



The Regulatory Alchemist

A Publication of Alchemetric Solutions, Inc.

In this issue: Regulatory Compliance Observations

In September 2020 the CFPB released its Summer 2020 edition of Supervisory Highlights. In this publication the CFPB discusses several regulatory compliance items that have been noted by its examiners. Some of these items include:

FCRA/Regulation V

Furnishers are required to conduct a reasonable investigation with respect to the disputed information and review all relevant information provided by the consumer with the dispute notice or provided by the credit reporting company. CFPB examiners found that, for both direct and indirect disputes, the furnishers failed to review underlying account information and documentation, account history notes, or dispute-related correspondence that was provided in order to assess what reasonable investigative steps would be necessary.

EFTA/Regulation E

The EFTA indicates that “no writing or other agreement between a consumer and any other person may contain any provision which constitutes a waiver of any right conferred or cause of action created by this sub- chapter.” Both the EFTA and Regulation E state that consumers have a right to have their claims of error investigated if their notice of

error meets certain criteria. CFPB examiners have observed some financial institutions requiring consumers to sign deposit account agreements that stated that the consumers would “cooperate” with the institution’s investigation of any errors filed by the consumer. The “cooperation” included providing affidavits and notifying law enforcement authorities. By requiring consumers to “cooperate” with Regulation E error investigations and provide information beyond that which is required in EFTA and Regulation E, the financial institutions’ agreements contained provisions that waived consumers’ rights in violation of EFTA.

Examiners have also found that some institutions required consumers to sign stop payment request forms and deposit agreements in which the consumers agreed to indemnify and hold the institutions harmless for various claims and expenses arising from the institutions honoring stop payment requests. This included not holding the financial institutions liable if they were unable to stop the payment due to inadvertence, accident, or oversight. Such language was interpreted as impermissibly waiving consumers’ rights in violation of EFTA and Regulation E.

Furthermore, both Section 908(a) of EFTA and Regulation E require a financial institution investigating an alleged EFT error to communicate to consumers, among other elements, (1) the investigation determination; and (2) an explanation of the determination when it determines that no error or a different error occurred within its report of results.

CFPB examiners have found that some financial institutions violated Regulation E by failing to provide an explanation of its findings within the report of results. Please note, “explanation” is not synonymous with that of a “determination.” Financial institutions must go beyond just providing the findings to actually explain or give the reasons for or cause of those findings.

Additional Information

For additional information as well as to review other CFPB findings, check out the full edition of this newsletter at consumerfinance.gov

And the Really Fine Print....

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November 2020

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