

Client Alert

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CFPB Announces Settlement for Violations of the EFTA and CFPA

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On January 3, 2019, the Consumer Financial Protection Bureau (CFPB) announced a settlement with a federal savings bank for alleged violations of the Electronic Fund Transfer Act (EFTA) and Regulation E, as well as alleged violations of the Consumer Financial Protection Act of 2010 (CFPA). According to the CFPB press release, the savings bank has been ordered to provide approximately \$12 million in restitution, and pay a \$3.5 million civil money penalty. This is the first CFPB enforcement action under Director Kathy Kraninger.

THE ALLEGED VIOLATIONS

The CFPB alleged that the savings bank violated the EFTA and its implementing Regulation E by (i) failing to correctly honor customers' stop-payment requests on preauthorized electronic fund transfers (EFTs); and (ii) failing to conduct reasonable error resolution investigations. In addition, the CFPB alleges that the savings bank violated the CFPA by reopening deposit accounts that customers had closed without seeking prior authorization or providing adequate notice.

Electronic Fund Transfer Act and Regulation E

The EFTA and its implementing Regulation E require that financial institutions holding consumers' accounts allow consumers to stop future payment on preauthorized EFTs. Under the EFTA, "[a] consumer may stop payment of a preauthorized electronic fund transfer by notifying the financial institution orally or in writing at any time up to three business days preceding the scheduled date of the transfer."

According to the CFPB consent order, the savings bank failed to enter some stop-payment orders after account holders asked the bank to stop payment on preauthorized EFTs, including by refusing to enter stop payments or by requiring consumers to contact the merchants initiating the EFTs prior to implementing stop payment orders. In addition, the CFPB alleged that the savings bank did not have a mechanism to systematically stop payment on preauthorized EFTs processed on debit cards. The CFPB alleged that the savings bank violated the EFTA and Regulation E when it failed to stop payment for preauthorized EFTs after notification from the consumer.

The EFTA and Regulation E also require that financial institutions holding consumers' accounts allow consumers to contest incorrect or unauthorized EFTs through an error resolution procedure. The EFTA requires that a financial institution "investigate [an] alleged error, determine whether an error has occurred, and report or mail the results of such investigation and determination to the consumer within ten business days." Regulation E further requires that the financial institution "investigate promptly." In addition, Regulation E provides that a reasonable investigation by the financial institution, at a minimum, must include a "review of its own records regarding [the] alleged error."

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In the consent order, the CFPB alleged that the bank violated the EFTA and Regulation E by failing to initiate and complete reasonable error resolution investigations. According to the CFPB, the savings bank did not investigate reported errors unless the consumer confirmed the asserted error in writing on a specific form within 10 days of being sent the form. While Regulation E permits “[a] financial institution to require the consumer to give written confirmation of an error within 10 business days of an oral notice,” the “financial institution must begin its investigation promptly upon receipt of an oral notice [and] may not delay until it has received a written confirmation.”

The CFPB also alleged that the savings bank had a separate procedure for customers who notified the bank of a suspected error regarding a payday loan, which instructed the account holder to dispute the transaction with the lender.

The CFPB concluded that the savings bank did not have a procedure in place to require that a reasonable error resolution investigation occur whenever a consumer notified the bank about a suspected error regarding an EFT, resulting in routine failures to conduct a reasonable review of all relevant information within its own records prior to making a determination about whether the consumer had asserted a valid error. The CFPB asserted that “[i]n numerous instances when the savings bank found no error, a reasonable review of all relevant information within the bank’s own records would have resulted in a determination in favor of the consumer.” As a result, the CFPB concluded that the savings bank failed to adequately address the unauthorized or incorrect transactions, as required by the EFTA and Regulation E.

Consumer Financial Protection Act of 2010

In the second part of the consent order, the CFPB alleged that the savings bank unfairly reopened certain closed customer accounts, in violation of the CFPA. The CFPA prohibits covered persons from engaging in unfair acts or practices. An act or practice is unfair if it causes or is likely to cause consumers substantial injury that is not reasonably avoidable and if the substantial injury is not outweighed by countervailing benefits to consumers or to competition.

The CFPB alleged that the savings bank reopened accounts that had been closed by account holders when the bank received certain types of debits or credits to the accounts. The CFPB also alleged that when the savings bank reopened accounts (1) to process debits, some balances became negative and potentially subject to fees, such as overdraft and non-sufficient funds fees; or (2) to process credits, this gave creditors the opportunity to initiate debits to the account, possibly resulting in the same types of fees. The CFPB alleged that the savings bank reopened such accounts without obtaining consumers’ prior authorization and providing timely notice, unfairly causing substantial injury to consumers that were not reasonably avoidable or outweighed by any countervailing benefit to consumers or to competition.

According to the consent order, consumers were reimbursed for incurred fees plus interest in July 2017.

CONCLUSION

In addition to requiring payment of more than \$12 million in restitution and a \$3.5 million civil money penalty to settle the CFPB’s charges, the CFPB ordered the savings bank to improve its practices with respect to stop-payment requests on preauthorized EFTs; conduct a prompt, thorough, and reasonable error resolution investigation whenever a customer notifies the bank of a suspected error; improve its practices related to the

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processing of transactions subsequent to account closure; and develop a comprehensive compliance plan designed to ensure that the bank's stop-payment, error resolution, and deposit account re-opening practices comply with federal consumer financial laws and the terms of the consent order. The consent order serves as a reminder of the challenges of administering preauthorized EFTs, as well as the regulatory expectations related to reasonable investigations of errors alleged by consumers.

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