

Regulation Review

Disclaimer

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

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

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

The Accredited ACH Professional (AAP) and the Accredited Payments Risk Professional (APRP) are service marks of Nacha.

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



Agenda

31 Code of
Federal
Regulations

12 Code of
Federal
Regulations

Regulation E

Uniform
Commercial
Codes

Federal Reserve
Bank Operating
Circulars

OFAC-Office of
Foreign Asset
Control

BSA / USA
Patriot Act

Private Sector
Rules / Other
Guidances

Code of Federal Regulations

31 CFR PART 203

Provides rules for financial institutions that use EFT to process Federal Tax Payments through EFTPS

31 CFR PART 370

Governs the handling of payments for the US Department of the Treasury's Bureau of the Public Debt made through the ACH Network

Code of Federal Regulations

31 CFR Part 210

- Provides regulatory foundation for use of the ACH network by agencies
- Defines the rights and liabilities of agencies, federal reserve banks, financial institutions, and the public, in connection with ACH credit and debit entries and entry data originated or received by an agency through the ACH system
- Provides the foundation for the Green Book

Exceptions to the ACH Rules

1. Does not have to be a member of an ACH Association
2. Governing claims for compensation
3. Governing enforcement of the ACH Rules, including audit requirements
4. Governing the reclamation of benefit payments
5. Requiring that a credit entry be originated no more than two (2) banking days before the settlement date of the entry

Exceptions to the ACH Rules

6. Requiring that originating depository financial institutions (ODFIs) establish exposure limits for Originators of Internet-initiated debit entries
7. Requiring reporting regarding high rates of entries returned as unauthorized
8. Uses the Notice Equals Authorization Approach for All Transaction Types
9. Treasury converts Consumer and Business Checks at Lockbox and Point of Sale locations

Exceptions to the ACH Rules

10. Liability of the Government

- Liability is limited to the value of the entry, it does not include ANY other fees

11. Liability of Financial Institutions

- Limited to the amount of the entry or entries

12. Reversals

- Requires agencies to certify that reversals do not violate applicable laws or regulations

Exceptions to the ACH Rules

13. Account Requirements for Federal Payments

- Check or savings accounts only (not G.L. or loan)
- Only Vendor payments may be allowed to go to a G.L.
- Must be credited to the account in the name of the recipient



12 Code of Federal Regulations (CFR)

Federal Regulations for Banks and Banking

- Part 204: Regulation D
- Part 1005: Regulation E (CFPB)
- Part 210: Regulation J
- Part 1026: Regulation Z (CFPB)
- Part 229: Regulation CC

Regulation D

12 CFR Part 204

- Federal Reserve System issued Regulation D under the authority of the provisions of the Federal Reserve Act
- Establishes level of Reserves financial institutions must maintain in form of cash in vault
 - or, if insufficient, hold at Reserve Bank or pass through correspondent account
 - Reserve amounts cannot be used for investment or other direct income producing purposes
- Percentage based on classified “Transaction Accounts”
- Amount required for reserves has a significant impact on financial institution’s cost of funds and generally affects DFI’s pricing for products and services

Regulation E

12 CFR Part 1005

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 Consumer Financial Protection Bureau (CFPB) is now the custodian of Regulation E (12 CFR 1005)

Regulation E Purpose & Authority

Electronic Funds Transfer Act

Establishes the basic rights, liabilities, & responsibilities of consumers who use EFTs & remittance transfer services & of financial institutions or other persons that offer these services

Regulation E

Subpart A – Electronic Fund Transfers (EFT)

Subpart B – Remittance Transfers

Primary objective is the protection of individual consumers engaging in EFTs & remittance transfers

ACH*

Debit card

Prepaid account*

ATM transfers

Wire

Prepaid card

IAT

Regulation E - General

Section 1005.1 – Authority & purpose

Section 1005.2 - Definitions

Section 1005.3 - Coverage

Section 1005.4 – General disclosure requirements

Section 1005.5 - Issuance of access devices

Section 1005.6 - Liability of consumer for unauthorized transfers

Section 1005.7 - Initial disclosures

Section 1005.8 - Change in terms; error resolution notice

Section 1005.9 – Receipts at electronic terminals; periodic statements

Section 1005.10 - Preauthorized transfers

Regulation E - General

Section 1005.11 - Procedures for resolving errors

Section 1005.12 – Relation to other laws

Section 1005.13 – Administrative Enforcement/Record Retention

Section 1005.14 – Electronic fund transfer service provider not holding consumer's account

Section 1005.15 – Electronic fund transfer of government benefits

Section 1005.16 – Disclosures at ATMs

Section 1005.17 – Requirements for overdraft services

Section 1005.18 – Requirements for FIs offering prepaid accounts

Section 1005.19 – Internet posting of prepaid account agreements

Section 1005.20 – Requirements for gift cards and gift certificates

Regulation E - General

Appendix A to Part 1005 --Model Disclosure Clauses & Forms

Appendix B to Part 1005-- Reserved

Appendix C to Part 1005-- Issuance of Official Interpretations

Supplement I to Part 1005-- Official Interpretations

Regulation E Subpart B

- Requirements for Remittance Transfers

Key Definitions

Access Device: A card, code, or other means of access to a consumer’s account, or any combination thereof, that may be used by the consumer to initiate electronic fund transfers



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



Business Day:

- Any day on which the offices of the consumer's financial institution are open to the public for carrying on substantially all business functions

Banking Day:

- A day the Federal Reserve Operates

Calendar Day:

- Any day of the year

Definitions

Consumer

- A natural person

Person

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

Definitions

Electronic Terminal: Electronic device other than a telephone used to initiate an electronic fund transfer

- POS, ATM, & cash dispensers

Financial Institution:

- Bank
- Savings Association
- Credit Union
- Other person that holds an account belonging to a consumer or that issues an access device and agrees to provide EFT



Coverage

Electronic Fund Transfer (EFT)

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 (Single Message and Dual Message)
- 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 the consumer can make

Exclusions from Coverage

Checks (unless converted)

Wires

- Except consumer international transfers covered in subpart B

Telephone transfers

- Between consumer & FI AND does not take place under a telephone bill-payments plan in which recurring transfers are contemplated

Securities or Commodities

Automatic transfers:

- Between consumers' accounts within a financial institution
- From a consumer's account to an account of a member of the consumer's family held in the same financial institution; or
- Between a consumer's account and an account of the financial institution

Small Institutions (under \$100 million)

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 Fund Transfers 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



Checks – Have they been Converted?

Regulation E applies to transactions where information from a check is used to initiate a one-time electronic fund transfer from a consumer's account



Notice Obligations

A person initiating a transfer with information from a consumer's check must provide notice that the transaction will be processed as an EFT and obtain the consumer's consent

A consumer consents to such a one-time EFT when:

- Consumer receives the required notice and
- Goes forward with the underlying transaction

Notice Obligations

A point-of-sale notice must be posted in a prominent and conspicuous location, and a copy must be provided to the consumer at the time of the transaction

Example:

“When you provide a check as payment, you authorize us either to use the information from your check to make a one-time electronic fund transfer from your account or to process the account as a check transaction.”



