

Reg E's Continued Importance During the CFPB Halt



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Regulation E (Reg E) establishes the basic rights, liabilities, and responsibilities of consumers who use electronic funds transfers (EFTs) and remittance transfer services, and of the financial institutions or others that offer these services.

As the new Trump administration implements its deregulatory agenda, work at the CFPB has been brought to a halt, at least temporarily. On February 8, acting Director Russell Vought sent an email memorandum to Bureau personnel to stop all work. The memo called for Bureau employees to cease work on all pending investigations, to not open any new investigations, to suspend the effective date of all final rules that have not yet become effective, and to not issue any proposed rules.

While the administration's ultimate vision for the Bureau remains unclear, financial institutions must still ensure that they comply with Regulation E (Reg E). Continued compliance is necessary to limit liability risks, both once the Bureau resumes operations and as state governments work to fill any perceived gaps in the Bureau's enforcement.

The Bureau's current halt has not affected the legal force of Reg E. Vought's memo did not call for the Bureau to repeal any final rules that are already effective, such as Reg E. Accordingly, Reg E remains in effect, and any violations of Reg E could be investigated when the Bureau resumes work. And there is reason to believe that the Bureau will resume work: On February 11, President Trump nominated Jonathan McKernan to be Bureau Director. The nomination of McKernan, a longtime regulatory attorney who previously served on the Federal Deposit Insurance Corporation (FDIC) Board of Directors, suggests that the Bureau will continue to operate in some capacity during the Trump administration. Financial institutions should thus expect the Bureau to resume regulatory and enforcement operations in the near future.

But even as the Bureau remains dormant, financial institutions that ignore Reg E face liability risks from state governments that have enacted parallel regulations. The Electronic Funds Transfer Act (EFTA) does not preempt state regulations that impose identical or heightened restrictions in comparison to EFTA and Reg E. See 15 U.S.C. § 1693q. States have responded to this lack of preemption by promulgating their own regulations related to electronic funds transfers. Massachusetts, for example, has enacted a suite of regulations incorporating Reg E as its own state law. See, e.g., 209 C.M.R. § 31.05 ("Compliance with 12 C.F.R. § 1005.5 constitutes compliance with 209 C.M.R. § 31.05."). Thus, states such as Massachusetts could pick up the enforcement of Reg E, even while the Bureau's work

stoppage continues. Considering the Bureau's January 14 recommendation to states to strengthen their consumer protection laws, financial institutions should expect state-level enforcement of Reg E. See Consumer Fin. Prot. Bureau, *Strengthening State-Level Consumer Protections* (Jan. 2025); see also Caitlin Mandel, Patrick Doerr & Hollie Albin, *CFPB Helps Guide States to Fill Gaps in Protection Framework*, Bloomberg (Feb. 21, 2025).

Though the Bureau is inactive, Reg E continues to operate in full force. Financial institutions should continue to closely monitor their compliance with Reg E, or else they risk becoming the subjects of costly enforcement actions at the federal and state levels.

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