

NLWJC - Kagan

Counsel - Box 022- Folder 008

Food Stamps

Food Stamps Martha Phipps

2 Things

1. EBT program

13 states are operational

5 states

24 _____

14% of FS households get benefits from EBT

Quick study to show success of EBT?

Release a study.

Reduces FS fraud by X amt.

2. Change in reg / EO / directive to take nationwide or five states to adopt immediately. incentive

within 5 yrs - all states

Call Rahm

Telecom - Martha Phipps 5-30-96

720-3631

Idea -

Stop printing food coupons

(can be electronic)

Yvette Jackson -

head of E.S. program

703-305-2026

left msg.

wednesday

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001

LRM NO: 4667

FILE NO: 2422

6/7/96

LEGISLATIVE REFERRAL MEMORANDUM

Total Page(s): 7

TO: Legislative Liaison Officer - See Distribution below:

FROM: James JUKES

(for) Assistant Director for Legislative Reference

OMB CONTACT: Timothy JOHNSON 395-7562 Legislative Assistant's Line: 395-3454

SUBJECT: JUSTICE Proposed Report RE: HR3525, Church Arson Prevention Act of 1996

DEADLINE: 1:00 TODAY Friday, June 07, 1996

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President.

Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

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- Erin Jones

Ref/ stat 456-1647

← (ERT) - not under that protection

we
Ag - shouldn't apply
if!

(FRB) would ERT cards must have -
but this is state / how does
ST do this? who does it
change

major obstacle - will cause huge
blowup - bec of Ref E. Fires from four states
Study - don't cost so much

DRAFT

104TH CONGRESS
2D SESSION

H. R. _____

IN THE HOUSE OF REPRESENTATIVES

Mr. ROBERTS (for himself and _____) introduced the following bill;
which was referred to the Committee on _____

A BILL

To exempt from the Regulation E requirements, State administration of the food stamp program through electronic benefit transfer systems that provide for distribution of means-tested benefits.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 SECTION 1. SHORT TITLE.

4 This Act may be cited as the "Encouragement of
5 Electronic Benefit Transfer Systems Act".

6 SEC. 2. AMENDMENT.

7 Section 7(i) of the Food Stamp Act of 1977 (7 U.S.C.
8 2016(i)) is amended by adding at the end the following:

1 “(7) ENCOURAGE ELECTRONIC BENEFIT TRANSFER
2 SYSTEMS.—

3 “(A) IN GENERAL.—The disclosures, protec-
4 tions, responsibilities, and remedies established
5 under section 904 of the Electronic Fund Transfer
6 Act (15 U.S.C. 1693b), and any regulation or order
7 issued by the Board of Governors of the Federal Re-
8 serve System in accordance with such Act, shall not
9 apply to benefits under this Act delivered through
10 any electronic benefit transfer system.

11 “(B) REPLACEMENT OF BENEFITS.—Any regu-
12 lation issued by the Secretary regarding the replace-
13 ment of benefits under this Act, and liability for re-
14 placement of benefits under this Act, under an elec-
15 tronic benefit transfer system shall be similar to the
16 regulations in effect for a paper food stamp issuance
17 system.

18 “(C) DEFINITION OF ELECTRONIC BENEFIT
19 TRANSFER SYSTEM.—As used in this paragraph, the
20 term ‘electronic benefit transfer system’ means a
21 system under which a governmental entity distrib-
22 utes benefits determined under this Act, or other
23 benefits or payments (excluding payments of sala-
24 ries, of pension, retirement, and unemployment ben-
25 efits established by Federal, State, or local govern-

3

1 ment, and of other employment-related benefits), by
2 establishing accounts to be accessed electronically by
3 recipients of the benefits, including through the use
4 of an automated teller machine, a point-of-sale ter-
5 minal, or an intelligent benefit card.”.

Reg E / EBT

Robots - ¹not apply to AFDC / FD Stamp

Heavily
merit
of Reg E

Ellen HUST - testimony tomorrow
they no position

WH Task Force -

said should have
no position.

headed by VP

Ken Apfel / Ed Dubeve

Prelim findings -

Study -
costs < admin
replacement
mid-then talk a lot
IF's role

Ed DeSaver
Camp Miller

FRB - said it must apply ~~in~~ ^{next} March.

Camp. phy - Reg E - some of states
+ consumer sps

only go through if left fails.
because new states will want left.



DEPARTMENT OF AGRICULTURE
OFFICE OF THE SECRETARY
WASHINGTON, D.C. 20250
(202) 720-3631

FAX TRANSMITTAL

DATE: June 18, 1996

SENT TO:

Elena Kagan, Rahm Emanuel

PHONE #:

FAX #:

OF PAGES SENT:

5

(excluding cover sheet)

FROM:

Martha Phipps

PHONE #:

202-720-3631

FAX #:

202-720-5437

COMMENTS:

Bill on EBT and Reg E that Roberts will introduce tomorrow in hearing. Also, information sheet on Reg E for your information.

Regulation E

- ◆ The Electronic Funds Transfer Act governs the operations of commercial debit card networks. Regulation E is the regulation which implements the provisions of the Act and establishes the framework of legal rights and responsibilities for card issuers and card holders using electronic transfer systems.
- ◆ EBT systems were previously exempted from Regulation E, however, the Federal Reserve Board has ruled that Regulation E must be applied to EBT programs effective March, 1997.
- ◆ One provision of Regulation E has major cost implications to EBT systems: A client's liability is capped at \$50 if the client reports the loss within two days of discovery. Losses in excess of \$50 would be the responsibility of the card issuer. In the case of EBT, program regulations place responsibility for liabilities with the State.
- ◆ Client advocates support the Board's decision since it gives EBT households the same protections against debit card loss as persons with bank accounts.
- ◆ Those opposed to applying Regulation E to EBT systems believe that current program protections are sufficient (i.e. use of personal ID numbers and immediate deactivation of lost and stolen cards), especially when one considers that States are unable to implement risk controls that are available to banks, such as revoking use of the card for repeat offenders and charging fees to offset the Regulation E losses.
- ◆ Reg E opponents, especially States, further believe that the cost of replacing benefits coupled with the administrative costs of processing and investigating claims would increase the overall cost of EBT to the point that cost neutrality would be threatened. States generally support elimination of the Regulation E requirement, or sharing the liabilities with Federal agencies.
- ◆ At least two States, California and Pennsylvania, are delaying EBT implementation until the Regulation E issue is resolved.
- ◆ USDA is interested in a solution that would strike a balance between appropriate consumer protections and maintaining the cost effectiveness of EBT.
- ◆ USDA is currently evaluating the impact of Regulation E in test sites in New Jersey and New Mexico for State-administered systems, as well as Treasury's pilot of Federal Direct EBT payments in Texas. An interim report of the liabilities and administrative costs resulting from the tests should be available in early June. The final report is due to be released in the early fall.

