



# Error Resolution and Overdraft Programs

# Presenter



James Siegel, CPA, CRCM, CAMS

Senior Manager - RAAS

- Part of Plante Moran's risk and accounting advisory services team
- Member of the Association of Certified Anti-Money Laundering Specialists (ACAMS) and the Arizona Society of Certified Public Accountants



# Today's Topics:



Regulation E  
Error  
Resolutions: P2P  
Payment Focus



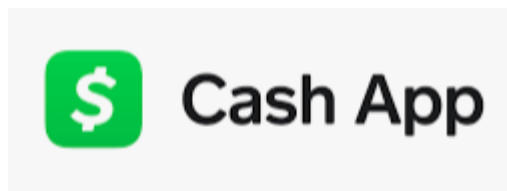
Overdraft  
Programs:  
Recent  
Regulatory  
Guidance



# Regulation E Error Resolution: P2P Payment Focus

# P2P Payments

What are some common examples of P2P platforms your members may be using?





# P2P payments

Why the focus on P2P payments in this guidance?





# Poll Question #1

Has your Credit Union noted an increase in P2P-related error resolution claims in recent years?

- A) Yes
- B) No
- C) I don't know

# P2P payments

How do P2P platforms work?







# P2P payments





## Error resolution FAQ – Coverage: Transactions

- “What transactions are covered by the Electronic Fund Transfer Act and Regulation E?”
- “...any person-to-person (P2P) or mobile payment transactions that meet the definition of EFT, including debit card, ACH, prepaid account, and other electronic transfer to or from a consumer account.”



## Error resolution FAQ – Coverage: Transactions

- “Can person-to-person or ‘P2P’ payments be EFTs under Regulation E?”
- “Is a P2P payment that uses the consumer’s debit card to transfer funds considered an EFT?”
- “Is a credit-push P2P payment that transfers funds out of a consumer’s deposit, prepaid, or mobile account considered an EFT?”
- “Is a P2P debit card ‘pass-through’ payment considered an EFT?”





## Error resolution FAQ – Coverage: Financial Institutions

- “What is a financial institution under EFTA and Regulation E?”
- “Regulation E section 1005.2(i) defines financial institution under EFTA and Regulation E to include banks, savings associations, credit unions, and:
  - any other person that directly or indirectly holds an account belonging to a consumer, or
  - any other person that issues an access device and agrees with a consumer to provide electronic fund transfer (EFT) services.”



## Error resolution FAQ – Coverage: Financial Institutions

- “Can non-bank P2P payment providers be considered financial institutions under Regulation E?”
- “If a non-bank P2P payment provider initiates a debit card ‘pass-through’ payment from the consumer’s account held by a depository institution to a different person’s account at another institution, is the non-bank P2P payment provider considered a financial institution under Regulation E?”
- “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?”



## Error resolution FAQ – Error Resolution

- “What is an error for purposes of EFTA and Regulation E?”
- “What are a financial institution’s error resolution obligations under Regulation E?”
- “The Bureau found that a financial institution did not conduct a reasonable investigation **when it summarily denied error disputes if consumers had prior transactions with the same merchant**, and the financial institution did not consider other relevant information such as the consumer’s assertion that the EFT was unauthorized or for an incorrect amount.”





## Error resolution FAQ – Error Resolution

- “If private network rules provide less consumer protection than federal law, can a financial institution rely on private network rules?”



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## Error resolution FAQ – Error Resolution

- “Can a financial institution require a consumer to file a police report or other documentation as a condition of initiating an error resolution investigation?”



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# Error resolution FAQ – Error Resolution

What can we ask a member to provide for an error resolution investigation?







## Error resolution FAQ – Unauthorized EFTs

- “What is an unauthorized EFT?”
- “ An unauthorized EFT is 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). Unauthorized EFTs include transfers initiated by a person who obtained a consumer’s access device through fraud or robbery and consumer transfers at an ATM that were induced by force. Comments 2(m)-3 and 4.”
- “If a transfer meets the Regulation E definition of unauthorized EFT, how does a financial institution determine the consumer’s liability, if any?”



