally burdensome and costly to implement. In addition, such an approach could require institutions to establish more complicated and cumbersome procedures for consumers to use to access account information. Thus, as in the interim rule, a consumer is deemed to have accessed his or her account electronically 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. Comment 18(c)–2 has been added to provide this interpretation. Under the final rule, the liability and error resolution provisions are not triggered when consumers obtain balance information by the telephone because many institutions may not make available specific transaction information available by telephone, and because, unlike written or electronic histories, a consumer will not be able to retain a copy of transactions to review. In addition, the final rule would not require institutions to track whether a consumer accessed an account electronically if they provide consumers at least 120 days after a transfer is credited or debited to the consumer's account to report an error.

Untimely Notice of Error

Industry commenters also requested clarification on the effect of providing account histories that include more than 60 days of transaction information. These commenters noted that many institutions commonly provide up to 12 months of transaction information on their Internet Web sites. Several industry commenters further urged the Board to clarify that the limits on consumers' liability for unauthorized transactions applies only to transfers occurring in the 60-day period before the consumer electronically accesses an account. Some of these commenters noted that researching unauthorized EFTs becomes more complicated and time-consuming for transactions older than 60 days, because documents such

as receipts and ATM security tapes or videos are often archived or destroyed after 60 days.

The Board has added new comment 18(c)–3 to address the circumstance in which a financial institution makes available more than 60 days of transaction information either electronically or in writing. The new comment provides that institutions generally will not be required to comply with the error resolution provisions set forth in § 205.11 with respect to a transaction that occurred more than 60 days prior to the date the consumer electronically accesses the payroll card account or the date a written history was sent, whichever is earlier (assuming information about the alleged error is available to the consumer). An institution that does not track when a consumer accesses an account or is sent a written history also may choose not to follow the procedures in § 205.11 for any notice of error received more than 120 days after the transfer allegedly in error is credited or debited to the consumer's account. In either case, however, if the consumer's assertion of error involves an unauthorized transfer, the institution is required to comply with § 205.6, which specifically addresses consumer liability for unauthorized transfers, before it may impose any liability on the consumer for the transfer. See also comment 11(b)(1)–7; EFTA § 909; 15 U.S.C. 1693g. Some institutions asked the Board to clarify that the limits on consumers' liability for unauthorized transfers only apply to transactions occurring during the 60 days preceding the date the consumer electronically accesses his or her account. However, such a rule would not be consistent with the EFTA, which does not contain a time limitation for asserting an unauthorized EFT claim. *See* EFTA § 909; 15 U.S.C. 1693g.

Additional Issues

Several commenters were concerned that explicitly stating that payroll card accounts were covered under Regulation E might affect whether they are also ''accounts'' for purposes of coverage under other laws, such as for customer identification procedures under the Bank Secrecy Act, for reserve requirements under the Board's Regulation D, for Truth in Savings Act purposes, and possibly for other purposes under state laws. As stated in the supplementary information for the interim rule, the definition of ''account'' as amended by the final rule does not affect the treatment of payroll card accounts under other laws. This final rule is intended only to address coverage issues under Regulation E.

Compliance Date

The interim rule established an effective date of July 1, 2007. Consumer groups commented that the effective date should be earlier in light of the projected growth of payroll card accounts. Industry commenters, however, asserted that financial institutions and employers will need at least 12 months following the adoption of a final rule to implement necessary changes, and one industry commenter suggested that mandatory compliance be delayed until 2008. The final rule retains a mandatory compliance date of July 1, 2007, for the revisions addressing payroll card accounts, to provide institutions sufficient time to implement necessary changes, but institutions may begin complying with the final rule beginning 30 days after the date of publication in the **Federal Register**.

A–7—Model Clauses for Financial Institutions Offering Payroll Card Accounts

Model Form A–7 provides model clauses consistent with the provisions in § 205.18 that apply to financial institutions that offer payroll card accounts but do not provide periodic statements under § 205.9(b). These clauses, which are modeled after similar clauses provided under Appendix A–5 for EBT accounts, are intended to assist financial institutions in disclosing to payroll card holders how to obtain account balances and account histories, as well as error resolution procedures. (The model clauses do not include language about the 120-day safe harbor under the liability limit and error resolution provisions because the safe harbor goes beyond the literal requirements of the final rule. *See* comment 18(c)–1.) Comment 2 for Appendix A is revised to clarify 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. The final rule also includes nonsubstantive changes to the model clauses to correct a cross reference to § 205.15 of the regulation.

