

ther restitution efforts are pursued, the district attorney or an employee of the district attorney authorized to make such a determination makes a determination that there is probable cause to believe that a crime has been committed; and

(vi) charges only fees in connection with services under the contract that have been authorized by the contract with the State or district attorney.

(b) Certain checks excluded

A check is described in this subsection if the check involves, or is subsequently found to involve—

(1) a postdated check presented in connection with a payday loan, or other similar transaction, where the payee of the check knew that the issuer had insufficient funds at the time the check was made, drawn, or delivered;

(2) a stop payment order where the issuer acted in good faith and with reasonable cause in stopping payment on the check;

(3) a check dishonored because of an adjustment to the issuer's account by the financial institution holding such account without providing notice to the person at the time the check was made, drawn, or delivered;

(4) a check for partial payment of a debt where the payee had previously accepted partial payment for such debt;

(5) a check issued by a person who was not competent, or was not of legal age, to enter into a legal contractual obligation at the time the check was made, drawn, or delivered; or

(6) a check issued to pay an obligation arising from a transaction that was illegal in the jurisdiction of the State or district attorney at the time the check was made, drawn, or delivered.

(c) Definitions

For purposes of this section, the following definitions shall apply:

(1) State or district attorney

The term “State or district attorney” means the chief elected or appointed prosecuting attorney in a district, county (as defined in section 2 of title 1), municipality, or comparable jurisdiction, including State attorneys general who act as chief elected or appointed prosecuting attorneys in a district, county (as so defined), municipality or comparable jurisdiction, who may be referred to by a variety of titles such as district attorneys, prosecuting attorneys, commonwealth's attorneys, solicitors, county attorneys, and state's attorneys, and who are responsible for the prosecution of State crimes and violations of jurisdiction-specific local ordinances.

(2) Check

The term “check” has the same meaning as in section 5002(6) of title 12.

(3) Bad check violation

The term “bad check violation” means a violation of the applicable State criminal law relating to the writing of dishonored checks.

(Pub. L. 90-321, title VIII, §818, as added Pub. L. 109-351, title VIII, §801(a)(2), Oct. 13, 2006, 120 Stat. 2004.)

SUBCHAPTER VI—ELECTRONIC FUND TRANSFERS

§ 1693. Congressional findings and declaration of purpose

(a) Rights and liabilities undefined

The Congress finds that the use of electronic systems to transfer funds provides the potential for substantial benefits to consumers. However, due to the unique characteristics of such systems, the application of existing consumer protection legislation is unclear, leaving the rights and liabilities of consumers, financial institutions, and intermediaries in electronic fund transfers undefined.

(b) Purposes

It is the purpose of this subchapter to provide a basic framework establishing the rights, liabilities, and responsibilities of participants in electronic fund and remittance transfer systems. The primary objective of this subchapter, however, is the provision of individual consumer rights.

(Pub. L. 90-321, title IX, §902, as added Pub. L. 95-630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3728; amended Pub. L. 111-203, title X, §1073(a)(1), July 21, 2010, 124 Stat. 2060.)

AMENDMENTS

2010—Subsec. (b). Pub. L. 111-203 inserted “and remittance” after “electronic fund”.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective 1 day after July 21, 2010, except as otherwise provided, see section 4 of Pub. L. 111-203, set out as an Effective Date note under section 5301 of Title 12, Banks and Banking.

EFFECTIVE DATE

Pub. L. 90-321, title IX, §923, formerly §921, as added by Pub. L. 95-630, title XX, §2001, Nov. 10, 1978, 92 Stat. 3741, renumbered §922, Pub. L. 111-24, title IV, §401(1), May 22, 2009, 123 Stat. 1751; renumbered §923, Pub. L. 111-203, title X, §1073(a)(3), July 21, 2010, 124 Stat. 2060, provided that: “This title [enacting this subchapter] takes effect upon the expiration of eighteen months from the date of its enactment [Nov. 10, 1978], except that sections 909 and 911 [sections 1693g, 1693i of this title] take effect upon the expiration of ninety days after the date of enactment.”

[Pub. L. 111-203, §1073(a)(3), which directed renumbering of section 922 of Pub. L. 90-321 as section 923 effective 1 day after July 21, 2010, was executed after the renumbering of section 921 of Pub. L. 90-321 as section 922 by Pub. L. 111-24, §401(1), effective 15 months after May 22, 2009, to reflect the probable intent of Congress.]

SHORT TITLE

This subchapter known as the “Electronic Fund Transfer Act”, see Short Title note set out under section 1601 of this title.

