Outlook Live Transcript
Regulation E – Error Resolution Examiner Insights
December 12, 2019

Jean Roark – Facilitator:
Good afternoon and welcome to Outlook Live. Today's topic is Regulation E – Error Resolution Examiner Insights. I'm Jean Roark from the St. Louis Fed and I'll be your moderator.

Our presenters today are Scott Sonbuchner and Yvonne Lunde. Scott is a senior examiner at the Federal Reserve Bank of Minneapolis, and Yvonne is a senior examiner at the Federal Reserve Bank of New York.

And before turning our call over to our speakers, I'll run through our call logistics on slide 2. Upon logging into the webcast, you are automatically set up to listen to our webinar through your computer speakers. This option allows you to sit back and enjoy the webinar. Just a quick logistical note, we encourage you to listen to the audio through your PC, but if you need a phone option, we have a limited number of lines available. If you choose to listen to the audio through your phone, you'll need to download the presentation and follow along manually on your computer. Dial-in information and a direct presentation download link can be found on the launch webcast page or on the webinar player page. You can also download the PDF of today's presentation using the materials button.

We are offering continuing professional education credits for attending the session. If you're interested in that, you must do two things. First, you must be registered for this session, and second, you must complete the post-session survey. And feel free to visit our website at www.consumercomplianceoutlook.org. There, you can find the session materials and eventually the archive of the webinar.

I'll cover our legal language before turning it over to our speakers. The opinions expressed in this presentation are intended for informational purposes, and are not formal opinions of, nor binding on, the Board of Governors of the Federal Reserve System. And with all of that out of the way, I'll turn our call over to our first speaker. Scott, take it away.

Scott Sonbuchner:
Hello. Today's presentation will start with me, Scott, providing an overview of the Regulation E Error Resolution Requirements. Then Yvonne will cover the recent additions of prepaid cards, and provide examples of violations and complaints that examiners have seen.

Slide 4 provides an overview of the first half of this presentation.

Regulation E requires financial institutions to investigate and resolve alleged errors involving electronic funds transfers.

To better understand this requirement, the first part of this presentation, we'll review:

- The regulatory definitions of electronic funds transfers and the regulatory definition of error,
- The requirements for a consumer notice of error,
- The time limits for financial institutions to complete an investigation,
- We'll then review what is meant by a reasonable investigation, and finally,
- How financial institutions can complete an investigation both when there is an error and when there is no error or a different error.

Slide 5 reviews Regulation E's definition of electronic fund transfer (EFT). In general, an electronic funds transfer is any transfer of funds 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.

Electronic funds transfers include point-of-sale transfers, ATM transfers, direct deposits or withdrawals of funds, transfers initiated by telephone when under a written plan, and transfers resulting from debit card transactions whether or not initiated through an electronic terminal. Common exclusions from the definition of EFT include checks and wires.

Slide 6 reviews Regulation E's definition of error. Regulation E provides seven types of transfers or inquiries covered under its regulatory definition of error. The first six examples are types of transfers. These include:

- An unauthorized EFT.
    - Interestingly, unauthorized electronic fund transfer is a defined term in Regulation E. It means 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 benefits.
    - Unauthorized EFTs do not include EFTs initiated by the consumer's financial institution or its employees.

Regulation E errors also include:

- An incorrect EFT to or from a consumer's account;
- An omission of an EFT from a consumer's periodic statement;

- A computational or bookkeeping error by the institution for an EFT;
- A consumer's receipt of an incorrect amount of money from an electronic terminal – I should point out that Regulation E defines electronic terminal to include point-of-sale terminals and ATMs;
- Regulation E errors also include an EFT that was not identified in accordance with the disclosure requirements for electronic terminal receipts, for example, ATM receipts and periodic statements or pre-authorized transfers;
- And the seventh and last example is a type of consumer inquiry, specifically, a consumer's request for documentation required to be disclosed by Regulation E, such as ATM receipts or periodic statements, or for additional information or clarification concerning an EFT, including a request the consumer makes to determine whether one of the errors listed above actually exists.

Slide 7 reviews the requirements for a consumer's notice of error.