## Error resolution FAQ – Unauthorized EFTs

“Is an EFT from a consumer’s account initiated by a fraudster through a non-bank P2P payment provider considered an unauthorized EFT?”





## Error resolution FAQ – Unauthorized EFTs

“Does an EFT initiated by a fraudster using stolen credentials meet the Regulation E definition of an unauthorized EFT?”



Yes!





## Error resolution FAQ – Unauthorized EFTs

“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?”

**YES**



## Error resolution FAQ – Unauthorized EFTs

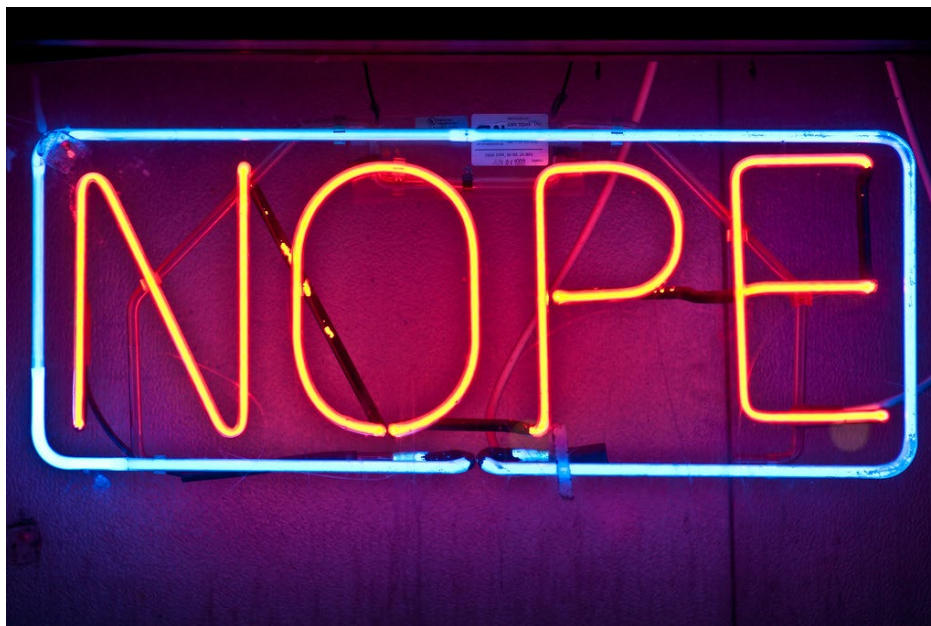
“If a third-party fraudulently induces a consumer to share account access information, are subsequent transfers initiated with the fraudulently obtained account information excluded from Regulation E’s definition of unauthorized electronic fund transfer because they are initiated ‘[b]y a person who was furnished the access device to the consumer’s account by the consumer’”?





## Error resolution FAQ – Unauthorized EFTs

“Can a financial institution consider a consumer’s negligence when determining liability for unauthorized EFTs under Regulation E?”



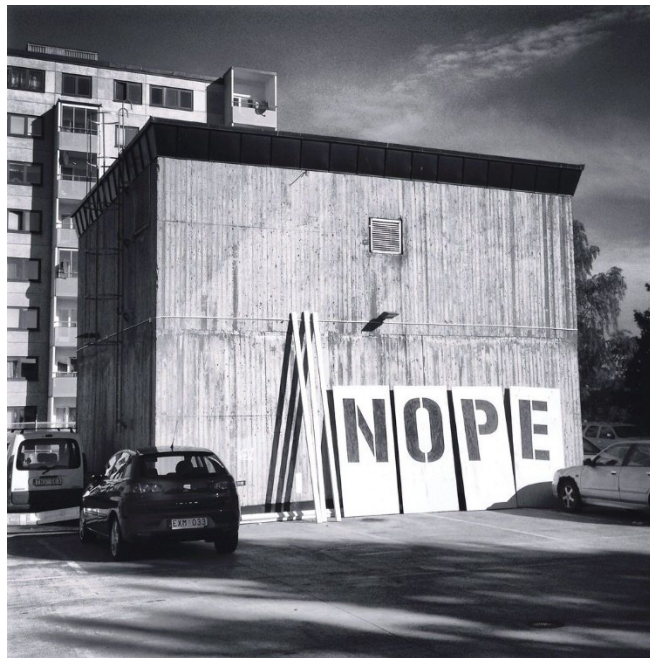
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# Error resolution FAQ – Unauthorized EFTs

