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Regulation E



THE BORING BITS

THE RULES, THE REGULATIONS... BLAH, BLAH, BLAH

- The views presented here are my own (most of the time, anyway) and do not necessarily reflect those of Macha, NACHA, any other “ACHA” or Taylor Swift for that matter
- I did not go to law school, so I’m not giving you legal advice
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Special Disclaimer

Swiftie 🎧

/'swiftie/-adjective

Taylor Swift's fans who are more than just fans.

See also: obsessive, insane

This is all for fun, so please don't report me to the Swifties, they have tremendous passion and power, just ask Ticketmaster

The Evolution of a Swiftie



August 10, 2013



June 4, 2023

Which Regulation E “Era” are you in?





- How Most FIs Feel about Regulation E

Debut Era-The Beginning of Reg E

The Electronic Fund Transfer Act (EFTA) of 1978

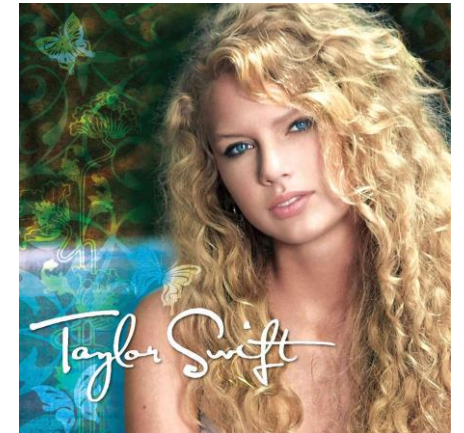
The Board of Governors of the Federal Reserve System originally issued Regulation E (12 CFR 205)

- The Bureau Consumer Financial Protection (BCFP) is now the custodian of Reg E (12 CFR 1005)

Carry out the goals of the Electronic Fund Transfer Act

- Sets forth the basic rights, liabilities, and responsibilities of consumers who use electronic fund transfer services and the financial institutions that offer such services

Consumer protection when engaging in electronic fund transfers



You Are Not Your Mistakes

What is an 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

I Would Very Much Like to be Excluded from this Narrative

Unauthorized EFT Exclusions:

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

And She Said Speak Now...



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

This is the consumers liability



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

What is an Error?



Error means:

Unauthorized
electronic fund
transfer

Incorrect EFT to
or from
consumer's
account

Omission of an
EFT from a
periodic
statement

A computational
or bookkeeping
error made by the
financial
institution

- 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



Your Time is Running Out



Ten Days:



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



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

But the Time is Ticking

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 where applicable

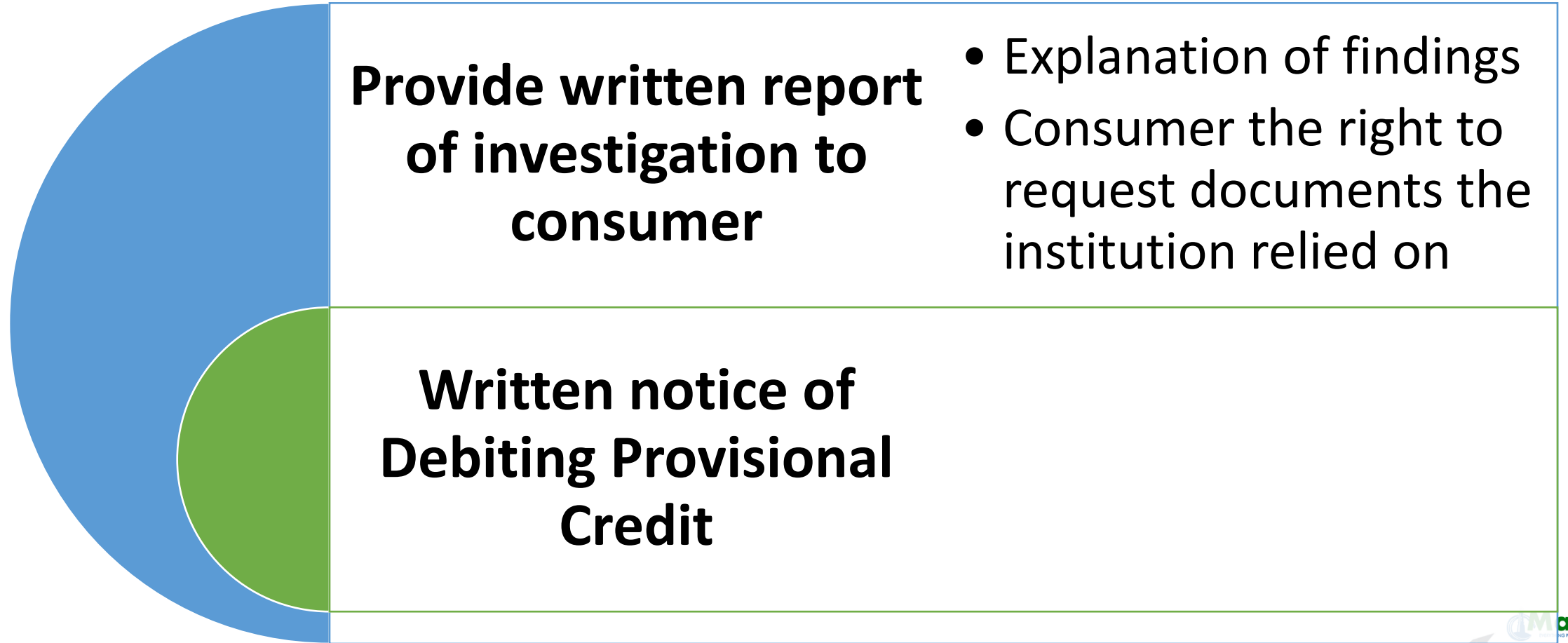
Tonight's the Night we Forget about the Deadlines...