Financial institutions must promptly investigate errors asserted by consumers when they receive any oral or written notice of error from a consumer where the financial institution receives the notice within 60 days of sending the periodic statement where the alleged error first appears (or longer if there are extenuating circumstances).

The notification identifies the consumer's name and account number. This is a practical requirement as a financial institution must be able to identify the account in question and the notice must indicate why the consumer believes an error exists, and includes, to the extent possible, the type, date, and amount of the error.

Please note, this presentation focuses primarily on two separate sections of Regulation E. Section 1005.11 provides the general procedures for resolving Regulation E errors. Section 1005.6 describes when a financial institution may hold a consumer liable for an unauthorized transaction.

Remember, unauthorized transactions are just one of the seven possible errors listed in Regulation E. Throughout the presentation, there is additional regulatory guidance for errors that involve unauthorized transactions. That's true here too.

If a financial institution receives a notice of error after 60 days of sending the periodic statement, it may no longer be required to comply with Section 1005.11.

However, when a consumer's assertion of error involves an unauthorized transaction, the institution must still comply with Section 1005.6 before imposing any liability on the consumer. This is true even if the institution receives a notice of error after 60 days of sending the periodic statement. We will review Section 1005.6 more, later in this presentation.

Slide 8 reviews notices of error where the consumer provides notice orally.

If a consumer provides oral notice of error, the financial institution may require the consumer to provide written confirmation of the error within 10 business days of oral notice. If the institution does not receive written confirmation within those 10 business days, it may extend the investigation period without provisionally crediting the account.

However, the institution must begin the investigation promptly. Upon receipt of an oral notice, it may not delay initiating or completing the investigation.

Slide 9 reviews Regulation E's definition of business day.

Regulation E uses the term day and calendar day interchangeably. However, it also uses the term business day, which is a defined term. A business day for Regulation E is any day on which the offices of the consumer's financial institution are open to the public for carrying on substantially all business functions.

Substantially all business functions include both public and back-office operations of the institution. For purposes of error resolution, this means both handling consumer transactions, such as deposits and withdrawals, as well as performing back office functions such as investigating account errors. Many banks have limited staffing on the weekends. It may not need to count the weekend days as business days.

On slide 10, we'll review the time limits financial institutions have for completing investigations when they do not extend the investigation period.

Once a financial institution has received a notice of an EFT error, Regulation E time limits start to apply. When financial institutions choose not to extend the standard time limit, they must investigate and resolve alleged errors within 10 business days of receipt of the notice from the consumer for accounts open more than 30 days.

For new accounts, that is for accounts open 30 days or less, financial institutions must investigate and resolve alleged errors within 20 business days of receipt of notice from the consumer, and the regulation specifies that you count that 30 days from the day of the first deposit.

On slide 11, we'll review how financial institutions can extend the investigation period.

When financial institutions do not believe they can resolve the alleged error within the above 10 or 20 business days, they have the option of extending the investigation period.

To extend the investigation period, the financial institution must provide provisional credit for the disputed amount within 10 business days of the initial notice of error or 20 business days for new accounts.

This means the financial institution must give the consumer full use of the funds during the investigation. Two related points are worth mentioning.

First, for interest bearing accounts, the financial institution must include interest on the provisional credit, and second, for unauthorized EFTs, financial institutions may reduce the provisional credit by a maximum of $50 in accordance with the liability provisions of Section 1005.6. We'll cover these later in the presentation.

Within two business days of providing provisional credit, financial institutions must inform the consumer of the amount and date of the credit. As noted before, if the financial institution requests written confirmation from the consumer but does not receive it within 10 business days of a consumer's oral notice of error, the institution need not provisionally credit the consumer's account in order to extend the investigation period.

On slide 12, we'll review the regulatory time limits for completing investigations when financial institutions have extended the investigation period.

Financial institutions that follow the provisional credit requirement may extend the investigation period.

For accounts open more than 30 days, financial institutions may extend the investigation period up to 45 calendar days after notice. For new accounts, that is, accounts open 30 days or less, for debit card point-of-sale transactions, or any EFT transactions outside the U.S., financial institutions may extend the investigation period up to 90 calendar days after notice.