“If a financial institution’s agreement with a consumer includes a provision that modifies or waives certain protections granted by Regulation E, such as waiving Regulation E liability protections if a consumer has shared account information with a third party, can the institution rely on its agreement when determining whether the EFT was unauthorized and whether related liability protections apply?”







## Error resolution FAQ – Unauthorized EFTs

“If a consumer provides notice to a financial institution about an unauthorized EFT, can the financial institution require that the consumer first contact the merchant about the potential unauthorized EFT before the financial institution initiates its error resolution investigation?”





## Error resolution FAQ – Unauthorized EFTs

- “Do private network rules, such as provisions that a transfer is final and irrevocable, impact whether a P2P credit-push transfer meets the Regulation E definition of unauthorized EFT?”
- No
- “A fraudster initiates an EFT through a non-bank P2P payment provider that the consumer does not have a relationship with from the consumer’s account with a depository institution. Is the depository institution considered a financial institution with full error resolution obligations under Regulation E?”
- Yes



## Error resolution FAQ – Unauthorized EFTs





## Poll Question #2

How confident are you that personnel responsible for processing error resolution claims understand how to navigate the unique risks posed by P2P errors?

- A) Very confident
- B) Somewhat confident
- C) Not very confident



# Error resolution best practices

- Train staff responsible for processing error resolution claims.
- Monitor, monitor, monitor.
- Don't forget about front line staff.
- Review letter templates and error resolution forms on a periodic basis.
- Don't assume third parties are doing it right.



# Overdraft Programs: Recent Regulatory Guidance



## Poll Question #3

Has your Credit Union made any significant changes to your institution's overdraft program in the past 12 months in order to make it more "member friendly", including reduction of fee amounts or discontinuing overdraft fees altogether?

- A) Yes
- B) No
- C) Our Credit Union never implemented an overdraft program



## Overdrafts – Recent Guidance





## Overdrafts – Recent Guidance

- Give members the option to utilize technology whenever possible to notify them of a low or negative account balance.
- Consider implementing a cap on the number of overdraft fees which can be assessed in a single day.
- Consider implementing a “de minimis” overdraft fee exclusion.
- Consider implementing an overdraft “grace period.”



# Overdrafts – Recent Guidance

## Managing fee waivers

- Approval process
- How many fees are being waived? For whom?
- What if core reporting is limited?





# Overdrafts – Re-presented items

Re-presentation of non-sufficient funds transactions



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# Overdrafts – Re-presented items

- Review your disclosures
- Check with your core provider





## Poll Question #4

Does your institution have a static limit overdraft program or a dynamic limit overdraft program?

- A) Static
- B) Dynamic
- C) I am not sure what the difference is between a static and a dynamic overdraft program



# Dynamic overdraft programs

- Static overdraft model: an overdraft program where member overdraft limits do not change from day to day.
- Dynamic overdraft model: A model where, typically using vendor software, each member relationship is evaluated on a periodic basis (daily, weekly, monthly) to determine what that member's overdraft limit will be.



# Dynamic overdraft programs

## Disclosures

- Replacement of the fixed amount with an overdraft limit that may change and could change as frequently as daily.
- Use of a new overdraft limit that may be lower or higher, at times, than the fixed amount to which the member had become accustomed.
- Suspension of the overdraft limit when it falls to zero and how such a change may result in transactions being returned unpaid to merchants/third parties due to insufficient funds.



# Dynamic overdraft programs





# Dynamic overdraft programs







# Dynamic overdraft programs

## Model validations



# Contact your presenter



**James Siegel**

Senior Manager – Risk and Accounting Advisory Services

303.846.3499

[james.siegel@plantemoran.com](mailto:james.siegel@plantemoran.com)