

Regulation E

Moving Beyond “Us vs. Them”

DISCLAIMER

Macha, through its Direct Membership in Nacha, is a specially recognized and licensed provider of ACH education, publications and support.

Payments Associations are directly engaged in the Nacha rulemaking process and Accredited ACH Professional (AAP) program.

Nacha owns the copyright for the Nacha Operating Rules & Guidelines.

The Accredited ACH Professional (AAP) and Accredited Payments Risk Professional (APRP) is a service mark of Nacha.

This material is derived from collaborative work product developed by Nacha and its member Payments Associations and is not intended to provide any warranties or legal advice and is intended for educational purposes only.

This material is not intended to provide any warranties or legal advice and is intended for educational purposes only.

This document could include technical inaccuracies or typographical errors and individual users are responsible for verifying any information contained herein.

No part of this material may be used without the prior written permission of Macha/PAR.

© 2024 Macha/PAR All rights reserved

Error Resolution

Regulation E provides rules that protect consumers with 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



Unauthorized EFT's

- **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



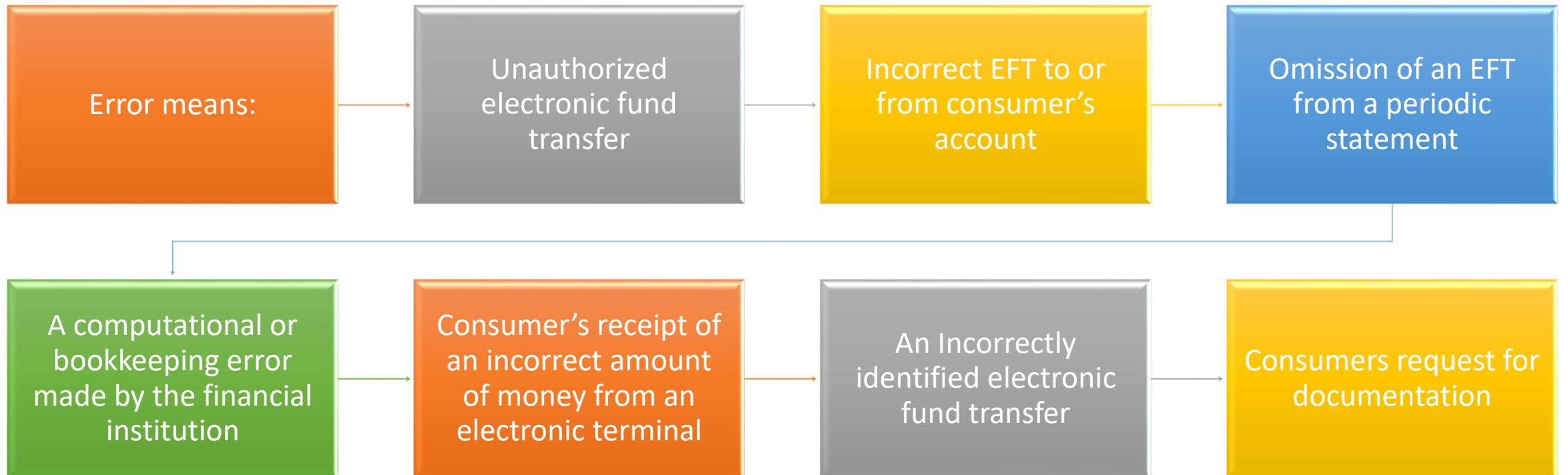
Unauthorized EFT's do NOT include:

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



What is an Error?



Happiness ≠ Regulation E

Regulation E does not provide protection related to the quality of goods or services represented by the transaction



Error vs. Consumer Dissatisfaction

- Reg E requires financial institutions to protect their consumer customers against unauthorized and incorrect electronic fund transfers (EFTs) (and other EFT errors)
 - Unauthorized – an EFT that is (1) initiated by a person other than the consumer, (2) initiated by a person who lacks authority to initiate the transfer, and (3) from which the consumer received no benefit.
 - Incorrect – EFTA/Reg E provide no definition and there is no meaningful legislative or regulatory history or guidance.
 - CFPB described P2P transfers misdirected due to directory errors as incorrect in 2021 Fall Supervisory Highlights
- Financial Institution – includes account-holding entities and entities that issue “access devices” and provide EFT services to consumers
- Consumer dissatisfaction with goods/services, consumer being fraudulently induced into sending a P2P transfer (Zelle, RTP, FedNow) – these are not errors
- Fraud does not always mean unauthorized

Is this covered by Reg E?

