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Regulation E: Disputes and What Everyone Is Talking About

September 17, 2024



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Session CPE Requirements

- You need to attend 50 minutes to receive the full one CPE credit.
- There will be four knowledge check questions throughout the presentation. You must respond to a minimum of three to receive the full one CPE credit.

****Both requirements must be met to receive CPE credit****



Learning Objectives

At the end of this session, you will be able to:

- Identify the process of resolving disputes related to Regulation E
- Discuss common issues, including unauthorized transactions and how to properly report them
- Discuss benefits and drawbacks of automating certain aspects of Regulation E compliance



Here Today

Karen Leiter, Principal



Karen Leiter is a Principal with CLA. She works with banks and credit unions nationwide, managing regulatory compliance engagements and other consulting services. Karen joined the Financial Services Group at CLA in 2020 after working in financial institutions since 2004. She has spent the majority of that time focused on regulatory compliance, Bank Secrecy Act (BSA) compliance and bank operations. Karen has spent her career working at a mortgage broker, local community bank and a larger regional bank.

During her time working in financial institutions Karen has personally worked with a manual BSA program, Patriot Officer, Abrigo (BAM) and Verafin during her banking career. Karen focuses on regulatory compliance, BSA, compliance management systems and special projects, such as compliance risk assessments and BSA assessments.

Amy Koshiol, National Regulatory Compliance Director



After spending 30 years in the banking industry, Amy joined CLA's financial services group in 2018. Her industry experience includes working with community banks and diversified financial services holding companies in various roles such as vice president operations/cashier, corporate compliance officer, internal audit director, and interim chief risk officer. Currently, Amy is leading the regulatory compliance practice at CLA and is responsible for quality review, product and team development. She focuses in fair lending, compliance management systems, Community Reinvestment Act, UDAAP and special projects such as compliance risk assessments, consulting, and outsourcing services for financial institutions and financial services companies.



Culture of Compliance (FIN-2014-A007)



Leadership actively supports and understands compliance efforts



Efforts to manage and mitigate compliance deficiencies and risks are not compromised by revenue interest



Relevant information from the various departments within the organization is shared with compliance staff to further efforts



Devote adequate resources to the compliance function



Compliance program is effective by, among other things, ensuring that it is tested by an independent and competent party



Leadership and staff understand the purpose of compliance efforts and how its reporting is used



What's Coming Next?



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Knowledge *Check*

What aspect of investigations do you find most challenging?

- a. Understanding how far to go in our investigation
- b. When we should consider restricting cards or removing card access
- c. Figuring out how to find/identify merchant credits back to the account after we make our case final



Consequences and Regulator Scrutiny

FIs are seeing large operational losses due to debit card fraud

Board & Management putting pressure on operations & compliance to find ways to deny claims

FIs are often denying claims if chargeback is unsuccessful

FIs delaying investigation outside time limits, waiting on processors

UDAAP Implications

Class Action lawsuits



OD/NSF Fees & CRA/Fair Lending Assessment



Fees charged



Refunds



Charge-offs and collections



Other Considerations

Compliance Management

- Overdraft Oversight
- Refunds
- Charge-offs
- Risk Assessment
- Board Oversight

Customers

- Opt-ins @ account opening
- Opt-ins during the life of the account
- Training/Education

UDAAP

- All the above



Industry Trends

Eliminations

- No Overdrafts on ...
 - Any transactions
 - Debit card purchases
 - ATM withdrawals
- No Continuous or Extended Overdraft fees
- No NSF fees

Modifications

- Decrease Overdraft and NSF Fees
- New or Decreased daily limits
- New or Increased “cushion” before charging
- New or Extended grace periods or amounts before charging



Liability for the Consumer

The extent of the consumer's liability is determined solely by the *consumer's promptness* in notifying the bank.



Knowledge *Check*

How effective has your financial institution been at managing your investigations?

a. Very effective

b. Somewhat effective

c. We struggle with the numerous scenarios that come with the disputes from customers.



