

Resolving Errors with Regulation E

MICHELE BARLOW, AAP, APRP, NCP

EXECUTIVE VICE PRESIDENT

MBARLOW@MACHA.ORG



Important Info

DISCLAIMER:

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- You should contact your own attorney, accountant or tax professional with any specific questions you might have related to this presentation that are of a legal, accounting or tax nature.

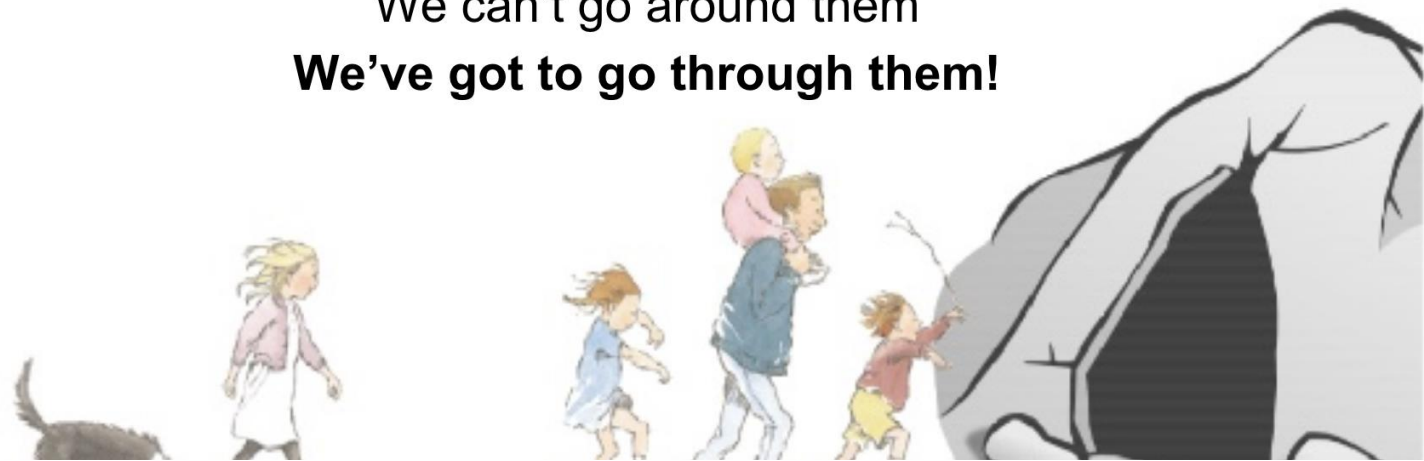
Regulations! Complicated, boring regulations!

We can't go over them

We can't go under them

We can't go around them

We've got to go through them!



Here is the main thing to remember
about Regulation E...





THE **WORLD** ISN'T FAIR, CALVIN.

I KNOW, BUT WHY ISN'T IT EVER UNFAIR IN MY FAVOR?

To Recap

The Electronic Fund Transfer Act (EFTA) of 1978

The Board of Governors of the Federal Reserve System originally issued Regulation E (12 CFR 205)

- The Bureau Consumer Financial Protection (BCFP) is now the custodian of Reg E (12 CFR 1005)

Carry out the goals of the Electronic Fund Transfer Act

- Sets forth the basic rights, liabilities, and responsibilities of consumers who use electronic fund transfer services and the financial institutions that offer such services

Consumer protection when engaging in electronic fund transfers

Important Definitions

Account: A demand deposit, savings, or other consumer account established primarily for personal, family, or household purposes

- Includes “payroll cards” where an employer establishes cards (access devices) through which compensation is transferred on a recurring basis
- Unemployment Cards are covered
- HSA account cards are not covered

Definitions

Consumer:

- A natural person

Person:

- A natural person
- An organization
 - Corporation
 - Government agency
 - Estate
 - Trust
 - Partnership
 - Proprietorship
 - Cooperative
 - Association

Electronic Fund Transfer (EFT) 1005.3

Any transfer of funds that is initiated through an electronic terminal, telephone, computer or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer's account

Debit Card Transactions (PIN & Signature)

ATM Transactions

ACH (PPD, ARC, BOC, POP, TEL, WEB)