- I bought a puppy through PayPal. I never got the puppy
- I ordered a cell phone case through Amazon. They sent me the wrong one
- My bill was \$63.47 at the restaurant. When the charge posted to my account, it was for \$163.47
- I purchased something from website. It is clearly a fraudulent company



Is this covered by Reg E?

- I was told to go out and purchase gift cards. I gave the gift card numbers out. My computer is still not fixed
- I gave my card number to the man who called me. I can see these charges now that he did
- I gave my card to my grandson to spend \$20. He spent \$200
- I only signed up for a free trial



Is this covered by Reg E?

- Your account holder's access credentials are compromised by a bad actor
- Let's say you only push out credits...
 - Your account holder is claiming that the "debit" to their account for the credit you sent is unauthorized

Is this covered by Reg E?

- Your account holder's access credentials are compromised by a bad actor
- Let's say you offer **both** debits and credits
 - Bad actor pulls debits from someone else's account, then sends the credits to their account at another FI
- The debits are returned (the credits are gone)
- Your account holder is claiming that their access was compromised.

Complex Transactions = Complex Compliance

- Not all EFTs that have the same net financial effect are treated the same for purposes of Reg E error resolution
 - P2P – can be direct “push” transfer (Zelle, RTP, FedNow) or intermediated two step “pull + push” transfer (Venmo, CashApp)
 - Credit “push” transfers are generally not unauthorized except in account takeover
 - Debit “pull” transfers, including as first leg of intermediated P2P or wallet transactions, are much more susceptible to being unauthorized

Other considerations...

- What if I think my customer is lying?
- Can I submit chargebacks to recover funds that the FI is losing but not give the funds back to the customer?
- What if the merchant is requiring further information and the customer doesn't respond?
- Can you require your customer to contact the merchant before submitting a dispute?
- What if the customer told our Fraud Department they did the transaction, but then files a dispute?

Errors Beyond 60 Days

Scenario: Account holder didn't look at their statement for six months and now noticed an unauthorized debit for \$100 every month. How do we handle this for ACH? How do we handle this for debit cards?



Regulation E – ACH and Card

Timeliness of Error Notice Reg. E 1005.6.3

- 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 beyond 60 days
 - FI is still liable for unauthorized EFTs within the first 60 days



October 4

November 4

December 4

January 4

February 4

March 4



Total dispute amount: $\$100 \times 6 = \600



Statement cuts 30th of the month



Today is March 15

October 4

November 4

December 4

January 4

February 4

March 4

- Today is March 15
- First statement date is October 30.

- Per Reg E, you are required to handle transactions that posted within 60 days of the Statement Date.
- 60 Days from Statement Date = December 30

ACH

October 4

November 4

December 4

January 4

February 4

March 4

- Today is March 15
- First statement date is October 30.

- ACH – Return via the ACH network any unauthorized entries that are within 60 days of Settlement Date. 60 Days ago = January 15 (give or take)
- What about the rest? Send a request for proof of authorization to ODFI, or ask if they will allow for late returns. The ODFI will either provide valid proof of authorization, OR allow the late returns for the other entries.

Debit Card

October 4

November 4

December 4

January 4

February 4

March 4

- Today is March 15
- First statement date is October 30.

- Chargeback rights – 120 days
- 120 Days = November 15 (give or take)

Reg E in Recent News

- Jan 2024 - New York Department of Financial Services (NYDFS) brought action in Federal Court against Citibank alleging that the bank systemically failed to protect account holders from online scam activity
- Claiming process for investigating reported fraud is geared towards denying consumer claims
- Weak cybersecurity controls make the bank blind to fraudulent activity
- Citi basically says these are authorized transactions

