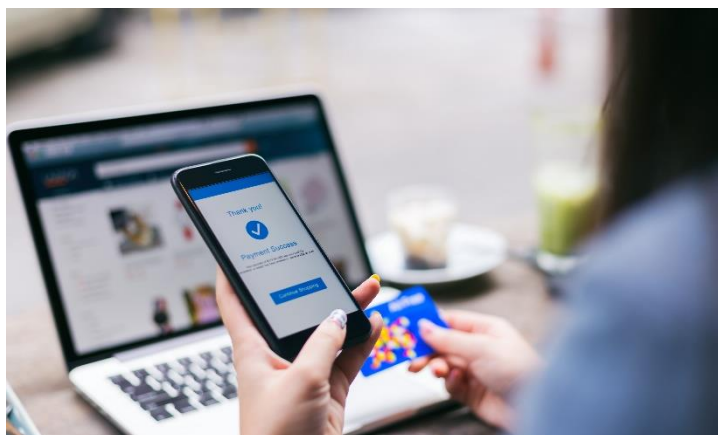


Regulation E - Back to Basics

Procedures for Resolving Errors

BY JOHN PACE

Section 1005.11 of Regulation E, which implements the Electronic Fund Transfer Act (EFTA), establishes the procedures for a financial institution (FI) to follow when investigating and resolving errors reported by a consumer related to electronic fund transfers (EFTs). EFTA and Regulation E detail a process for consumers to dispute potential EFT errors on their accounts along with prompt investigation of any alleged error, providing provisional credit when necessary, and making a final determination within a specified timeframe on whether an error occurred. The regulatory requirements are for the protection of consumers and are not applicable to non-consumer accounts.



EFTs continue to grow in number and in dollar volume. For example, a press release from the National Automated Clearing House Association (NACHA) on October 17, 2024, shared statistics, regarding same-day Automated Clearing House (ACH) transactions that indicated total ACH debits and credits have grown from 18.3 billion payments in 2014 to 31.45 billion payments in 2023.

The dollar volume of these payments has doubled over the same period from \$40.03

trillion to \$80.10 trillion. The largest area of increase has been in consumer bill payments, which makes EFT errors more consequential to consumers as the errors could result in late payments or underpayments that could impact a consumer's financial well-being. This makes timely and accurate resolution of EFT errors a significant customer service activity.

What is an EFT error?

To establish a strong EFT error resolution process and program, it is important to first understand how Regulation E defines an error. According to Regulation E §1005.11(a)(1), an EFT error includes:

1. An unauthorized EFT;
2. An incorrect EFT to or from a consumer's account;
3. The omission of an EFT from a periodic statement;
4. A computational or bookkeeping error made by the FI relating to an EFT;

5. The consumer's receipt of an incorrect amount of money from an automated teller machine;
6. An EFT not identified as established in Regulation E §1005.9 (Receipts at Electronic Terminals; Periodic Statements) and §1005.10(a) (Preauthorized Transfers)¹; or
7. A consumer's request for documentation required by those same sections of Regulation E or for additional information or clarification concerning an EFT, including a request the consumer makes to determine whether an error exists under items 1 to 6 above.

According to Regulation E §1005.11(a)(2), an error does not include:

1. A routine inquiry about the consumer's account balance;
2. A request for information for tax or other recordkeeping purposes; or
3. A request for duplicate copies of documentation.

Notice of error

Now that we have been refreshed on what Regulation E defines as an error, what should an FI do when it receives a notice of error from a consumer? To answer this question, we must first identify what constitutes a notice from a consumer. Regulation E §1005.11(b) makes clear that notice of an error may be made either orally or in writing. Regulation E §1005.11(b)(1) specifies three criteria that, if present, require an FI to comply with the Regulation E error resolution requirements (FIs may comply with the requirements voluntarily as a best practice even if the three criteria are not met). The criteria are as follows:

1. The notice is received by the FI no more than 60 days after the FI sent the periodic

statement in which the alleged error is first reflected;

2. The notice enables the FI to identify the consumer's name and account number (this could be the account number, but may also be a social security number, address, or another means of unique identification); and
3. The notice indicates why the consumer believes an error exists and includes to the extent possible the type, date, and amount of the error.

While Regulation E §1005.11(b)(2) allows a consumer to provide notice orally, it also allows an FI to require a consumer to provide written confirmation of an error within ten business days of the oral notice. The FI must inform the consumer of the requirement and provide the address to which the written confirmation must be sent. This information must be provided to the consumer at the time the oral notice is made. An FI may not delay starting or finishing an investigation pending receipt of a written confirmation.

EFT error investigation and resolution

When an FI receives an error notice from a consumer, it must investigate the error promptly, provide provisional credit to extend the investigation, when necessary, correct the error (if any), and notify the consumer promptly of the results of the investigation.

Regulation E §1005.11(c)(1) allows an FI ten business days to investigate and determine whether a true error occurred. An FI has three business days after completing the investigation to report the results of the investigation to the consumer, whether an error occurred or not. If an error did occur, the FI must correct the error within one business day after the discovery of the error.

If an FI is unable to complete the investigation within ten business days, Regulation E §1005.11(c)(2) allows the FI to take up to 45 days from receipt of the error notice from the consumer to investigate and determine whether an error occurred. To take advantage of this extended period, the FI must take four steps:

1. Provide provisional credit, in the amount of the alleged error, to the consumer's account within ten business days of receiving the error notice;
2. Inform the consumer, within two business days of providing provisional credit, of the amount of the provisional credit and the date the credit was applied to the consumer's account;
3. Correct the error, if any, within one business day after determining that an error occurred; and
4. Report the results to the consumer within three business days after completing the investigation (including, if applicable, a notice that provisional credit has been made final).

