
**THE LAW OF ELECTRONIC
FUNDS TRANSFER**

by
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VOLUME II

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

FEDERAL REGULATIONS

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

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

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

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FEDERAL REGULATIONS

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

§545.17 Funds transfer services.

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

§533.1 Electronic fund transfers subject to Regulation E.

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

FEDERAL REGULATIONS

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

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