



Regulations Module 7

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You Tell Me

- What are the regulations?
 - Why are they important to the ACH Network?
 - Why are they important to AAPs?

Federal Government ACH

- Title 31 Code of Federal Regulations Part 210 (31 CFR 210)
 - Federal regulation for *Federal Government Participation in the ACH*
 - In 1999 adopted the *NACHA Operating Rules*
 - Exempts certain rules
- Green Book
 - Procedure manual for financial institutions
 - http://www.fiscal.treasury.gov/fsreports/ref/greenBook/greenbook_home.htm

Regulation D

- Establishes level of reserves financial institutions must hold at the Federal Reserve Banks
 - Reserves are based on deposits in transaction accounts
- Defines a transaction account
 - Any deposit account, even if technically a savings account, that allows six or more transfers or withdrawals per month to another account of the depositor or to a 3rd party

Regulation E

- Implements the Electronic Fund Transfer Act (EFTA) of 1978
 - Establishes the basic rights, liabilities and responsibilities of consumers who use electronic fund transfer services
 - ATM, debit card, prepaid card, and ACH transactions
 - Does not address domestic wire transfers or transactions that were negotiated as checks (RCK, XCK)

Regulation E

- Notice requirements for check conversion
- Merchants/billers must provide notice that receipt of the consumer's check constitutes authorization for the check to be processed as a check or as an EFT
 - Consumer authorizes process when they are presented with notice and goes forward with the transaction
 - Consumer should also be provided with a copy of notice as a take away

Regulation E

- Service fees
 - Merchant/biller must provide notice if they wish to collect a service fee electronically for a check returned for insufficient or uncollected funds
 - Consumer authorizes process when they are presented with notice, specific amount of the fee and goes forward with the transaction
 - Consumer should also be provided with a copy of notice as a take away



Regulation E

Initial Disclosure

- Written or electronic
- Disclosure of business days
- Permissible transactions
- Fees/charges
- Rights regarding receipts, statements, notices
- Liability for unauthorized transactions
- Stop payments
- Error resolution

Periodic Disclosure

- Monthly when EFT activity
- Amount of transfer
- Date of debit/credit
- Type of account and account number
- Party debiting/crediting account
- Terminal ID
- Fees
- Balances in account
- Address/phone to report errors

Regulation E

- Disclosure requirements for ACH POS transactions
 - Card issued by a third-party other than the account holding financial institution
- Error resolution handled by card issuer and consumer
- No periodic statement from card issuer if certain requirements met

Regulation E

- Error resolution
 - Defines an error
 - Unauthorized
 - Missing entry from periodic statement
 - Bookkeeping error
 - Incorrect amount at ATM
 - Incorrectly identified entry
 - Consumer requests more information, terminal receipts, periodic disclosures or notices of preauthorized credit notices

Regulation E

- **Error Resolution Exemptions**
 - A routine inquiry about a consumer's account balance
 - A request for information for tax/recordkeeping
 - A request for duplicate copies of documentation

You Tell Me

- What are some examples of errors as defined by Regulation E?
- What isn't an error?

Regulation E – Error Resolution

Action	ACH	Debit Card	Exception
Consumer notifies DFI of error	Within 60 days of statement date	Within 60 days of statement date	Within 90 days of statement if a notice of error involves an EFT that was not initiated within a state; Resulted from a point-of-sale debit card transaction; or occurred within 30 days after the first deposit to the account was made
DFI investigation	10 business days	10 business days	20 business days if error occurred in new account
DFI investigation completed	Advise consumer within three business days; if error confirmed, correct within one business day	Advise consumer within three business days; if error confirmed, correct within one business day	
DFI investigation incomplete	Provide provisional credit; must complete within 45 days of consumer notification	Provide provisional credit; must complete within 45 days of consumer notification	Provide provisional credit; must complete within 90 days of consumer notification for new account debit card/foreign transactions

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Regulation E

- Authorization for preauthorized debits to consumer account
 - In writing, signed or similarly authenticated
 - Satisfy requirements of E-Sign Act
 - Verification of consumer identity and assent
 - Provide copy of authorization to consumer

Regulation E

- Consumer stop payments on electronic funds transfers
 - May be provided orally or in writing up to three business days before scheduled date of debit
 - RDFI may require written confirmation within 14 days of oral stop payment request
 - If required by RDFI and written confirmation not received, stop payment ceases to be binding