Slide 13 reviews the guidance on conducting a reasonable investigation.

In response to a notice of error from a consumer, financial institutions must investigate the alleged error. Specifically, the investigation must determine whether an error has occurred, and must at minimum, include a reasonable review of all relevant information within the bank's own records.

When investigating and reviewing the information, it's important to remember that the Electronic Fund Transfer Act states that in any action which involves a consumer's liability for an unauthorized electronic funds transfer, the burden of proof is upon the financial institution to show that the electronic fund transfer was authorized.

Slide 14 reviews the regulatory guidance on how to conduct a reasonable investigation when the Regulation E error involves an unauthorized transaction.

Regulation E sets forth the extent of a consumer's liability for unauthorized transactions. Again, unauthorized electronic fund transfer is a defined term. It means an electronic funds 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. The term does not include EFTs initiated by the consumer's financial institution or its employees.

According to Regulation E, the extent of a consumer's liability for an unauthorized transaction is determined solely by the consumer's promptness in reporting the loss or theft of an access device.

Consumer negligence cannot be used to impose greater liability than is permissible under Regulation E. For example, writing the pin on a debit card or on a piece of paper kept with the card does not affect the consumer's liability.

On slide 15, we'll review the conditions for imposing liability on consumers who allege unauthorized transactions.

Regulation E stipulates that financial institutions must have met certain conditions to hold the consumer liable for an unauthorized EFT. Specifically, the financial institution must have provided the following in its initial Regulation E disclosure:

- A summary of the consumer's liability,
- The financial institutions telephone number and address, and
- The financial institution's business days.

If the unauthorized transfer involves an access device, it must be an accepted access device. And the financial institution must have provided a means to identify the consumer to whom it was issued. Note, the means to identify could be mechanical such as a pin or a comparison of the consumer's signature.

Generally, an access device becomes an accepted access device when a consumer requests and receives, or signs or uses, the access device to transfer money between accounts or to obtain money, property, or services.

On slide 16, we'll review the limitations for imposing liability onto consumers who allege unauthorized transactions when there is an access device.

As stated earlier, Regulation E states that the consumer's liability for an unauthorized transaction is determined solely by the consumer's promptness in reporting the loss or theft of an access device.

An access device is a defined term. It means a card, code, or other means of access to a consumer's account, or any combination of those, that may be used by the consumer to initiate an electronic funds transfer.

Specifically, Regulation E establishes the following three tiers of liability for unauthorized EFTs involving an access device.

The first tier occurs if the consumer notifies the financial institution within two business days after learning of the loss or theft of the access device. Then, the consumer's maximum liability is $50.

The second tier occurs if the consumer failed to notify the financial institution within two business days of learning of the missing card, and the institution establishes that these transfers would not have occurred had they been notified. The consumer's liability increases to a total possible liability of $500, including the $50 liability in tier one.

The third tier of liability occurs if the consumer fails to report unauthorized EFTs that appear on a periodic statement after 60 days of the financial institution's transmittal. The consumer then faces unlimited liability for all unauthorized transfers made after the 60-day period. However, the consumer's liability for unauthorized transfers before the statement is sent and up to 60 days following is still determined based upon the first two tiers of liability.

On slide 17, we'll review the limitations for imposing liability on to consumers alleging an unauthorized transaction, but this time when there is no access device.

For unauthorized EFTs made without an access device, the first two tiers of liability from the previous slide do not apply, as there is no access device to lose or to be stolen. However, the third tier of liability still applies. If the consumer notifies a financial institution within the 60 days of the transmittal of the periodic statement that shows the unauthorized transfer, the consumer has no liability.

However, the if the consumer fails to report the unauthorized transfers within the above 60 calendar day period, the consumer may be liable for any transfers occurring after the close of the 60 days and before notice was given to the institution.

An example, a consumer receives an unauthorized ACH debit for $200. If the institution is not notified, and on the 61st day after periodic statement transmittal, there is another unauthorized ACH debit for $400, the consumer may be liable for the $400 transaction.

