

VIII. Other Requirements (12 CFR 1005.10, 1005.14, 1005.15)

IX. Relation to Other Laws (12 CFR 1005.12)

Subpart B

Requirements for remittance transfers

X. Remittance Transfer Definitions (12 CFR 1005.30)

XI. Disclosures (12 CFR 1005.31)

XII. Estimates (12 CFR 1005.32)

XIII. Procedures for Resolving Errors (12 CFR 1005.33)

XIV. Procedures for Cancellation and Refund of Remittance Transfers (12 CFR 1005.34)

XV. Acts of Agents (12 CFR 1005.35)

XVI. Transfers Scheduled Before the Date of Transfer (12 CFR 1005.36)

Sections Applicable to Both Subpart A and Subpart B

XVII. Preemption

XVIII. Administrative Enforcement and Record Retention (12 CFR 1005.13)

XIX. Miscellaneous (EFTA provisions not reflected in Regulation E)

SUBPART A

I. Scope

Key Definitions—12 CFR 1005.2

Access device is a card, code, or other means of access to a consumer's account or a combination of these used by the consumer to initiate EFTs. Access devices include debit cards, personal identification numbers (PINs), telephone transfer and telephone bill payment codes, and other means to initiate an EFT to or from a consumer account (12 CFR 1005.2(a)(1) and 12 CFR Part 1005, Supp. I, Comment 2(a)-1).

Access devices do not include either of the following:

- magnetic tape or other devices used internally by a financial institution to initiate electronic transfers
- a check or draft used to capture the MICR (Magnetic Ink Character Recognition) encoding or routing, account, and serial numbers to initiate a one-time ACH debit (Comments 2(a)-1 and 2(a)-2)

Accepted access device is an access device that a consumer

- requests and receives, signs, or uses (or authorizes another to use) to transfer money between accounts or to obtain money, property, or services
- requests to be validated even if it was issued on an unsolicited basis
- receives as a renewal or substitute for an accepted access device from either the financial institution that initially issued the device or a successor (12 CFR 1005.2(a)(2))

Account includes the following:

- checking, savings, or other consumer asset accounts held by a financial institution (directly or indirectly), including certain club accounts, established primarily for personal, family, or household purposes
- *payroll card account*, established through an employer (directly or indirectly), to which EFTs of the consumer's wages, salary, or other employee compensation (such as commissions), are made on a recurring basis. The payroll card account can be operated or managed by the employer, a third-party processor, a depository institution, or any other person. All transactions involving the transfer of funds to or from a payroll card account are covered by the regulation (12 CFR 1005.2(b)(2) and Comment 2(b)-2).

An account does not include:

- an account held by a financial institution under a bona fide trust agreement
- an occasional or incidental credit balance in a credit plan
- profit-sharing and pension accounts established under a bona fide trust agreement
- escrow accounts such as for payments of real estate taxes, insurance premiums, or completion of repairs
- accounts for purchasing U.S. savings bonds (12 CFR 1005.2(b)(3) and Comment 2(b)-3)

A *payroll card account* does not include a card used

- solely to disburse incentive-based payments (other than commissions when they represent the primary means through which a consumer is paid) that are unlikely to be a consumer's primary source of salary or other compensation;
- solely to make disbursements unrelated to compensation, such as petty cash reimbursements or travel per diem payments; or
- in isolated instances to which an employer typically does not make recurring payments

(Comment 2(b)-2).

Activity means any action that results in an increase or decrease of the funds underlying a certificate or card, other than the imposition of a fee, or an adjustment due to an error or a reversal of a prior transaction (12 CFR 1005.20(a)(7)).

ATM operator is any person that operates an ATM at which a consumer initiates an EFT or a balance inquiry and that does not hold the account to or from which the transfer is made or about which the inquiry is made (12 CFR 1005.16(a)).

Dormancy fee and inactivity fee mean a fee for non-use of or inactivity on a gift certificate, store gift card, or general-use prepaid card (12 CFR 1005.20(a)(5)).

Electronic check conversion (ECK) transactions are transactions where a check, draft, or similar paper instrument is used as a source of information to initiate a one-time electronic fund transfer from a consumer's account. The consumer must authorize the transfer (12 CFR 1005.3(b)(2)).

Electronic fund transfer (EFT) is a transfer of funds initiated through an electronic terminal, telephone, computer (including online banking) or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer's account. EFTs include, but are not limited to, point-of-sale (POS) transfers; automated teller machine (ATM) transfers; direct deposits or withdrawals of funds; transfers initiated by telephone; and transfers resulting from debit card transactions, whether or not initiated through an electronic terminal (12 CFR 1005.3(b)).

Electronic terminal is an electronic device, other than a telephone call by a consumer, through which a consumer may initiate an EFT. The term includes, but is not limited to, point-of-sale terminals, automated teller machines, and cash-dispensing machines (12 CFR 1005.2(h)).