Regulation E

- Stop Payment of Preauthorized Transfers
 - If consumer requests to stop all future payments, an RDFI may require written confirmation of revocation of authorization with the Originator
 - If not received within 14 days the RDFI may honor subsequent debits

Regulation E

- Notice for preauthorized debits in varying amounts
 - 10 days prior to the scheduled payment date
 - Consumer may elect to receive notice only if amount varies by more than a pre-specified range or when the transfer will differ from the most recent transfer by more than agreed upon amount

Regulation E Subpart B

Remittance Transfer Rule

- The Consumer Financial Protection Bureau (CFPB) has issued this rule to protect consumers who send money electronically to foreign countries
- These transactions are called remittance transfers
- Includes
 - Disclosure requirements
 - Right to cancel
 - Error resolution
- Applies to:
 - Consumer International Wires
 - International ACH (IAT)
 - Online bill pay
 - Loads onto certain prepaid cards
 - Sweep accounts

Regulation CC

- Implements the Expedited Funds Availability Act of 1988
 - Defines availability of deposited funds
- *NACHA Operating Rules* provide for better funds availability than Regulation CC
 - The *Rules* state that an RDFI must make the amount of each credit Entry received from its ACH Operator available to the Receiver for withdrawal no later than the Settlement Date of the Entry
 - An RDFI that reasonably suspects that a credit Entry is unauthorized is exempt from the Settlement Date requirement but subject to applicable legal requirements

Credit Availability Exception

- According to the *NACHA Operating Rules*
 - If an RDFI reasonably suspects that a credit Entry is unauthorized, the RDFI is exempt from the availability requirement subject to applicable Legal Requirements
 - Regulation CC applies and funds must be made available by opening of business on the business day following the Settlement Date
 - An RDFI invoking such an exemption must promptly notify the ODFI

FRB Operating Circular 4

- Federal Reserve Bank’s terms and conditions of its functions as an ACH Operator
- Governs clearing and settlement of ACH credit and debit items
 - Defines processing windows/schedules in Appendix B



Transmission Deadline	Item Type(s)	Settlement Schedule ⁴
10:30 a.m. ET (1030 ET)	Same Day eligible Forward Items and all Return Items (excluding paper returns, paper NOCs, Fedline Web returns and Fedline Web NOCs)	1 p.m. ET (1300 ET) – same day
	Future dated Forward Items	8:30 a.m. ET (0830 ET) – future day ⁴
2:45 p.m. ET (1445 ET)	Same Day eligible Forward Items and all Return Items (including paper returns, paper NOCs, FedLine Web returns, and Fedline Web NOCs ²)	5 p.m. ET (1700 ET) – same day
	Future dated Forward Items	8:30 a.m. ET (0830 ET) – future day
4 p.m. ET (1600 ET)	Return Items (excluding paper returns, paper NOCs, FedLine Web returns and FedLine Web NOCs)	5:30 p.m. ET (1730 ET) – same day
8 p.m. ET (2000 ET)	Future dated Forward Items and all Return Items (excluding paper returns, paper NOCs, FedLine Web returns and FedLine Web NOCs)	8:30 a.m. ET (0830 ET) – future day
2:15 a.m. ET (0215 ET)	Future dated Forward Items and all Return Items (including paper returns, paper NOCs, FedLine Web returns, and FedLine Web NOCs)	8:30 a.m. ET (0830 ET) – future day



OCC Circular 235

- Office of the Comptroller of the Currency (OCC) Circular 235
- Applies to national banks
- Relates to FI's responsibilities for Network risk identification & assessment
 - Includes ACH Network

UCC 4A

- Uniform Commercial Code Article 4A
 - Governs “corporate wholesale credit entries,” including wire transfers and corporate ACH credit Entries
 - Comprehensive body of state law
 - Choice of law
 - Some provisions may be altered through agreements while others cannot
 - ODFI/Originator, ODFI/TPS and deposit agreements
 - Commercially reasonable

UCC 4A Cannot Be Altered - Origination

- ODFI is obligated to transmit all Entries it accepts
 - ODFI acceptance occurs when the Entry is transmitted to the ACH Operator
- ODFI is obligated to pay the Originator or Receiver interest on any Entries delayed or not transmitted

UCC 4A Cannot Be Altered - Origination

- Originator is obligated to pay ODFI for Entries properly transmitted
- ODFI must settle “on-us” Entries on the Settlement Date