On slide 18, we'll review the process for completing an investigation when there is an error.

Upon completion of its investigation, if a financial institution determines that an error occurred, it must correct the error within one business day. This includes crediting of interest and the refunding of any fees imposed by the institution. Then, within three business days after completing the investigation, financial institutions must report the result to consumers.

This may be reported either orally or in writing if the financial institution had made provisional credit; notify the consumer that the provisional credit has now been made final. It's worth mentioning that financial institutions may avoid performing the investigation altogether if they make the final correction to the consumer's account in the amount or manner alleged by the consumer to be an error. However, financial institutions must still comply with the other applicable requirements of Section 1005.11.

On slide 19, we'll review the process for completing an investigation when there is no error or when there is a different error.

If upon completion of its investigation the financial institution determines that no error or a different error occurred, the financial institution must report the result to the consumers within three business days after completing the investigation.

This explanation of findings must be in writing, and must include a notice of the consumer's right to request the documents that the institution relied on in making its determination. The financial institution is permitted to debit the provisional credit, but it must follow one of two alternative procedures set forth in Regulation E and the commentary.

The first option, upon debiting a provisionally credited amount, the financial institution must notify the consumer of the date and amount of the debiting, and notify the consumer that the financial institution will honor checks to third parties and preauthorized transfers without charging an overdraft for five business days after the notification. The financial institution need only honor items that would have been paid if the provisionally credited funds had not been debited.

Alternatively, there is a second option. The financial institution may notify the consumer that the consumer's account will be debited five business days from the transmittal of the notification, specifying the calendar date on which the debiting will occur.

The second option is easier to implement but permits the consumer greater freedom to withdraw the provisional credit.

That's it for the first part of the presentation. Yvonne will now review prepaid cards and then violations and complaints that examiners see.

Yvonne Lunde:
Thank you, Scott. Moving to slide 20, Prepaid Cards.

The new prepaid rule went into effect on April 1, 2019. Previously, in terms of prepaid products, Regulation E error resolution requirements only applied to payroll cards and government benefit accounts. Under the new rule, the definition of account under Regulation E, Section 1005.2(b)(3) was expanded to include a broader set of prepaid accounts. These accounts now generally need to comply with the Regulation E Error Resolution requirements, among other provisions of Regulation E.

The definition of account now includes the following categories.

First, payroll cards, the definition remains the same as it was under the previous version of the regulation.

Second, government benefit accounts, defined as they were under the prior version of the regulation. These include all federal benefits, as well as state and local benefits, that are not needs tested.

Third, prepaid accounts marketed or labeled as prepaid that can be redeemed at multiple unaffiliated merchants for goods or services, or used at ATMs.

And fourth, accounts that are issued on a prepaid basis or capable of being loaded with funds at a later time, whose primary function is to conduct transactions with multiple unaffiliated merchants for goods or services, or at ATMs, or to conduct person-to-person transfers, and which are not checking accounts, shared draft accounts, or NOW accounts.

Some exclusions apply for the last two categories of accounts. For example, gift cards and accounts fully loaded with funds from a health savings account, or certain other types of employee benefit accounts, are not considered to be prepaid cards.

There are limitations on error resolution for unverified prepaid accounts, which are included in Regulation E, Section 1005.18(a)(3). These limitations for unverified accounts do not apply to payroll card and government benefit accounts.

Financial institutions are not required to resolve errors or limit consumer's liability on unverified prepaid accounts.

For an institution that has no consumer identification and verification process, the institution must provide a disclosure that explains their error resolution process and any limitations on liability for unauthorized transfers, or explains that there are no such protections.

For institutions that have a consumer identification and verification process, in order for Regulation E error resolution and limited liability requirements to apply to a prepaid account, the account must have successfully completed the consumer identification and verification process.

If the consumer identification and verification process is not complete or where the institution could not verify the identity of the consumer, the institution must disclose the risks of not verifying the account or registering the account. There is a model notice for this disclosure in Regulation E Appendix A(7)(C).

For accounts where the consumer's identity is later verified, financial institutions are not required to resolve errors and limit liability for disputed transactions that occurred prior to verification.