§ 1693a. Definitions

As used in this subchapter—

(1) the term “accepted card or other means of access” means a card, code, or other means of access to a consumer's account for the purpose of initiating electronic fund transfers

when the person to whom such card or other means of access was issued has requested and received or has signed or has used, or authorized another to use, such card or other means of access for the purpose of transferring money between accounts or obtaining money, property, labor, or services;

(2) the term “account” means a demand deposit, savings deposit, or other asset account (other than an occasional or incidental credit balance in an open end credit plan as defined in section 1602(i)¹ of this title), as described in regulations of the Bureau, established primarily for personal, family, or household purposes, but such term does not include an account held by a financial institution pursuant to a bona fide trust agreement;

(4)² the term “Board” means the Board of Governors of the Federal Reserve System;

(4)² the term “Bureau” means the Bureau of Consumer Financial Protection;

(5) the term “business day” means any day on which the offices of the consumer’s financial institution involved in an electronic fund transfer are open to the public for carrying on substantially all of its business functions;

(6) the term “consumer” means a natural person;

(7) the term “electronic fund transfer” means any transfer of funds, other than a transaction originated by check, draft, or similar paper instrument, which is initiated through an electronic terminal, telephonic instrument, or computer or magnetic tape so as to order, instruct, or authorize a financial institution to debit or credit an account. Such term includes, but is not limited to, point-of-sale transfers, automated teller machine transactions, direct deposits or withdrawals of funds, and transfers initiated by telephone. Such term does not include—

(A) any check guarantee or authorization service which does not directly result in a debit or credit to a consumer’s account;³

(B) any transfer of funds, other than those processed by automated clearinghouse, made by a financial institution on behalf of a consumer by means of a service that transfers funds held at either Federal Reserve banks or other depository institutions and which is not designed primarily to transfer funds on behalf of a consumer;

(C) any transaction the primary purpose of which is the purchase or sale of securities or commodities through a broker-dealer registered with or regulated by the Securities and Exchange Commission;

(D) any automatic transfer from a savings account to a demand deposit account pursuant to an agreement between a consumer and a financial institution for the purpose of covering an overdraft or maintaining an agreed upon minimum balance in the consumer’s demand deposit account; or

(E) any transfer of funds which is initiated by a telephone conversation between a con-

sumer and an officer or employee of a financial institution which is not pursuant to a prearranged plan and under which periodic or recurring transfers are not contemplated; as determined under regulations of the Bureau;

(8) the term “electronic terminal” means an electronic device, other than a telephone operated by a consumer, through which a consumer may initiate an electronic fund transfer. Such term includes, but is not limited to, point-of-sale terminals, automated teller machines, and cash dispensing machines;

(9) the term “financial institution” means a State or National bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person who, directly or indirectly, holds an account belonging to a consumer;

(10) the term “preauthorized electronic fund transfer” means an electronic fund transfer authorized in advance to recur at substantially regular intervals;

(11) the term “State” means any State, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or any political subdivision of any of the foregoing; and

(12) the term “unauthorized electronic fund transfer” means an electronic fund transfer from a consumer’s account initiated by a person other than the consumer without actual authority to initiate such transfer and from which the consumer receives no benefit, but the term does not include any electronic fund transfer (A) initiated by a person other than the consumer who was furnished with the card, code, or other means of access to such consumer’s account by such consumer, unless the consumer has notified the financial institution involved that transfers by such other person are no longer authorized, (B) initiated with fraudulent intent by the consumer or any person acting in concert with the consumer, or (C) which constitutes an error committed by a financial institution.

(Pub. L. 90-321, title IX, § 903, as added Pub. L. 95-630, title XX, § 2001, Nov. 10, 1978, 92 Stat. 3728; amended Pub. L. 111-203, title X, § 1084(1), (2), July 21, 2010, 124 Stat. 2081.)

REFERENCES IN TEXT

Section 1602(i) of this title, referred to in par. (2), was redesignated section 1602(j) of this title by Pub. L. 111-203, title X, § 1100A(1)(A), July 21, 2010, 124 Stat. 2107.

AMENDMENTS

2010—Pub. L. 111-203, § 1084(1), which directed the substitution of “Bureau” for “Board” wherever appearing, was executed by making the substitution in pars. (2) and (6) but not in par. (3), to reflect the probable intent of Congress.

Par. (3). Pub. L. 111-203, § 1084(2)(A), redesignated par. (3) as (4) defining the term “Board”.

Par. (4). Pub. L. 111-203, § 1084(2)(B), which directed addition of par. (4) defining the term “Bureau” after par. (3), was executed by making the addition after par. (4) defining the term “Board”, to reflect the probable intent of Congress.