V. Final Regulatory Flexibility Analysis

The Board prepared a regulatory flexibility analysis as required by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) (RFA) in connection with the January 2006 interim rule. 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 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(b). 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 EFTA], 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 through an employer, and 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. The Board also did not receive any comments on its regulatory flexibility analysis in the interim rule.

3. *Small entities affected by the final rule.* Entities are required to comply with the final rule to the extent that they qualify as financial institutions with respect to a payroll card account. Specifically, an entity must either directly or indirectly hold a payroll card account or issue an access device (*i.e.*, the payroll card) and agree with the consumer to provide EFT services. The Board does not currently believe that there are any employers or service providers that would qualify as financial institutions with respect to their payroll card programs. Based on available information, the final rule will, at the time of its adoption, apply to approximately 60 depository institutions that are offering payroll card programs. The Board is unaware of any such institutions which could be considered a small institution 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 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, upon the consumer's request, and by telephone. Institutions also will be required to implement error resolution provisions under the final rule to the extent that they do not currently have such procedures.

The Board understands that many depository institutions and payroll card services providers 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 through telephone and electronic access. Because the 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 final rule will not have a significant economic impact on a substantial number of small entities.

5. *Other Federal rules.* To the Board's knowledge, no Federal rules duplicate, overlap, or conflict with the 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 provide relief from 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 final rule, financial institutions engaged in providing payroll card accounts may elect not to provide periodic statements 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.

The final rule would also in most cases exclude employers from the scope of entities subject to the regulation to the extent that such employers arrange or contract with a bank or third-party service provider to provide payroll cards. Commenters on the interim rule had urged the Board to exclude employers from the scope of the rule entirely, stating that the additional compliance burden may make some employers unwilling to establish payroll card programs.

Generally, under the final rule, consumers' 60-day period to report an error with respect to a transaction begins on the date the consumer electronically accesses an account for which information about the transaction is made available or the date the institution sends a written history reflecting the transaction, whichever is earlier. The final rule provides a safe harbor for financial institutions that may have operational difficulties in tracking when consumers electronically access their accounts or are sent a written history of transactions. To ease compliance, under the final rule, institutions can comply with the regulation if they allow a consumer up to 120 days after a transaction has posted to report any errors involving the transaction. A similar rule applies with respect to the provisions affecting consumer liability for unauthorized transactions.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1) (PRA), 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 entities involved in providing payroll card accounts that qualify as financial institutions under the regulation, of which there presently are approximately 60, 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 final rule provides disclosure obligations with respect to payroll card accounts. Financial institutions are required to fully comply with Regulation E, as amended by this final rule, and provide disclosure of basic

terms, costs, and rights relating to electronic fund transfer services in connection with the payroll card account. 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. These institutions should already have systems in place to comply with the Regulation E requirements for accounts generally. 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 cards, including respondents not regulated by the Federal Reserve, is approximately 1,265 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 83,751 hours for respondents regulated by the Federal Reserve. The final rule would increase the total burden under Regulation E for all respondents regulated by the Federal Reserve by 115 hours, from 83,751 to 83,866 hours. The Board did not receive any comments on the burden estimates provided in the interim final rule.

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 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 interim rule amending 12 CFR part 205 and the Official Staff Commentary which was published at 71 FR 1473 on January 10, 2006, is adopted as a final rule with the following changes:

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 revising paragraph (b)(2) as follows:

§ 205.2 Definitions.

* * * * *

(b) * * *

(2) The term includes a ''payroll card account'' which is an account that is directly or indirectly established through an employer and to which electronic fund transfers of the consumer's wages, salary, or other employee compensation (such as commissions), 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. Section 205.18 is revised to read as follows:

§ 205.18 Requirements for Financial Institutions Offering Payroll Card Accounts.

(a) *Coverage.* A financial institution 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 statements.*

(1) A financial institution need not furnish periodic statements required by § 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 of the consumer's account transactions, such as through an Internet Web site, 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 the financial institution receives the consumer's request.