Moving to slide 21, for prepaid accounts, institutions may provide a traditional periodic statement or provide an alternative to the periodic statement. As an alternative to the periodic statement, under Regulation E Section 1005.18(c)(1), an institution can provide the account balance via telephone, an electronic history of 12 months of account transactions, and a written history of 24 months of account transactions upon request.

If the periodic statement is used, then traditional timelines for timeliness of the customer's notification of the error are followed.

There are modified error resolution requirements that impact the timeliness of receipt of an error resolution notice when the alternative to the periodic statement is used.

These modifications are described in Regulation E, Section 1005.18(e)(2), which allows for one of two options.

- The first option is that the institution may comply with the error resolution requirements for a notice of error that is received by the earlier of 60 days after the date the consumer electronically accesses the account, provided that the electronic account transaction history reflects the alleged error.
- Or if the consumer requests a written account transaction history, 60 days after the date the institutions sends the first written account transaction history reflecting the alleged error.

As an alternative to the first option, which would require tracking when the consumer electronically accessed the account, there is a second option available. The institution can choose to investigate any notice of error from the consumer that is received by the institution within 120 days after the transfer allegedly in error was credited or debited to the consumer's account.

There are parallel provisions under Section 1005.18(e)(1), modifying the timing of the report of an unauthorized EFT for determining the liability of the consumer when the alternative to the periodic statement is used. These follow the same timelines established for reporting of a notice of error.

Moving on to error resolution violations and complaints, Slide 23, Failure to Initiate Investigation. An investigation must be conducted after the consumer provides notification of an error. An institution can require a consumer to give notice only by contacting a certain phone number or address. However, if the consumer attempts to give notice in a different manner, there must be reasonable procedures to refer the consumer to the specific telephone number or address required by the institution.

The failure to initiate an investigation after a notification about an error is received is an issue that has been repeatedly identified by regulators over the years. The investigation must begin promptly upon receipt of a notice of error that contains the information set forth in Section 1005.11(b)(1), including an oral notice of error. An institution cannot require anything more as a condition for an investigation.

Regulators have found instances where banks were in violation of this rule. Examples of practices that violated the rule included instances where, as a condition to the investigation, the bank required a customer to provide a written notice of error, provide notice of error on a specific form, provide notarized documents, sign an affidavit, file a police report, visit a branch to file an error notification, or contact the merchant.

Institutions should ensure that practices do not discourage consumers from filing error resolution requests. The FDIC, in its June 2019 Consumer Compliance Supervisory Highlights, described instances where banks implemented onerous requirements for initiating an error investigation or resolving error claims, such as requiring a visit to the branch, filing a police report, or requiring consumers to agree to assist law enforcement or serve as witnesses in any action brought against individuals responsible for an unauthorized transaction.

The FDIC found that some of these instances had, or were likely to have a chilling effect on consumers from asserting their rights in violation of Regulation E and Section 5 of the Federal Trade Commission Act.

The CFPB's January 2019 Consent Order with USAA Federal Savings Bank also describes practices that would discourage a consumer from providing notice of an error. In certain circumstances involving ACH debit payments for payday loans, USAA's procedure directed representatives to warn consumers about potential legal and financial consequences of proceeding with an error resolution investigation.

The procedure had provided a script that had the representative inform customers that if the bank determined that the ACH debit was authorized that the consumers would put their USAA membership at risk, and that their existing accounts may be closed, and they would be unable to purchase additional USAA products.

The script also stated, it is a federal crime to make a false statement to a bank, and this is punishable by a fine of up to $1 million dollars or imprisonment for up to 30 years, or both.

If the customer still wanted to proceed with the error notification after receiving this warning, the bank required the customer to complete a written dispute form and get it notarized before conducting an investigation.

These practices were found to be in violation of Regulation E's requirement to promptly initiate and conduct error resolution investigations.

Moving to slide 24.

Regulation E prohibits institutions from charging fees for error resolution. Generally, we have not seen issues involving direct charges for error resolution. However, there is a risk of running afoul of this rule when charges apply for customer contact in general.