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 initiated in a state
- Resulted from a point-of-sale debit card transaction
- Occurred within 30 days of the first deposit

No Mistakes were Made



You Say that You'll Take it all Back

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

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

What's New?

In June 2021 the CFPB issued a document highlighting some common questions for complying with Regulation E

That FAQ document was amended in December 2021 to further clarify some responsibilities for financial institutions and payment app providers when it comes to resolving errors for consumers



FAQ Highlights

A: Yes, yes you are.

Q: If a consumer uses a non-bank P2P payment provider to initiate a debit card “pass-through” payment from the consumer’s account held by a depository institution, is the depository institution considered a financial institution under Regulation E, even though the transfer was initiated through the non-bank P2P payment provider?

What does this mean?

- You may (and probably do) have error resolution responsibilities for transfer sent through P2P payment apps

FAQ Highlights

- So, who is responsible for error resolution?
 - You both are!
- Can I punt the problem back to the app provider?

TELL ME
that it's not
MY FAULT

FAQ Highlights

Q: Can non-bank P2P payment providers be considered financial institutions under Regulation E?-
I'm looking at you Zelle!

A: Generally, yes.

What does this mean?

The P2P payment app provider may also have error resolution responsibilities for transfers done through payment apps

App Providers Responsibility

- The only time you can send the consumer back to the app provider is if the disputed transaction did not settle through the FI, but rather to a prepaid account owned by the app provider
- If the transaction settles on your debit card or through the ACH network to an account held by your FI, you must do error resolution