Anti Fraud Proposals

- X Double penalties for recipient fraud from 6 months and 1 year to 1 and 2 years, respectively.**
- X Authorize USDA to time-limit retail store authorizations.**
- X Authorize USDA to require retail food stores to authorize verification of tax filing.**
- X Require denied retail store applicants to sit out a waiting period (from 6 months to permanent) before reapplying.**
- X Authorize USDA to set disqualification periods (including permanent disqualification) for knowingly submitting an application with false information about a substantive matter.**
- X Disqualify retail store from the Food Stamp Program for the same length of time as WIC disqualifications.**
- X Authorize summary suspension during appeals of permanent disqualification; hold USDA harmless for lost sales.**
- X Require civil and criminal forfeiture of property used to commit or facilitate felony offenses under the Act.**
- X Amend the Social Security Act and the IRS Code to expand the Department's authority to share taxpayer identification numbers—SSNs and EINs— with State investigators and law enforcement agencies to improve administration and enforcement of the Act.**
- X Mandate use of Federal Tax Refund Offset Program and Unemployment Compensation intercepts to collect claims; authorize allotment reductions for claims based on overissuances caused by State errors; set 25 percent retention rate for collections from recipient error/fraud, amend Internal Revenue Code to conform with these requirements.**
- X Expand the definition of "coupon" to include authorization cards, cash or checks issued in lieu of coupons, or access devices (e.g., EBT cards and PINs).**

**EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
Washington, D.C. 20503-0001****LRM NO: 4786****FILE NO: 1486****6/18/96****LEGISLATIVE REFERRAL MEMORANDUM****Total Page(s): 9****TO: Legislative Liaison Officer - See Distribution below:****FROM: James JUKES** *Ji-* (for) Assistant Director for Legislative Reference**OMB CONTACT: Ronald JONES** 395-3386 Legislative Assistant's Line: 395-3454
C=US, A=TELEMAIL, P=GOV+EOP, O=OMB, OU1=LRD, S=JONES, G=RONALD, I=E
jones_re@a1.eop.gov**SUBJECT: AGRICULTURE Proposed Testimony on POSSIBLE IMPACT OF REGULATION E ON
ELECTRONIC FUNDS TRANSFER ACT****DEADLINE: 5:00 TODAY Tuesday, June 18, 1996**

In accordance with OMB Circular A-19, OMB requests the views of your agency on the above subject before advising on its relationship to the program of the President.

Please advise us if this item will affect direct spending or receipts for purposes of the "Pay-As-You-Go" provisions of Title XIII of the Omnibus Budget Reconciliation Act of 1990.

COMMENTS: OMB testimony for this hearing was previously circulated under LRM 4777.

LEGISLATIVE REFERRAL MEMORANDUM
Distribution List

LRM NO: 4786

FILE NO: 1486

SUBJECT: AGRICULTURE Proposed Testimony on POSSIBLE IMPACT OF REGULATION E ON ELECTRONIC FUNDS TRANSFER ACT

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**RESPONSE TO
LEGISLATIVE REFERRAL MEMORANDUM**

**LRM NO: 4786
FILE NO: 1486**

If your response to this request for views is short (e.g., concur/no comment), we prefer that you respond by e-mail or by faxing us this response sheet.
If the response is short and you prefer to call, please call the branch-wide line shown below (NOT the analyst's line) to leave a message with a legislative assistant.

You may also respond by:

- (1) calling the analyst/attorney's direct line (you will be connected to voice mail if the analyst does not answer); or
- (2) sending us a memo or letter.

Please include the LRM number shown above, and the subject shown below.

TO: Ronald JONES 395-3386
 Office of Management and Budget
 Fax Number: 395-3109
 Branch-Wide Line (to reach legislative assistant): 395-3454

FROM: _____ (Date)
 _____ (Name)
 _____ (Agency)
 _____ (Telephone)

SUBJECT: AGRICULTURE Proposed Testimony on POSSIBLE IMPACT OF REGULATION E ON ELECTRONIC FUNDS TRANSFER ACT

The following is the response of our agency to your request for views on the above-captioned subject:

- _____ Concur
- _____ No Objection
- _____ No Comment
- _____ See proposed edits on pages _____
- _____ Other: _____
- _____ FAX RETURN of _____ pages, attached to this response sheet

DRAFT

TESTIMONY OF ELLEN HAAS
UNDER SECRETARY FOR FOOD, NUTRITION AND CONSUMER SERVICES
U.S. DEPARTMENT OF AGRICULTURE
BEFORE THE
HOUSE COMMITTEE ON BANKING AND FINANCIAL SERVICES
SUBCOMMITTEE ON FINANCIAL INSTITUTIONS AND CONSUMER CREDIT
JUNE 19, 1996

Madame Chairman, Members of the Committee, it is my pleasure to join you today to discuss the impact of applying the Federal Reserve's Regulation E under the Electronic Funds Transfer Act to the Food Stamp Program.

Vice President Gore, the Federal Electronic Benefits (EBT) Task Force and I as co-Chair of the Task Force and as Under Secretary for Food, Nutrition and Consumer Services at the U.S. Department of Agriculture, have championed the use of electronic benefit technology to deliver benefits to people. The Administration has recognized the challenges involved in implementing this technology; challenges that include ensuring that people using the technology have adequate protections for their benefits. Regulation E is an important issue affecting the implementation of EBT and all of the stakeholders involved.

The Food and Consumer Service of the U.S. Department of Agriculture has been testing EBT for food stamp issuance since 1984. In the last three years, we have been actively working with States on implementing EBT nationwide.

The Administration recognized early on EBT's extraordinary potential for efficiently, affordably, and securely delivering program benefits and improving the quality of service to food stamp recipients and reducing the stigma associated with paper coupons. And, we knew that issuing food assistance benefits electronically would revolutionize the way we protect benefits from fraud and abuse.

Vice President Gore's September 1993 Report of the National Performance Review, **From Red Tape to Results**, called for the rapid development of a nationwide system to deliver government benefits electronically. The Federal EBT Task Force was chartered to meet that purpose. Just over two years ago, the Task Force report, **From Paper to Electronics: Creating a Benefit Delivery System That Works Better and Costs Less**, was released.

Since then, we have made tremendous strides in realizing the vision of that report: to make EBT nationwide in the fullest sense -- one card, user friendly, with unified electronic delivery of government funded benefits under a federal-state partnership. Our progress is noteworthy, thanks to the cooperation of the Federal agencies and the Federal EBT Task Force in working with our State partners.

Today, every state in the country, as well as the Commonwealth of Puerto Rico, is planning for EBT implementation. Thirty of these States have received approval to proceed with their EBT programs. The Southern Alliance of States, under the guidance of the Federal EBT Task Force, is

prepared to begin implementation of combined Federal and State EBT by the end of the year.

I am particularly proud of the role of the Food and Consumer Service as the lead Federal agency for EBT. The Food Stamp Program has progressed from having just six operational EBT sites in 1993, to thirteen sites today. Five States now operate statewide EBT systems: Maryland, New Mexico, Texas, South Carolina and Utah. Overall, EBT participation has increased from roughly four percent of the total Food Stamp caseload in 1993 to almost fifteen percent today.

This Administration is fully committed to seeing the promise of EBT become a reality in every State. Over the past three years we have made EBT a top priority for the Department. We have met our Department goal of having every State planning EBT by the end of the year.

Since States began planning for EBT, there has been concern about the impact of Regulation E on EBT systems. Regulation E establishes a framework of legal rights and responsibilities for card issuers and card holders in electronic fund transfer systems, setting up procedures for processing claims of lost funds and limiting a client's liability for loss. Without Reg E, clients are currently liable for all benefit losses resulting from transactions made with a valid card and Personal Identification Number (PIN) up to the point the client notifies the EBT system of a problem.

In March, 1994, the Federal Reserve Board issued a decision to extend coverage of Regulation E to EBT systems effective in March, 1997. The Board allowed three years for State and Federal agencies to determine the impact Reg E would have on EBT operating costs, and to determine, should there be increased costs, whether these would preclude EBT from being a cost-effective alternative to issuing paper checks and food stamp coupons. Most stakeholders agreed that there was not enough empirical data in this area to project the impact Reg E would have on EBT.