Errors defined under §1005.11(a) are for the error resolution responsibilities of the Bank and the Consumer:

Unauthorized EFT	Incorrect EFT to or from consumer account	Omission of an EFT from statement
Computational or bookkeeping error	Receipt of incorrect amount of money at an ATM or other cash dispensing terminal	EFT not properly identified
	Consumer request for clarification or info to determine whether an error was made	



Defining “Unauthorized”

The following transactions are considered unauthorized because they were initiated by:

Someone other than account holder **AND**

The account holder did not receive any benefit from the transfer



Defining “not Unauthorized”

The following transactions are considered “not an unauthorized transaction”:

With fraudulent intent by the customer or person acting in concert with customer

Error by a financial institution or committed by its employees

Initiated by person other than the customer to whom the **customer furnished** the card, code, or other means of access; unless the owner notified the FI that transfers by that other person are no longer authorized





Investigation Process



Investigation Responsibilities

Customer

- Notify the financial institution as soon as the error is known or suspected
- Verbally or in writing

Financial Institution

- Investigate the potential error and quickly resolve appropriately

CANNOT

- Hold negligence against the customer (writing PIN on card or leaving out username)
- Require a customer to submit a police report or to provide any of the following additional documentation
- Require customer to talk with the merchant to resolve



What you need to start an investigation

You cannot delay investigating the error if no written notice is received

Or if it is only a presentment

Details:

- Name
- Account number
- Description of error (date/amount/etc.)



Investigation Timeline

Notice

- Verbal or Written Notice within two business days following learning of the loss or theft OR
- Within 60 calendar days of transmittal* of the statement containing the first error for download

For Provisional Credit

- Written notice within ten business days
- Should include name, account number, and description of error
 - *You must not delay investigating the error if no written notice is received*
 - Lack of written notice means the customer does not get provisional credit if received after the ten business days of the verbal notice

* Transmittal refers to placing the paper statements in the mailbox to be delivered to consumers, or pushing out the email notification to the consumers that electronic statements are now available

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Investigation Tools

- Signed customer statement and documentation
- Historical information regarding customer activity (time, frequency, location, amounts, and transaction types)
- Transaction relative to customer's home, business or shopping location
- Customer's location at the time of error
- Pertinent problems reported by other customers
- Signature information on Point of Sale (POS) transactions
- Police reports or security camera photographs





Did an error occur?

	What's next	Monies	Results
YES!	Correct the error within one business day of the determination.	The refund must include related interest and charges in addition to the actual disputed amount.	Provide a written or oral notice to the customer. Document your process.



Four variations for errors within disputes:

The FI confirmed the error, final funds credited, no provisional credit (PC) was given

The FI determined there was no error, no PC was given

The FI confirmed the error after PC was given

The FI determined there was no error after PC was given, PC reversed



Investigation Timeframe

1 4/6/2023

Investigation may not exceed 90 days
Investigation = 108 days

2 July 20, 2023

Re: Notice of Debit Card Dispute Investigation

Dear [REDACTED]

This letter is to inform you that we received your written notice on 04/03/2023 disputing the following debit card transaction(s):

POS Purchase	[REDACTED]	\$145.74
POS Purchase	[REDACTED]	\$50.00

Re: Final Notice of Debit Card Dispute Investigation

Dear [REDACTED]

This is to inform you that the investigation of your MasterCard debit card dispute totaling [REDACTED] for your debit card dispute filed 04/03/2023 has been satisfactorily resolved. The provisional credit we provided to you on 04/06/2023 is now final.

Thank you for your patience in this matter. If you should have any questions regarding this dispute, please call us at [REDACTED].



May not delay investigation

§ 1005.11(b)(1)

(1) Timing; contents. A financial institution shall comply with the requirements of this section with respect to any oral or written notice of error from the consumer that:

Official interpretation of 11(b)(1) Timing; Contents

2. **Investigation pending receipt of information.** While a financial institution may request a written, signed statement from the consumer relating to a notice of error, it may not delay initiating or completing an investigation pending receipt of the statement.