Collection of Service Fees

Allows collection of service fees for items returned unpaid

Model notice language

ACH Rules require that the authorization contains language for submission of NSF fees



General Disclosures

Clear and understandable

In writing

In a form the consumer can keep

May be provided electronically (subject to E-Sign Act) (unless paper also provided)

May be combined with other required disclosures

May provide once to consumer with multiple accounts

May provide one set to any of multiple account holders

Electronic Disclosures

Electronic disclosures should match paper versions

Standard for electronic disclosures is whether it's clear & readily understandable on a typical home computer screen

Meets requirement if it's in a standard form that can be downloaded and printed



Consumer Liability for Unauthorized Transfers

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

- \$500 or
- The sum of \$50 of the unauthorized transactions 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 transfers 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



Reporting

To avoid liability for subsequent transactions

Consumer must report unauthorized electronic fund transfers which appear on a periodic statement

- Within 60 days of the statement's transmittal

If a lost or stolen access device was involved, lower limits and time frames may apply



Notice and Extensions

Notice may be in person, by phone, or in writing

Written notice is given when the consumer mails the notice or delivers it for transmission

If the consumer's delay in providing notice was due to extenuating circumstances (e.g. vacations and hospitals)

- Institution shall extend notice periods by a reasonable amount

Initial Disclosures

A FINANCIAL INSTITUTION SHALL DISCLOSE THE FOLLOWING TO A CONSUMER AT THE TIME THEY CONTRACT FOR AN EFT SERVICE OR BEFORE THE FIRST EFT IS MADE:

Consumer's liability

Telephone number and address for notices

Business days

Types of electronic fund transfers that can be made

Transactional limitations

Fees

Right to receipts and periodic statements

Stop payments

Financial institution liability for a failure to make or stop certain transfers

Confidentiality

Error resolution rights and procedures

Notice that ATM fees may be imposed by ATM operators

Change-in-Terms Notice

Must mail or deliver written notice to consumers at least 21 days before the effective date of any change in a term or condition if it would result in:

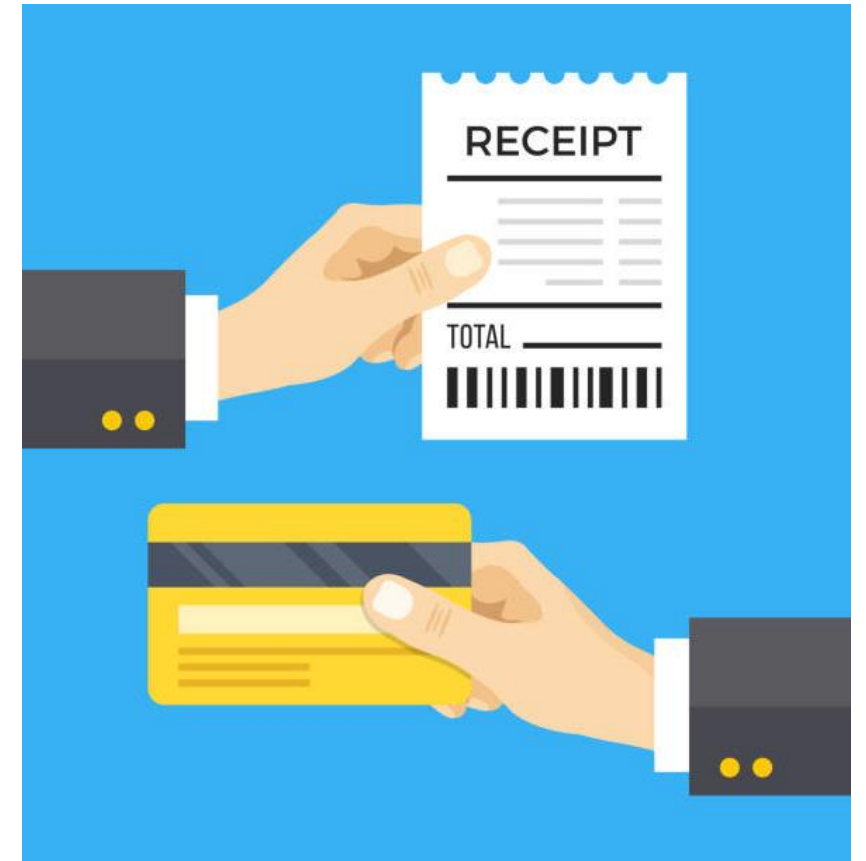
- Increased fees
- Increased consumer liability
- Fewer types of available electronic funds transfers
- Stricter limitations on the frequency or dollar amount of transfers



Terminal Receipts

For any electronic fund transfer greater than \$15 conducted at an electronic terminal, the consumer shall be given a receipt containing

- Amount of the transaction and any fee(s)
- Date
- Type of transfer
- Number that identifies the account or access device used
 - Need not exceed four digits or letters
- Terminal location
- Name of any third party to or from whom funds are transferred



Terminal Receipts

Can program ATMs to print receipts only upon request

- Requirement is that they be made available

Receipts can include promotional material

- Cannot be required to surrender the receipt in order to take advantage of promotion

Periodic Statements

Must provide a periodic statement for each monthly cycle in which an electronic fund transfer has occurred

or

Shall send a periodic statement at least quarterly if no transfer has occurred

**Only applies to accounts to or from which electronic fund transfers can be made



“No wonder it doesn’t balance. You didn’t put in as much as I took out.”

Periodic Statements

Must disclose:

- Transaction information (amount, date, type, and, as applicable, terminal location and identity of third parties)
- Account number
- Fees
- Balances (at beginning and end of statement period)
- Address and telephone number for inquiries (and preauthorized transfers)



Periodic Statements - Exceptions

Passbook accounts

Transfers by the consumer between two accounts of the consumer in the same institution

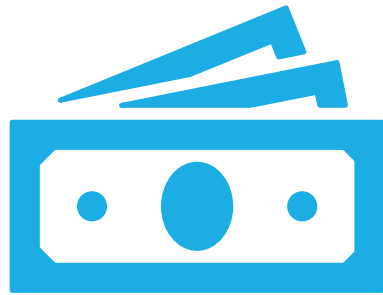
- Documenting the transfer on one of the accounts satisfies periodic statement requirement

Accounts opened with an EFT, but to and from which subsequent EFTs cannot be made (e.g. CD)

Need not send periodic statements to consumers whose accounts are inactive



Preauthorized Transfers



Financial Institution must provide notice when a preauthorized EFT is initiated to a consumer's account at least once every 60 days.

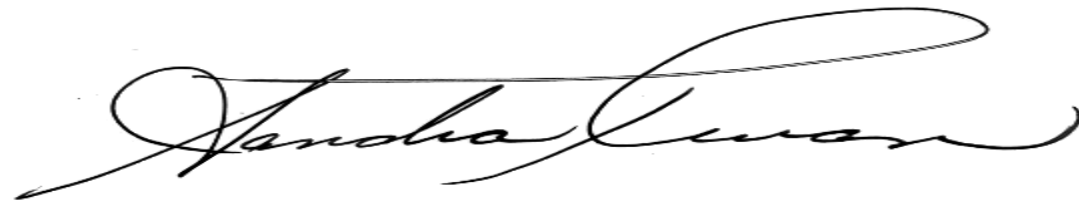


Not required to provide notice of a transfer if the payor gives the consumer positive notice that the transfer has been initiated

Preauthorized Transfers

Preauthorized EFTs from a consumer's account may only be authorized in writing, signed or similarly authenticated by the consumer

Person obtaining authorization shall provide a copy to the consumer

A handwritten signature in black ink, appearing to read "Sandra Lujan". The signature is written in a cursive style with a large, sweeping initial "S" and a long horizontal line extending across the middle of the name.

Stop Payment

Consumer may stop payment of a preauthorized EFT

- By notifying the financial institution
- Orally or in writing
- At least three business days before the scheduled date of the transfer

Financial institution may

- Require written confirmation of stop payment orders
- Within 14 days of oral notification
 - Oral notices cease to be binding after 14 days (if properly disclosed to consumer)



Reg E-Stop Payment Revocation of Authorization

If a consumer revokes authority for all further payments from a particular payee, the institution must make arrangements such that no further debits originated by that payee are made to the consumer's account

- However, institutions may require the consumer to provide a copy of a written notice sent to the payee, revoking authority for the payee to originate debits to the consumer's account
- If the consumer does not provide the copy within 14 days, the institution is not required to continue stopping payments to the payee