Administrators for State-operated Federal programs like the Food Stamp Program and Aid to Families with Dependent Children expressed concern that Reg E might lead to an influx of claims of unauthorized transactions, and in turn to increased costs due to replaced benefits. It was important for us to collect empirical data to discern if these concerns would be borne out in practice.

At the same time, we heard from advocates who believed that recipient abuse would be minimal, but were concerned that recipients have the same protections as commercial debit card customers.

In an effort to learn more about the likely impacts of Reg E on benefit replacements and administrative costs, the Food and Consumer Service, in collaboration with the Departments of Health and Human Services and the Treasury, sponsored several demonstrations.

I would like to personally thank New Jersey, New Mexico, and

Citibank's Direct Federal Program operation in Texas -- for volunteering to participate in our 12 month evaluation of Reg E. These States, their participating counties, and the Texas project, have greatly advanced our understanding of this important issue.

I am pleased to report that the Food and Consumer Service has completed gathering data on how the application of Regulation E will affect EBT systems, and although we have not completed our analysis of the full 12 months of demonstration operations, I would like to present our preliminary findings this morning.

In our evaluation, we took a careful look at recipient claims in EBT systems operating with and without Regulation E to examine the impact on recipients and program administrative and benefit costs.

Our preliminary data show Reg E had little, if any, impact on the rate of claims submissions. This is the case across the three major categories of claim types, including unauthorized transactions, the very different demonstration settings, and all programs.

Consequently, our preliminary findings suggest that Reg E had little to no effect on the cost associated with replaced benefits in the demonstration sites. Most claims for benefits lost through the unauthorized use of EBT were denied. For approved claims, the resulting liability for replaced benefits averaged just \$0.02 per case month for cash benefits and less than \$0.01 per case month for food stamp benefits in the

demonstration sites.

At this point, the preliminary evidence suggests that, although Regulation E may not impose much additional cost to governmental agencies and their EBT vendors in the form of replaced benefits, the added administrative costs of Reg E operations may be more substantial. Our evaluation found that administrative costs varied considerably across sites and programs -- with differences in claim rates and claim types.

For direct Federal payment programs, such as the one we studied in Texas, the administrative costs of Reg E equalled \$0.19 per case month, compared to costs of from \$0.64 to \$0.94 per case month for claims of lost cash benefits in state-administered Federal programs.

For claims involving food stamp benefits, which were fewer in number and did not involve automatic teller machine (ATM) "misdispenses," the administrative costs of Reg E operations showed little variation around an average of \$0.26 per case month.

In contrast, the administrative costs of investigating claims in the comparison site, which did not implement Reg E, averaged only about \$0.02 per case month for AFDC claims and \$0.01 per case month for food stamp claims.

Later this year, when our final report is available, we may see a somewhat different picture of the demonstration sites' experience with

claims and administrative costs. The final report will be based on data from the full 12 months of Reg E operations at each site and will include some administrative cost components not yet compiled, such as caseworker time, and costs associated with fair hearings and recoupment procedures.

The final report will also assess costs that likely would not be incurred in a non-demonstration setting, as well as estimate the likely impact of Reg E on the cost-neutrality of EBT.

Of special interest will be the sites' own assessment of how staffing and operational procedures can be modified to achieve even greater efficiencies in providing the client protections envisioned by the Federal Reserve's Board of Governors when the Board ruled that Regulation E should apply to all EBT systems.

Madame Chairman, this concludes my prepared remarks. I would be happy to answer any questions you or the Members might have.

***** DRAFT *****

STATEMENT OF

G. EDWARD DESEVE

CONTROLLER

OFFICE OF MANAGEMENT AND BUDGET

OFFICE OF FEDERAL FINANCIAL MANAGEMENT

BEFORE THE

SUBCOMMITTEE ON FINANCIAL INSTITUTIONS

AND CONSUMER CREDIT OF THE

COMMITTEE ON BANKING AND FINANCIAL SERVICES

UNITED STATES HOUSE OF REPRESENTATIVES

**REGARDING THE POSSIBLE IMPACT OF APPLYING THE
FEDERAL RESERVE'S REGULATION E UNDER THE
ELECTRONIC FUNDS TRANSFER ACT TO BENEFIT PROGRAMS**

JUNE 19, 1996

******* DRAFT *******

Statement of G. Edward DeSeve

Controller

**Office of Management and Budget
Office of Federal Financial Management**

**Before the Subcommittee on Financial Institutions and Consumer Credit
of the Committee on Banking and Financial Services**

**Regarding the Possible Impact of Applying the Federal Reserve's Regulation E
under the Electronic Funds Transfer Act To Benefit Programs**

INTRODUCTION

Thank you Madam Chairwoman. As Controller of the Office of Federal Financial Management in the Office of Management and Budget (OMB), I work on Electronic Benefits Transfer (EBT) with other offices in OMB and with program and financial management officials in the Departments of Agriculture, Health and Human Services, and the Treasury, as well as the Social Security Administration. The Administration appreciates the opportunity to testify before you today on the impact of applying the Electronic Funds Transfer Act, and its implementing regulation, Regulation E, to benefit programs operating EBT systems. Our goal is to build a nationwide EBT systems by 1999 that uses one card, is user friendly, and provides recipients with dignity, security, and access. We propose to do this by promoting individual responsibility to minimize fraud and abuse in EBT systems.

CUSTOMIZING CURRENT LEGISLATION

Recently, I testified before the Committee on implementing a single-card EBT system, partnering with States and using the commercial infrastructure. EBT is a payment method similar to Direct Deposit except that it serves those recipients who

receive in-kind benefits, cannot afford commercial banking, or otherwise do not have bank accounts. However, due to the unique characteristics of EBT systems and the populations they serve, existing consumer protection legislation does not adequately meet the needs of participants in EBT systems, nor does it provide States the needed authority to prevent fraudulent claims. Still, many provisions of current law and regulation provide valuable consumer rights to all bank customers and should be applied to EBT systems.

As such, we would propose that existing consumer protection legislation can be customized for those EBT accounts that are not owned by the recipient, to strengthen the relationship between the State and the benefit recipient. For EBT accounts in Federally-administered EBT programs, where an account is in fact owned by the benefit recipient, existing legislation is adequate.

WHY CHANGE IS NEEDED

The current provision of law for unauthorized funds transfers is not adequate for EBT accounts owned by States for three reasons: (1) States are concerned about unlimited liability arising from repeated losses, fraudulent or otherwise, in accounts that they cannot close, (2) if there is a problem of unauthorized withdrawals from the EBT account, the State currently is obligated to reimburse and continue its relationship with the recipient, and (3) recipients of means-tested programs generally cannot afford the \$50 co-insurance payment provided for under current law. The Federal Reserve Board recognized these concerns when it established a moratorium on the application of Regulation E to EBT systems until March, 1997.

Under current law, a financial institution has the discretion to determine to which consumers it wants to offer electronic funds transfer services. If there is a problem of

unauthorized withdrawals with a commercial account, a financial institution may simply no longer offer electronic funds transfer services to a given consumer.

If there is a problem with an State EBT account, the State must continue its relationship with the recipient. Without a backup paper system, this means recipients of in-kind benefits, such as food and nutrition assistance, will continue to participate in EBT. In these State-administered programs, a monthly fee is paid for by the State pays for the account. While the State owns the account, the recipient is responsible for safeguarding the card and PIN. States are concerned that current legislation does not provide recipients with sufficient incentive to prevent losses. As a result, States fear they will be stuck paying monthly fees that are higher than necessary.