For example, several prepaid card programs charge fees for calling customer service by telephone. If a customer calls to provide a notice of error or to request further information about a transaction to determine if it is in error under Regulation E, a charge should not apply. Ensure that employees are well-trained on what constitutes a Regulation E error, and have adequate procedures, as well as adequate monitoring, so that no fee is charged for error resolution.

Moving to slide 25, Provisional Credit Issues. Regulators have seen issues where provisional credit is not provided when extending the investigation period beyond the 10-business day timeframe (or 20 days for new accounts).

An institution can require that a customer provide written confirmation of an oral notice of error within 10 business days of the oral notice, but it must tell the consumer of the requirement and the address where the confirmation must be sent. If the customer does not provide the written notice, provisional credit does not need to be provided in order to extend the investigation period. This is the only exception to the requirement to provide provisional credit when extending the timeframe.

There have also been issues where provisional credit was provided for the amount of the alleged error, but interest was not provided when an interest-bearing account was involved. Provisional credit should include both the amount of the alleged error and interest, when applicable.

Moving to slide 26, Denying Claims without Adequate Investigation. Earlier on slide 23, we talked about how an institution must investigate an error once the notice of error is received and cannot require anything further such as a written notice of error, a notarized affidavit, or a police report.

Similarly, a financial institution cannot deny an error claim on the basis of a consumer failing to provide additional information or meeting additional requirements after a notice of error is received. An investigation must be conducted.

If a reasonable review of all relevant information within the institution's records would result in a determination favorable to the consumer, an institution cannot deny the claim. In the CFPB's consent order with USAA, it was found that USAA failed to conduct reasonable reviews of all relevant information within its own records prior to making a determination about whether the error was valid.

The CFPB found that when consumers had previously authorized transactions with a merchant that pre-dated a disputed transaction with the merchant, the bank made the summary determination that no error had occurred without considering other evidence in its records, including that the consumer asserted an error.

When consumers did not have a transaction history with the merchant, USAA did not reasonably consider relevant details in its own records.

In numerous instances when the bank found no error, a reasonable review of all relevant information within the bank's own records would have resulted in a determination in favor of the consumer.

Based on these practices, the CFPB found that USAA failed to conduct a reasonable review of all relevant records within its own records when investigating an error notification, and was in violation of the Electronic Fund Transfer Act and Regulation E.

When conducting an investigation of an unauthorized EFT, keep in mind that under the Electronic Fund Transfer Act Section 909(b), the burden of proof is on the financial institution to show that an alleged error was an in fact an authorized transaction. If the financial institution cannot establish proof of valid authorization, the financial institution must credit the consumer's account.

Moving to slide 27, Issues when Denying Claims. There have been many instances of notice violations identified by regulators, which have been repeatedly found over the years.

One type of violation found is that the notification of error resolution is not timely. Institutions should carefully track when the investigation is complete, as that is the trigger for resolving any error found as well as notification requirements. The results of the investigation, including a written explanation of the institution findings, must be provided to the consumer within three business days after completing the investigation.

Another violation identified is that no written notice is provided. When denying a claim, the notice must be in writing.

In some instances, institutions provided a written notice, but the notice did not include a statement regarding the consumer's right to obtain the documentation that the institution relied on in its error resolution investigation. Ensure that the template for a notice of error resolution for denied claims includes this statement.

There have also been issues with the failure to provide documents. If a customer later requests the documents used by the institution in its error resolution investigation, the institution must promptly provide copies in an understandable form.

The CFPB identified instances where institutions were refusing consumer requests to review materials relied on by institutions in denying error claims, and incorrectly informed consumers that subpoenas would be required to review that material.

Moving to slide 28. There have been violations regarding the notification of reversal of provisional credit when provisional credit was provided to extend the timeframe for investigation, and it is later determined there is no error. Regulators have identified instances where the notice of reversal of provisional credit did not include the required disclosures.

In order to avoid violations, an institution should choose one of the two procedures for compliance under Regulation E, and ensure that notice procedures, letter templates, and training align with the method chosen.

