Violations

Frequently Cited Violations

<u>Violation</u>	Regulatory Citation
The institution fails to follow error resolution	Section 205.11(c)(2)] of Reg. E requires the
procedures when the consumer's account has	institution to provisionally credit consumer's
been provisionally credited.	account within 10 days of receiving an error
	notice, unless the institution requires but does not
	receive written confirmation of an oral notice of
	error within 10 days or the error involves an
	account subject to Regulation T.
The collection agency does not mail to the	Reg. E, Section 205.11(d)(1) says the consumer
consumer a written explanation of an	must receive a written explanation in the mail of
investigation's findings including additional rights.	the investigation's findings including a notice of
	the consumer's right to request documentation
	within the specified time period. On request, the
	institution must promptly provide copies of the
	documents.
The collection agency does not provide the results	Under Reg. E, an institution must determine
of an investigation to the consumer within the	whether an error occurred within 10 days of
proper timeframe.	receiving a notice of error and must report the
	results to the consumer within three days after the
	determination [205.11(c)(1)] unless it is unable to
	complete the investigation in that time. If not, it
	can take up to 45 days to complete the
	investigation but must provisionally credit the
	consumer's account [205.11(c)(2)].
The agency does not correct an error.	Section 205.11(c) requires an institution to correct
	the error within one business day after
	determining that an error did occur.
The institution does not provide an adequate	Section 205.7(a) requires that an institution must
initial disclosure to the consumer.	provide adequate initial written disclosure at the
	time a consumer contracts for an EFT service or
	before the first transfer is made.
The institution fails to provide to the consumer an	Section 205.8(b) requires that an appropriate error
error resolution at least once a year.	resolution notice be sent to the consumer at least
	once each calendar year.
Records are not properly retained.	Section 205.13(b) requires the institution to retain
	evidence of compliance with the requirements
	imposed the EFTA and Reg. E for a period of not
	less than two years from the date disclosures are
	made or action is taken.
The bank company does not send an advisory to	An agency bank is required tomust report the
customer after error correction	results of an investigation and notify the consumer

Challenges

One of the biggest compliance dilemmas is the difference between NACHA rules for EFTs and ACH transactions, and how the CFPB may go after Regulation E violations. While collection agencies are used to the rules set forth in NACHA agreements, the CFPB often takes it one step further. For example, under NACHA rules, it is okay for a collection agency to only have a recording of a consumer's voice as proof of authorization for an EFT. On the other hand, Regulation E takes it one step further and mandates that agencies have written authorization from the consumer before finalizing an EFT.

If a collection agency violates the rules set forth in a NACHA agreement, consequences include removal from the ACH network, mandated education and –in extreme situations – fines. If the CFPB finds that a debt collector has violated Regulation E, the consequences are much more public-facing. The Bureau may try to enact federal policy that curtails an agency's bad practices, or it may impose hefty fines. It's critical that collection agencies demonstrate to the CFPB that they have a good compliance management system in place to handle the requirements of Regulation E.

Solutions

If a debt collector runs into a Regulation E violation, there's a good chance the issue can be settled without litigation. There's typically enough of a paper trail to make it clear if an error was a discoverable error; therefore, that can be corrected without bringing lawyers into the process.

Regulation E establishes an entire process including time limits within which collection agencies have to deal with errors brought to their attention. One of the outcomes of that could be that there in fact isn't an error at all; the customer was under a mistaken impression about whether there was an error or not.

Ultimately, errors of omission seem to occur more so than errors of commission. It is critical that agencies include language that makes it very clear how EFTs will be handled.

Agencies need to be certain to provide language that is:

- **1.** Clear and Concise Terms and Conditions: Outline your financial practices including NSF charges, convenience fees, merchant practices as well as your contact information.
- **2. Right of Revocation:** Clearly explain how to change, extend or payoff any established payment plan. If changing a payment plan requires an alternate contact, you must include this information as well as hours of operation.
- **3. Online Acknowledgement:** Include a statement that clearly defines the agreement and give the payer an opportunity to acknowledge understanding and accepting it.
- **4. Signature:** The consumer must sign the agreement. Either a hard copy signature or an electronic signature is acceptable. You must store this signed agreement for at least two years.