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NO PAYMENTS EVERYWHERE

Let's Talk about App Providers

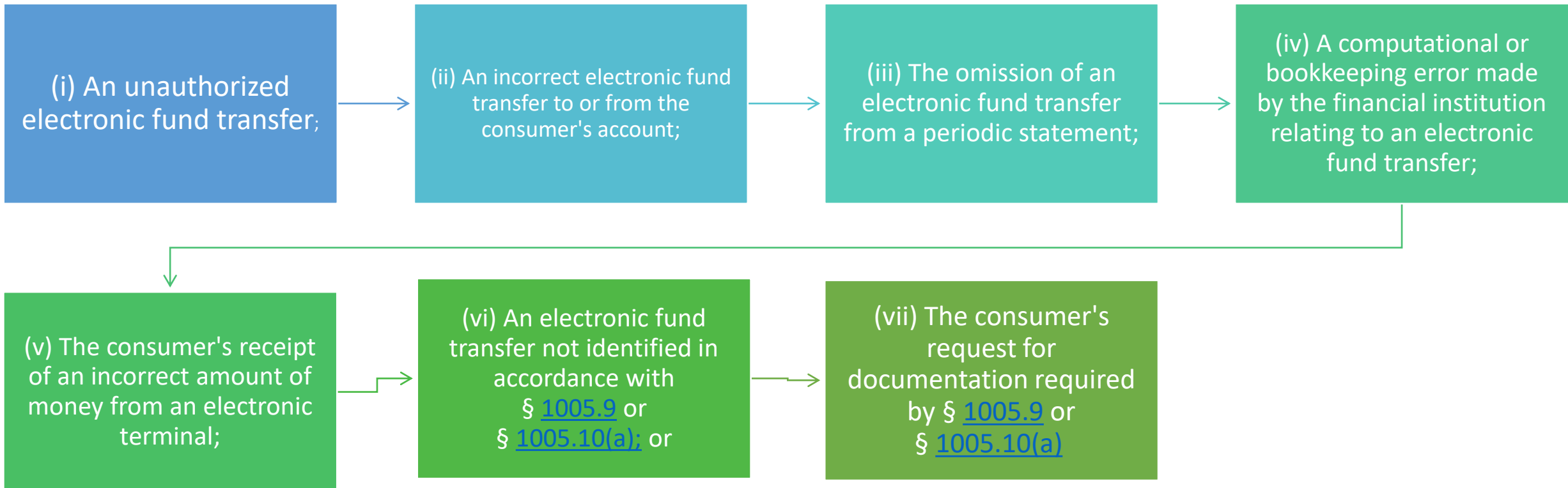


She's in Her Lover Era

- An accountholder finds a new “friend” online
- At some point the accountholder provides them with access to their online banking passcodes and account information
- The “friend” uses your P2P system to send money to themselves
- Is this an error under Regulation E?



What Regulation E Says is an Error



Source: Regulation E 1005.11(a)

Digging Deeper-Unauthorized EFT

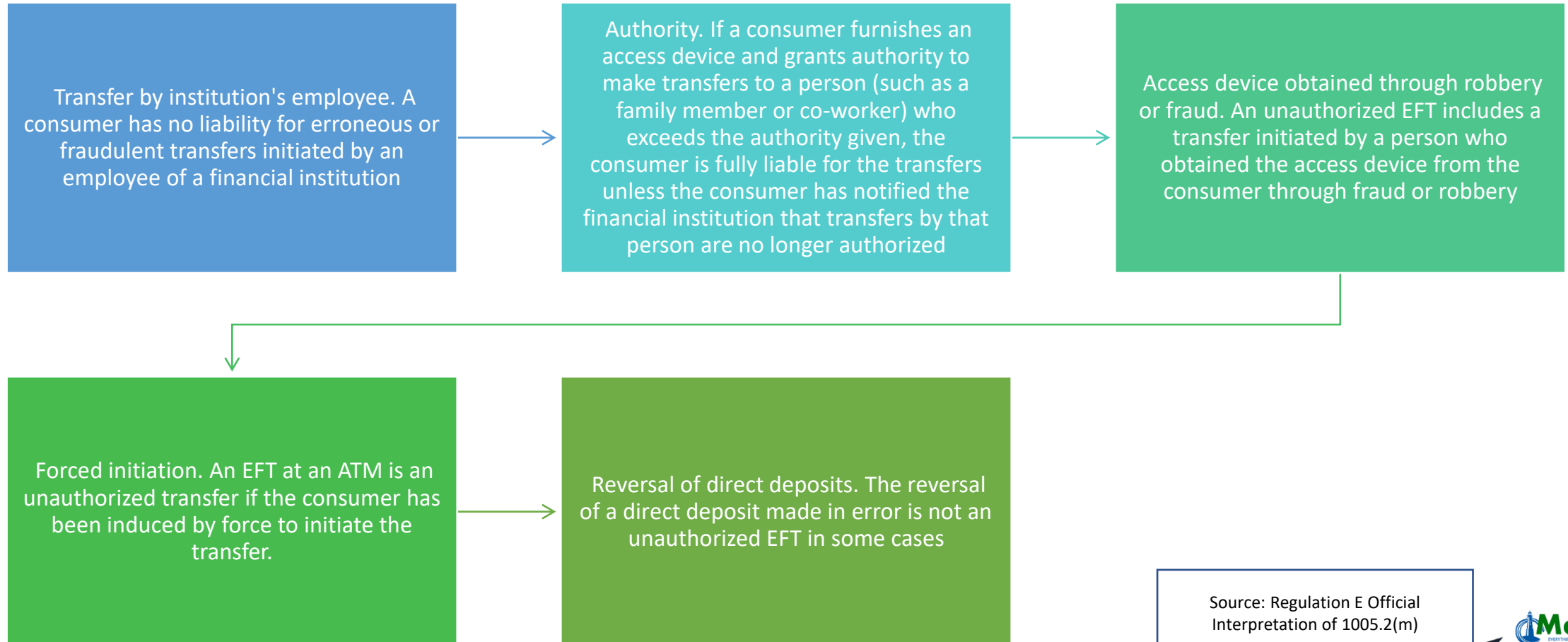
(1) By a person who was furnished the access device to the consumer's account by the consumer, unless the consumer has notified the financial institution that transfers by that person are no longer authorized

