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800-422-7285

Compliance Institute

Deposit & Marketing Compliance

Virtual Live-Stream Session

June 15-16, 2021



**ICBA
CERTIFICATION
PROGRAM**

Compliance Institute Manuals

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About ICBA and Community Banker University®

The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. ICBA is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education, and high-quality products and services.

With nearly 50,000 locations nationwide, community banks constitute roughly 99 percent of all banks, employ nearly 700,000 Americans and are the only physical banking presence in one in three U.S. counties. Holding nearly \$5.9 trillion in assets, over \$4.9 trillion in deposits, and more than \$3.5 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers' dreams in communities throughout America.

The goal of Community Banker University is *building better community bankers™* by delivering the very best education solutions for community bankers who want to grow and expand within the industry. Unparalleled educational offerings have been a staple of the ICBA education program, and Community Banker University will expand those offerings for the benefit of our members by bringing a fresh, modern approach to community banker education.

Community Banker University is affiliated with the prestigious Barret School of Banking to provide community bankers with an opportunity for a graduate degree in banking.

Community Banker University representatives and workshop instructors on-site at each seminar and workshop are always available to answer your questions. If you have additional comments or questions or would like more information on Community Banker University programs, products or services, please call (800)422-7285 or visit www.communitybankeruniversity.com.

Shirley Ringhand

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What Does Certification Mean?

Certification applies to individuals and is granted by an association or other non-government organization to individuals who meet predetermined qualifications established by the association or organization. A certification program uses a certification board of professionals to review instructional materials and applies a testing instrument to measure each individual's level of competence after completing each course.

Upon successfully completing all certification requirements, individuals are awarded a certification designation attesting that they have met the standards established by the board. Certification is thus intended to make the individuals, and the association offering the educational program, more accountable. Certification does not imply that individuals have been officially licensed to practice in the field in which they have been certified.

Community Banker University offers (9) certification programs specifically designed for community bank employees in critical areas of interest:

- **Bank Security:** Certified Community Bank Security Officer (CCBSO)
- **BSA/AML:** Certified BSA/AML Professional (CBAP)
- **Compliance:** Certified Community Bank Compliance Officer (CCBCO)
- **Commercial Lending:** Certified Commercial Loan Officer (CCLO)
- **Consumer Lending:** Certified Community Bank Consumer Lender (CCBCL)
- **Credit Analyst:** Certified Community Bank Credit Analyst (CCBCA)
- **Information Technology:** Certified Community Bank Technology Officer (CCBTO)
- **Internal Audit:** Certified Community Bank Internal Auditor (CCBIA)
- **Risk Management:** Certified Community Bank Risk Specialist (CCBRS)

All of Community Banker University's certification training programs are delivered through *Institutes* where classroom instruction, case studies and competency testing is performed. Upon completion of the respective institute, certification designation is granted. Annual continuing professional education is then required to ensure participant's certification designation remains current.

Certification Board

Community Banker University Certification Programs are administered by the Certification Board with the following purpose and duties:

Purpose of the Board

The Board shall exist to serve the public and the field of bank education through the establishment and maintenance of criteria and procedures for education certification. The Board is an autonomous, voluntary credentialing organization formed by the Independent Community Bankers of America ("ICBA"), a private, nonprofit, tax-exempt corporation.

Duties of the Board

The Board shall have full authority to perform the following duties:

1. Establish policies, rules, regulations and requirements for the Certification Programs.
2. Establish and maintain fee structures for the Certification Programs.
3. Direct the establishment and implementation of Certification criteria and procedures for Certification.

Community Banker University
Certified Community Bank Compliance Officer
Body of Knowledge

NOTE: The purpose of any common body of knowledge should be to provide a basis for education, training, hiring/promoting, and testing competency of those individuals who strive to be a Certified Community Bank Compliance Officer (CCBCO).

The following categories and topics should be considered when developing the minimum Body of Knowledge (BOK) required for each CCBCO:

- I. Lending Compliance
 - Regulation Z – Closed End Credit
 - Regulation Z – Open End Credit
 - Regulation X – RESPA
 - Flood Insurance
 - Private Mortgage Insurance
 - Regulation B
 - Fair Housing Act
 - Fair Lending
 - Fair Credit Reporting Act (FCRA)
 - Fair Debt Collection Practices Act
 - Regulation AA
 - Regulation C – HMDA
 - Community Reinvestment Act – (CRA)
 - Lending to Military Consumers
- II. Operations Compliance
 - Bank Bribery Act
 - Right to Financial Privacy Act
 - BSA and AML for Compliance Officers
 - FCRA and Red Flags Programs
 - Suspicious Activity Reports (SAR's)
 - OFAC Requirement
- III. Deposit Compliance
 - Consumer Financial Privacy (Reg P)
 - Regulation DD – Truth in Savings
 - Regulation E – Electronic Funds Transfer
 - Regulation CC – Expedited Funds Availability Act and Check 21
 - UDAAP
 - Advertisement of Membership
 - Nondeposit Retail Investment Programs
 - Consumer Sales of Insurance Disclosures
 - Regulations D & Q
 - Compliance Implications for Advertising and Web Site

CONTINUING PROFESSIONAL EDUCATION PROCEDURES

Requirements for Maintaining Community Banker University Certification(s)

Participation in a Community Banker University certification program requires that **ALL Certification Participants meet the Continuing Professional Education (CPE) credit requirements. You will be enrolled in a two-year maintenance cycle beginning on January 1 following certification. The CCBCO certification requires that you complete **30 CPE credits in your two-year maintenance cycle and pay the Annual Certification Fee of \$100 that is billed yearly.****