(2) The history of account transactions provided under paragraphs (b)(1)(ii) and (iii) of this section must include the information set forth in § 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 § 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 § 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 paragraph A–7(a) in appendix A of this part.

(ii) *Error resolution.* A notice concerning error resolution that is substantially similar to the notice contained in paragraph A–7(b) in appendix A of this part, in place of the notice required by § 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 paragraph A–7(b) in appendix A of this part, in place of the notice required by § 205.8(b). Alternatively, a financial institution may include on or with each electronic and written history provided in accordance with § 205.18(b)(1), a notice substantially similar to the abbreviated notice for periodic statements contained in paragraph A–3(b) in appendix A of this part, modified as necessary to reflect the error resolution provisions set forth in this section.

(3) *Limitations on liability.* (i) For purposes of § 205.6(b)(3), the 60-day period for reporting any unauthorized transfer shall begin on the earlier of:

(A) The date the consumer electronically accesses the consumer's account under paragraph (b)(1)(ii) of this section, provided that the electronic history made available to the consumer reflects the transfer; or

(B) 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.

(ii) A financial institution may comply with paragraph (c)(3)(i) of this section by limiting the consumer's liability for an unauthorized transfer as provided under § 205.6(b)(3) for any transfer reported by the consumer within 120 days after the transfer was credited or debited to the consumer's account.

(4) *Error resolution.* (i) The financial institution shall comply with the requirements of § 205.11 in response to an oral or written notice of an error from the consumer that is received by the earlier of—

(A) Sixty days after the date the consumer electronically accesses the consumer's account under paragraph (b)(1)(ii) of this section, provided that the electronic history made available to the consumer reflects the alleged error; or

(B) Sixty days after 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 alleged error is first reflected.

(ii) In lieu of following the procedures in paragraph (c)(4)(i) of this section, a financial institution complies with the requirements for resolving errors in § 205.11 if it investigates any oral or written notice of an error from the consumer that is received by the institution within 120 days after the transfer allegedly in error was credited or debited to the consumer's account.

■ 4. In Appendix A to Part 205, Appendix A–7—Model Clauses for Financial Institutions Offering Payroll Card Accounts (§ 205.18(c)) is revised to read 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 allow you to report an error until 60 days after the earlier of the date you electronically access your account, if the error could be viewed in your electronic history, 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] or 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 *§ 205.2—Definitions*, under *2(b) Account*, paragraph 2. is revised;

■ b. Under *§ 205.18—Requirements for Financial Institutions Offering Payroll Card Accounts*, under *18(a) Coverage*, paragraph 1. is republished, and paragraph 2. is added;

■ c. Under *§ 205.18—Requirements for Financial Institutions Offering Payroll Card Accounts*, a new heading ''18(b) Alternative to Periodic Statements'' is added, and paragraphs 1. and 2. are added;

■ d. Under *§ 205.18—Requirements for Financial Institutions Offering Payroll Card Accounts*, a new heading ''18(c) Modified Requirements'' is added, and paragraphs 1., 2., and 3. are added;

■ e. Under *Appendix A—Model Disclosure Clauses and Forms*, paragraph 2. is republished.

Supplement I to Part 205—Official Staff Interpretations

§ 205.2 Definitions.

2(a) * * *

2(b) Account

1. * * *

2. *Certain employment-related cards not covered.* The term ''payroll card account'' does not include a card used solely to disburse incentive-based payments (other than commissions which can represent the primary means through which a consumer is paid), such as bonuses, which are unlikely to be a consumer's primary source of salary or other compensation. The term also does not include a card used solely to make disbursements unrelated to compensation, such as petty cash reimbursements or travel per diem payments. Similarly, a payroll card account does not include a card that is used in isolated instances to which an employer typically does not make recurring payments, such as when providing final payments or in emergency situations when other payment methods are unavailable. However, all transactions involving the transfer of funds to or from a payroll card account are covered by the regulation, even if a particular transaction involves payment of a bonus, other incentive-based payment, or reimbursement, or the transaction does not represent a transfer of wages, salary, or other employee compensation.

* * * * *

§ 205.18 Requirements for Financial Institutions Offering Payroll Card Accounts.

18(a) Coverage

1. *Issuance of access device.* Consistent with § 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 salary or other compensation through a payroll card account.

