

Regulation E – Error Resolution Examiner Insights

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1

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2

Agenda

- Overview of the Regulation E Error Resolution Requirements
- Prepaid Cards
- Error Resolution Violations and Complaints

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3

Regulation E Error Resolution

- Regulation E requires financial institutions to investigate and resolve errors asserted by consumers involving electronic fund transfers
 - Definition of Electronic Fund Transfer and Error
 - Notice of Error Requirements
 - Time Limits for Completing Investigations
 - Reasonable Investigation
 - Completing Investigations

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4

Definition of Electronic Fund Transfer (EFT) §1005.3(b)

- 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
 - Point-of-sale (POS) transfers;
 - ATM transfers;
 - Direct deposits or withdrawals of funds;
 - Transfers initiated by telephone (under written plan); and
 - Transfers resulting from debit card transactions

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5

Definition of Error §1005.11(a)

- An unauthorized EFT;
- 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;
- An EFT that was not identified in accordance with §1005.9 [electronic terminal receipts and periodic statements] or §1005.10(a) [preauthorized transfers]; and
- A consumer's request for documentation required by §1005.9 or §1005.10(a) 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.

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6

Notice of Error Requirements §1005.11(b)

- Financial institutions must promptly investigate EFT errors when they receive any oral or written notice of error from a consumer that:
 - is received within 60 days of sending the periodic statement where the alleged error first appears (or longer for extenuating circumstances);
 - identifies the consumer's name and account number (identifies sufficiently the account in question);
 - indicates why the consumer believes an error exists; and
 - includes, to the extent possible, the type, date, and amount of the error.
- Note: When a consumer's assertion of error involves an *unauthorized transaction*, the institution must comply with §1005.6 before imposing any liability on the consumer. This is true even if the institution receives the notice of error after 60 days of sending the periodic statement.

Oral Notice of Error

- If a consumer provides oral notice, 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

Definition of Business Day §1005.2(d)

- Business Day 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:
 - Both public and back-office operations of the institution
 - For the purposes of error resolution, this means both handling consumer transactions as well as performing internal functions, such as investigating account errors

Time Limits for Completing Investigations without Extension

- Accounts open more than 30 days:
 - Investigate and resolve alleged errors within 10 business days of receipt of notice from the consumer
- Accounts open 30 days or less:
 - Investigate and resolve alleged errors within 20 business days of receipt of notice from the consumer

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 (20 business days for new accounts)
- Additionally, the institution:
 - Must give the consumer full use of the funds during the investigation (for interest-bearing accounts, the provisional funds must include interest)
 - Within two business days of providing provisional credit, inform the consumer of the amount and date of the credit
 - For unauthorized EFTs, may reduce provisional credit by a maximum of \$50 in accordance with the liability provisions §1005.6
- The exception to this rule: if the institution requested a written confirmation but did not receive it within 10 days, the institution can extend the investigation period without providing provisional credit

Time Limits for Completing Investigations with Extension

- Financial institutions that follow the provisional credit requirements 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 accounts open 30 days or less, for debit card POS transactions, or EFT transactions outside the US, financial institutions may extend the investigation period up to 90 calendar days after notice

Reasonable Investigation

- The investigation must determine whether an error has occurred and must at a minimum include a reasonable review of all relevant information within the bank's own records
- The Electronic Fund Transfer Act (EFTA) states that "[i]n any action which involves a consumer's liability for an unauthorized electronic fund transfer, the burden of proof is upon the financial institution to show that the electronic fund transfer was authorized..." EFTA 909(b)

Reasonable Investigation – Unauthorized Transactions §1005.6

- Regulation E sets forth the extent of a consumer's liability for unauthorized transactions
- The extent of a consumer's liability for unauthorized transactions is determined solely by the consumer's promptness in reporting the loss or theft of an access device (Comment 6(b)-3)
- Consumer negligence cannot be used to impose greater liability than is permissible under Regulation E (e.g., writing the PIN on a debit card or on a piece of paper kept with the card does not affect the consumer's liability)

Conditions for Liability §1005.6(a)

- To hold a consumer liable for an unauthorized EFT, the financial institution must have provided the following in the initial Regulation E disclosures:
 - a summary of the consumer's liability;
 - its telephone number and address; and
 - the financial institution's business days.
- If the unauthorized transfer involved 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

Limitations on Liability §1005.6(b)

- Regulation E establishes three tiers of liability for unauthorized EFTs involving an access device. If the consumer:
 - Notifies the financial institution within two business days after learning of the loss or theft of the access device, the consumer's maximum liability is \$50
 - 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 above)
 - Fails to report unauthorized EFTs that appear on a periodic statement after 60 days of the financial institution's transmittal, the consumer 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 determined based on the first two tiers of liability

Limitations on Liability §1005.6(b) *(continued)*

- For unauthorized EFTs made without an access device, only the third tier of liability applies, specifically:
 - If the consumer notifies the institution within 60 days of the transmittal of the periodic statement that shows the unauthorized transfer, the consumer has no liability
 - However, 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 is given to the institution
- For 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