The 10- and 45-day timelines discussed above may be extended in certain circumstances as allowed by Regulation E §1005.11(c)(3). The ten-day timeline for completing the investigation may be extended to 20 days if the error notice relates to an EFT to or from an account within 30 days of the first deposit being made to the account. The 45-day timeline may be extended to 90 days if the notice of error relates to an EFT that:

1. Was not initiated within a state;
2. Resulted from a point-of-sale debit card transaction; or
3. Occurred within 30 days after the first deposit to the account was made.

Regulation E generally leaves how an investigation should be conducted up to an FI to decide. However, the regulation does provide

guidance in §1005.11(c)(4) regarding review of the FI's own records to investigate an alleged error. The regulation states that an FI satisfies the reasonable investigation requirement by reviewing its own records if:

1. The alleged error concerns a transfer to or from a third party; and
2. There is no agreement between the FI and that third party regarding the type of EFT involved.

Determination of no error

We have focused on what an FI needs to do to investigate and resolve an alleged error but what must be done when an FI determines that no error, or an error different than the one alleged, occurred?

In these instances, §1005.11(d) of the regulation requires that, as part of the report of results to the consumer, the FI include a written explanation of the findings and disclose the consumer's right to request the documents relied on by the FI in making the determination of no, or a different, error. In addition, if an FI had provided provisional credit and is now reclaiming the provisional credit based on the results of the investigation, the FI must:

1. Notify the consumer of the date and the debited amount; and
2. Notify the consumer that the FI will honor checks, drafts, or similar instruments payable to third parties and preauthorized transfers from the consumer's account (without charge to the consumer because of an overdraft) for five business days after the notification. (Note: while an FI must honor items as specified in the notice, it does not need to honor items that would have resulted in an overdraft with the provisional credit in place.)

§1005.11(e) of the regulation states that an FI that has fully complied with all the error resolution requirements has no further responsibilities if the consumer reasserts the same error later.

Considerations for an effective error resolution program

To establish an effective program for handling Regulation E errors, the first thing to consider is a comprehensive policy (this can be a standalone error resolution policy or included within an overarching Regulation E policy). The policy should include the definition of a Regulation E error and differentiate those from inquiries and other errors. It should set the framework for the program, including procedures, training, monitoring, and reporting. A solid policy demonstrates board and senior management commitment to promptly and completely investigate and correct errors.

Financial institutions may consider creating a centralized function to process the Regulation E error notifications to ensure that Regulation E errors are handled consistently in alignment with the requirements of the regulation.

To complement the established framework for resolving errors, comprehensive procedures are beneficial for guiding employees in receiving and logging errors, investigating errors (including setting standards for how to conduct the investigation), documentation standards (to evidence what was reviewed as part of the investigation), how and when to provide provisional credit during an investigation, and the timing and content of the response to the consumer. While many error notifications may be unique, having a standardized process in place can mitigate the risk of noncompliance.

Training related to the policy and related procedures, along with the requirements from the regulation, ensures that employees understand not only the steps required by policy and procedure to resolve errors, but also the regulatory requirements that drive the error resolution process.

Even with strong policies, procedures, and training in place, there is still potential that something is missed in the process. Additional risk mitigation can be achieved with a monitoring and audit program that identifies gaps in the error resolution process. Following the three lines of defense model, both the first and second lines of defense (business units and the compliance or risk function) should conduct separate monitoring of Regulation E error resolution. Monitoring, including reviews of documentation used in the investigation, timing of responses, timing of provisional credit (and if applicable, the timing and reason for removal of the provisional credit), and validation and communication of the results of the investigation is key to maintaining a compliant program. The third-line audit function, whether internal or external, should periodically conduct reviews of the error resolution process and of the monitoring program to ensure both are working as intended and controls are effective.

Another tool available related to oversight of the error resolution process is complaint tracking. Complaints received from consumers about how alleged errors were handled will provide valuable insight into potential gaps or weaknesses in the Regulation E error resolution process.

As part of the error resolution program, consideration should be given to oversight of any third-party service providers (TPSPs) involved with EFTs or receipt of alleged errors to ensure that alleged errors from all applicable channels are captured and investigated appropriately. Examples of TPSPs for EFTs are FIS, Fiserv, Jack Henry, and Temenos. As part of the TPSP oversight program, the FI should ensure that an adequate training program is established for the TPSPs' employees and include the TPSPs' activities in its monitoring and audit program. The monitoring and audit functions may request a sample of errors, with all related

documentation, handled by the TPSPs to ensure that errors are being handled timely and investigated thoroughly.

Finally, it is important to develop a robust reporting process to keep the board and senior management informed. The reporting should include both the handling of error notifications, and the results of monitoring conducted. The reporting for the handling of error notifications should include information on volumes of error notifications received, analysis of potential trends, and metrics related to the investigation

and timeliness of responses. Monitoring reports should focus on errors identified, timeliness of remediation, and any trends that may be present in the issues identified, including potential fraud trends.

By having knowledge of the requirements for Regulation E error resolution and establishing an effective program for the receipt, handling, and tracking of errors, FIs may enhance their overall compliance management systems and improve customer satisfaction.

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