8/4/2023

Re: Notice of Debit Card Dispute Investigation

Dear [REDACTED]

This letter is to inform you that we received your written notice on 07/31/2023 disputing the following debit card transaction(s):

5	POS F [REDACTED]	PAYPAL	\$103.20
5	POS F [REDACTED]	PAYPAL	\$51.75

We have provisionally credited Checking Account [REDACTED] in the amount of \$154.95 effective 08/04/2023 pending resolution of the debit card dispute investigation(s).

Investigation must start immediately upon first notification from consumer



Finalizing Disputes and the Notice to Consumer

- Within one business day
- Orally or in writing
 - How is this documented?

Regulation E

§ 1005.11(c)

(c) Time limits and extent of investigation –

Official interpretation of 11(c) Time Limits and Extent of Investigation +

§ 1005.11(c)

(c) Time limits and extent of investigation –

Official interpretation of 11(c) Time Limits and Extent of Investigation -

1. **Notice to consumer.** Unless otherwise indicated in this section, the financial institution may provide the required notices to the consumer either orally or in writing.

(1) **Ten-day period.** A financial institution shall investigate promptly and, except as otherwise provided in this paragraph (c), shall determine whether an error occurred within 10 business days of receiving a notice of error. The institution shall report the results to the consumer within three business days after completing its investigation.

The institution shall correct the error within one business day after determining that an error occurred.



Accrued interest and any fees, including overdraft and minimum balance fees assessed as a result of the error were not refunded

Customer Signature _____
 Branch: **MAIN OFFICE** Employee Name: _____
 *****Operations Use Only*****
 Date Refunded: ____/____/____ By: _____
 Amount of overdraft fees refunded? \$ _____
 Operations Comments:

ELECTRONIC DEBITS

(#) denotes fee for paying overdraft items

Date	Description		Amount
09/30/22	REGIONAL ACCEPT TELPAYMENT	Disputed item	600.00
10/03/22	48		100.00
10/03/22	48		100.00

Account No.: _____ Enclosures: (0)

Statement Date: **10/17/2022** Page: **2**

ELECTRONIC DEBITS (cont.)

(#) denotes fee for paying overdraft items

Date	Description	
10/03/22	(#) NSF PAID ITEM FEE	NSF fee for original item ✓
10/06/22	1 PUR KRC	
10/06/22	1 PUR KRC	

no refund for the fee after the investigation was closed in consumer's favor

Amount
35.00



Knowledge *Check*

Which of the following best describes your financial institution?

- a. We manage our disputes and track on excel worksheets or similar workflows
- b. We use a vendor to help track, monitor, and investigate our disputes
- c. We manage our own disputes and do not have a great tracking process



Limitations on Amount of Liability \$50/\$500

§ 1005.6

Official interpretation of 6(b) Limitations on Amount of Liability



(1) Timely notice given. 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 liability shall not exceed the lesser of \$50 or the amount of unauthorized transfers that occur before notice to the financial institution.

Official interpretation of 6(b)(1) Timely Notice Given



(2) Timely notice not given. If the consumer fails to notify the financial institution within two business days after learning of the loss or theft of the access device, the consumer's liability shall not exceed the lesser of \$500 or the sum of:

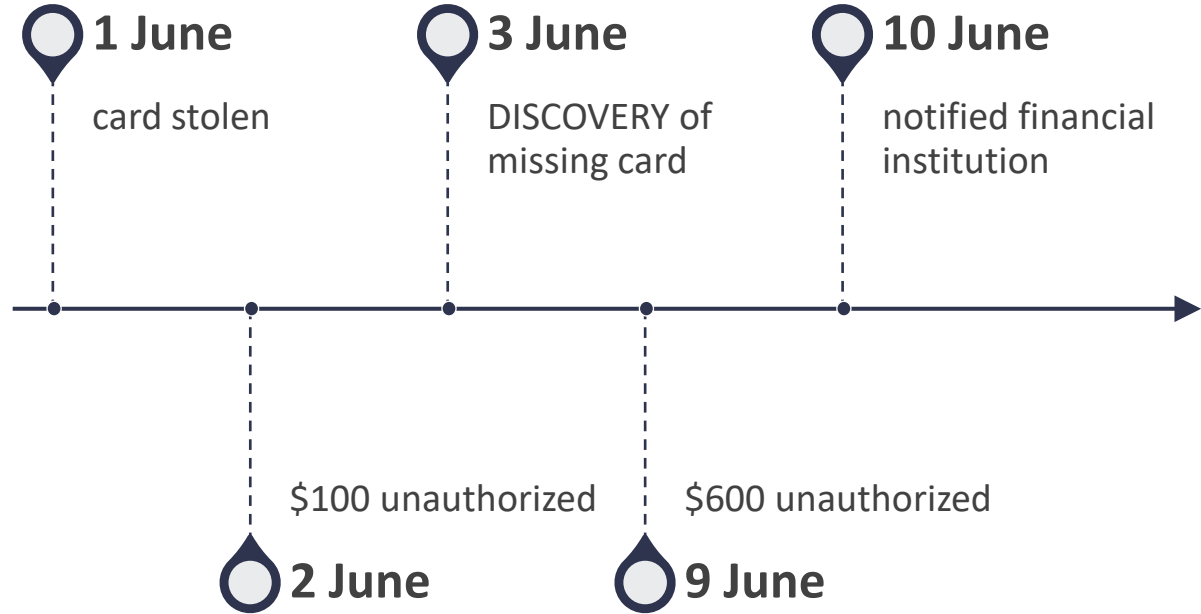
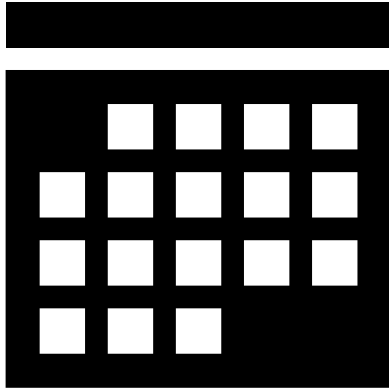
Official interpretation of 6(b)(2) Timely Notice Not Given



- (i) \$50 or the amount of unauthorized transfers that occur within the two business days, whichever is less; and
- (ii) The amount of unauthorized transfers that occur after the close of two business days and before notice to the institution, provided the institution establishes that these transfers would not have occurred had the consumer notified the institution within that two-day period.