ACTION FORCING MECHANISM

Many States have organized in regional alliances to implement EBT, such as the Southern Alliance of States, the Northeast Coalition of States, and the Western Coalition of States. I have attached to my testimony a list of the EBT alliances and their member States. States in the three coalitions I have mentioned are scheduled to begin rolling-out their EBT systems next March, provided, that there is a solution to the problem of consumer protections. The alliances are concerned about proceeding given the impending end of the moratorium.

COMMON GROUND

To address these concerns, we have been working closely with States in these alliances and with consumer groups to find common ground that encompasses those rights that should be applied to EBT while addressing those factors that make State-owned EBT accounts different from consumer owned accounts. We believe that many

States and consumer groups can agree on the common ground of the following four principles:

1. A Responsibility Standard;
2. Addressing Recipients Needs;
3. Administrative Controls to Prevent Losses; and
4. Shared Federal and State Financing.

First--a responsibility standard. To avoid the potential for unlimited liability, in general, the recipient should be liable for unauthorized transactions involving a valid access device, or EBT card, and PIN. The recipient should not, however be responsible for those losses that occur after the recipient has reported the EBT card is missing, the PIN compromised, or that continued access is denied to a person previously authorized to use the EBT card. The responsibility standard should not apply in cases of forced initiation, that is, when force is used prior or incident to the withdrawal, *if* the recipient is willing to cooperate in the prosecution of the person who used the EBT card. In such, case, the recipient should be reimbursed in full. The responsibility standard should not apply in cases where a valid access device and PIN were not used, such as systems errors.

Second--To accommodate the responsibility standard and the unique recipient population, EBT systems should be designed to respond to recipient needs that current law does not require financial institutions to address. EBT systems should include a toll-free hotline, easily accessible 24 hours a day and 7 days a week for recipients to call and request that account access from their access devices be blocked. States should provide recipients with adequate notice, and training as needed on-demand, of how the system works. States should also allow PIN selection on-demand to discourage recipients from

writing down the PIN on or near the access device. States should conduct an investigation before denying any claim. And claim denials should be subject to fair hearing review, at the request of the recipient, to ensure proper procedures were followed in the investigation and determination.

Third--Administrative cost controls to prevent unauthorized funds transfers and claims. Based on a State's experience with a given recipient, the State, or its agent, may want to provide a recipient with an alternative method of accessing benefits. As an incentive to safeguard access devices and PINs, a State may want to impose a fee on replacement cards that reflects the reasonable cost of producing and distributing the card.

And finally--Shared Federal and State government financing of the cost of providing these consumer protections for State-administered Federal programs. Almost all of the costs associated with providing these consumer protections are considered administrative costs for the purposes of Federal reimbursement, generally at 50 cents on the dollar. The remaining costs involve replacing benefit losses only as described above, such as in some cases of systems error or when the withdrawal was initiated through force.

The Federal government should participate in funding these replacement because the electronic EBT environment is much more secure than the paper environment. In paper benefit delivery systems there is a negotiable instrument, such as a check or food coupon, which can be lost or stolen after it is in the recipient's possession. EBT is like a vault with two keys: the card and PIN. Because the card and the PIN must be used together to withdrawal funds, many losses that could have occurred in the paper environment, after the recipient is in possession of the funds, are *prevented* with EBT. In

general, the government will only be liable for EBT losses that are not the fault of the client. This includes new situations, not the fault of the client, but for which there is no analogue in the paper environment, such as forced initiation of a withdrawal.

CONCLUSION

States and recipient advocates have expressed concerns that current law is not sufficient to protect States and recipients from potential liability in EBT systems. We believe that customizing current legislation to reflect four principles will address the needs of both States and recipients alike. These principles are:

- a responsibility standard;
- Addressing recipients needs;
- administrative controls to prevent losses; and
- shared financing.

We believe that adopting a customized approach, based on these four principles is far preferable to a complete exemption from Regulation E. The customized approach gets EBT done and advances the our partnership with States, particularly in the area of financing. The customized approach minimizes the potential for fraud and abuse. The customized approach basically eliminates State liability when the card and PIN were used. And the customized approach encompasses many basic consumer standards that all consumers enjoy today. A complete exemption leaves these issues unresolved and in fact only adds new issues as each State must now create consumer protections *de novo*.

We hope that many of the States and advocates testifying today will repeat this message and provide more description of this common ground. We are available to work with Committee staff in developing bill language that includes the principles we have articulated. Again, thank you for this opportunity to testify before you on EBT.

EXECUTIVE OFFICE OF THE PRESIDENT
OFFICE OF MANAGEMENT AND BUDGET
OFFICE OF FEDERAL FINANCIAL MANAGEMENT

FAX COVER SHEET

Number of Pages: SIX
(Excluding this Cover Sheet)

Date: 6.18.96

TO: ELENA KAGAN
AGENCY & ROOM NO: WH COUNSEL
OFFICE NO: _____
FAX NO: 6-1647

FROM: JIM BESSIN
OFFICE NUMBERS: 395-3952

Office of Federal Financial Management (395-3993)
Financial Standards and Reporting Branch (395-3993)
Management Integrity Branch (395-6911)
Federal Financial Systems Branch (395-6903)

FAX NUMBERS: 395-4915
395-3952

AS REQUESTED, ATTACHED IS THE FEDERAL RESERVE
1994 RULING.

LET ME KNOW IF YOU NEED ANY BACKGROUND MATERIAL.

THANKS.

FEDERAL RESERVE SYSTEM**12 CFR Part 205**

(Regulation E; Docket No. R-0829)

Electronic Fund Transfers**AGENCY:** Board of Governors of the Federal Reserve System.**ACTION:** Final rule.

SUMMARY: The Board is publishing a final rule to amend Regulation E, pursuant to its authority under sections 904(c) and (d) of the Electronic Fund Transfer Act, to cover electronic benefit transfer (EBT) programs established by federal, state, or local government agencies. EBT programs involve the issuance of access cards and personal identification numbers to recipients of government benefits so that they can obtain their benefits through automated teller machines and point-of-sale terminals. The final rule applies Regulation E to EBT programs but sets forth certain limited modifications under authority granted to the Board by section 904(c) of the act. In particular, periodic account statements are not required if account balance information and written account histories are made available to benefit recipients by other specified means. This rulemaking directly affects government agencies that administer EBT programs and indirectly affects depository institutions and other private-sector entities.

DATES: *Effective date:* February 28, 1994. *Compliance date.* To provide adequate time to prepare for compliance, the Board has delayed mandatory compliance until March 1, 1997.

FOR FURTHER INFORMATION CONTACT: Jano Jensen Cell or Mary Jane Seebach, Staff Attorneys, or John C. Wood, Senior Attorney, Division of Consumer and Community Affairs, at (202) 452-2412 or (202) 452-3667. For the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf (TDD), at (202) 452-3544.

SUPPLEMENTARY INFORMATION:**(1) Background****EFT Act and Regulation E**

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

ATM cards and other access devices; disclosure of terms and conditions of an EFT service; documentation of electronic fund transfers by means of terminal receipts and account statements; limitations on consumer liability for unauthorized transfers; procedures for error resolution; and certain rights related to preauthorized transfers.