Both methods allow for five business days for the amount of the provisional credit to be made available to pay third parties and pre-authorized transfers.

As mentioned earlier, under one procedure, the bank debits the amount first, and then provides the notice, which includes the statement that certain items will be honored for five business days after the notification.

Under the alternate procedure, which is described in a comment to the regulation, the institution provides the notice first, and then debits the amount five business days later.

Issues can arise when the template is not correct or where an employee is not trained on the method used. For example, if the alternate procedure in the commentary is used, then the provisional credit amount cannot be debited before the calendar date in the notice, which must be five business days from the date the notice is sent. Or, if the amount is debited right away, the template must provide that the institution will honor third party payments and pre-authorized transfers for five business days.

Moving to slide 29, Issues when Honoring Claims. There have been issues with the timeliness of correcting errors and the timeliness of the notice. An error must be corrected within one business day of determining the error has occurred. Notice must be provided within three business days after the investigation is complete, including, when applicable, notice that provisional credit was made final.

One way institutions may track this is to keep a log, and include tracking of when an investigation has been concluded, so that errors can resolved and notice is provided on a timely basis.

There have been violations where the final credit provided to correct an error did not include all required amounts. Generally, institutions have provided the amount of the error. However, there have been instances where the credit did not include interest, if it was an interest-bearing account, and the refund of fees resulting from the error.

For example, if an error resulted in an overdraft, and an overdraft fee was charged that would not have been charged had the error not been made, that overdraft fee should be reversed after it is determined that an error occurred.

Moving to slide 30. Once an investigation is completed and the institution makes the determination, the financial institution cannot reopen the investigation. For example, if the financial institution determines that there was an error and credits the consumer's account, but later finds that the consumer was refunded by the merchant or that the transaction was authorized, it cannot reverse the credit. While a finalized credit cannot be reversed, an institution can pursue other paths, such as asking a customer to return the money.

By taking the time necessary to perform the investigation, including extending time and providing provisional credit if needed, an institution can ensure it has the most complete information to make a determination.

On slide 31, we provided some links for references with guidance on error resolution procedures, consumer liability for unauthorized EFTs, and the prepaid card rule. We also provided links to CFPB and FDIC supervisory highlights that included findings on error resolution, as well as the CFPB's January 2019 consent order with USAA.

We received several questions in advance of this presentation. Thank you for submitting your questions. We do not have time to address all questions received, but we will address some of them today. I will turn it over to Scott to address the first set of questions.

Scott Sonbuchner:
Thank you, Yvonne. The first question is, do the Regulation E rules apply to transaction accounts opened for commercial purposes, specifically, opened by individuals for the stated purpose of business activity?

Based on the information provided, Regulation E would not apply in this scenario. This is assuming that the account is a commercial deposit account opened to an individual for business activity. Regulation E defines an account to mean a demand deposit or checking, savings, or other consumer asset account held directly, or indirectly, by a financial institution, and established primarily for personal, family, and household purposes.

The next question is more of a general inquiry. We have received a number of questions seeking clarification of zero liability and its interaction with Regulation E. The zero liability policies are protections that are generally imposed by contractual obligations with card networks rather than the Electronic Fund Transfer Act or Regulation E.

Regulation E liability amounts are a ceiling for the amount of liability than an institution may impose on a consumer. An institution can always impose less liability on the consumer than the amount set forth in Regulation E, and be compliant with the regulation. There is one comment in Regulation E specific to zero liability. That is Comment 7(b)(1)-1, which relates to the initial disclosures applicable to Regulation E. This comment states that if a financial institution chooses to impose zero liability for unauthorized EFTs, it need not provide the liability disclosures. If the institution later decides to impose liability, however, it must first provide the disclosures.

Therefore, how we would view the zero liability provisions, as it relates to Regulation E compliance, would depend on what is disclosed to consumers and what is employed in practice by the institution.

And then a follow-up question regarding zero liability, if there is a pin-based transaction would we follow zero liability for the Regulation E liability rules?

As indicated with the previous response, what you disclose to the consumer is what you would generally apply as it relates to the liability provisions for unauthorized ETFs, subject to the limits set forth in Regulation E.