(2) With fraudulent intent by the consumer or any person acting in concert with the consumer; or

(3) By the financial institution or its employee

Source: Regulation E-1005.2(m)

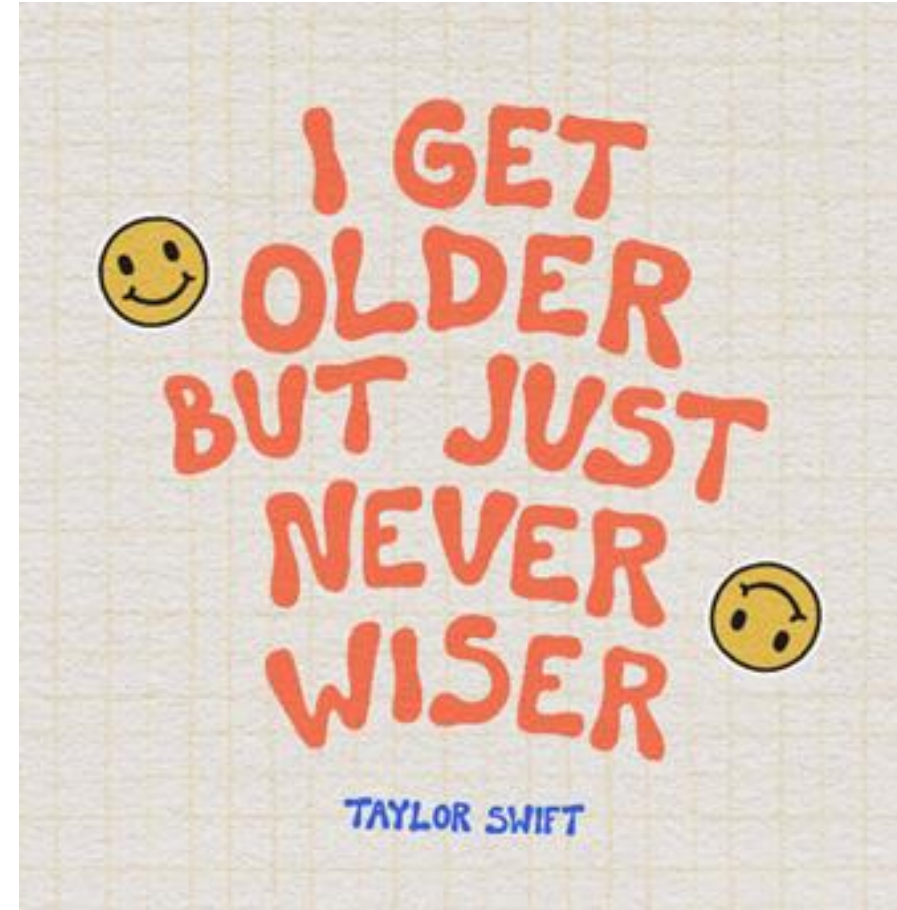
Digging Even Deeper



Source: Regulation E Official Interpretation of 1005.2(m)

What do the FAQs Say about this?

- Q: A third party fraudulently induces a consumer into sharing account access information that is used to initiate an EFT from the consumer's account. Does the transfer meet Regulation E's definition of an unauthorized EFT?
- What do you think?



Answer from the FAQs

Yes. As discussed in Electronic Fund Transfers Error Resolution: Unauthorized Fund Transfers Question 1, Regulation E defines an unauthorized EFT as an EFT 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. 12 CFR 1005.2(m). Comment 1005.2(m)-3 explains further that an unauthorized EFT includes a transfer initiated by a person who obtained the access device from the consumer through fraud or robbery. Similarly, when a consumer is fraudulently induced into sharing account access information with a third party, and a third party uses that information to make an EFT from the consumer's account, the transfer is an unauthorized EFT under Regulation E

This Means?

If the access device was obtained through fraud-
this meets the definition of an error under the
regulation

The FI must proceed with an investigation no
matter when this error is reported

Never be so Kind you Forget to be Clever

Marjorie fell victim to the classic grandparent scam. They were contacted by a fraudster saying that Taylor was in jail, and they needed to purchase \$1000 in iTunes gift cards and provide the gift card information to the fraudster to get their girl out of jail



Grandma Marjorie goes to the nearest drug store chain, makes the purchase, takes pictures of the access codes on the cards, and sends them to the fraudster



Is this a Regulation E error?