The EFTA is not limited to traditional financial institutions holding consumers' accounts. For EFT services made available by entities other than an account-holding financial institution, the act directs the Board to assure, by regulation, that the provisions of the act are made applicable. The regulation also applies to entities that issue access devices and enter into agreements with consumers to provide EFT services.

Government Programs Involving Electronic Delivery of Benefits

The federal government, in conjunction with state and local agencies, is working to expand electronic delivery of government benefits both for direct federal benefit programs and for federally funded programs that are state administered. An electronic benefit transfer (EBT) system functions much like a private-sector EFT program. Benefit recipients receive plastic magnetic-stripe cards and personal identification numbers (PINs) and access benefits through electronic terminals. For cash benefits such as Aid to Families with Dependent Children (AFDC) or Supplemental Security Income (SSI), the programs may use existing private-sector ATM networks as well as POS terminals to disburse benefits. For food stamp purchases, the programs use POS terminals in grocery stores. In some cases the POS equipment is duplicated solely to the EBT program, while in others it also is used for private-sector transactions.

For many state and local agencies, EBT may provide a way to increase operational efficiency, to reduce costs, and to improve service to benefit recipients. Federal legislation that took effect April 1, 1992, provided new impetus for the use of EBT, authorizing the states to use electronic delivery of food stamp benefits in place of paper coupons. States previously could seek approval to use EBT for food stamp benefits only on a demonstration basis. Currently, about 30 states have EBT programs in different stages of operation or development.

In November 1993, the Clinton administration established a Federal Electronic Benefits Task Force. The group's assigned task is to develop and implement a nationwide system for the

electronic delivery of benefits from government programs, pursuant to a recommendation from the National Performance Review. In December, the EBT Task Force wrote to the Federal Reserve Board, expressing the federal agencies' commitment to providing consumer protection for EBT recipients, and noting at the same time the need for program integrity and accountability for public funds. The EBT Task Force asked that the Board provide a three-year delay in the effective date if the Board should ultimately decide to apply Regulation E to EBT programs. The EBT Task Force stated that this delay was necessary for implementing EBT in accordance with Regulation E; among other things, the agencies needed the time to collect and evaluate comparative loss data at EBT test sites, data that they could then use as the basis for seeking legislative authorization and funding to pay for replacing benefits lost due to unauthorized transfers.

(2) Discussion**Board Authority**

The Federal Reserve Board has a broad mandate under the EFTA to determine coverage when electronic services are offered by other than traditional financial institutions. Section 904(d) provides that in the event EFT services are made available to consumers by a person other than a financial institution holding a consumer's account, the Board shall ensure that the act's provisions are made applicable to such persons and services.

The legislative history of the EFTA provides guidance on the Board's authority to determine if particular services should be covered by the act, based on whether transfers are initiated electronically, whether current laws provide adequate consumer safeguards, and whether coverage is necessary to achieve the act's basic objectives. A Senate Banking Committee report noted that the statutory delegation of authority to the Board enables the Board to examine new services on a case-by-case basis, thereby contributing substantially to the act's overall effectiveness. The Congress contemplated that, as no one could foresee EFT developments in the future, regulations would keep pace with new services and assure that the act's basic protections continue to apply. See S. Rep. No. 915; S. Rep. No. 1273, 95th Cong., 2d Sess. 25-26 (1978).

In February 1993 the Board published a proposal to amend Regulation E to cover EBT programs, with certain modifications. 58 FR 8714, February 17, 1993. The Board believes that a number

of factors support Regulation E coverage of EBT programs. EBT recipients use the same kinds of access devices and electronic terminals in conducting transactions as do consumers of EFT services in general. Indeed, in EBT systems that piggyback on existing EFT networks, the terminals used are one and the same. The transactions themselves, such as cash withdrawals and purchases, are also similar.

To obtain benefits, recipients insert a magnetic-stripe card into a terminal that reads the encoded information, and enter a PIN to verify their identity. The terminal communicates with a database to ascertain that a recipient is eligible for benefits, that the card has not been reported lost or stolen, and that benefits are available in an amount sufficient to cover the requested transaction. In cash benefit programs, the recipient receives a cash disbursement; in the case of food stamp benefits, the recipient's allotment is charged and the merchant's account credited for the amount of the food purchase. From a recipient's viewpoint, an EBT system functions much the same as if the recipient had an ordinary checking account with direct deposits of government benefits and with ATM and POS service available to access the benefits.

The Board believes that the strong similarity of EBT systems and other EFT services, the act's legislative history, and the language of the EFTA and Regulation E support coverage of EBT programs under the act and regulation. Therefore, the Board has determined that EBT programs must comply with the requirements of Regulation E as modified by this final rule, pursuant to its authority under 904(c) and (d) of the EFTA.

The Board's action, amending the regulation, supersedes an interpretation in the Official Staff Commentary to Regulation E (12 CFR part 205, supp. II). The commentary stated that an electronic payment of government benefits was not a credit or debit to a "consumer asset account" because the account was established by a government agency rather than the consumer (the recipient). The Board has reexamined that interpretation, and has concluded that a sufficient basis does not exist for excluding these accounts from Regulation E's coverage.

The act defines the term "account" to mean "a demand deposit, savings deposit, or other asset account * * * as described in regulations of the Board, established primarily for personal, family, or household purposes * * * Regulation E uses substantially the same wording, and refers to "other consumer asset account." The reference to

"consumer" asset accounts distinguishes them from business-purpose accounts, which are not subject to the regulation.

The EFTA's coverage is not limited to traditional depository institutions, but may extend to any person (including a government agency) * * * who issues an access device and agrees with a consumer to provide electronic fund transfer services." In the case of EBT programs, the Board's action will affect primarily government agencies that administer EBT programs and issue EBT cards to benefit recipients for accessing benefits, or that arrange for such services to be provided. The revised rule will affect only indirectly most depository institutions and other private-sector entities.

Board's Proposal

While the Board proposed general coverage of EBT under the EFTA, the proposal published in February 1993 modified certain documentation requirements, recognizing differences between EBT and EFT systems. A periodic statement would not be required if information about account balances and account histories were otherwise made available to consumers. In addition, modifications were proposed in the rules on the issuance of access devices, initial disclosures, and the notices on error resolution procedures, to tailor the requirements to EBT programs.

The Board received approximately 175 comment letters on its proposal from a broad range of commenters. About 125 commenters—including state and local agencies that provide benefits, federal agencies, financial institutions, and a bank trade association—opposed the Board's proposal. Many of them requested an exemption for EBT programs from the Regulation E liability and error resolution rules. They asserted that full application of Regulation E would increase the costs of delivering benefits to the point that offering EBT might not be economically feasible, because EFT programs may be only marginally cost-effective even without factoring in Regulation E compliance costs. They expressed the view that the expected advantages of EFT might not be realized if Regulation E were to apply, and that its application would hinder the introduction or expansion of EFT programs.

In place of the Board's proposal, the majority of the commenters supported recommendations given to the Board in May 1992 by an interagency steering committee established within the federal government to coordinate EBT efforts among program agencies.

Agencies represented on that group included the Treasury Department's Financial Management Service, the Agriculture Department's Food and Nutrition Service, the Health and Human Services Department's Social Security Administration and Administration for Children and Families, the Office of Management and Budget, and other federal agencies that have an interest in planning for EBT systems. The steering committee's proposal primarily differed from the Board's proposal in that benefit recipients would be liable for unauthorized transfers subject to certain conditions, and the error resolution requirements would not apply if an agency maintained "efficient, fair, and timely procedures" for resolving errors and disputes, including an appeals process.