Varying Amounts



When a preauthorized EFT will vary in amount

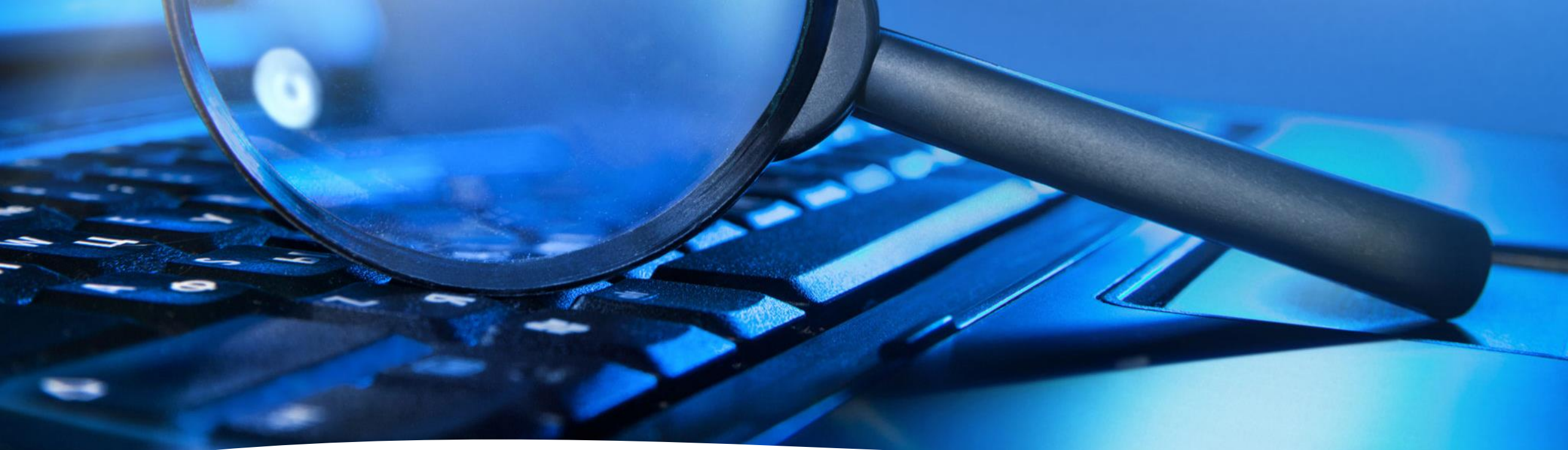
Must send written notice to the consumer of the amount and date of transfer

At least 10 days before the scheduled date of transfer



A consumer may elect to receive notice for all varying transfers, or only those outside a specified range of amounts





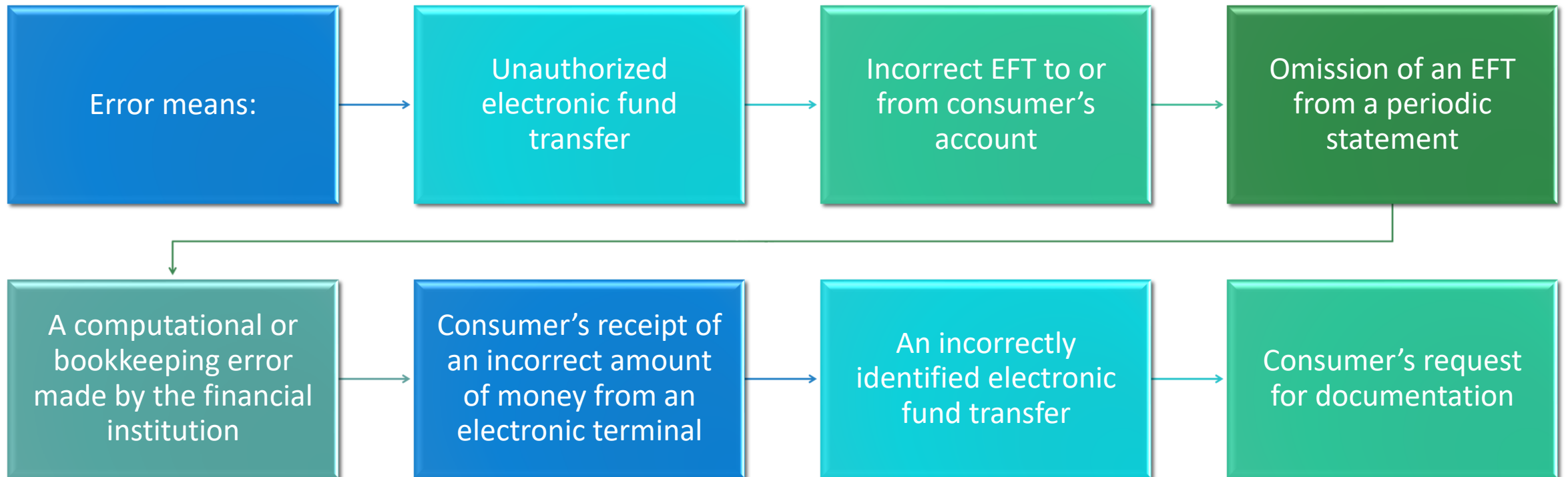
Error Resolution

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

Error Resolution



Errors do not include:



Routine inquiry about
account balance



A request for tax or other
bookkeeping purposes



A request for duplicate
copies of documentation

Notice of Error from Consumer

Must be received no later than 60 days after the institution sends the periodic statement on which the alleged error is first reflected

Must identify the consumer's name and account number

Must indicate why the consumer believes an error exists

- Type, date, and amount of the error



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

10
DAYS

Investigating Alleged Errors

Ten Days:

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

- Investigation

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



10-3-1

Investigating Alleged Errors

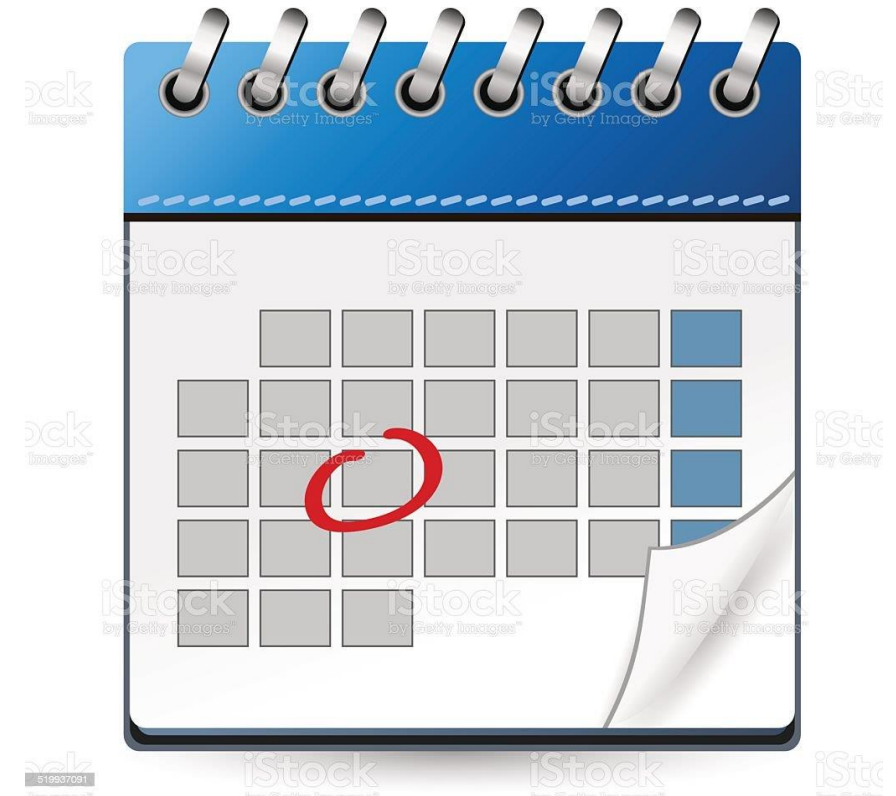
Forty-five days:

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 credit the consumer's account within 10 business days of receiving notice

- Must include interest and fees where applicable



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

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.

