

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1005

Electronic Fund Transfers (Regulation E)

AGENCY: Bureau of Consumer Financial Protection.

ACTION: Final Rule; correcting amendments.

SUMMARY: The Bureau of Consumer Financial Protection (Bureau) is making certain clerical and non-substantive corrections to errors it has identified in Regulation E, which implements the Electronic Fund Transfer Act.

DATES: This correction is effective on [INSERT DATE THIRTY DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

FOR FURTHER INFORMATION CONTACT: Jane Raso, Counsel; Kristine M. Andreassen and Eric Goldberg, Senior Counsels, Office of Regulations, at (202) 435-7700.

SUPPLEMENTARY INFORMATION:

I. Overview

Regulation E, which implements the Electronic Fund Transfer Act,¹ and the official interpretations to the regulation are codified in 12 CFR part 1005.² Regulation E provides comprehensive consumer protections for consumers using electronic fund transfer and remittance transfer systems. Current Regulation E inadvertently contains several errors, as described below.

¹ 15 U.S.C. 1693 *et seq.*

² Subpart A of Regulation E was originally adopted as 12 CFR part 205 by the Board of Governors of the Federal Reserve System but, upon transfer of authority in the Dodd-Frank Act to implement Regulation E to the Bureau, was renumbered as 12 CFR part 1005. 76 FR 81020 (Dec. 27, 2011).

The Bureau is publishing this final rule to correct these errors. No substantive change is intended by the corrections herein.

Subpart A

Section 1005.7 Initial Disclosures. Section 1005.7(b)(11) in 12 CFR part 1005 cross-references the definition of an “automated teller machine operator” as defined in “§ 1005.16(a)(1).” This is a clerical error, as there is no such paragraph in § 1005.16. The definition of “automated teller machine operator” is set forth in § 1005.16(a). Accordingly, this final rule corrects the erroneous cross reference in § 1005.7(b)(11) by changing it from § 1005.16(a)(1) to § 1005.16(a).

Subpart B

Model form for error resolution and cancellation disclosures (short). Model Form A-37 in appendix A to part 1005 sets forth language about the rights of a remittance transfer sender regarding error resolution and cancellation. Pursuant to § 1005.31(b)(2)(vi), it should contain language that informs a sender that the sender can contact the State agency that licenses or charters a remittance transfer provider and the Bureau for questions or complaints about the remittance transfer provider.³ However, the model form that was adopted only included this language in part. To correct this clerical error, Model Form A-37 is amended so that it now contains the disclosure required by § 1005.31(b)(2)(vi) in its entirety. The Bureau notes that other model forms in subpart B that contain the statement required by § 1005.31(b)(2)(vi) accurately reflect the statement.

³ See 77 FR 6193, 6228 (Feb. 12, 2012) (explaining the contents of Model Form A-37).

Official interpretation to § 1005.33(a) and (g). Section 1005.33(a)(1)(iv) provides that a remittance transfer provider's failure to make funds available to a designated recipient by the date of availability disclosed to the sender is an error unless an exception applies. One such exception, set forth in § 1005.33(a)(1)(iv)(D), is if the failure to make funds available is due to the sender having provided the remittance transfer provider with an incorrect account number for the designated recipient's account and the remittance transfer provider has met the conditions set forth in § 1005.33(h). Comment 33(a)-9 explains the application of § 1005.33(a)(1)(iv)(D). However, it erroneously cross-references § 1005.30(h)(2) when it should have cross-referenced § 1005.33(a)(1)(iv)(D). This final rule corrects this error by removing the erroneous cross reference to § 1005.30(h)(2) and replacing it with the correct cross reference to § 1005.33(a)(1)(iv)(D). Additionally, comment 33(g)-1 contains a cross reference to the requirement set forth in the regulation that remittance transfer providers are subject to § 1005.13's record retention requirements. However, instead of cross-referencing § 1005.33(g)(2), where this requirement resides, the comment cross-references § 1005.31(g)(2). This final rule corrects the erroneous cross reference in comment 33(g)-1 by changing it from § 1005.31(g)(2) to § 1005.33(g)(2).

Official interpretation to § 1005.36. Currently, there are two section headings in the commentary to § 1005.36 (Transfers Scheduled before the Date of Transfer). The existence of two separate headings for the commentary to § 1005.36 is a clerical error. Further, one of the headings is different from the heading of § 1005.36 in the regulatory text. This final rule removes the erroneous heading so that the heading that remains in the commentary to § 1005.36 has the same heading as the heading of § 1005.36 in the regulatory text. Additionally, this final

rule moves the commentary set forth under the erroneous heading and places it under the remaining heading.

II. Basis for the Corrections

The Bureau is publishing this technical correction as a final rule that will be effective 30 days after the date of publication in the *Federal Register*. The Bureau finds that there is good cause to publish this final rule without seeking public comment. *See* 5 U.S.C. 553(b)(3)(B). Public comment is unnecessary because the rule corrects inadvertent, clerical errors about which there is minimal, if any, basis for substantive disagreement.