Anticipating public opposition to Regulation E coverage, the Board in the proposal indicated that commenters should offer explanations of why modifications in the regulatory requirements were needed, together with specifics such as data on costs. Approximately 35 commenters included estimates of the additional cost they believed would be imposed by Regulation E. In some cases the estimates were quite detailed. A few estimates were based on agency experience with the replacement of lost or stolen cards in EBT programs. Most of the cost estimates were based on loss and fraud experience under existing paper-based benefit programs (such as mailed AFDC checks and mailed food coupons). Nationwide, one group estimated the projected costs due to Regulation E, in worst-case scenarios, to be between \$164 million and \$986 million annually.

Many commenters suggested that private-sector financial institutions differ from government agencies in ways that relate to how compliance costs can be borne. For example, financial institutions can control their costs by selecting the customers to whom they are willing to offer EFT services, while program agencies must accept all who qualify for the benefit program. If a customer of a financial institution is suspected of engaging in fraud, the institution can terminate the account relationship. In a like situation, an agency could shift a recipient from EBT back to the paper-based system, but commenters believe it may not be feasible to operate dual systems.

Similarly, commenters noted, private-sector institutions handle losses related to the Regulation E customer-liability limitations by spreading the losses over their entire customer base in the form of

increased fees or reduced interest paid. Agencies cannot do so, and thus losses would have to be paid out of tax revenues, or, where permitted, by reducing benefits. If neither method is available, then the EBT program would be eliminated or cut back.

Approximately 35 commenters supported the Board's proposal. This group included advocacy groups for benefit recipients, financial institutions, a bank trade association, and individuals. These commenters agreed with the premise that the same rules should apply to both EBT recipients and EFT users in the general public, and that both government and private-sector organizations offering EFT services should be subject to the same rules.

Some commenters in this group called for even greater consumer protection for EBT recipients than would be provided by existing Regulation E. For example, one advocacy group argued that the regulation should prohibit mandatory EBT programs. Other commenters urged the Board to require disputed amounts to be provisionally credited to the consumer's account within one business day (instead of 10 business days for ATM transactions, or 20 business days for POS transactions, as allowed by existing Regulation E). A coalition of consumer groups suggested that the limits on liability for unauthorized transactions are too high in the EBT context, and that, for example, the \$50 liability that can be imposed even if a recipient promptly reports a lost or stolen debit card should be reduced or eliminated.

Final Action on Proposal

After a review of the comments, further analysis, and a weighing of policy considerations, the Board has adopted a final rule pursuant to its authority under 904 (c) and (d) of the EFTA. The Board's action requires EBT programs to comply with the requirements of Regulation E as modified by this final rule. The Board continues to believe that all consumers using EFT services should receive substantially the same protection under the EFTA and Regulation E, absent a showing that compliance costs outweigh the need for consumer protections. The Board recognizes that benefit program agencies are concerned about the operational and cost impacts of coverage, specifically in the areas of liability for unauthorized transfers and error resolution, but believes that the cost data presented to support exemptions in these areas were not definitive.

The Board has provided a delayed implementation date, making

compliance optional until March 1, 1997, in keeping with a request received in December 1993 from the Federal EBT Task Force. As discussed above, the EBT Task Force, which represents all the major agencies with large individual benefit programs, asked for the three-year delay so that agencies could develop and implement a nationwide system for delivering multiple-program benefits in compliance with Regulation E.

The Board's modified rules for EBT programs are limited to programs for disbursing welfare and similar government benefits. Some of the military services, as well as certain private-sector employers, have installed ATMs through which salary and other payments can be made in a manner similar to EBT systems. Such systems remain fully covered by Regulation E.

In bringing EBT accounts within the scope of the EFTA's definition of "account," the Board does not take a position about the legal status of the funds for any other purpose. For example, legal ownership of the funds in EBT accounts (by the recipient or a state, for instance) is not affected by this rulemaking.

Some commenters asked for clarification on whether the Board viewed specialized types of programs, such as Medicaid, or programs using different technology (specifically, smart card programs) as covered by the EFTA and Regulation E. The Board believes that when a consumer can access funds in an account using electronic means, Regulation E is applicable. The Board believes that Medicaid programs do not involve an account within the meaning of Regulation E, given that benefits under these programs are not made available to the consumer in terms of a dollar amount available to be accessed by the consumer, as is the case in EBT programs such as AFDC, SSI, and food stamps.

With regard to smart card systems, the Board has issued a proposal to review Regulation E, also published in today's Federal Register, that solicits comment on the question of coverage of smart card systems in general (both public and private sector). Any determination made on coverage of smart cards in the review could apply to EBT smart card programs.

(3) Explanation of New § 205.15

Section 205.15—Electronic Fund Transfer of Government Benefits

A new section is added to the regulation to specifically address the rules on the electronic fund transfer of government benefits. Agencies are

generally required to comply with all applicable sections of the regulation. Section 205.15 contains the modified rules for EBT programs on the issuance of access devices, periodic statements, initial disclosures, liability for unauthorized use, and error resolution notices.

Paragraph (a)—Government Agency Subject to Regulation

Paragraph (a)(1)

The act and regulation define coverage in terms of "financial institution." Coverage applies to entities that provide EFT services to consumers whether these entities are banks, other depository institutions, or other types of organizations entirely. The substance of paragraph (a)(1), which defines when a government agency is a financial institution for purposes of the act and regulation, is unchanged from the proposal. Editorial changes have been made for clarity.

Paragraph (a)(2)

The term "account," which is defined generally in § 205.2(b), is defined for purposes of § 205.15 to mean an account established by a government agency for distributing benefits to a consumer electronically, such as through ATMs or POS terminals, whether or not the account is directly held by the agency or a bank or other depository institution. For example, an "account" under this section would include use of a database containing the consumer's name and record of benefit transfers that is accessed for verification purposes before a particular transaction is approved. For purposes of this section, government benefits include cash benefits such as AFDC and SSI and noncash benefits such as benefits under the food stamp program.

Paragraph (b)—Issuance of Access Devices

Under § 205.5, debit cards, PINs, and other access devices may not be issued except in response to a consumer's request or application for a device, or to replace a device previously accepted by the consumer. Financial institutions are permitted to issue unsolicited access devices in limited circumstances under § 205.5(b). The general prohibition against unsolicited issuance is intended to protect a consumer against the issuance of an access device that could be used to access the consumer's funds without the consumer's knowledge and approval or without the consumer's being informed of the terms and conditions applicable to the device.

The Board's final rule makes clear that in the case of EBT, an agency may

issue an access device to a recipient without a specific request. A recipient of government benefits is deemed to have requested an access device by applying for benefits that the agency disburses or will disburse by means of EBT. The Board believes that it is unlikely that a government agency would issue an access device without the recipient's being made aware that the way to access benefits is by use of the device and that to safeguard benefits the device must be protected. Moreover, given that initial disclosures would be provided during training, the recipient will be informed of the account's terms and conditions.

The Board does recognize, however, commenters' concerns about the need for agencies to verify the identity of the consumer receiving the device before it is activated. As in the case of the private sector, an issuing agency will have to verify the identity of the consumer by a reasonable means before a device is activated. Reasonable means include methods of identification such as a photograph or signature comparison.

Some commenters expressed concern about the statutory prohibition against the compulsory use of EFT and its implications for EBT programs. Section 913 of the EFTA prohibits requiring a consumer to establish an account at a particular institution for receiving electronic fund transfers as a condition of employment or receipt of government benefits. This prohibition does not prevent an agency from requiring benefits to be delivered electronically.