Must disclose that one-time EFTs initiated using information from a consumer's check are a type of transfer consumer can make

Electronic Fund Transfers

Preauthorized electronic fund transfer

- An electronic fund transfer authorized in advance to recur at substantially regular intervals

Unauthorized electronic fund transfer

- An electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit

Unauthorized Electronic Funds Transfers- Exclusions

An electronic fund transfer initiated:

- By a person who was furnished the access device to the consumer's account by the consumer
 - Unless the consumer has notified the financial institution that transfers by that person are no longer authorized
- With fraudulent intent by the consumer or any person acting in concert with the consumer
- By the financial institution or its employee

Consumer Liability for Unauthorized Transfers 1005.6

If the consumer notifies the financial institution within 2 business days after learning of the loss or theft of the access device, his or her liability shall not exceed the lesser of:

- \$50 or
- The amount of unauthorized transfers that occurred before notice

Consumer Liability for Unauthorized Transfers

If the customer fails to provide timely notice, his or her liability shall not exceed the lesser of:

- \$500 or
- The sum of \$50 of the unauthorized transaction within 2 business days (whichever is less), plus the amount of unauthorized transfers from day 3 through notice to the financial institution



State Laws may give more consumer protection

Timeliness of Error Notice

If customer gives notice beyond 60 days, consumer's liability will not exceed the amount of the unauthorized transfer that occur after the close of 60 days and before the notice and that would not have occurred had timely notice been given

- Consumer liability is unlimited
- FI is still liable for unauthorized EFTs within the first 60 days



Consumer's Liability

Consumer must report unauthorized EFT within 60 days of the transmittal of the statement to avoid liability for **SUBSEQUENT** transfers

You cannot tell a customer to go away if they report a transaction as unauthorized after the 60 days from the statement

- Burden to prove that it was
- We will come back to this again

Notice and Extensions

Notice is given when a consumer takes steps “reasonably necessary” to provide the pertinent information

Whether or not “a particular employee or agent of the institution actually receives the information”

Error Resolution

Regulation E provides rules that protect consumers in regards to “errors” in electronic transactions.

If a consumer claims that an error has occurred, the financial institution is required to:

Take **ACTION** by:

- **INVESTIGATING** the error
- Providing a **RESOLUTION** to the consumer and
- **COMMUNICATING** the resolution to the consumer

What is an Error?

Error means:

Unauthorized electronic fund transfer

Incorrect EFT to or from consumer's account

Omission of an EFT from a periodic statement

A computational or bookkeeping error made by the financial institution



Notice of Error from Consumer

A financial institution may require the consumer to give written confirmation of an error within 10 business days of an oral notice

- Must inform the consumer of this requirement and provide address where written notice is to be sent

Ten Days:

A financial institution must determine whether an error occurred within 10 business days of receiving a notice of error

Have 3 business days to report results to consumers after completing investigation

Must correct error within 1 business day after determining that an error occurred

Investigating Alleged Errors

Forty-five days:

If unable to complete investigation within 10 business days,

- Financial institution may take up to 45 days from receipt of notice of error to investigate

Must provisionally credits the consumer's account within 10 business days of receiving notice

- Must include interest where applicable

Provisional Credit

For Unauthorized EFT

- May withhold the maximum of \$50

Need not provide provisional credit if:

- FI does not receive written notice of error within 10 days of the oral notice
- Error involves a Reg T account
 - Securities Credit by Brokers & Dealers

Investigating Alleged Errors

Corrects the error within 1 business day after determining an error occurred

Informs consumer within 2 business days after giving provisional credit of the amount, date credited

- Gives full use of funds

Reports results to consumer within 3 business days after completing its investigation

Notice that provisional credit is final

Exceptions 1005.11(c)3

10 business days becomes 20 business days if the alleged error involves an EFT to or from the account within 30 days after the first deposit to the account was made

Exceptions

45 days becomes 90 days if the alleged error involves an EFT that

- Was not initiated in a state
- Resulted from a point-of-sale debit card transaction
- Occurred within 30 days of the first deposit

Provide written report of investigation to consumer

- Explanation of findings
- Consumer the right to request documents the institution relied on

Written notice of Debiting Provisional Credit

Reversing Provisional Credit 1005.11(d)2

Debiting Provisional Credit

Must provide notice to consumer:

- Date and amount of debit
- Honor checks, drafts, or similar presentments for five business days after notification
- Without charge for resulting overdrafts
- Only honor items that you would have paid if the provisional credit had not been reversed

Reassertion

If a financial institution has complied with these steps, it has no obligation if a consumer reasserts the same error

Let's Talk about Regulation E

In June of 2021, the CFPB issued a document highlighting some common questions for complying with Regulation E

That FAQ document was amended in December 2021 to further clarify some responsibilities for financial institutions and payment app providers when it comes to resolving errors for consumers

You're probably not going to like what they had to say...

https://files.consumerfinance.gov/f/documents/cfbp_electronic-fund-transfers-faqs.pdf

FAQ Highlights

Q: If a consumer uses a non-bank P2P payment provider to initiate a debit card “pass-through” payment from the consumer’s account held by a depository institution, is the depository institution considered a financial institution under Regulation E, even though the transfer was initiated through the non-bank P2P payment provider?

A: Yes, yes you are.

What does this mean?

- You may (and probably do) have error resolution responsibilities for transfer sent through P2P payment apps

FAQ Highlights

Q: Can non-bank P2P payment providers be considered financial institutions under Regulation E?



A: Generally, yes.

What does this mean?

- The P2P payment app provider may also have error resolution responsibilities for transfers done through payment apps

FAQ Highlights

So, who is responsible for error resolution?

- You both are!

So, can I punt the problem back to the app provider?



Can I Ever Kick them Back to the App Provider?

The only time you can send the consumer back to the app provider is if the disputed transaction did not settle through the FI, but rather to a prepaid account owned by the app provider

If the transaction settles on your debit card or through the ACH network to an account held by your FI, you must do error resolution

Scenarios are Fun!



What Would you Do?

Bob called State Bank's call center on July 19 to dispute several \$300 PPD transactions that were on his statement. Bob stated he had not authorized any of the payments. State Bank's investigation discovered the first transaction occurred on January 5th and then the 5th of every month after that, through July. The first statement containing one of the transactions was dated January 21.

- Is this a Reg E error?
- What is Bob's liability for these seven transactions?
- What can the FI do to get the money back?

A Call I Took While Creating this Presentation

- Jane Matthews calls her financial institution Star Credit Union on June 1st to dispute two charges she sees on her account from Integrated HealthCare. The transactions were \$586.00 each and posted to her account on March 18th and March 23rd
- Star Credit Union took a WSUD and returned the entries as R10
- June 3rd the returns were dishonored as R68 Untimely
- Star Credit Union debited her account for the dishonored returns and informed her she should work directly with Integrated HealthCare

Did Star Credit Union Handle this Correctly?

What should they have done instead?

Is there anyway for Star CU to get their money back?

THAT WAS AN EASY ONE!



GIVE ME A HARD ONE!



Puppy Scenario

Cardholder calls. They bought a puppy via PayPal using their debit card. Several weeks have passed since the puppy was supposed to arrive. Cardholder wants to dispute the transaction

Regulation E does not apply!

Transaction was authorized

Whether ACH or debit card, there is no happiness guarantee. Regulation E does not provide protection related to the quality of goods or services represented by the transaction

Difference between what you are REQUIRED to do, and what you CAN do – customer service is often at the forefront

You may have chargeback rights through your card network; however, with PayPal there is a good chance that they will decline the dispute

With PayPal specifically, the buyer can submit a dispute/claim. The buyer contacts the seller directly through PayPal's Resolution Center site to file a dispute and the two parties work together to find a solution. If buyer and seller can't agree to a solution, buyer can escalate the dispute to a claim in order to request a refund/reversal where PayPal steps in to determine how the situation should be resolved.

What would you do?

A fraudster calls Sarah pretending to be an employee at her bank. At the fraudster's request, Sarah provides her online banking credentials. The fraudster later uses the information she provided to initiate EFTs from her checking account

Sarah calls your FI to report the unauthorized transaction

Is this an error under Regulation E?

Do you help her?

What if your disclosures say you would never contact the accountholder over the phone-does that change anything?

Let Me Call You Sweetheart...