2. *Application to employers and service providers.* Typically, employers and third-party service providers do not meet the definition of a ''financial institution'' subject to the regulation because they neither hold payroll card

accounts nor issue payroll cards and agree with consumers to provide EFT services in connection with payroll card accounts. However, to the extent an employer or a service provider undertakes either of these functions, it would be deemed a financial institution under the regulation.

18(b) Alternative to Periodic Statements

1. *Posted transactions.* A history of transactions provided under §§ 205.18(b)(1)(ii) and (iii) shall reflect transfers once they have been posted to the account. Thus, an institution does not need to include transactions that have been authorized, but that have not yet posted to the account.

2. *Electronic history.* The electronic history required under § 205.18(b)(1)(ii) must be provided in a form that the consumer may keep, as required under § 205.4(a)(1). Financial institutions may satisfy this requirement if they make the electronic history available in a format that is capable of being retained. For example, an institution satisfies the requirement if it provides a history at an Internet Web site in a format that is capable of being printed or stored electronically using an Internet web browser.

18(c) Modified Requirements

1. *Error resolution safe harbor provision.* Institutions that choose to investigate notices of error provided up to 120 days from the date a transaction has posted to a consumer's account may still disclose the error resolution time period required by the regulation (as set forth in the Model Form in Appendix A–7). Specifically, an institution may disclose to payroll card account holders that the institution will investigate any notice of error provided within 60 days of the consumer electronically accessing an account or receiving a written history upon request that reflects the error, even if, for some or all transactions, the institution investigates any notice of error provided up to 120 days from the date that the transaction alleged to be in error has posted to the consumer's account. Similarly, an institution's summary of the consumer's liability (as required under § 205.7(b)(1)) may disclose that liability is based on the consumer providing notice of error within 60 days of the consumer electronically accessing an account or receiving a written history reflecting the error, even if, for some or all transactions, the institution allows a consumer to assert a notice of error up to 120 days from the date of posting of the alleged error.

2. *Electronic access.* A consumer is deemed to have accessed a payroll card account electronically when the consumer enters a user identification code or password or otherwise complies with a security procedure used by an institution to verify the consumer's identity. An institution is not required to determine whether a consumer has in fact accessed information about specific transactions to trigger the beginning of the 60-day periods for liability limits and error resolution under §§ 205.6 and 205.11.

3. *Untimely notice of error.* An institution that provides a transaction history under § 205.18(b)(1) is not required to comply with the requirements of § 205.11 for any notice of error from the consumer pertaining to a transfer that occurred more than 60 days prior to the earlier of the date the consumer electronically accesses the account or the date the financial institution sends a written history upon the consumer's request. (Alternatively, as provided in § 205.18(c)(4)(ii), an institution need not comply with the requirements of § 205.11 with respect to any notice of error received from the consumer more than 120 days after the date of posting of the transfer allegedly in error.) Where the consumer's assertion of error involves an unauthorized EFT, however, the institution must comply with § 205.6 before it may impose any liability on the consumer.

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, August 24, 2006.

Jennifer J. Johnson,

Secretary of the Board.

[FR Doc. 06–7223 Filed 8–29–06; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL RESERVE SYSTEM

12 CFR Part 205

[Regulation E; Docket No. R–1265]

Electronic Fund Transfers

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim final rule; request for public comment.

SUMMARY: The Board is amending Regulation E, which implements the Electronic Fund Transfer Act, and the official staff commentary to the regulation, which interprets the requirements of Regulation E. The amendments clarify that the requirement to obtain a consumer's authorization to collect a service fee for insufficient or uncollected funds through an electronic debit to the consumer's account applies to *any* person that intends to collect the fee in that manner. The amendments also clarify notice requirements for electronic check conversion transactions and for collecting insufficient funds fees electronically. This interim final rule, for which the Board is seeking comment, will supersede the corresponding provisions of the January 2006 final rule that addressed these topics.

DATES: This interim final rule is effective January 1, 2007. Comments must be received on or before September 29, 2006.

ADDRESSES: You may submit comments, identified by Docket No. R–1265, 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.* 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, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at *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, NW.) between 9 a.m. and 5 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: Ky Tran-Trong, Senior Attorney, Vivian W. Wong, Attorney, or David A. Stein,