Exclusions from gift card definition. The following cards, codes, or other devices are excluded and not subject to the substantive restrictions on imposing dormancy, inactivity, or service fees, or on expiration dates if they are (12 CFR 1005.20(b))

- usable solely for telephone services;
- reloadable and not marketed or labeled as a gift card or gift certificate. For purposes of this exception, the term "reloadable" includes a temporary non-reloadable card issued solely in connection with a reloadable card, code, or other device;
- a loyalty, award, or promotional gift card (except that these must disclose on the card or device itself, information such as the date the funds expire, fee information and a toll-free number) (12

CFR 1005.20(a)(4) and (c)(4));

- not marketed to the general public;
 - issued in paper form only; or
 - redeemable solely for admission to events or venues at a particular location or group of affiliated locations, or to obtain goods or services in conjunction with admission to such events or venues, at the event or venue or at specific locations affiliated with and in geographic proximity to the event or venue.
- General-use prepaid card* is a card, code, or other device
- issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and
 - that is redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or that may be usable at automated teller machines (12 CFR 1005.20(a)(3)). See "*Exclusions from gift card definition.*"

Gift certificate is a card, code, or other device issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount that may not be increased or reloaded in exchange for payment and redeemable upon presentation at a single merchant or an affiliated group of merchants for goods or services (12 CFR 1005.20(a)(1)). See "*Exclusions from gift card definition.*"

Loyalty, award, or promotional gift card is a card, code, or other device (1) issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in connection with a loyalty, award, or promotional program; (2) that is redeemable upon presentation at one or more merchants for goods or services, or usable at automated teller machines; and (3) that sets forth certain disclosures, including a statement indicating that the card, code, or other device is issued for loyalty, award, or promotional purposes (12 CFR 1005.20(a)(4)). See "*Exclusions from gift card definition.*"

Overdraft services. A financial institution provides an overdraft service if it assesses a fee or charge for paying a transaction (including a check or other item) when the consumer has insufficient or unavailable funds in the account to pay the transaction. However, an overdraft service does not include payments made from the following:

- a line of credit subject to Regulation Z, such as a credit card account, a home equity line of credit, or an overdraft line of credit;
- funds transferred from another account held individually or jointly by the consumer; or

- a line of credit or other transaction from a securities or commodities account held by a broker-dealer registered with the Securities and Exchange Commission (SEC) or the Commodity Futures Trading Commission (CFTC). (12 CFR 1005.17(a)).

Preauthorized electronic fund transfer is an EFT authorized in advance to recur at substantially regular intervals (12 CFR 1005.2(k)).

Service fee means a periodic fee for holding or use of a gift certificate, store gift card, or general-use prepaid card. A periodic fee includes any fee that may be imposed on a gift certificate, store gift card, or general-use prepaid card from time to time for holding or using the certificate or card (12 CFR 1005.20(a)(6)). For example, a service fee may include a monthly maintenance fee, a transaction fee, an ATM fee, a reload fee, a foreign currency transaction fee, or a balance inquiry fee, whether or not the fee is waived for a certain period of time or is only imposed after a certain period of time. However, a service fee does not include a one-time fee or a fee that is unlikely to be imposed more than once while the underlying funds are still valid, such as an initial issuance fee, a cash-out fee, a supplemental card fee, or a lost or stolen certificate or card replacement fee (Comment 20(a)(6)-1).

State means any state, territory, or possession of the United States; the District of Columbia; the Commonwealth of Puerto Rico; or any of their political subdivisions (12 CFR 1005.2(l)).

Store gift card is a card, code, or other device issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment, and redeemable upon presentation at a single merchant or an affiliated group of merchants for goods or services (12 CFR 1005.20(a)(2)). See “Exclusions from gift card definition.”

Unauthorized electronic fund transfer is an EFT from a consumer's account initiated by a person other than the consumer without authority to initiate the transfer and from which the consumer receives no benefit. This does not include an EFT initiated in any of the following ways:

- by a person who was furnished the access device to the consumer's account by the consumer, unless the consumer has notified the financial institution that transfers by that person are no longer authorized;
- with fraudulent intent by the consumer or any person acting in concert with the consumer; or
- by the financial institution or its employee (12 CFR 1005.2(m)).

Coverage—12 CFR 1005.3

Subpart A of Regulation E applies to any electronic fund transfer (EFT) that authorizes a financial institution to debit or credit a consumer's account. The requirements of subpart A of Regulation E apply only to accounts for which there is an agreement for EFT services to or from the account between (i) the consumer and the financial institution or (ii) the consumer and a third party, when the account-holding financial institution has received notice of the agreement and the fund transfers have begun (Comment 3(a)-1).

Regulation E applies to all persons, including offices of foreign financial institutions in the United States, that offer EFT services to residents of any state, and it covers any account located in the United States through which EFTs are offered to a resident of a state, no matter where a particular transfer occurs or where the financial institution is chartered (Comment 3(a)-3). Regulation E does not apply to a foreign branch of a U.S. financial institution unless the EFT services are offered in connection with an account in a state, as defined in 12 CFR 1005.2(f) (Comment 3(a)-3).

Exclusions from Coverage

12 CFR 1005.3(c) describes transfers that are not EFTs and are therefore not covered by the EFTA and Regulation E:

- transfers of funds originated by check, draft, or similar paper instrument;
- check guarantee or authorization services that do not directly result in a debit or credit to a consumer's account;
- any transfer of funds for a consumer within a system that is used primarily to transfer funds between financial institutions or businesses, e.g., Fedwire or other similar network;
- any transfer of funds that has as its primary purpose the purchase or sale of securities or commodities regulated by the SEC or the CFTC, purchased or sold through a broker-dealer regulated by the SEC or through a futures commission merchant regulated by the CFTC, or held in book-entry form by a Federal Reserve Bank or federal agency;
- intra-institutional automatic transfers under an agreement between a consumer and a financial institution;
- transfers initiated by telephone between a consumer and a financial institution provided the transfer is not a function of a written plan contemplating periodic or recurring transfers. A written statement available to the public, such as