In EBT programs, agencies do not require recipients to open or maintain bank accounts at a particular institution for the electronic receipt of government benefits. This is the case even when an agency enters into an arrangement with a single financial institution that then serves as the agency's financial intermediary. Consequently, the Board believes that the prohibition against compulsory use is not an impediment to mandatory EBT programs. Nevertheless, pursuant to its authority under section 904(c) of the EFTA, the Board has determined that a government agency with a mandatory EBT program should ensure that recipients of cash benefits have access to other electronic options (for example, direct deposit of benefits to an existing bank account or to an account established by the recipient for that purpose).

Paragraph (c)—Alternative to Periodic Statement

Regulation E requires financial institutions to provide periodic statements for an account to or from which EFTs can be made. Periodic

statements are a central component of Regulation E's disclosure scheme. But as long as other means of obtaining account information are available to benefit recipients, the Board believes that periodic statements are not absolutely necessary for EBT programs due to the limited types of transactions involved, particularly given the expense of routinely mailing monthly statements to all recipients. Moreover, requiring periodic statements could impede the effort to eliminate paper and move toward a fully electronic system. Most commenters supported the Board's proposal to exempt government agencies from the requirement if the agency furnishes the consumer with other means of accessing account information.

Under the proposal, agencies were to provide balance information by means of an electronic terminal, balance inquiry terminal, or a readily available telephone line, and to make available a written account history upon request. The final rule contains those alternatives with modifications that respond to the comments.

To make balance information readily available, the proposal also would have required that the terminal receipt show the balance available to the consumer after the transfer. A number of commenters stated that this requirement would be difficult for some EBT systems to implement because existing ATM networks may not be capable of providing current account balances at all times. Commenters suggested that giving consumers access to balance information by other means (such as telephone or balance inquiry terminals) would achieve the same purpose. Accordingly, the final rule does not require that terminal receipts include the account balance as long as a consumer can access balance information by the other means set forth in paragraph (c) of this section.

A number of commenters urged that agencies should not make telephone access the only method by which a recipient can obtain an account balance. Taking these comments into consideration, the Board has modified the final rule. The final rule requires, in addition to a telephone line, at least one alternative method (such as a balance inquiry terminal) for access to balance information.

Commenters suggested that the telephone line be toll-free and available on a 24-hour basis. For EFT systems generally, the Board interprets a readily available telephone line to mean at least a local or toll-free line available during standard business hours. The Board believes that the same interpretation is

appropriate for EBT systems, although an agency may of course choose to provide recipients with a 24-hour line.

Commenters requested that the Board provide certainty by clarifying how a consumer may request a written account history and the time period for compliance. The final rule clarifies that a request may be either written or oral, that the history should cover the 60 calendar days preceding the request date, and that the history should be provided promptly upon request. In addition, commenters asked for clarification about whether an agency could charge for written account histories or other disclosures required by the regulation. The Board believes that imposing fees in such instances would be contrary to public policy.

The Board had solicited comment on whether more complex EBT systems developed in the future (for example, systems allowing third-party payments) may necessitate periodic statements or other documentation, and whether the Board should address this issue at present. Several commenters encouraged the Board not to address the issue at this time, but to delay a decision until performance under the final rule can be assessed. Accordingly, the Board has deferred taking a position at this time.

Paragraph (d)—Modified Requirements

Paragraph (d)(1)—Initial Disclosures

Section 205.7 requires that written disclosures of the terms and conditions of an EFT service be given at or before the commencement of the service. Three disclosures have been modified for EBT programs. Under paragraph (d)(1)(i), government agencies must disclose the means by which the consumer may obtain account balance information, including the telephone number for that purpose. The disclosures will explain the ways in which balance information will be made available. (See model disclosure form A(12) below.) Under paragraph (d)(1)(ii), agencies must disclose that the consumer has the right to receive a written account history, upon request, and must provide a telephone number for obtaining the account history. This disclosure substitutes for the disclosure of a summary of the consumer's right to a periodic statement under § 205.7(a)(6) of the regulation. Under paragraph (d)(1)(iii), agencies must provide an error resolution notice substantially similar to model disclosure form A(13) rather than the notice currently contained in § 205.7(a)(10).

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Paragraph (d)(2)—Annual Error Resolution Notice

Section 205.8(a) of the regulation requires that financial institutions provide a notice in advance of certain adverse changes to terms that were disclosed in the initial disclosures. No modification has been made for EBT programs. Consequently, agencies will have to provide a notice for certain changes in terms, such as in transaction limitations. Other changes, such as a decrease in the amount of a consumer's benefits, continue to be governed only by the agencies' program rules.

Section 205.8(b) of the regulation requires financial institutions to provide periodic error resolution notices to consumers, either annually or with each monthly account statement. In substitution for these notices, paragraph (d)(2) requires agencies to provide an error resolution notice substantially similar to model disclosure form A(13). The notice is to be provided annually.

Paragraph (d)(3)—Limitations on Liability

Section 205.8 of the regulation limits a consumer's liability for unauthorized transfers. If the consumer notifies the account-holding institution within two business days after learning of the loss or theft of a debit card, the consumer's liability is limited to \$50. If notification is not made until after two business days, liability can rise another \$450 for transfers made after two business days, for a total of \$500. If the consumer does not notify the institution until more than 60 days after a periodic statement is sent showing an unauthorized transfer, the consumer's liability is unlimited for unauthorized transfers occurring after the 60th day and before notification.

The Board believes that the EFTA generally mandates the same degree of protection for benefit recipients as for the general public. The Board solicited comment on potential costs associated with implementing the liability rules for EBT programs and why such implementation would present a greater burden for government agencies than that experienced by financial institutions. Commenters submitted data on the expected cost impact of Regulation E on EBT programs, specifically on costs related to the limitations on consumer liability for unauthorized transfers and error resolution requirements; as discussed earlier, however, the Board believes the data are not definitive. Under the final rule, therefore, the limits on liability for unauthorized use, the error resolution

requirements, and most other provisions of Regulation E would apply to EBT.

The Board recognizes the concerns about the potential cost impact of coverage, especially in regard to unauthorized use because of the potential for abuse through fraudulent claims. The Board believes, however, that through the leadership of the Federal Electronic Benefits Task Force, which has the goal of developing a nationwide system for delivering government benefits electronically, it should be possible for the agencies to implement cost-effective procedures that will help minimize the risk of fraudulent claims and potential abuse of EBT systems.

The Board notes in particular that Regulation E does not mandate an automatic replacement when a claim of lost or stolen funds is made. In the case of EBT as in the private sector, the agency would investigate the claim, consider the available evidence, and exercise judgment in making a determination about whether the transfer was unauthorized or was made by the recipient or by someone to whom the recipient gave access. The Board does not underestimate the difficulties that these investigations may pose for EBT program agencies. But the Board also believes that practical ways can be found, within the scope of Regulation E, that will enable EBT administrators to control potential losses.

The operational procedures developed to minimize risk will need to address some aspects of EBT that are different from the commercial setting—such as the fact that program agencies, unlike private sector institutions, may not be able in cases of suspected fraud or abuse simply to terminate their relationship with the recipient. Some of the measures that federal agencies have inquired about, which may be compatible with the special requirements of EBT, relate to aspects of the relationship that are not addressed by Regulation E. Thus their implementation would not conflict with regulatory requirements. Some of these include putting recipients on restricted issuance systems—requiring, for instance, that the recipient call in advance for authorization before each access to benefits, or restricting the sites at which the recipient could obtain benefits, or crediting the recipient's benefits in weekly increments rather than the full monthly amounts. Or the agency could appoint a representative payee, or place the recipient on a backup paper-based benefit payment system. Imposing these or other limitations may not be desirable from either an agency's or the recipient's

perspective except in circumscribed situations. But if found to be cost-effective, such measures represent some possible approaches for dealing with recipients who show themselves to be irresponsible in their use of the EBT system.