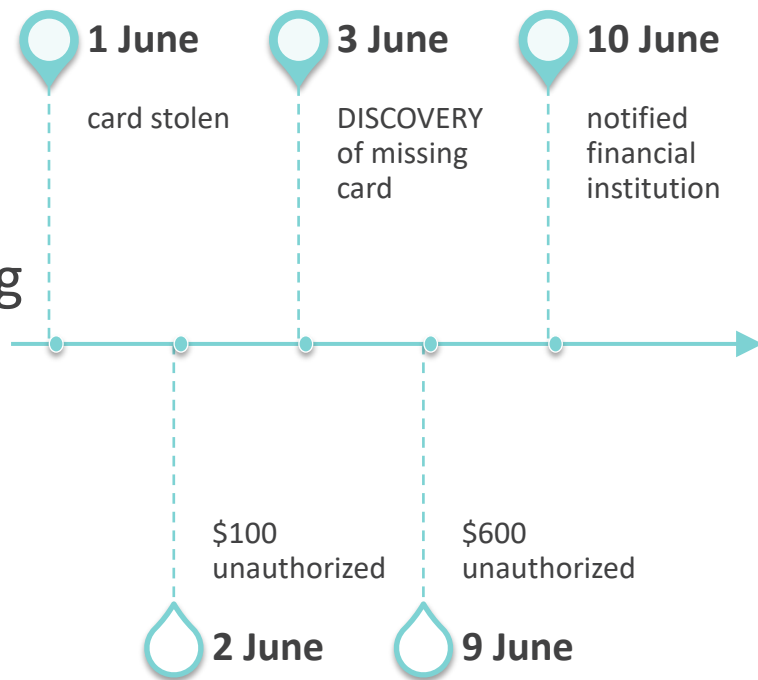


Quick Quiz #1: Total Liability \$500

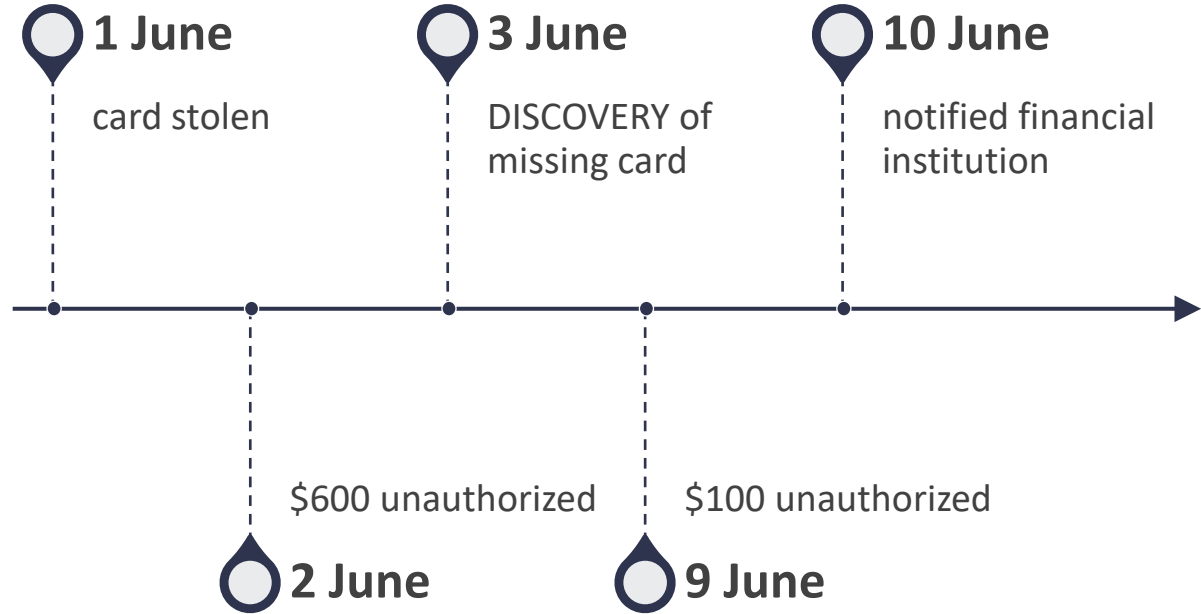
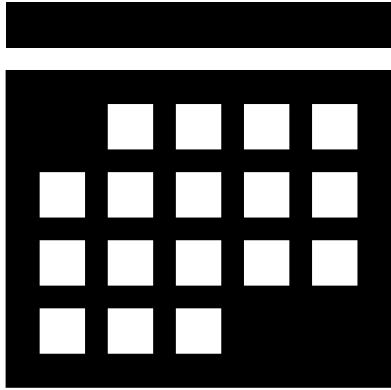


Quick Quiz

- Within 2 business days of identifying the loss
 - Unauthorized: \$100
 - Consumer Liability: \$50
- AFTER 2 business days of identifying the loss
 - Unauthorized: \$600
 - Consumer Liability: \$450