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

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





No Error

Provide written report of investigation to consumer

Explanation of findings

Consumer has the right to request documents the institution relied on

Written notice of debiting provisional credit

Reversing Provisional Credit

Debiting Provisional Credit

Must provide notice to consumer:

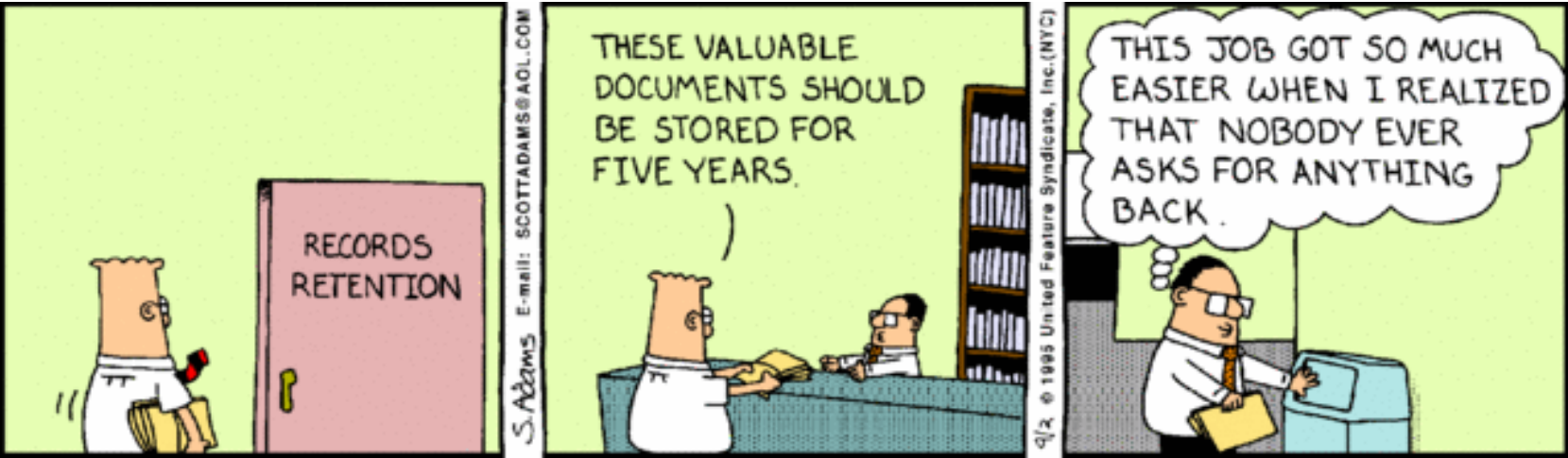
- Date and amount of debit
- Honor checks, drafts, or similar presentments for five business days after notification
 - Without charge for resulting overdrafts
 - Only honor items that you would have paid if the provisional credit had not been reversed

Reassertion

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

Retention

Must retain evidence of compliance for a period of not less than 2 years from the date the specific action is required



EFT Service Provider Not Holding Consumer's Account

Is subject to all requirements if

- Issues an access device to access the consumer account at the FI
- No agreement with the FI
 - De-coupled Debit cards





ATM Disclosures

An ATM operator that imposes a fee on a consumer for initiating an electronic fund transfer or balance inquiry shall:

- Provide notice that a fee will be imposed
- Disclose the amount of the fee

Notice must:

- Be posted in a prominent and conspicuous location on or at the ATM that a fee may (or will be) imposed for providing electronic fund transfer services or for a balance inquiry
- Provide the notice by showing it on the screen of the ATM or by providing it on paper before the consumer is committed to paying a fee

Dodd Frank 1073 International Remittance Rule

Regulation E Remittance Transfer Rules

Subpart B to Regulation E

- Effective October 28, 2013

Section 919 of the EFTA:

- Requires disclosure of certain information prior to and at the time of the transfer
- Creates new consumer protections, including the right cancel a transfer and the right to a refund in certain circumstances
- Establishes a new error resolution scheme to which remittance transfer providers must adhere
- Establishes standards of liability for remittance transfer providers and their agents

Consumer protection

- Comparison shopping
- Transparency and certainty of costs



Coverage

Remittance Transfer

- Electronic transfer of funds sent by consumers in the U.S. to recipients in other countries
 - International Wire
 - Includes consumer wires! (BCFP believes Article 4A of the UCC no longer applies to consumer wires)
 - International ACH
 - Online bill pay
 - Loads onto certain prepaid cards
 - Sweep accounts

Coverage

What are not Remittance Transfers

- Less than \$15.00
- Transfers that are not sent for personal, family, or household purposes
- initiated by sole proprietorships or unincorporated businesses;
- Doesn't apply to transactions where primary purpose is the purchase or sale of security or commodity

Coverage

Who is a “Sender”?

- A consumer (natural person) “in a State”
 - For transfers funded from an account, location of the account determines whether consumer is in a state
 - For transfers not funded from an account which are not made in person, provider may determine sender’s location based on provider’s records associated with the sender or information provided by the sender
- Residency of the sender is not a factor

Coverage

Who is a “Recipient”?

- Any person (natural person, business, etc) located in a foreign country
 - For transfers sent to an account, location of the account determines whether recipient is in a foreign country
 - For transfers not sent to an account, location of recipient is determined by
 - information provided by the sender, or
 - Information the provider has about the recipient (ex. Prepaid card mailed to foreign address)

Recipient and sender can be the same person

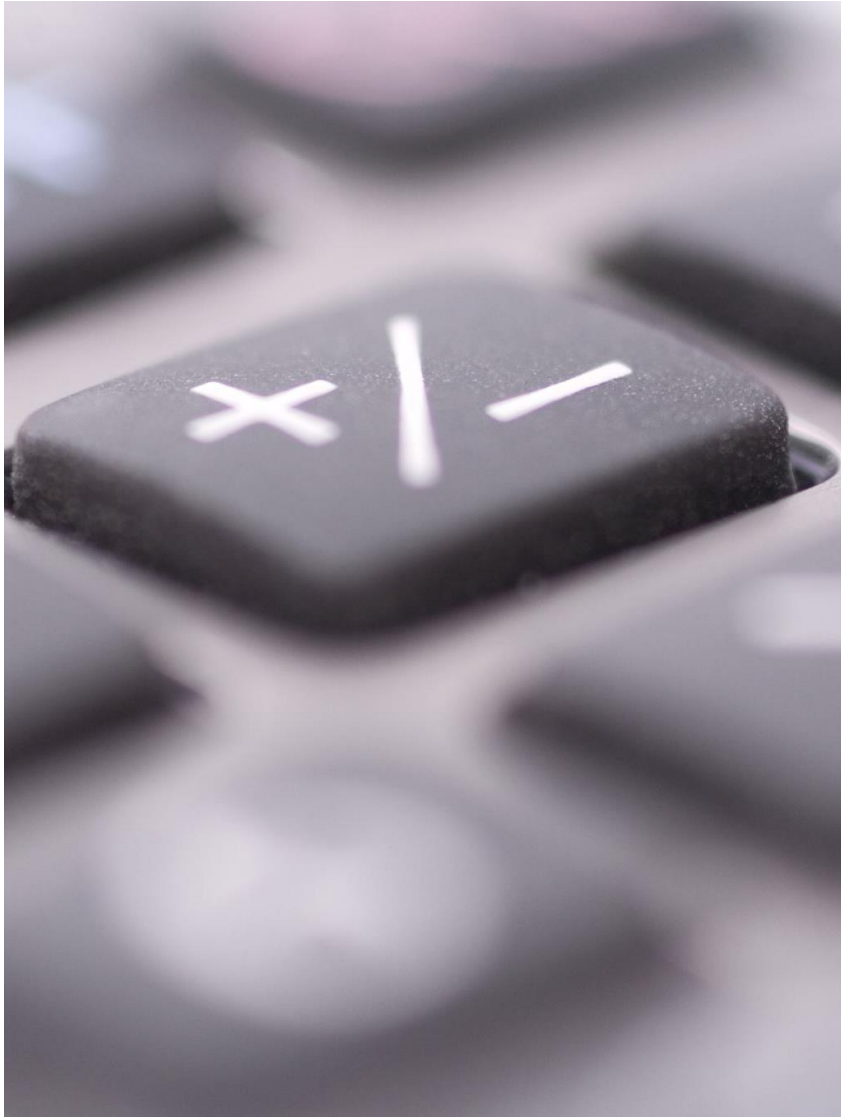
Coverage

Applies to “Remittance Transfer Providers”

- Any person (natural person, business etc.) that provides remittance transfers for a consumer in the normal course of its business, regardless of whether the consumer holds an account with such person
- Includes: Banks/Credit Unions; Brokers-dealers; Thrifts; Money Transmitters

“Normal Course of Business”

- Means a person is deemed not to be providing remittance transfers for a consumer if the person:
 - Provided 500 or fewer remittance transfers in the previous calendar year; and
 - Provided 500 or fewer remittances in the current year



Key Requirements

Two disclosures

- 1) Prepayment Disclosure: Provided when sender requests the transfer but prior to payment
- 2) Receipt Disclosure: Provided when payment is made