In regard to recurring claims for the replacement of benefits, EBT agencies may not establish a presumption that, because a recipient has filed a claim in the past, the recipient's assertion of a second claim of unauthorized withdrawals can be automatically rejected. On the other hand, depending on the circumstances, it would not be unreasonable for the agency, in making its determination about the validity of a claim, to give weight to the fact that a particular recipient within a certain period of time has previously filed a claim, or multiple claims, of stolen funds. The Board believes that these are just some of the areas in which the Federal EBT Task Force can be helpful in setting operating guidelines and procedures.

Regulation E provides that a consumer may bear unlimited liability for failing to report within 60 days any unauthorized transfers that appear on a periodic statement. Because EBT recipients will not receive periodic statements, under the Board's proposal the 60 days would have run from the transmittal of a written account history provided upon the consumer's request. The final rule differs somewhat in that the 60-day period also can be triggered when the consumer obtains balance information via a terminal or telephone or on a terminal receipt.

Paragraph (d)(4)—Error Resolution

Section 205.11 of Regulation E sets certain time limits within which a consumer must file a notice of an alleged error. Under the Board's proposal for EBT, government agencies were to comply with the error resolution procedures in § 205.11 in response to an oral or written notice of error from the consumer received no later than 60 days after the consumer obtained a terminal receipt or a written account history on which the alleged error was reflected. The final rule differs somewhat, in that error resolution procedures can be triggered by any information provided to the consumer under paragraph (c).

List of Subjects in 12 CFR Part 205

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

For the reasons set forth in the preamble, the Board amends 12 CFR part 205 as follows:

PART 205—ELECTRONIC FUND TRANSFERS (REGULATION E)

The authority citation for part 205 revised to read as follows:

Authority: 15 U.S.C. 1693.

2. Section 205.15 is added to read as follows:

§ 205.15 Electronic fund transfer of government benefits.

(a) *Government agency subject to regulation.* (1) A government agency is deemed to be a financial institution for purposes of the act and regulation if directly or indirectly it issues an access device to a consumer for use in initiating an electronic fund transfer of government benefits from an account. The agency shall comply with all applicable requirements of the act and regulation, except as provided in this section.

(2) For purposes of this section, the term *account* means an account established by a government agency for distributing government benefits to a consumer electronically, such as through automated teller machines or point-of-sale terminals.

(b) *Issuance of access devices.* For purposes of this section, a consumer is deemed to request an access device when the consumer applies for government benefits that the agency issues or will disburse by means of electronic fund transfer. The agency shall verify the identity of the consumer receiving the device by reasonable means before the device is activated.

(c) *Alternative to periodic statement.* A government agency need not furnish the periodic statement required by § 205.9(b) if the agency makes available to the consumer:

(1) The consumer's account balance, through a readily available telephone line and at a terminal (which may include providing balance information at a balance-inquiry terminal or providing it, routinely or upon request, on a terminal receipt at the time of an electronic fund transfer); and

(2) A written history of the consumer's account transactions for at least 60 days preceding the date of a request by the consumer. The account history shall be provided promptly in response to an oral or written request.

(d) *Modified requirements.* A government agency that does not furnish periodic statements, pursuant to paragraph (c) of this section, shall

comply with the following requirements:

(1) *Initial disclosures.* The agency shall modify the disclosures under § 205.7(e) by providing:

(i) *Account balance information.* The means by which the consumer may obtain information concerning the account balance, including a telephone number. This disclosure may be made by providing a notice substantially similar to the notice contained in section A(12) of appendix A of this part.

(ii) *Written account history.* A summary of the consumer's right to receive a written account history upon request, in substitution for the periodic statement disclosure required by § 205.7(a)(6), and a telephone number that can be used to request an account history. This disclosure may be made by providing a notice substantially similar to the notice contained in section A(12) of appendix A of this part.

(iii) *Error resolution notice.* A notice concerning error resolution that is substantially similar to the notice contained in section A(13) of appendix A of this part, in substitution for the notice required by § 205.7(a)(10).

(2) *Annual error resolution notice.* The agency shall provide an annual notice concerning error resolution that is substantially similar to the notice contained in section A(13) of appendix A of this part, in substitution for the notice required by § 205.8(b).

(3) *Limitations on liability.* For purposes of § 205.8(b) (2) and (3), in regard to a consumer's reporting within 60 days any unauthorized transfer that appears on a periodic statement, the 60-day period shall begin with the transmittal of a written account history or other account information provided to the consumer under paragraph (c) of this section.

(4) *Error resolution.* The agency 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 no later than 60 days after the consumer obtains the written account history or other account information, under paragraph (c) of this section, in which the error is first reflected.

3. Appendix A to part 205 is revised by adding sections A(12) and A(13) to read as follows:

Appendix A to Part 205—Model Disclosure Clauses

* * *

Section A(12)—Disclosure by Government Agencies of Information About Obtaining Account Balances and Account Histories (§ 205.15(d)(1) (i) and (ii))

You may obtain information about the amount of benefits you have remaining by calling [telephone number]. That information is also available [on the receipt you get when you make a transfer with your card at (an ATM)(a POS terminal)](when you make a balance inquiry at an ATM)(when you make a balance inquiry at specified locations).

You also have the right to receive a written summary of transactions for the 60 days preceding your request by calling [telephone number]. [Optional: Or you may request the summary by contacting your caseworker.]

Section A(13)—Disclosure of Error Resolution Procedures for Government Agencies That Do Not Provide Periodic Statements (§ 205.15(d)(1)(iii) and (d)(2))

In Case of Errors or Questions About Your Electronic Transfers Telephone us at [telephone number] or Write us at [address] as soon as you can, if you think an error has occurred in your [EBT](agency's name for program) account. We must hear from you no later than 60 days after you learn of the error. You will need to tell us:

- Your name and [case] [file] 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 generally complete our investigation within 10 business days and correct any error promptly. In some cases, an investigation may take longer, but you will have the use of the funds in question after the 10 business days. 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 during the investigation.

For errors involving transactions at point-of-sale terminals in food stores, the periods referred to above are 20 business days instead of 10 business days.

If we decide that there was no error, we will send you a written explanation within three business days after we finish our investigation. 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).

By order of the Board of Governors of the Federal Reserve System, February 24, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94-4681 Filed 3-2-94; 12:38 pm]

BILLING CODE 6210-01-P

E X E C U T I V E O F F I C E O F T H E P R E S I D E N T

18-Jun-1996 05:13pm

TO: Rahm Emanuel
TO: Michelle Crisci

FROM: Elena Kagan
 Office of the Counsel

SUBJECT: ebt again

As to whether legislation is needed to exempt EBT from regulation E:

An exemption would require either legislative or administrative repeal of the Federal Reserve Board rule applying Reg E to EBT. That rule is quite clear; it has to be eliminated to render Reg E non-applicable to EBT.

I guess the next question is whether the President could tell the Federal Reserve Board to get rid of one of its rules. I don't know the answer to that question, but would be glad to find out if you think such an action is remotely possible.