Pub. L. 111-203, § 1084(2)(A), redesignated par. (3) as (4) defining the term “Board”. Former par. (4) redesignated (5).

¹ See References in Text note below.

² So in original. There are two pars. designated “(4)” and no par. (3).

³ So in original. The colon probably should be a semicolon.

Pars. (5) to (12), Pub. L. 111-203, §1084(2)(A), redesignated pars. (4) to (11) as (5) to (12), respectively.

EFFECTIVE DATE OF 2010 AMENDMENT

Amendment by Pub. L. 111-203 effective on the designated transfer date, see section 1100H of Pub. L. 111-203, set out as a note under section 552a of Title 5, Government Organization and Employees.

§ 1693b. Regulations

(a) Prescription by the Bureau and the Board

(1) In general

Except as provided in paragraph (2), the Bureau shall prescribe rules to carry out the purposes of this subchapter.

(2) Authority of the Board

The Board shall have sole authority to prescribe rules—

(A) to carry out the purposes of this subchapter with respect to a person described in section 5519(a) of title 12; and

(B) to carry out the purposes of section 1693o-2 of this title.

In prescribing such regulations, the Board shall:

(1)¹ consult with the other agencies referred to in section 1693o² of this title and take into account, and allow for, the continuing evolution of electronic banking services and the technology utilized in such services,

(2)¹ prepare an analysis of economic impact which considers the costs and benefits to financial institutions, consumers, and other users of electronic fund transfers, including the extent to which additional documentation, reports, records, or other paper work would be required, and the effects upon competition in the provision of electronic banking services among large and small financial institutions and the availability of such services to different classes of consumers, particularly low income consumers,

(3)¹ to the extent practicable, the Board shall demonstrate that the consumer protections of the proposed regulations outweigh the compliance costs imposed upon consumers and financial institutions, and

(4)¹ any proposed regulations and accompanying analyses shall be sent promptly to Congress by the Board.

(b) Issuance of model clauses

The Bureau shall issue model clauses for optional use by financial institutions to facilitate compliance with the disclosure requirements of section 1693c of this title and to aid consumers in understanding the rights and responsibilities of participants in electronic fund transfers by utilizing readily understandable language. Such model clauses shall be adopted after notice duly given in the Federal Register and opportunity for public comment in accordance with section 553 of title 5. With respect to the disclosures required by section 1693c(a)(3) and (4) of this title, the Bureau shall take account of variations in the services and charges under different electronic fund transfer systems and, as appropriate, shall issue alternative model clauses for disclosure of these differing account terms.

¹ So in original. See 2010 Amendment note below.

² See References in Text note below.

(c) Criteria; modification of requirements

Regulations prescribed hereunder may contain such classifications, differentiations, or other provisions, and may provide for such adjustments and exceptions for any class of electronic fund transfers or remittance transfers, as in the judgment of the Bureau are necessary or proper to effectuate the purposes of this subchapter, to prevent circumvention or evasion thereof, or to facilitate compliance therewith. The Bureau shall by regulation modify the requirements imposed by this subchapter on small financial institutions if the Bureau determines that such modifications are necessary to alleviate any undue compliance burden on small financial institutions and such modifications are consistent with the purpose and objective of this subchapter.

(d) Applicability to service providers other than certain financial institutions

(1) In general

If electronic fund transfer services are made available to consumers by a person other than a financial institution holding a consumer's account, the Bureau shall by regulation assure that the disclosures, protections, responsibilities, and remedies created by this subchapter are made applicable to such persons and services.

(2) State and local government electronic benefit transfer systems

(A) "Electronic benefit transfer system" defined

In this paragraph, the term "electronic benefit transfer system"—

(i) means a system under which a government agency distributes needs-tested benefits by establishing accounts that may be accessed by recipients electronically, such as through automated teller machines or point-of-sale terminals; and

(ii) does not include employment-related payments, including salaries and pension, retirement, or unemployment benefits established by a Federal, State, or local government agency.

(B) Exemption generally

The disclosures, protections, responsibilities, and remedies established under this subchapter, and any regulation prescribed or order issued by the Bureau in accordance with this subchapter, shall not apply to any electronic benefit transfer system established under State or local law or administered by a State or local government.

(C) Exception for direct deposit into recipient's account

Subparagraph (B) shall not apply with respect to any electronic funds transfer under an electronic benefit transfer system for a deposit directly into a consumer account held by the recipient of the benefit.

(D) Rule of construction

No provision of this paragraph—

(i) affects or alters the protections otherwise applicable with respect to bene-