



OCC ADVISORY LETTER

Comptroller of the Currency
Administrator of National Banks

Subject: Electronic Fund Transfer Act--Investigations of Unauthorized Transactions

To: Chief Executive Officers and Compliance Officers of National Banks and Federal Branches, Department and Division Heads, and Examining Personnel

This advisory letter reminds bank management of their obligations under the Electronic Fund Transfer Act (EFTA) and Regulation E. The OCC wishes to ensure that national banks fully comply with the EFTA's error resolution requirements and that they conduct adequate investigations of claims of unauthorized transactions.

The purpose of this advisory letter is to assist banks in addressing the compliance and reputation risks of inadequate investigations under Regulation E. Regulation E requires financial institutions to investigate promptly errors that occur as a result of electronic fund transfers, including unauthorized transactions (12 CFR 205.11). Section 909(b) of the EFTA establishes that the burden of proof is on the financial institution to show that the transaction was authorized. Conducting good faith, reasonable investigations can help national banks satisfy this burden of proof. The OCC notes that the EFTA provides for treble damages in legal actions filed by consumers if certain factual circumstances are present.

The OCC is concerned that some banks may be rejecting claims of unauthorized transactions solely because the customer's Automated Teller Machine (ATM) card or debit card and personal identification number (PIN) were used in the transaction, and the customer supplied no information indicating that the card or PIN was misappropriated. These facts alone may be insufficient to establish that a transaction was authorized because fraudulent means may have been used to obtain the customer's account number, card, or PIN. For instance, the customer may have been a victim of "shoulder surfing," a practice used by criminals to obtain account or card numbers or PINs by observing customer transactions. Therefore, banks cannot assume that they have satisfied their duty to investigate simply by concluding that the customer's debit card and PIN were used in the transaction at issue. Rather, banks must take steps to investigate whether there are indications that unauthorized use occurred.

To assist national banks in complying with EFTA and Regulation E error resolution procedures, the OCC has compiled a list of actions banks may take to help determine whether a transaction was authorized.¹ A reasonable investigation under Regulation E might include review of one or more of the following items:

¹ As a general matter, a financial institution may limit its review to its own records if (1) the transfer is to or from a third party; and (2) there is no agreement between the institution and the third party for the type of electronic fund transfer involved. 12 CFR 205.11(c)(4).

- Documentation or written, signed statements provided by the customer.
- Historical information on the customer's pattern of use (e.g., time, frequency, location, and types and amounts of transactions).
- Location of the transaction in relation to the customer's residence, place of business, or normal shopping locations.
- Customer's location at the time of the unauthorized transaction.
- Problems reported by other customers regarding the access device or ATM.
- Signature information on point of sale transactions.
- Police reports, if available.
- Film from security cameras, if available.

A national bank's duty to investigate errors is triggered by any oral or written notice from a consumer that satisfies 12 CFR 205.11(b). This section requires the consumer to report an error no later than 60 days after the institution sends the periodic statement or provides the passbook documentation on which the alleged error is first reflected. Additionally, the consumer must give the institution sufficient information to identify the consumer's name and account number. The consumer must also indicate why he or she believes an error occurred and, to the extent possible, the type, date, and amount of the error. The institution may request a written, signed statement relating to a notice of error, but it may not delay initiating or completing an investigation pending receipt of the statement (12 CFR Part 205, Supplement I, Official Staff Interpretations, ¶ 11(b)(1) -- 2). A national bank may request a customer's reasonable cooperation in any such investigation. However, it may not deny a claim of error based solely on the cardholder's failure to comply with such a request.

The institution is generally required to determine whether an error occurred within 10 business days and report to the consumer within 3 business days of completing the investigation. If the institution cannot complete the investigation within 10 business days, it may take up to 45 days to complete its investigation if it provisionally credits the account within 10 business days.² The institution has 1 business day after determining that an error occurred to correct the error. If the institution finds that no error occurred, it must give the consumer a written explanation of its findings.

If you have any questions regarding this advisory letter, you may contact your supervisory office or the Community and Consumer Policy Division at 202-874-4428.

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Community and Consumer Policy

² There are several exceptions to the time frames for investigations specified above. 12 CFR 205.11(c)(3).