

## Bur. of Consumer Financial Protection

## § 1005.14

from the requirements of the Act or this part for any class of electronic fund transfers within the state. The Bureau shall grant an exemption if it determines that:

(i) Under state law the class of electronic fund transfers is subject to requirements substantially similar to those imposed by the Federal law; and

(ii) There is adequate provision for state enforcement.

(2) *Exception.* To assure that the Federal and state courts continue to have concurrent jurisdiction, and to aid in implementing the Act:

(i) No exemption shall extend to the civil liability provisions of section 916 of the Act; and

(ii) When the Bureau grants an exemption, the state law requirements shall constitute the requirements of the Federal law for purposes of section 916 of the Act, except for state law requirements not imposed by the Federal law.

### § 1005.13 Administrative enforcement; record retention.

(a) *Enforcement by Federal agencies.* Compliance with this part is enforced in accordance with section 918 of the Act.

(b) *Record retention.* (1) Any person subject to the Act and this part shall retain evidence of compliance with the requirements imposed by the Act and this part for a period of not less than two years from the date disclosures are required to be made or action is required to be taken.

(2) Any person subject to the Act and this part having actual notice that it is the subject of an investigation or an enforcement proceeding by its enforcement agency, or having been served with notice of an action filed under sections 910, 916, or 917(a) of the Act, shall retain the records that pertain to the investigation, action, or proceeding until final disposition of the matter unless an earlier time is allowed by court or agency order.

### § 1005.14 Electronic fund transfer service provider not holding consumer's account.

(a) *Provider of electronic fund transfer service.* A person that provides an electronic fund transfer service to a con-

sumer but that does not hold the consumer's account is subject to all requirements of this part if the person:

(1) Issues a debit card (or other access device) that the consumer can use to access the consumer's account held by a financial institution; and

(2) Has no agreement with the account-holding institution regarding such access.

(b) *Compliance by service provider.* In addition to the requirements generally applicable under this part, the service provider shall comply with the following special rules:

(1) *Disclosures and documentation.* The service provider shall give the disclosures and documentation required by §§1005.7, 1005.8, and 1005.9 of this part that are within the purview of its relationship with the consumer. The service provider need not furnish the periodic statement required by §1005.9(b) if the following conditions are met:

(i) The debit card (or other access device) issued to the consumer bears the service provider's name and an address or telephone number for making inquiries or giving notice of error;

(ii) The consumer receives a notice concerning use of the debit card that is substantially similar to the notice contained in appendix A of this part;

(iii) The consumer receives, on or with the receipts required by §1005.9(a), the address and telephone number to be used for an inquiry, to give notice of an error, or to report the loss or theft of the debit card;

(iv) The service provider transmits to the account-holding institution the information specified in §1005.9(b)(1), in the format prescribed by the automated clearinghouse (ACH) system used to clear the fund transfers;

(v) The service provider extends the time period for notice of loss or theft of a debit card, set forth in §1005.6(b)(1) and (2), from two business days to four business days after the consumer learns of the loss or theft; and extends the time periods for reporting unauthorized transfers or errors, set forth in §§1005.6(b)(3) and 1005.11(b)(1)(i), from 60 days to 90 days following the transmittal of a periodic statement by the account-holding institution.

(2) *Error resolution.* (i) The service provider shall extend by a reasonable

time the period in which notice of an error must be received, specified in § 1005.11(b)(1)(i), if a delay resulted from an initial attempt by the consumer to notify the account-holding institution.

(ii) The service provider shall disclose to the consumer the date on which it initiates a transfer to effect a provisional credit in accordance with § 1005.11(c)(2)(ii).

(iii) If the service provider determines an error occurred, it shall transfer funds to or from the consumer's account, in the appropriate amount and within the applicable time period, in accordance with § 1005.11(c)(2)(i).

(iv) If funds were provisionally credited and the service provider determines no error occurred, it may reverse the credit. The service provider shall notify the account-holding institution of the period during which the account-holding institution must honor debits to the account in accordance with § 1005.11(d)(2)(ii). If an overdraft results, the service provider shall promptly reimburse the account-holding institution in the amount of the overdraft.

(c) *Compliance by account-holding institution.* The account-holding institution need not comply with the requirements of the Act and this part with respect to electronic fund transfers initiated through the service provider except as follows:

(1) *Documentation.* The account-holding institution shall provide a periodic statement that describes each electronic fund transfer initiated by the consumer with the access device issued by the service provider. The account-holding institution has no liability for the failure to comply with this requirement if the service provider did not provide the necessary information; and

(2) *Error resolution.* Upon request, the account-holding institution shall provide information or copies of documents needed by the service provider to investigate errors or to furnish copies of documents to the consumer. The account-holding institution shall also honor debits to the account in accordance with § 1005.11(d)(2)(ii).

**§ 1005.15 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 this part 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, other than needs-tested benefits in a program established under state or local law or administered by a state or local agency. The agency shall comply with all applicable requirements of the Act and this part, 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, but does not include an account for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency.

(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 disburses or will disburse by means of an 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 § 1005.9(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 (such as by 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 that is provided promptly in response to an oral or written request and that covers at least 60 days preceding the date of a request by the consumer.

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