These can be combined into one disclosure that is given prior to payment

Generally must be in written, retainable form

- Exceptions for transfers conducted entirely by telephone or mobile device
- There are sizing and format requirements

Disclosure Requirements

<u>Prepayment Disclosure</u>	<u>Receipt Disclosure</u>	<u>Combined Disclosure</u>
<ol style="list-style-type: none">1. Amount transferred in the currency funded - "transfer amount"2. Any fees and taxes -"transfer fees and transfer taxes"3. Total amount of transaction - "Total"4. Exchange Rate -"Exchange Rate"5. Transfer amount in the currency to be received in -"transfer amount"6. Foreign fees and taxes -"Other fees or other taxes"7. Net amount received by recipient -"Total to Recipient"	<ol style="list-style-type: none">1. Date funds available in foreign country2. Recipient information3. Error resolution rights4. Provider information5. CFPB's complaint telephone toll-free number6. Remittance transfer schedule at least 3 days in advance of transfer date, the date the provider will transfer "Transfer Date"	<ol style="list-style-type: none">1. The information required by both disclosures may be combined into a single disclosure if presented to sender <i>before</i> the payment is made

Key Requirements

Foreign language requirement

- Generally, disclosures must be given in English and each of the foreign languages principally used by the provider to advertise remittance transfers, or the foreign language primarily used by the sender with the provider to conduct the transfer

Disclosures must be accurate at the time payment is made

- Provider not required to guarantee that terms of prepayment disclosure for any specific amount of time. But if terms change by the time payment is made, a new disclosure must be given

Cancellation Rights

CANCELLED!!

- Sender may cancel the remittance transfer within 30 minutes of making payment
- Remittance transfer provider must refund the total amount of funds provided by the sender (including fees and taxes) within 3 days of the cancellation request

Error Resolution

Sender may assert an error within 180 days of promised funds availability date

- Specific notice requirements

Provider has 90 days to investigate and resolve

Three kinds of errors

- Amount
- Delay
- Documentation
 - Request for documentation or additional information or clarification concerning a transfer unless
 - Documentation request is for tax or record keeping purposes, or
 - Inquiry about status before the disclosed date of funds availability

Error Resolution

Amount Errors

- An incorrect amount paid by the sender
- Computational or bookkeeping error made by Provider relating to the transfer
- Recipient receives less than disclosed amount to be received unless
 - Amount was an estimate and variance results from application of actual exchange rate, fees, and taxes rather than any estimated amounts, or
 - Force majeure events (e.g. sudden imposition of foreign currency controls or taxes that are unknown at time of disclosure)

Error Resolution

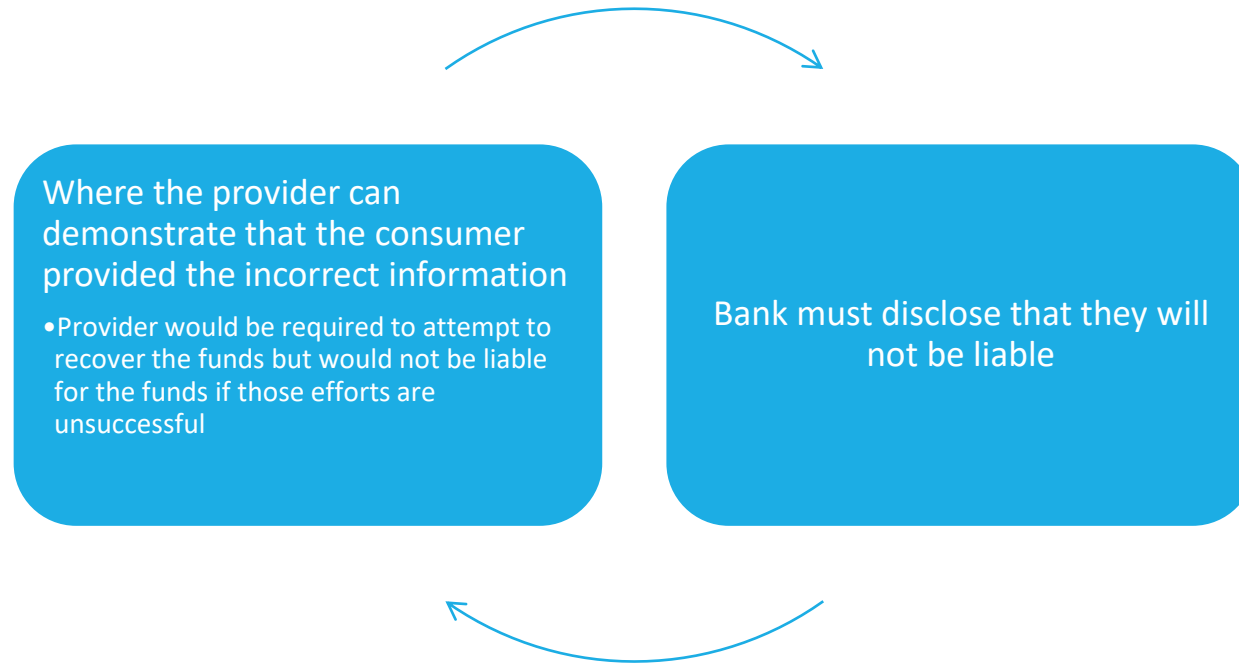
Delay errors

- Failure to make funds available to the recipient on the disclosed availability date
- Fraudulent pick up
- Delivery to wrong account (even when sender provides incorrect information)

Delays are excused if

- Force majeure events (war, natural disasters, etc)
- Delays resulting from Provider's fraud screening, BSA/ OFAC procedures, or similar legal requirements
 - Delays for fraud, AML/ BSA type screenings by other correspondents are not excused
- Transfer made with fraudulent intent by sender or any person acting in concert with the sender

Error Resolution



Regulation E Exercise – True or False

_____ Reg E classifies both failure to include a transfer on the periodic statement and a consumer request for additional information as "errors".

_____ A DFI must respond to a notice of an error by either resolving it within 10 business days or recrediting the customer account during a 45-day investigation.

_____ Reg E allows exactly twice as long to resolve POS errors or EFTs that are not initiated within a state as pre-authorized EFT errors.

_____ A DFI must provisionally re-credit a customer account even if it required written confirmation following oral notice of an error and the customer did not provide it.

Regulation E Exercise – True or False

_____ DFIs have two business days to correct confirmed errors.

_____ If loss/theft of access device is not reported within two business days, the consumer's liability may exceed \$50 if financial institution establishes that unauthorized transactions would not have occurred if loss/theft had been appropriately reported.

_____ DFI has three business days after completing its investigation to report the results to the consumer.

_____ Reg E covers all ACH commercial transactions.

Regulation J

12 CFR Part 210

Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through the Fedwire Funds Service and the FedNow Service

- Subpart A-Collection of Checks and Other Items by Federal Reserve Banks
- Subpart B-Funds Transfers Through the Fedwire Funds Service
- Subpart C-Funds Transfers Through the FedNow Service

Regulation Z

12 CFR 1026 (CFPB)

Truth in Lending Act

Regulation Z prohibits certain practices relating to payments made to compensate mortgage brokers and other loan originators.

The goal of the amendments is to protect consumers in the mortgage market from unfair practices involving compensation paid to loan originators

Governs credit card lending practices

Regulation CC



12 CFR PART 229



IMPLEMENTS EXPEDITED
FUNDS AVAILABILITY ACT
OF 1987



REG CC APPLIES PRIMARILY TO
CHECK TRANSACTIONS, BUT IT
CONTAINS A PROVISION FOR
THE AVAILABILITY OF FUNDS
DEPOSITED BY WIRE TRANSFER
OR ACH CREDIT

Regulation CC - Funds Availability

Reg CC says funds are to be made available to the account holder no later than the start of the business day after the banking day on which the funds are received



Nacha Rules on Funds Availability

Consumer credits available to the RDFI by 5pm the day before Settlement Date must be available for cash withdrawal no later than 9 AM RDFI local time on the Settlement Date.

