



UNDERSTANDING THE NUANCES BETWEEN REGULATION Z AND REGULATION E UNAUTHORIZED TRANSACTIONS

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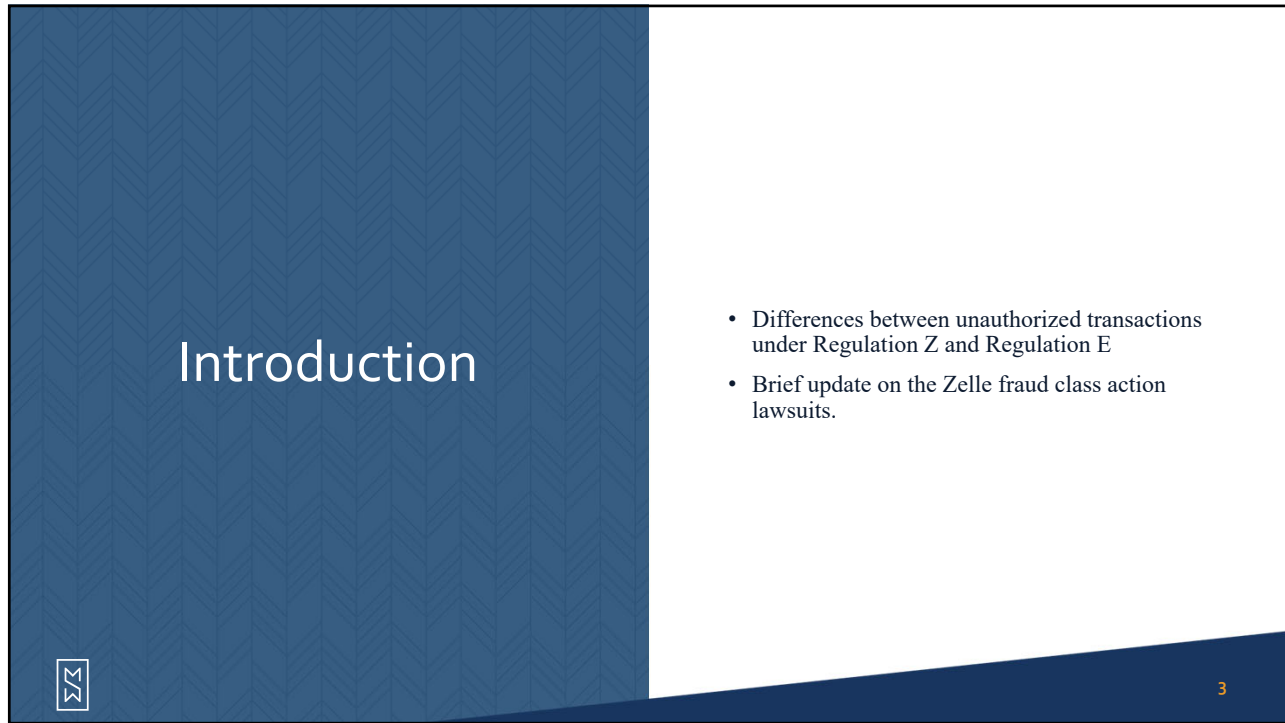
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- If you have any questions, or require further information on these materials, please do not hesitate to call our office at: (818) 241-0103.




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Introduction

- Differences between unauthorized transactions under Regulation Z and Regulation E
- Brief update on the Zelle fraud class action lawsuits.

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**UNAUTHORIZED TRANSACTIONS
REGULATION E
VS.
REGULATION Z**

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Unauthorized Transaction

- Regulation E
 - Applies to electronic fund transfers, including ACH transfers and debit cards.
- Regulation Z
 - Applies to open-end and closed-end credit but includes special liability provisions related to credit cards that address unauthorized transactions.
- Knowing the type of transaction is key to understating which unauthorized transaction procedures apply.



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Regulation E vs. Regulation Z – Unauthorized Transaction

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| <ul style="list-style-type: none"> • Regulation E Definition <ul style="list-style-type: none"> – Regulation E defines an unauthorized EFT as 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. | <ul style="list-style-type: none"> • Regulation Z Definition <ul style="list-style-type: none"> – Under Regulation Z, the term unauthorized use means “the use of a credit card by a person, other than the cardholder, who does not have actual, implied, or apparent authority for such use, and from which the cardholder receives no benefit. |
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Regulation E – Unauthorized Transaction (Fraud)

- An unauthorized EFT as defined under Regulation E also includes transfers initiated by a person who obtained the access device information (i.e., login information) from the consumer through fraud or robbery.



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Regulation Z – Unauthorized Use (Fraud)

- There are slight differences in the types of transactions that are considered unauthorized based on whether Regulation E or Regulation Z applies. As noted, Regulation E covers unauthorized EFTs from an account (but does not cover credit cards), while Regulation Z covers transactions on open-end credit, including credit cards.
- Notably, an unauthorized use under Regulation Z includes a transaction initiated by a person who has obtained the credit card from the member, or otherwise initiated the transaction, through fraud or robbery. *See Comment 1026.12(b)(1)(ii)-4.*
- Regulation Z includes similar language to that of Regulation E, in that, both define an unauthorized transaction as one initiated by someone other than the consumer/cardholder.



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Regulation E –Unauthorized Transaction Limits on Liability

- (1) **\$50 Limited Liability Tier.** Notification within two business days.
- (2) **\$500 Limited Liability Tier.** Notification after two business days.
- (3) **Unlimited Liability Tier.** A consumer must report an unauthorized electronic fund transfer that appears on a periodic statement within 60 days.