UCC 4A Cannot Be Altered - Origination

- ODFI is liable for any error(s) it makes
 - Errors could include
 - Duplicate Entries
 - Transmits amounts greater or less than intended
 - Transmits to a Receiver other than intended
- ODFI is liable if it does not follow commercially reasonable security procedures to which they agreed

UCC 4A Can Be Altered - Origination

- ODFI may refuse any entry unless it has an express agreement to the contrary
- Notice of rejected entries must be given to the Originator by a reasonable means
- Cancellation, withdrawal or amendment of ACH entries after acceptance by ODFI
 - *NACHA Operating Rules* provide that entries cannot be withdrawn, canceled or otherwise amended after presentation to the ACH Operator; rules supersede UCC 4A

UCC 4A Can Be Altered - Origination

- Originator is obligated to inform ODFI of any errors in entries transmitted within 90 days
- Originators can only receive reimbursement for ODFI errors for one year following the Originator's receipt of sufficient notice to determine the error
- Choice of law
 - *NACHA Operating Rules* selected State of New York

UCC 4A - Receipt

- Cannot be altered through deposit agreement
 - RDFI is obligated to pay the Receiver for all Entries where final settlement has been received
- Can be altered through deposit agreement
 - Notification by RDFI of receipt of corporate ACH Credit Entry
 - Post Entries based solely on account number

UCC 4A - Commercially Reasonable Security

- Considerations to determine commercially reasonable include
 - Size of financial institution
 - Size of Originator
 - Type of origination activity
 - SEC code
 - Frequency of transactions
 - Nature of business
 - Similarly situated Originators doing similarly related business

UCC 4A - Commercially Reasonable Security

- Originator and ODFI must agree to security procedures
- When offered by the ODFI, if refused by Originator, alternate procedures by Originator must be agreed upon
 - Originator accepts liability
- Signature comparison alone is not considered to be commercially reasonable

OFAC

- Office of Foreign Assets Control
- Administers and enforces economic and trade sanctions based on U.S. foreign policy and national security goals
- Not a bank regulator
- OFAC requirements are separate and distinct from any other law, Act or agency requirements

OFAC Jurisdiction

- All U.S. citizens and corporations organized under U.S. law, including financial institutions, must comply with OFAC sanctions
- Non-compliance may result in criminal and/or civil penalties

OFAC

- Specially Designated Nationals (SDNs) and Blocked Persons List
 - Targeted foreign countries
 - Terrorists
 - International narcotics traffickers
 - Persons engaged in activities involving weapons of mass destruction

OFAC and ACH

- *NACHA Operating Rules* reflect the Know Your Customer (KYC) principle
- Know Your Customer's Customer (KYCC)
- Domestic ACH
 - ODFI – Know your Originator
 - RDFI – Know your Receiver
- International ACH
 - ODFI and RDFI must screen all information in an IAT transaction (e.g., all participants to the transaction and remittance information)

FinCEN

- Financial Crimes Enforcement Network
- Oversees and implements policy to prevent and detect money laundering
 - Administers Bank Secrecy Act
- Provides intelligence and analytical support to law enforcement

USA PATRIOT Act

- Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act of 2001
- Combats international terrorism and money laundering
- Requires financial institutions to have a Customer Identification Program (CIP)

CIP

- Financial institutions must complete the following prior to opening a new account
 - Verify the identity of any person seeking to open an account
 - Maintain records of the information used to verify the identity
 - Consult government-known suspected terrorist lists to determine whether person appears on list

BSA

- Bank Secrecy Act of 1970
 - Requires U.S. financial institutions to assist U.S. government agencies to detect and prevent money laundering
 - Financial institutions must
 - Keep records of cash purchases of negotiable instruments
 - File reports of cash transactions exceeding \$10,000 (daily aggregate)
 - Report suspicious activity

BSA

Currency Transaction Report

- Currency or coin transactions greater than 10K
 - Lump sum or aggregate
 - Daily threshold
- Prevents money laundering
- Financial Institutions
 - Personal Identifying Information
 - SSN, Driver's License/Gov't ID

Suspicious Activity Report

- Any activity that FI employee deems unusual
 - Money Laundering
 - Tax Evasion
 - Other Criminal Activity

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BSA “Travel Rule”

- Incorporated into IAT Entries
 - Requires following information to “travel” with the payment throughout the process
 - Name and address of Originator
 - RTN/Account Number of Originator
 - Name and address of Receiver
 - RTN/Account Number of Receiver
 - Amount and transaction date
 - Reason for payment

Questions?



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