Voluntary Availability Exception Option for RDFIs

RDFI's will be allowed additional time to investigate a suspicious credit prior to making funds available to the Receiver (potential money mule) when it reasonably suspects the credit is unauthorized



Voluntary Availability Exception Option for RDFIs

RDFI must promptly notify the ODFI if they invoke the exemption

This change is expected to reduce losses by allowing the ODFI more time to recover funds associated with unauthorized credit entries before the Receiver (a potential money mule) could withdraw the funds

Must still comply with Regulation CC availability requirements

Uniform Commercial Code

Detailed Code Addressing Most Aspects of Commercial Law

- Set of standardized state laws that govern financial contracts
- Establishes general duty standards for parties to act in Good Faith and exercise Ordinary Care.

Uniform Commercial Code Articles 3 & 4

Articles 3 & 4 document legal boundaries for most aspects of check processing and collection

- **Article 3 – Negotiable Instruments**
 - Definition and requirements of a negotiable instrument
 - Negotiation, transfer and endorsement of these instruments, and
 - Liability of the parties
- **Article 4 – Bank Deposits and Collections**
 - Covers the liability of a bank for action or non-action with respect to an item handled by it for purposes of presentment, payment, or collection.

Uniform Commercial Code Article 4A

Covers wholesale wire transfers and ACH credit transfers not subject to the Electronic Funds Transfer Act and Regulation E

Choice of Law: Nacha Operating Rules specify that lacking agreements to the contrary, ACH transactions are governed by UCC 4A adopted by the State of New York

Commercially Reasonable

What is NOT Covered

Check or other debit transfers, including ACH debit transactions



UCC4A Notice

DISCLOSURES REGARDING ELECTRONIC “WHOLESALE CREDIT” TRANSACTIONS

Subject to Uniform Commercial Code Article 4A

Provisional Payment:

Credit given by us to you with respect to an automated clearing house credit entry is provisional until we receive final settlement for such entry through a Federal Reserve Bank. If we do not receive such final settlement, you are hereby notified and agree that we are entitled to a refund of the amount credited to you in connection with such entry, and the party making payment to you via such entry (i.e. the originator of the entry) shall not be deemed to have paid you in the amount of such entry.

Notice of Receipt of Entry:

Under the operating rules of the National Automated Clearing House Association, which are applicable to ACH transactions involving your account, we are not required to give next day notice to you of receipt of an ACH item and we will not do so. However, we will continue to notify you of the receipt of payments in the periodic statements we provide to you.

Choice of Law:

We may accept on your behalf payments to your account which have been transmitted through one or more Automated Clearing Houses (ACH) and which are not subject to the Electronic Fund Transfer Act and your rights and obligations with respect to such payments shall be construed in accordance with and governed by the laws of the state of New York, as provided in the operating rules of the National Automated Clearing House Association, unless it has been otherwise specified in a separate agreement that the law of some other state shall govern.

Uniform Commercial Code 4A

Some provisions of Article 4A cannot be altered by agreement;

- Financial institutions and corporations should not rely on favorably-negotiated contract terms if they are contrary to the provisions of UCC 4A

Provisions of Article 4A that may be altered may be overruled by provisions of the Nacha Operating Rules (Nacha Operating Rules do not address issues/disputes between Financial Institutions and their customers)

Article 4A provisions prevail for issues/disputes related to “on-us” entries (i.e., entries transmitted to an ODFI for payment to Receivers’ accounts maintained at the ODFI)

Provisions that cannot be Altered

- ✓ ODFI is obligated to transmit all entries it accepts from the Originator
- ✓ ODFI is liable to Originator for interest payments to Originator or Receiver if entries are delayed and not transmitted for payment on an appropriate settlement date
- ✓ Originator is obligated to pay the ODFI for entries properly executed
- ✓ ODFI must make funds for “on-us” entries available to Receiver on the agreed-upon settlement date (in an on-us transaction the ODFI of the Originator is also the RDFI of the Receiver)

Provisions that cannot be Altered

- ✓ If ODFI transmits duplicate entries or amounts greater than amount intended by the Originator, Originator is obligated only for intended amount
 - ✓ If the Originator's account was charged for the duplicate or erroneous amount, it is also entitled to interest payment on the excess amount
- ✓ If the ODFI transmits an amount less than the Originator's intended amount, and the error is not corrected, the Originator is only obligated for the amount sent
 - ✓ If the Originator's account was charged the full amount, the ODFI would also be responsible for interest payments to the Originator on the amount not appropriately transmitted
- ✓ If the ODFI transmits payment to a Receiver other than the Originator's intended Receiver, the Originator is not obligated to the ODFI for the entry
 - ✓ ODFI may recover the amount from the unintended Receiver under the law of mistake and restitution

Provisions that cannot be Altered

- ✓ Originator is NOT liable to the ODFI for an unauthorized entry sent in its name
 - ✓ Unless the ODFI can prove that the “unauthorized” entry was submitted to the ODFI by a person who has “actual or apparent” authority to act for the Originator
- ✓ If the ODFI and Originator have an agreement that specifies “commercially reasonable” security procedures for determining entry authorization and the ODFI acted in “good faith” in complying with the procedure
 - ✓ Originator is responsible for the unauthorized entry
- ✓ If the Originator can prove that the entry was authorized by someone who was not entitled to act on the Originator’s behalf or access to the Originator’s facilities and security procedures was gained by an “interloper” not controlled by the Originator
 - ✓ ODFI is liable for the unauthorized entry

Provisions that cannot be Altered

RDFI is obligated to pay the Receiver for all entries it accepts on behalf of the Receiver

- Payment may be provisional until RDFI receives final settlement for the item if the ODFI, RDFI and the Receiver have appropriately agreed to abide by the Nacha Operating Rules, which provide that ACH credit entries covered by Article 4A are provisional in the case of such agreement
- Nacha Operating Rules require that the ODFI and the RDFI provide notice to the Originator and Receiver of the provisional payment rule for entries subject to Article 4A

Provisions that may be Altered by Agreement

ODFI's liability begins with acceptance of entries

ODFI accepts the entry when it transmits the entry to an ACH Operator

ODFI may refuse any entry from an Originator unless it has an express agreement to the contrary

On-us entries are accepted when the funds are credited or available to the Receiver

- Or the next funds transfer day after the funds are available in the Originator's account

ODFI must take action (either accept and execute or reject) on entries it receives if the Originator has a sufficiently funded non-interest bearing deposit account with the ODFI

Provisions that may be Altered by Agreement

Notice of rejected entries must be given to the Originator by a reasonable means

RDFI is not an agent of the Originator nor is it a beneficiary of the transaction

Lacking a previous agreement with a Receiver, UCC 4A does not mandate an RDFI to accept an entry

Provisions that may be Altered by Agreement

Article 4A allows for cancellation, withdrawal, or amendment of ACH entries after acceptance by the ODFI

- Nacha rules supersede this portion of Article 4A
- Entries cannot be withdrawn, canceled or otherwise amended after presentation to the ACH Operator
 - Except for duplicate or erroneous files

Originator is obligated to inform ODFI of any errors in entries transmitted within 90 days of receiving sufficient notification from the ODFI to detect the error

Originator is responsible to the ODFI if it initiates an erroneous entry and it is accepted by the ODFI according to agreed upon security procedures

Provisions that may be Altered by Agreement

RDFI accepts an entry when funds are available or credited to the account of the Receiver

- Or when final settlement through the Federal Reserve is received

RDFI is obligated to provide the Receiver notice of receipt of an entry before midnight on the next business day

- Nacha Operating Rules supersede
- Next day notification is not required for ACH credit entries
- RDFI must provide the Receiver notice in an account disclosure or other agreement that it will not give notice of UCC 4A-covered ACH credit entries

Provisions that may be Altered by Agreement

Originator's obligation to the Receiver is considered fulfilled at the time the RDFI appropriately accepts an entry on behalf of the Receiver

- Subject to the provisional credit rule

Private sector ACH Operators are the agents of the Originator and ODFI

- Nacha Operating Rules supersede this provision
- Responsibilities of private sector ACH Operators closely parallel the responsibilities of Federal Reserve Bank ACH Operators

Provisions that may be Altered by Agreement

If account number and name of Receiver are inconsistent, the RDFI may credit the ACH entry based on account number alone provided it does not have actual knowledge that the name and number identify two different people

