
EFT Agreement and Disclosures

2021 Document Updates Overview



The following is an overview of updates made to specific sections of the LOANLINER® Electronic Fund Transfers Agreement and Disclosure (EFT Agreement).

If you have questions regarding any of the changes to the EFT Agreement, please contact our team of compliance specialists at loanliner@cunamutual.com.

1. FOREIGN TRANSACTIONS

a. Visa and Mastercard - Foreign Transaction Fee Disclosures

Credit unions that assess foreign transaction fees on certain debit card transactions have been targets for class action litigation. Plaintiffs' attorneys have alleged that some credit unions breached their contractual promises by assessing foreign transaction fees when members used their debit cards to make online purchases. The complaints focus on disclosures that promise foreign transactions fees will only be assessed on transactions “made” in foreign countries. They claim that such disclosures do not make it clear, and a reasonable consumer would not understand, that transactions “made” in a foreign country include online transactions with a merchant in a foreign country even though the member/cardholder is physically located in the U.S. at the time of the transaction.

While the specific wording referenced in the class action lawsuits is not used in LOANLINER EFT Agreements, the following statement is being added to the fee disclosures in the “Foreign Transactions” section for clarification and to mitigate potential litigation risk: *“Transactions completed by merchants outside of the United States are considered foreign transactions, regardless of whether you are located inside or outside the United States at the time of the transaction.”*

NOTE: The “Foreign Transactions” section is comprised of a paragraph describing the currency conversion process and, if applicable, a second paragraph describing foreign transaction fee assessments. If a credit union does not assess or pass on foreign transaction fees to its members, the fee paragraph (including the new statement described above) will not appear in the “Foreign Transactions” section.

b. Mastercard - Currency Conversion Disclosures

Mastercard has implemented revised standards pertaining to currency conversion procedures. According to previous standards, the currency conversion rate used for a particular transaction was the rate as of the date the transaction was **processed**, and NOT the date the transaction occurred or was posted to the account.

The revised standards provide that the currency conversion rate used for a particular transaction will be the rate for the applicable currency on the date the transaction occurs. However, in limited situations, it will still be the rate on the date the transaction is **processed**.

The “Foreign Transactions” section of EFT Agreements that include Mastercard debit card disclosures will be updated to reflect the revised currency conversion process description.

c. Visa - Currency Conversion Disclosures (ADDED)

Visa has implemented revised standards pertaining to currency conversion procedures. According to previous standards, the currency conversion rate used for a particular transaction was the rate as of the date the transaction was **processed**, and NOT the date the transaction occurred.

The revised standards provide that the currency conversion rate used for a particular transaction will be the rate for the applicable currency on the date the transaction occurs.

The “Foreign Transactions” section of EFT Agreements that include Visa debit card disclosures will be updated to reflect the revised currency conversion process description.

2. DEBIT CARD / HSA DEBIT CARD

a. Transaction Type

Credit unions have the option to include the following statement in the debit card and/or HSA debit card sections of the EFT Agreement:

[Order goods or services by mail or telephone from places that accept \[Visa and/or Mastercard\].](#)

Since debit cards are also used frequently for online purchases, the statement is being expanded as follows:

[Order goods or services **online or** by mail or telephone from places that accept \[Visa and/or Mastercard\].](#)

3. FEES AND CHARGES

a. Out-of-Network ATM Fees

Some credit unions and banks have been targets for class action litigation pertaining to transactions at out-of-network ATMs. Plaintiffs’ attorneys allege that consumers have been wrongfully assessed fees for balance transfers at out-of-network ATMs. They argue that contractual terms are misleading and fail to clearly disclose that a balance inquiry conducted at an out-of-network ATM is a separate transaction from a cash withdrawal.

EFT Agreements that include disclosures for debit cards and/or ATM cards are being updated to clarify that the cardholder may be assessed multiple fees for multiple transactions in a single session at an ATM (e.g. fees for both a balance inquiry and a cash withdrawal).

b. Non-Sufficient Funds (NSF) Fee*

As a result of allegations raised in ongoing class action lawsuits, the NSF fee description is being modified to make it clear that the fee may be assessed when an item is first submitted (presented) for payment as well as for any resubmission of the item (e.g. Non-sufficient funds fee of \$X.XX **per submission/resubmission of an item.**). This change will only impact credit unions that specifically list this fee in the EFT Agreement.

NOTE: Clarifying NSF fee provisions were previously added to the Membership and account Agreement.

4. NOTICES

a. Notices and Unauthorized EFTs*

Regulation E's §1005.6 requires that written notices from members pertaining to unauthorized EFTs must be considered given at the time the notice is mailed to the credit union or is otherwise delivered for transmission to the credit union by any other usual means. However, other types of notices may be considered given by the member when received by the credit union. The language in the "Notices" section is being updated to highlight this difference.

b. Change-in-Terms Notices

The "Notices" section states that the credit union will provide 21 days' advance notice for any change to the EFT Agreement, aligning with the requirements set forth in Regulation E. However, not all changes are subject to this advance notice requirement. Therefore, the language is being updated to omit the reference to the 21-day advance notice period and will simply state that notice will be provided in accordance with applicable law.

5. BILLING ERRORS

a. Provisional Crediting for New Accounts*

Regulation E allows a credit union to extend the provisional crediting time frame from 10 business days to 20 business days if it cannot complete its billing error investigation within 10 business days after receiving the member's notice of error involving a new account. The "Billing Errors" section is being updated to allow credit unions to take advantage of this extended provisional crediting rule.

* ***Agreements ordered after 10/27/2020 already include these updates.***