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Regulation Z – Unauthorized Use Credit Card Limits on Liability

- As a general rule, the cardholder's liability for unauthorized use of a credit card cannot exceed either \$50 or the value obtained through the unauthorized use before the card issuer is notified, whichever is less.
- In addition, there are added conditions to imposing liability on the cardholder for unauthorized use under Regulation Z.
- If state law or an agreement between a cardholder and the card issuer imposes lesser liability than stated above, the lesser liability shall govern.



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Regulation E – Unauthorized Transaction Consumer Notice

- Provides specific time frames and tiered limits of liability within which notice must be provided, specific to unauthorized transactions.
- Key Notice Timeframes
 - 2 Business Days
 - 60 days – Tied to Periodic Statements



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Regulation Z – Unauthorized Use Consumer Notice

- Unlike Regulation E, Regulation Z does not include a two-business day timing requirement regarding unauthorized use disputes.
- Regulation Z has separate billing error resolution notice requirements, tied to periodic statements.
- Among other requirements, a billing error notice is defined in pertinent part as written notice received by a creditor no later than 60 days after the creditor transmitted the first periodic statement that reflects the alleged billing error. § 1026.13(b)(1). This implies that written notice of the error must be provided within 60 days.
- **However, and importantly, these billing error notice limits and timing requirements do NOT apply to the credit card unauthorized use liability protections (i.e., up to \$50). Regulation Z commentary confirms that the above time limit requirements do not affect the limit of liability protections for unauthorized use claims in relation to credit cards.**



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Regulation E – Error Resolution Procedures

- Generally, a financial institution must investigate **promptly (without delay)** upon receipt of an **oral or written** notice of error, and with limited exceptions, must determine whether an error occurred **within 10 business days** (and up to 20 business days in limited circumstances) of receiving a notice of error.
 - Thereafter, the financial institution must report the results to the consumer within 3 business days after completing its investigation and must correct the error within 1 business day after determining that an error occurred.
- If the financial institution is unable to complete its investigation within 10 business days, the institution may take **up to 45 days** (and up to 90 days in limited circumstances) from receipt of a notice of error to investigate and determine whether an error occurred, provided the institution does the following:
 - (i) Provisionally credits the account within 10 days.
 - (ii) Informs the consumer, within two business days after the provisional crediting.
 - (iii) Corrects the error, if any, within one business day after determining that an error occurred; and
 - (iv) Reports the results to the consumer within three business days after completing its investigation (including, if applicable, notice that a provisional credit has been made final).
- Procedures if no error or different error occurred:
 - Written explanation (within 3 business days of completing the investigation)
 - Debit provisional credit and provide notice



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Regulation Z – Error Resolution Procedures

- A card issuer is not required to impose liability on a cardholder for the unauthorized use of a credit card; if the card issuer does not seek to impose liability, the issuer need not conduct any investigation of the cardholder's claim.
- However, if seeking to impose liability on the cardholder, the card issuer must conduct a **reasonable investigation of the claim.**
- In general, (1) the creditor shall mail or deliver written acknowledgment to the consumer within **30 days** of receiving a billing error notice; and (2) The creditor shall comply with the appropriate resolution procedures, within 2 complete billing cycles (**but in no event later than 90 days**) after receiving a billing error notice.



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Q&A

- Regarding an unauthorized use claim related to a credit card, can a member make a claim 12 months after the charge was posted on their credit card statement?



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SCENARIOS



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Fraud Scenario 1 (Reg Z)

- Apple Pay Transaction

- Member provides credit card info to a 3rd party fraudster who then activates it on Apple Pay. After the credit card was activated on Apple Pay, over \$2500 was spent over the next few days, which the member is now claiming fraud.
- May the Credit Union hold the member liable? Any limits on the member's liability?



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Scenario 2 (Reg E)

- Sending Money via Zelle

- Member is fraudulently induced into providing her access device (e.g., Zelle login credentials). Thereafter, the fraudster uses the login credentials and initiates a \$2,000 transfer out of the member's credit union account through Zelle. Member notifies the Credit Union within 2 business days.
- Is the Credit Union obligated to refund the money?
- Any limits on the member's liability?



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Scenario 3 (Reg E)

- Sending Money via Zelle

- Member initiates a Zelle transfer of \$2,000 to pay a moving company and then later realizes it was a scam and that the moving company does not exist. Member reports the transaction as fraud within two business days. Is the Credit Union obligated to refund the money under Regulation E?



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ZELLE CLASS ACTION UPDATE



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Reg E - Zelle Class Action Takeaway



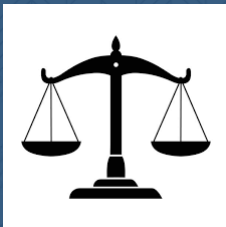
- Bank of America, Wells Fargo, and Navy Federal Credit Union (among others) were all sued by customers and members for violation of the EFTA.
- Recent favorable rulings regarding the EFTA claims.



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Reg E - Zelle Class Action Takeaway




- Recent rulings in *Natalie Tristan v. Bank of America* issued on June 28, 2023, and October 26, 2023, by Judge Carter in the Central District of California.
- Dismissed EFTA claims.
- However, the plaintiff's breach of the implied covenant of good faith and fair dealing claims survived the motion to dismiss (for a second time). The definition of "unauthorized transaction" was a key issue.



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