- RDFI has no obligation to check name and account number to make ensure match

Originator may not be liable to the ODFI for funds transmitted to a wrong account number

- ODFI must give notice to the Originator that RDFI may make deposit to Receiver's account based on account number alone

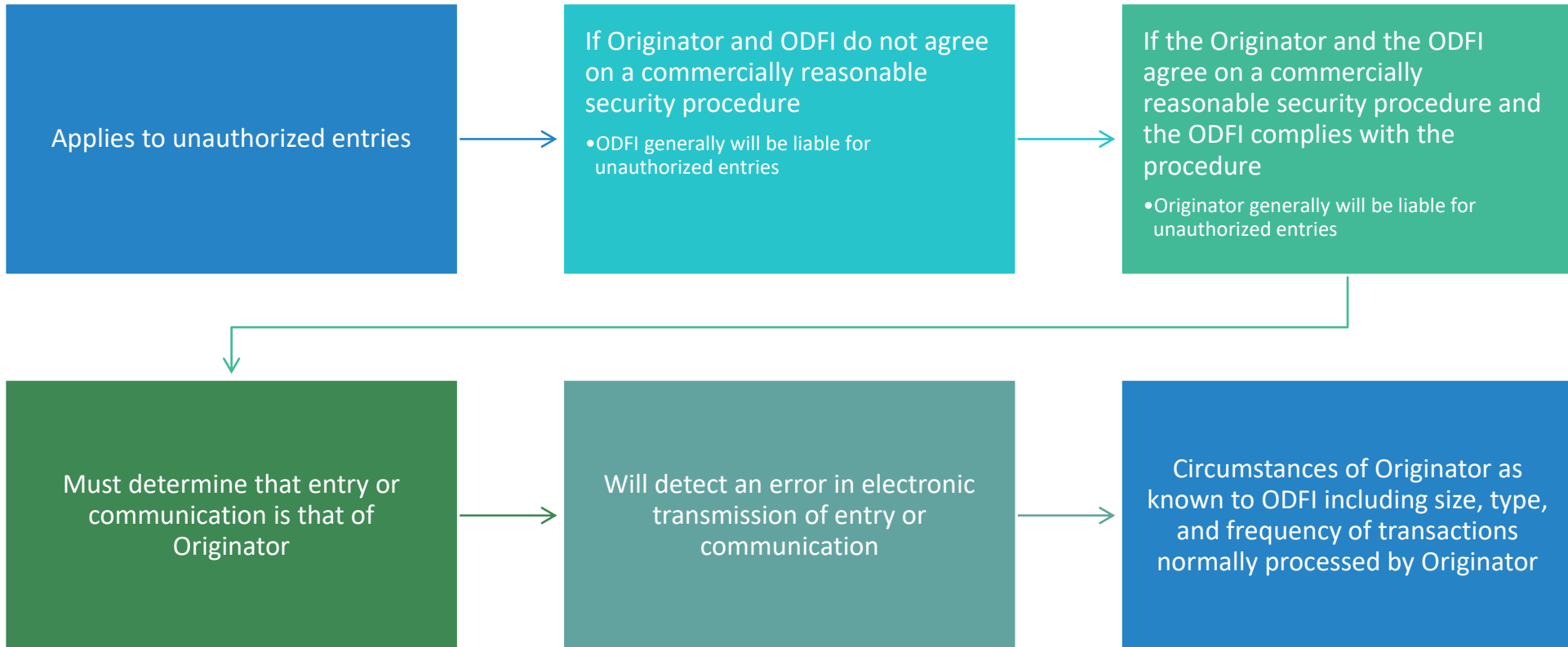
Provisions that may be Altered by Agreement

Originators can only receive reimbursement for ODFI errors (including those based on breaches of security) for one year following the Originator's receipt of sufficient notice to determine the error

Article 4A provides for a “choice of law” to determine which state's substantive law will be applied to the various parties of the electronic credit

- Nacha Operating Rules provides for the selection of New York state law unless precluded by agreement

Commercially Reasonable Security



Commercially Reasonable Security

Alternative security measures offered to Originator

Security measure generally in use by similarly-situated Originators and their ODFIs.

Security measure is considered to be commercially reasonable if it has been chosen by Originator after ODFI has offered and Originator has refused another commercial-reasonable security procedure

- And Originator agrees in writing to be responsible for any and all entries issued in compliance with the chosen security procedure

In no case is signature comparison alone considered by UCC 4A to be commercially reasonable

Federal Reserve Bank Operating Circulars

- OC1: Contains terms for opening, maintaining, and terminating a master account with a Federal Reserve Bank
- OC3: Covers exchange of items (paper, image and substitute checks) with the Federal Reserve
- OC4: Covers ACH transactions sent through the Fed as Operator
- OC5: Covers managing electronic connection with Federal Reserve Bank
- OC6: Covers FedWire services
- OC7: Covers Book Entry Securities Account Maintenance and Transfer Services
- OC8: Covers funds transfers made through the FedNow Service

Federal Reserve Bank Operating Circular 4

Implements provisions of the Federal Reserve Act and related statutes

Governs clearing and settlement of ACH Credit and Debit items



Operating Circular 4

The Operating Circular is the Federal Reserve Bank's terms and conditions of its functions as an ACH Operator

- Private sector ACH Operators have similar documents outlining their terms and conditions for ACH operations
- Outline procedures for processing and delivery
- Settlement times
- Procedures for disputed returns
- Limits FRB liability for non-value items (NOC, prenotes, etc.)
- Establishes process to monitor ongoing payments system risk

Other Check Law

ECCHO[®]



ECCHO Rules

- Governs image rules for Check exchanges between ECCHO members

Contract Law between collecting financial institutions

RTP Rules

- RTP® from The Clearing House is a real-time payments platform
- Gross settlement, credit push only system
- Transaction limit of \$1,000,000
- The RTP Rules govern participants of the RTP network



FedNow[®]

24x7x365, credit push system

Final and irrevocable settlement

Governed by Operating Rules and Operating Circular 8 (OC8)

Implemented by Federal Reserve

Interbank, real-time gross settlement (RTGS) Service



OFAC

Office of Foreign Assets Control (OFAC)

Administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals against

- targeted foreign countries
- terrorists
- international narcotics traffickers
- those engaged in activities related to the proliferation of weapons of mass destruction

OFAC Jurisdiction

U.S. citizens and permanent resident aliens

Companies located in the U.S.

Overseas branches of U.S. companies

For the U.S. ACH Network, this means all participants in any of these categories are subject to Federal Sanctions policies

OFAC Penalties

Both Criminal and Civil

Vary by sanctions' program

Can include:

- Imprisonment (employee)
 - 10-30 years depending on the program
- Fines per count (corporate and individuals)
 - \$10,000 - \$10,000,000 per count
- Forfeiture of property

OFAC

Specially Designated Nationals (SDNs) and Blocked Persons List

- Targeted foreign countries
- Terrorists
- International narcotics traffickers
- Persons engaged in activities involving weapons of mass destruction



OFAC and the ACH Network

ODFI Obligations

- OFAC Language in Agreements
- Originator Verified Against SDN List
 - Prior to Originating ACH Transactions
 - Upon Release of Transactions Into Network
- Software
 - Screen Potential Customers and Originators





OFAC and the ACH Network

RDFI Obligations

- Screen Receivers for Blocked Parties
 - Integrated With Overall Screening
 - Executed during posting process
 - Software Available
- Credits of Blocked Party s/b posted to FI holding account
- Debits of Blocked Party
 - Contact OFAC

OFAC and Domestic ACH

Nacha Rules require only lawful transactions be initiated

- Originator/ODFI Liable

Account holding FI has primary responsibility for blocking/reporting an illicit transaction monitoring against SDN List at account level