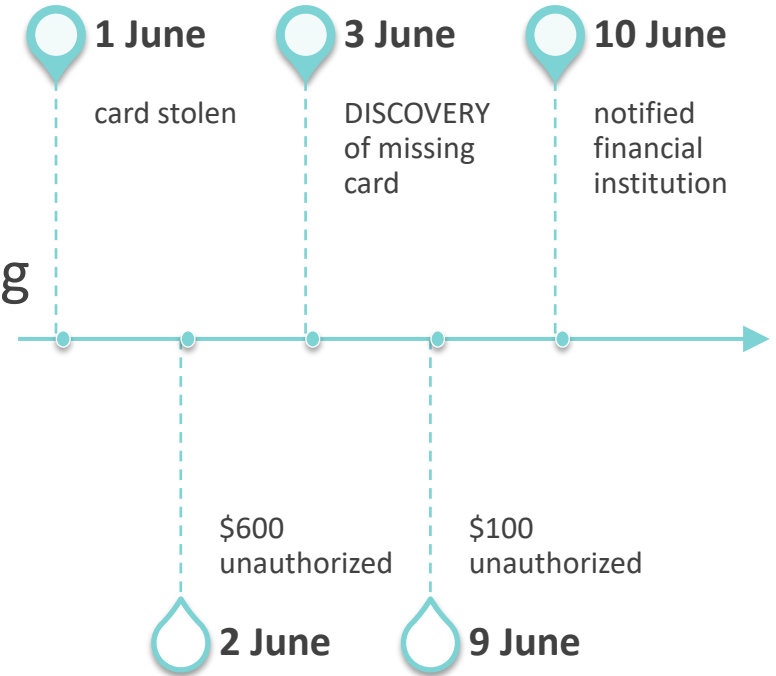


Quick Quiz #2



Quick Quiz #2: Total Liability \$150

- Within 2 business days of identifying the loss
 - Unauthorized: \$600
 - Consumer Liability: \$50
- AFTER 2 business days of identifying the loss
 - Unauthorized: \$100
 - Consumer Liability: \$100



Provisional Credit Stipulations



No Credit

- Not required if the customer did not submit the written complaint



Funds Reversed

- If reversed, need to give the notice of date and amount of reversing the transaction



Third Party Debits after Reversal Notice

- MUST honor, without charge (NSF fee), any third party debits for five (5) business days after the reversal notice is sent



Less than or equal to

- MUST honor third party items totaling the amount less than or equal to the amount provisionally re-credited and then reversed



Disputes older than 60 days

- Credit is not required if the customer reports a dispute later than 60 calendar days following a transmittal of a statement where the error first appeared



IMPORTANT!

**Provisional
credit cannot be
taken back once
it has been
made final—
regardless of
information
learned later.**



Knowledge *Check*

What resources do you feel are missing in your approach to managing Regulation E disputes, card management, overdrafts, etc.?

- a. Compliance testing
- b. Consulting to improve our process
- c. More dedicated staff
- d. Better technology or tools



Cards are a privilege, not a right

- Monitor abuse
- Restrict usage
- Manage limits
- Assess frequent disputers
- Manage trends



Important resources

CFPB: FAQ

- <https://www.consumerfinance.gov/compliance/compliance-resources/deposit-accounts-resources/electronic-fund-transfers/electronic-fund-transfers-faqs/>

FDIC Overdraft Payment Program Supervisory Guidance

- <https://www.fdic.gov/news/events/overdraft/faq.html>

CFPB: CMS Examination Procedures

- <https://www.consumerfinance.gov/compliance/supervision-examinations/compliance-management-review-examination-procedures/>

Issuance of access devices

- <https://www.consumerfinance.gov/rules-policy/regulations/1005/5/>

Definitions: Specifically, "Unauthorized electronic fund transfer"

- <https://www.consumerfinance.gov/rules-policy/regulations/1005/2/#m>

FIL: Supervisory Guidance on Multiple Re-Presentment NSF Fees

- <https://www.fdic.gov/news/financial-institution-letters/2022/fil22040.html>



Thank you!

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