A cardholder finds a new
“friend” online

At some point the
account holder provides
them with access to their
online banking passcodes
and account information

The “friend” uses your
P2P system to send
money to themselves

Is this an error under
Regulation E?

What Regulation E Says is an Error

- (i) An unauthorized electronic fund transfer;
- (ii) An incorrect electronic fund transfer to or from the consumer's account;
- (iii) The omission of an electronic fund transfer from a periodic statement;
- (iv) A computational or bookkeeping error made by the financial institution relating to an electronic fund transfer;
- (v) The consumer's receipt of an incorrect amount of money from an electronic terminal;
- (vi) An electronic fund transfer not identified in accordance with § [1005.9](#) or § [1005.10\(a\)](#); or
- (vii) The consumer's request for documentation required by § [1005.9](#) or § [1005.10\(a\)](#) or for additional information or clarification concerning an electronic fund transfer, including a request the consumer makes to determine whether an error exists under paragraphs (a)(1)(i) through (vi) of this section

Source: Regulation E
1005.11(a)

Digging Deeper-Unauthorized EFT

- (1) By a person who was furnished the access device to the consumer's account by the consumer, unless the consumer has notified the financial institution that transfers by that person are no longer authorized
- (2) With fraudulent intent by the consumer or any person acting in concert with the consumer;
or
- (3) By the financial institution or its employee

Source: Regulation
E-1005.2(m)

Digging Even Deeper

1. Transfer by institution's employee. A consumer has no liability for erroneous or fraudulent transfers initiated by an employee of a financial institution
2. Authority. If a consumer furnishes an access device and grants authority to make transfers to a person (such as a family member or co-worker) who exceeds the authority given, the consumer is fully liable for the transfers unless the consumer has notified the financial institution that transfers by that person are no longer authorized
3. Access device obtained through robbery or fraud. An unauthorized EFT includes a transfer initiated by a person who obtained the access device from the consumer through fraud or robbery
4. Forced initiation. An EFT at an ATM is an unauthorized transfer if the consumer has been induced by force to initiate the transfer.
5. Reversal of direct deposits. The reversal of a direct deposit made in error is not an unauthorized EFT when it involves:
 - i. A credit made to the wrong consumer's account;
 - ii. A duplicate credit made to a consumer's account; or
 - iii. A credit in the wrong amount (for example, when the amount credited to the consumer's account differs from the amount in the transmittal instructions)

Source: Regulation E Official Interpretation of 1005.2(m)

What do the FAQs Say about this?

- Q: A third party fraudulently induces a consumer into sharing account access information that is used to initiate an EFT from the consumer's account. Does the transfer meet Regulation E's definition of an unauthorized EFT?

- What do you think?

Answer from the FAQs

Yes. As discussed in Electronic Fund Transfers Error Resolution: Unauthorized Fund Transfers Question 1, Regulation E defines an unauthorized EFT as an EFT from a consumer's account initiated by a person other than the consumer without actual authority to initiate the transfer and from which the consumer receives no benefit. 12 CFR 1005.2(m). Comment 1005.2(m)-3 explains further that an unauthorized EFT includes a transfer initiated by a person who obtained the access device from the consumer through fraud or robbery. Similarly, when a consumer is fraudulently induced into sharing account access information with a third party, and a third party uses that information to make an EFT from the consumer's account, the transfer is an unauthorized EFT under Regulation E

So, this Means?

If the access device was obtained through fraud-this meets the definition of an error under the regulation

The FI must proceed with an investigation no matter when this error is reported

What About this Situation?

Your accountholder fell victim to the classic grandparent scam. They were contacted by a fraudster saying that their grandson was in jail, and they needed to purchase \$1000 in iTunes gift cards and provide the gift card information to the fraudster to get their poor boy out of jail

Grandma goes to the nearest drug store chain, makes the purchase, takes pictures of the access codes on the cards, and sends them to the fraudster

Is this a Regulation E error?

LET'S DISCUSS



ALL THE THINGS

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Resolving Errors with Regulation E

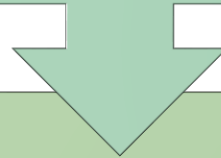
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262-345-1246

[mbarlow@macha
.org](mailto:mbarlow@macha.org)