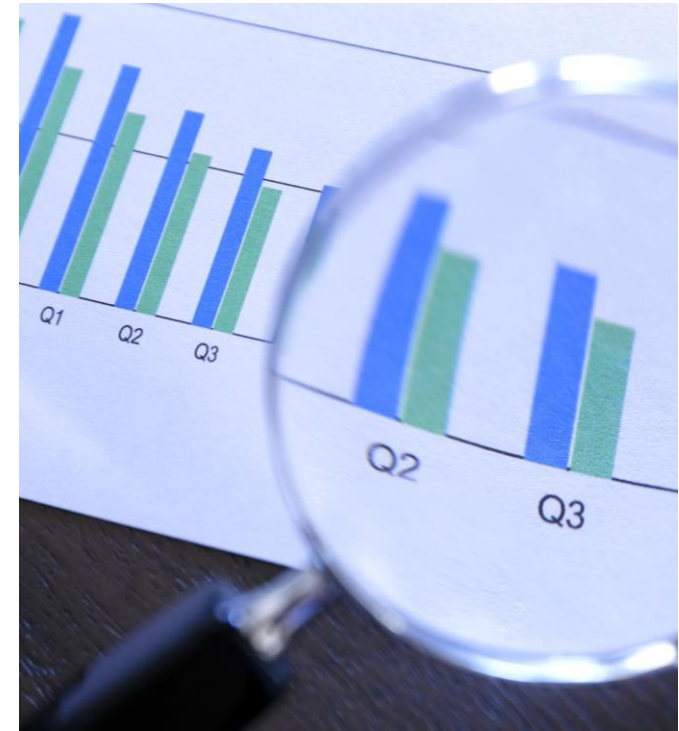
Recognition of low exposure on domestic transactions

Recognition of batch nature of ACH processing and lack of efficient interdiction software

OFAC Compliance

All ODFIs & RDFIs are responsible for OFAC compliance

If a financial institution contracts with a third-party service provider to do the actual OFAC review of the transactions, OFAC is clear that a financial institution cannot contract away its liability for OFAC compliance



OFAC Compliance for IAT



Have a written ACH
OFAC compliance
policy



Inbound transactions
– review of all parties
to the transaction,
remittance data and
correspondent banks



Outbound
transactions – review
of all parties to the
transactions and
remittance data



Train appropriate staff



FinCEN

Financial Crimes Enforcement Network

Oversee and implement policies to prevent and detect money laundering

- Administer Bank Secrecy Act

Provide intelligence and analytical support to law enforcement

A graphic with a teal background and a vertical yellow stripe. The words 'Bank Secrecy Act' are written in large, bold, black letters, with the 'B', 'S', and 'A' characters partially overlapping the yellow stripe.

Bank Secrecy Act

Bank Secrecy Act of 1970

Requires U.S. financial institutions to assist U.S. government agencies to detect and prevent money laundering

Financial institutions must:

- Keep records of cash purchases of negotiable instruments
- File reports of cash transactions exceeding \$10,000 (daily aggregate)
- Report suspicious activity

BSA “Travel Rule”

Incorporated into IAT Entries

- Requires following information to “travel” with the payment throughout the process
 - Name and address of Originator
 - RTN/Account Number of Originator
 - Name and address of Receiver
 - RTN/Account Number of Receiver
 - Amount and transaction date
 - Reason for payment



USA PATRIOT Act

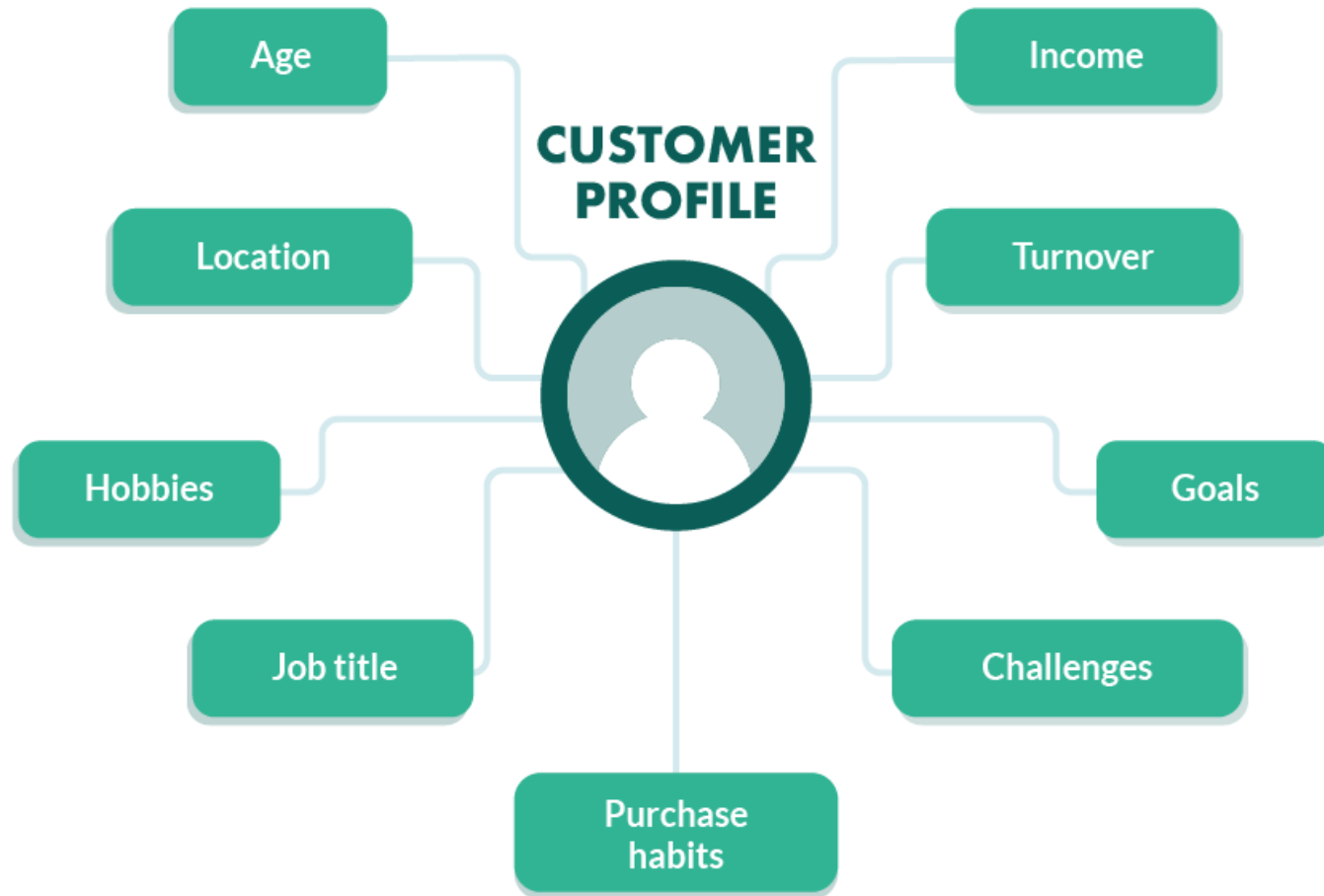
Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001

Combats international terrorism and money laundering

Requires financial institutions to have a Customer Identification Program (CIP)



Customer Information Profile (CIP)



Financial institutions must complete the following prior to opening a new account:

- Verify the identity of any person seeking to open an account
- Maintain records of the information used to verify the identity
- Consult government known suspected terrorist lists to determine whether person appears on list

FFIEC

(Federal Financial Institution Examination Council)

The Council is a formal interagency body empowered to prescribe uniform principles, standards, and report forms for the federal examination of financial institutions and to make recommendations to promote uniformity in the supervision of financial institutions.

Board of Governors of the Federal Reserve System ([FRB](#))

Federal Deposit Insurance Corporation ([FDIC](#))

National Credit Union Administration ([NCUA](#))

Office of the Comptroller of the Currency ([OCC](#))

Bureau Consumer Financial Protection (BCFP)

State Liaison Committee (SLC)

- Conference of State Bank Supervisors ([CSBS](#))
- American Council of State Savings Supervisors ([ACSSS](#))
- National Association of State Credit Union Supervisors ([NASCUS](#))

QUESTIONS

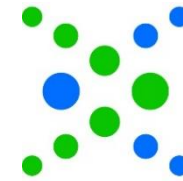
For Your Records

Continuing Education Credits

Regulation Review

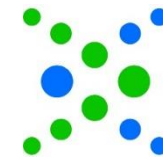
This session is worth 6 credits

(keep this slide for your records)



AAP[™]

Accredited
ACH Professional



APRP[™]

Accredited Payments
Risk Professional