List of Subjects in 12 CFR Part 1005

Automated teller machines, Banks, Banking, Consumer protection, Credit unions, Electronic fund transfers, National banks, Remittances, Reporting and recordkeeping requirements, Savings Associations.

Authority and Issuance

Accordingly, 12 CFR part 1005 is corrected by making the following correcting amendments:

PART 1005—ELECTRONIC FUND TRANSFERS (REGULATION E)

1. The authority citation for part 1005 is amended to read as follows:

Authority: 12 U.S.C. 5512, 5581; 15 U.S.C. 1693b. Subpart B is also issued under 12 U.S.C. 5601 and 15 U.S.C. 1693o-1.

Subpart A—General

2. Section 1005.7 is amended by revising paragraph (b)(11) to read as follows:

§ 1005.7 Initial disclosures.

* * * * *

(b) * * *

(11) *ATM fees.* A notice that a fee may be imposed by an automated teller machine operator as defined in § 1005.16(a), when the consumer initiates an electronic fund transfer or makes a balance inquiry, and by any network used to complete the transaction.

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3. Appendix A to part 1005 is amended by revising Model Form A-37 to read as follows:

APPENDIX A TO PART 1005—MODEL DISCLOSURE CLAUSES AND FORMS

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A-37—MODEL FORM FOR ERROR RESOLUTION AND CANCELLATION DISCLOSURES (SHORT)

(§ 1005.31(B)(2)(IV) AND (B)(2)(VI))

You have a right to dispute errors in your transaction. If you think there is an error, contact us within 180 days at [insert telephone number] or [insert website]. You can also contact us for a written explanation of your rights.

You can cancel for a full refund within 30 minutes of payment, unless the funds have been picked up or deposited.

For questions or complaints about [insert name of remittance transfer provider], contact:

State Regulatory Agency
800-111-2222
www.stateregulatoryagency.gov

Consumer Financial Protection Bureau
855-411-2372
855-729-2372 (TTY/TDD)
www.consumerfinance.gov

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4. In *Supplement I to Part 1005—Official Interpretations*:

a. Under *Section 1005.33—Procedures for Resolving Errors*:

i. In subsection 33(a)—*Definition of Error*, paragraph 9 is revised.

ii. In subsection 33(g)—*Error Resolution Standards and Recordkeeping Requirements*, paragraph 1 is revised.

b. The heading *Section 1005.36—Transfers Scheduled in Advance* and paragraph 1 underneath said heading are removed.

c. Under *Section 1005.36—Transfers Scheduled before the Date of Transfer*, paragraph 1 is added.

The revisions, removals, and additions read as follows:

Supplement I to Part 1005—Official Interpretations

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Section 1005.33—Procedures for Resolving Errors

33(a) Definition of Error

* * * * *

9. *Account number or recipient institution identifier.* For purposes of the exception in § 1005.33(a)(1)(iv)(D), the terms account number and recipient institution identifier refer to alphanumerical account or institution identifiers other than names or addresses, such as account numbers, routing numbers, Canadian transit numbers, International Bank Account Numbers (IBANs), Business Identifier Codes (BICs) and other similar account or institution identifiers used to route a transaction. In addition and for purposes of this exception, the term designated recipient’s account in § 1005.33(a)(1)(iv)(D) refers to an asset account, regardless of whether it is a consumer asset account, established for any purpose and held by a bank, savings association, credit union, or equivalent institution. A designated recipient’s account does not, however, include a credit card, prepaid card, or a virtual account held by an Internet-based or mobile telephone company that is not a bank, savings association, credit union or equivalent institution.

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Section 1005.33—Procedures for Resolving Errors

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33(g)—Error Resolution Standards and Recordkeeping Requirements

1. *Record retention requirements.* As noted in § 1005.33(g)(2), remittance transfer providers are subject to the record retention requirements under § 1005.13. Therefore, remittance transfer providers must retain documentation, including documentation related to error investigations, for a period of not less than two years from the date a notice of error was submitted to the provider or action was required to be taken by the provider. A remittance transfer provider need not maintain records of individual disclosures that it has provided to each sender; it need only retain evidence demonstrating that its procedures reasonably ensure the sender's receipt of required disclosures and documentation.

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Section 1005.36—Transfers Scheduled before the Date of Transfer

1. *Applicability of subpart B.* The requirements set forth in subpart B apply to remittance transfers subject to § 1005.36, to the extent that § 1005.36 does not modify those requirements. For example, the foreign language disclosure requirements in § 1005.31(g) and related commentary continue to apply to disclosures provided in accordance with § 1005.36(a)(2).

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[THIS SIGNATURE PAGE PERTAINS TO THE FINAL RULE TITLED
“ELECTRONIC FUND TRANSFERS (REGULATION E)”]

Dated: October 3, 2016.



Richard Cordray,

Director, Bureau of Consumer Financial Protection.