A Friend for Meredith Grey

- Taylor calls your institution. She thought she bought a new kitten on Facebook Marketplace. She paid with PayPal using which is linked to her debit card. Several weeks have passed since the kitten was supposed to arrive and there is no kitten
- Taylor wants to dispute the transaction



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NO ADVERTS. EVERYWHERE

Not an Error!



Folklore Era



Folklore

“If you do not notify us within sixty (60) days from when the transaction appeared on your statement, you are liable for the entire amount of the transaction”



The True Story

- Fact: There are no timeframes that limit reporting or resolving alleged errors under the Electronic Funds Transfer Act or Regulation E. Rather, the timeframes specified in these rules cover the issuance of provisional credit and completion of investigations. Timeframes also dictate the institution's notification to the consumer of the final resolution of the investigation. But – contrary to popular belief - no deadline is placed on the consumer for reporting an error. Nothing absolves the institution of its duty to investigate and resolve the dispute. The only duty that goes away after the 60-day timeframe is the duty to provide provisional credit and meet any timeframes that would otherwise have to be met if the consumer had given timely notice while the investigation is pending

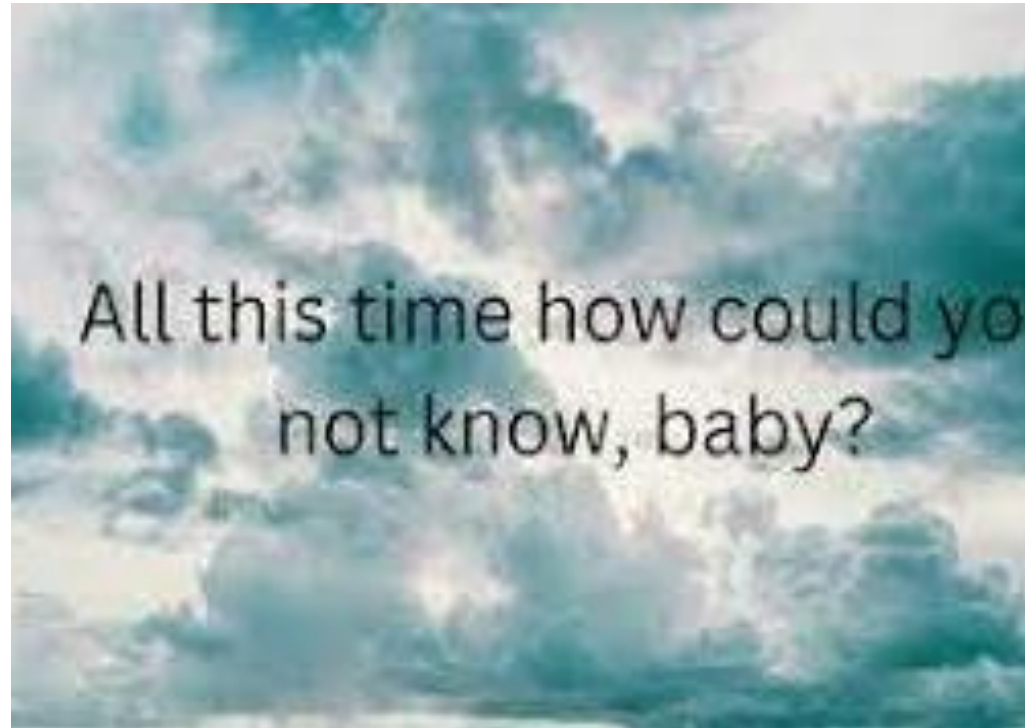
How Would Taylor Phrase That?

- If you do not notify us within 60 days after the account statement showing the error was sent or made available to you, and if we could have reasonably stopped losses to your account had you notified us of the error in time, you may not recover any money you lose after the 60-day period. We occasionally make exceptions if you were prevented from contacting us because of extenuating circumstances such as long-term travel or hospitalization



Frequently asked question

- How far back can an accountholder dispute a transaction?



Folklore

- “You have to provide written notice before we will investigate your claim”
- Fact: Written notice of an error only affects whether a financial institution needs to provide provisional credit and does not change the investigation timeframe



Folklore

- “Per regulation; the financial institution will only process transaction disputes greater than \$50.00
- Fact: No where in Regulation E does it limit the dollar amount below which an error does not have to be investigated



Most Important Thing to Remember about Regulation E



*You've got
no reason to
be afraid.*

Question...?



I Had the Time of My Life with You

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