Completing Investigation – Error

- If the determination is that an error occurred, the financial institution must:
 - Correct the error within one business day (this includes crediting of interest and the refunding of any fees imposed by the institution)
 - Report the results to the consumer within three business days after completing the investigation
 - May be reported either orally or in writing
 - If applicable, include notice that the provisional credit has been made final
- Financial institutions may make a final correction of alleged errors without an investigation but must comply with other applicable requirements of §1005.11

Completing Investigation – No Error/Different Error

- If the determination is that no error or a different error occurred, financial institutions must report the result to consumers within three business days after completing the investigation
- Explanation of findings:
 - Must be in writing;
 - Include a notice of the consumer's right to request the documents that the institution relied on in making its determination; and
 - To debit provisional credit, must follow one of two alternative procedures set forth in §1005.11(d)(2) and the commentary

Prepaid Cards

- New rule effective April 1, 2019
 - Prior to this rule, Regulation E error resolution requirements for prepaid accounts only applied to payroll cards and government benefit cards
 - New rule expands error resolution to prepaid accounts for which customer identification and verification processes are completed
 - §1005.2(b)(3) – Definition of account
 - §1005.18(e)(3) – Limitations for unverified accounts

Prepaid Cards (continued)

- If an institution uses the periodic statement alternative (§1005.18(c)(1)), as no periodic statement is provided, there are two options for determining the timeliness of an error notification for applicability of §1005.11:
 - §1005.18(e)(2)(i) – Notice of error is received by the earlier of:
 - 60 days after the consumer electronically accesses the account (if electronic transaction history reflects the alleged error), or
 - 60 days after the date the financial institution sends, upon consumer request, a written account transaction history reflecting the alleged error
 - §1005.18(e)(2)(ii) – An institution may choose to investigate any notice of error provided up to 120 days after the EFT was credited to/debited from the consumer's account
- There are parallel provisions under 1005.18(e)(1)(i) and (ii) modifying the timing of the report of an unauthorized EFT for liability of the consumer

Error Resolution Violations and Complaints

- Failure to Initiate Investigation
- Charging Fees for Error Resolution
- Provisional Credit Issues
- Denying Claim without Adequate Investigation
- Denying Claims – Issues
- Honoring Claims – Issues
- Finalized Investigation

Failure to Initiate Investigation

- Must promptly commence investigation upon receiving a notice of error, including upon receipt of oral notice (Comment 1005.11(c)-2)
- Cannot require anything more as a condition for investigation. For example, cannot require:
 - Written dispute
 - Notarized documents
 - Affidavit
 - Police report
 - Visit to a branch
 - Customer to contact merchant
- Ensure practices do not discourage consumers from providing a notice of error

Charging Fees for Error Resolution

- Regulation E prohibits charging fees related to any aspect of the error resolution process (Comment 1005.11(c)-3)
- If consumer is charged a fee for telephone contact, ensure that the fee is not charged if the contact is to notify about an error

Provisional Credit Issues §1005.11(c)(2) and (3)

- Not providing provisional credit timely (within 10 business days of error notification / 20 business days for new accounts) when extending investigation period
 - If institution requires written notification from the consumer, and it is not received, do not need to provide provisional credit – but this is the only exception
- Not including interest for interest-bearing accounts

Denying Claim without Adequate Investigation

- Cannot deny claim for failure to provide additional information beyond what is required under Regulation E
- Cannot deny claim if a reasonable review of all relevant information in the institution's records would result in a determination favorable to the customer
- If error is an unauthorized EFT: Burden of proof is on the institution to show that the EFT was authorized (EFTA 909(b))

Denying Claims – Issues

- Notice violations
 - Not timely
 - Not in writing
 - Failure to provide notice of customer's right to request documents institution relied on in making the determination
- Failure to provide documents used to make the determination upon consumer's request

Denying Claims – Issues *(continued)*

- Violations involving the notification of reversal of provisional credit (§1005.11(d)(2) and Comment 1005.11(d)-1)
 - Ensure one of the two procedures for debiting provisionally credited funds is followed
 - Ensure letter templates are correct and that notifications and date of debit is consistent with the procedure followed

Honoring Claims – Issues

- Untimely correction of the error
- Final credit did not include all required amounts
 - Amount of error;
 - Interest (if an interest-bearing account); and
 - Refund of any fees resulting from the error. (§1005.11(c) and Comment 1005.11(c)-6)
- Untimely notification after investigation complete, including, when applicable, notice that provisional credit was made final

Finalized Investigation

- Once an investigation is completed and a determination is made, the financial institution cannot reopen the investigation
- For example, if the financial institution later finds that the consumer was refunded by the merchant or the transaction was authorized, it cannot reverse the credit

References

- [Error Resolution Procedures and Consumer Liability Limits for Unauthorized Electronic Fund Transfers](#) (Consumer Compliance Outlook Q4 2012)
- [Prepaid Card Rule Implementation Page](#)
 - CFPB Executive Summary of the 2018 Prepaid Amendments
 - CFPB Prepaid Rule Small Entity Compliance Guide
- [FDIC Consumer Compliance Supervisory Highlights](#) (June 2019)
- [CFPB Supervisory Highlights](#) (Fall 2014)
- [CFPB Supervisory Highlights](#) (Summer 2017)
- [CFPB Consent Order with USAA Federal Savings Bank](#), January 3, 2019