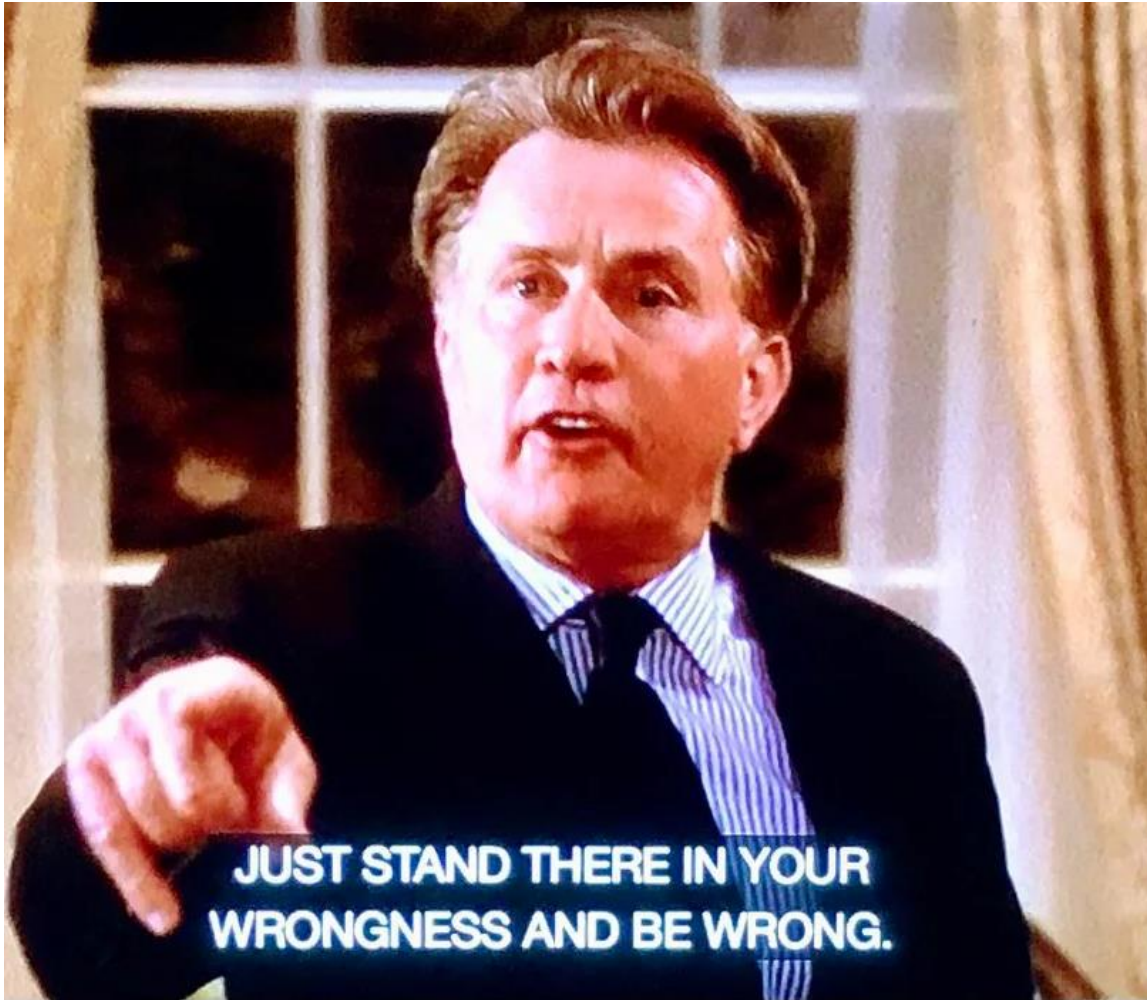
Soileau v. Midsouth Bancorp, 2020

- Plaintiffs (husband and wife) were 80 and 78. Due to poor health and reduced mental capacity, plaintiffs were forced to rely on family members and hired staff for assistance
- Over a span of 8 months, their account was depleted due to numerous unauthorized transfers and payments. Plaintiffs claimed \$467k of unauthorized transfers and asserted claims for violation of the EFTA and negligence. They immediately notified the bank
- Bank filed motion to dismiss based on argument that all transfers after a certain period were time barred due to failure to report. Court agreed
- Plaintiffs also made claims for failure to investigate timely under the EFTA and argued that the 60 day time period should be extended under the extenuating circumstances exception. Court agreed. Court also permitted negligence claims to proceed based on duty to investigate erroneous or unauthorized payments arising from deposit account agreement

Applying Reg E incorrectly

- Incorrectly turning customers away by suggesting the transactions are older than 60 days
- Not providing provisional credit within 10 business days
- Not finishing disputes and reporting to customers the results within the appropriate 45/90 day time frame
- Not appropriately tracking disputes

Here's a New One



- I was recently informed by the president of a financial institution that since the CFPB only has oversight for institutions that are over 10 billion in assets size that Regulation E didn't apply to them because they were under 10 billion.
- What do you think?
- Bonus points for anyone who can name this show

