



CFPB ISSUES BULLETIN REGARDING PREAUTHORIZED ELECTRONIC FUND TRANSFERS

The CFPB issued a Compliance Bulletin (Bulletin 2015-06) to remind entities of their responsibilities under the Electronic Fund Transfer Act and Regulation E when obtaining consumer authorizations for preauthorized electronic fund transfers (EFTs) from a consumer's account. Under Regulation E "preauthorized electronic fund transfer" means an electronic fund transfer authorized in advance to recur at substantially regular intervals.

Regulation E requires preauthorized EFTs from a consumer's account to be authorized only by a writing signed or similarly authenticated by the consumer. Thus, Regulation E requires both (i) a writing and (ii) a signature (or similar authentication).

The Bulletin covers when an authorization over the telephone may meet the requirements of Regulation E and the Electronic Signatures in Global and National Commerce Act (E-Sign Act). The Bulletin states that oral recordings obtained over the phone may be used to obtain an authorization under Regulation E provided that the recording complies with the E-Sign Act. The E-Sign Act establishes requirements for "electronic signatures" and "electronic records." Under the E-Sign Act the term "electronic signature" means an electronic sound, symbol or process, attached to or logically associated with a contract or other record and executed or adopted by a person with the intent to sign the record. The Bulletin addresses electronic signatures and provides that having the consumer enter a code into the telephone keypad, or recording and retaining the consumer's oral authorization assuming the consumer intends to sign the record through these actions, satisfies the E-Sign Act. However, under the E-Sign Act an "electronic record" cannot be created by an electronic recording of an oral communication. Under the E-Sign Act the term "electronic record" means a contract or other record created, generated, sent, communicated, received or stored by electronic means. Thus, the writing required by Regulation E must be in paper or electronic form, such as an authorization provided over the internet.

The Bulletin also discusses Regulation E's requirement that persons that obtain authorizations for preauthorized EFTs provide a copy of the terms of the authorization to the consumer. According to the CFPB, two of the most important terms of the authorization are (i)

the amount of the payment and (ii) the timing of the payment. The CFPB noted that during examinations the CFPB found that the notice of terms provided to consumers by some companies fail to satisfy Regulation E as the notices did not disclose these two important terms. Regarding providing a copy of the authorization to consumers, the CFPB suggests that as an alternative to providing a copy of the authorization post-execution, a company can provide a consumer with two copies of the authorization form, and have the consumer sign and return one form while retaining the other copy. However, according to the CFPB only making a copy of the authorization form available upon the consumer's request is not sufficient to satisfy Regulation E.

The Bulletin is a non-binding general statement of policy articulating considerations relevant to the CFPB's exercise of its supervisory and enforcement authority. The Bulletin is a good reminder to review your company's procedures for obtaining authorization for preauthorized electronic fund transfers. □

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