If you choose not to disclose the consumer liability provisions, then you may not impose liability for an unauthorized EFT. There is no distinction between a pin-based transaction or a signature-based transaction in Regulation E. I will hand it back over to Yvonne to answer the remaining questions.

Yvonne Lunde:
Thank you, Scott. The next question is, is it true that a consumer can claim a transaction from several years ago to be unauthorized, and we must give provisional credit?

The answer would be no. If the transaction was from several years ago, the provisions related to the procedures for resolving errors under Section 1005.11 would not apply. The error resolution provisions in Section 1005.11 only apply if the claim is received within 60 days from when the consumer would have received their periodic statement with the charge.

Remember for prepaid cards, the timing is different depending on whether the bank uses the alternative to periodic statements.

With that said, the bank would be required to investigate the claim to determine consumer liability under Section 1005.6 if the institution intends to impose any liability on the consumer.

The next question is, if, according to the customer, merchandise was purchased with a debit card and never received, is this covered under Regulation E, and can you ask the customer to call the merchant to resolve the matter?

This is a good question, and one of the differences between debit and credit transactions as they related to error claims.

For debit card transactions, Regulation E does not define an error to include the right to dispute a transaction with a merchant because of a problem with goods or services. While a consumer may assert an error with respect to the EFT underlying the purchase of goods or services, a merchant dispute about an issue with goods or services, including issues with delivery of goods or services, would generally not qualify.

As previously noted, an unauthorized EFT is narrowly defined as 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. Technically, in this scenario, the transaction was authorized by the consumer. If the consumer never receives the goods, this is still an approved transaction and not an error with the underlying EFT. As a result, this dispute would not be covered by Regulation E.

So the answer to the second part of the question, yes, and the bank should refer the customer to the merchant to resolve the issue.

As further reference, please see the Consumer Compliance Outlook article that we published in the first issue of 2016 titled, Credit and Debit Cards Issuer's Obligation When Consumer Dispute Transactions with Merchants. You can find this article on the Consumer Compliance Outlook website at www.consumercomplianceoutlook.org.

And the final question we will be able to answer today is, when the customer is filing a dispute, we provide provisional credit immediately. But when the merchant or ATM owner denies it, and faxes us a copy of the documents to prove the transactions are legitimate or that the ATM dispensed the money, can we debit the account right away?

There are really two parts to this question. The first is whether the information provided by the merchant or ATM owner is sufficient to deny the claim. As with all case-specific questions, there will be facts and circumstances specific to each case. In this instance, the ATM owner may have information to show that funds were disbursed, and the bank may have information that a PIN was used to conduct the transaction. However, this information may not be sufficient to deny the claim. For example, if the consumer is claiming that the charges are unauthorized, and the consumer is the victim of ATM skimming, the skimming device could have captured both the mag stripe, as well as the customer's PIN.

Remember the Electronic Fund Transfer Act Section 909(b) states that, in any action which involves the consumer's liability for unauthorized EFT the burden of proof is upon the financial institution to show that the electronic fund transfer was authorized.

The second part of the question relates to the debiting of provisional credit. As previously mentioned, if the bank has finished the investigation and determined that no error has occurred, it must follow the procedures in Section 1005.11(d). This includes the written explanation of findings and the statement of the consumer's right to request the documentation the institution relied on and making its determination, as well as the notice of debiting of provisional credit. The institution must also provide supporting documentation upon request.

That concludes our presentation. Thank you for joining us today. I will turn it back over to Jean.

Jean Roark – Facilitator:
Thank you so much, Yvonne. All right. We will be sending an email with the link to our survey. Please do just take a moment to fill that out. That should be coming out in about 30 minutes or so. We read every response and we try to make our sessions better based upon your feedback.

I'd like to thank our presenters, both Scott and Yvonne today, and also the Outlook Live team for their time.

As a quick reminder remember, check out our website, www.consumercomplianceoutlook.org for the archive of this call and for information on upcoming sessions. Thanks for joining us today. This concludes today's Outlook Live webinar. Enjoy the rest of your day.

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