I. Acceptable Continuing Professional Education (CPE) Activities:

1. Live Seminars/Conferences must account for at least **half** of the CPE credits required per cycle. (15 CPE)
 - All qualified seminars are equal to 1 CPE credit per every 50 minutes of classroom instruction.
 - Professional courses of study/college courses related to the common body of knowledge. One (1) college credit earned for live classroom training will be equivalent to fifteen (15) CPE.
2. Webinars, Computer Based Training, Internet/Online Courses, Videos, DVD and all other Self Study courses related to the common body of knowledge (included within this document) can account for a maximum of half of the required CPE credits per cycle. (15 CPE)

II. Reporting Continuing Professional Education (CPE) and Maintaining Your Certification:

1. CPE should be reported as earned or on a regular basis. Your Online Certification Portfolio can be accessed through the certification area of the ICBA website at: www.icba.org/certification.
2. Continuing Professional Education (CPE) credits cannot be reported more than once and cannot be used toward more than one certification unless directed by Community Banker University.
3. All Certification holders must maintain the records of their Continuing Professional Education (CPE) for a period of four (4) years. Certification holders will be subject to audit and verification each year of their CPE cycle.
4. There is an Annual Certification Fee of \$100 per certification (up to \$400) that covers the current certification year. The fee should be paid in your Online Certification Portfolio by December 31 of each year.
5. Continuing Professional Education (CPE) information must be submitted to Community Banker University by no later than December 31 of the second year of the Certification Maintenance Cycle and your Annual Certification Fees must be paid to date in order to maintain your certification.

III. Reasons for disqualification and loss of participation in the Certification Program:

1. Failure to complete the required number of hours of Continuing Professional Education (CPE) and to report by the specified deadline.
2. Failure to pay the Annual Certification Fee within the specified deadline.
3. Being found guilty of a felony by a US or State court of law



KRISTEN RITTER

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Role at TIB-Bequeaith

Kristen Ritter is responsible for on-site review and support of regulatory compliance testing and performance at client banks. Kristen primarily serves our Texas regional clients, however when needed, she assists with clients on a national level.

Summary of Experience

Kristen is a long time banker with 20+ years of varied experience in the Operations, Compliance, and BSA/AML areas. She is also an instructor/material creator for the Independent Community Bank's Bank Secrecy Act Certification Program, Annual Current Issues Conference, and BSA Audio Conference Series.

Most recently, Kristen was the Senior Vice President of Operations-Compliance and BSA Officer for a private bank in Colorado. She was responsible for all third party audits and regulatory exams pertaining to Compliance, BSA/AML, and Information Security. She was also responsible for the daily operations of the bank. Kristen was the chair of the Compliance Committee and also an active member of the Information Technology Steering Committee.

Prior to this Kristen was the Senior Vice President at another private bank in Colorado. In this role, she was responsible for the daily operations of eight branches in three states. She oversaw funds transfers, electronic banking, treasury management, and all other operations of the bank. She was responsible for compliance in these areas as well and was a member of the Compliance Committee.

Business and Professional Affiliations

Kristen maintains the Certified Community Bank Compliance Officer and Bank Secrecy Act/Anti Money Laundering Professional certifications from the Independent Community Bankers of America. In addition, she also attended the University of New Mexico's Graduate School of Banking.

Education

Kristen received a Bachelor of Arts degree from the University of Northern Colorado.



CLINT JAY

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Role at TIB Consulting Solutions

Clint Jay serves our Kansas City area clients, as well as select clients nationally. He is responsible for on-site review and support of BSA/AML and regulatory compliance testing and performance at client banks.

Summary of Experience

Clint has five years of financial services experience, and currently has responsibilities for both Loan Review and BSA/AML and compliance testing. Since June 2016, Clint has assisted client banks with regulatory compliance and BSA/AML services including, but not limited to, BSA/AML regulatory compliance testing, development of BSA/AML/OFAC Risk Assessments, serving as BSA/AML Virtual Compliance Officer, and performing AML Software Validations. Additionally, he participates as an instructor for ICBA BSA/AML Webinars, as well as a presenter at the ICBA's Bank Secrecy Act and Anti-Money Laundering Institute.

Prior to joining TIB Consulting Solutions, he spent two summers interning at a community bank in West Texas. After graduating from college he spent a year working in financial services as a financial adviser where he provided his clients with various investment products to assist them in reaching their financial goals. Having grown up the son of a community banker, he recognized the importance of banks to their communities and ultimately elected to pursue a career that would allow him to aid banks in meeting regulatory expectations and maintain the best business practices.

Business and Professional Affiliations

Clint maintains the Certified Community Bank Compliance Officer, Certified Community Bank Credit Analyst and Bank Secrecy Act/Anti Money Laundering Professional certifications from the Independent Community Bankers of America.

Education

He attended Texas A&M University where he acquired a Bachelor of Science degree in Agricultural Economics in 2015.

A G E N D A
Compliance Institute
Virtual Live-Streamed Institute
June 7-10/June 14-16
All times noted are Central Time

WEEK I:

Tuesday, June 7

9:00 a.m. – 9:45 a.m.

Welcome, Recap of CMS, Breakouts

9:45 a.m. – 12:00 p.m.

Lending Compliance 1 – RESPA – Regulation Z Closed-end: Finance Charge; Calculations; TIL

12:00 p.m. – 12:30 p.m.

LUNCH

12:30 p.m. – 5:00 p.m.

Lending Compliance 1 – Regulation Z Closed-end: ARM Loans; Rescission; Prohibited Acts; HOEPA, HPML; ATR/QM; Private Ed

Wednesday, June 8

9:00 a.m. – 12:30 p.m.

Lending Compliance 1 – Regulation Z Closed-end: TRID

12:30 p.m. – 1:00 p.m.

LUNCH

1:00 p.m. – 3:30 p.m.

Review of RESPA & Reg Z & Study Time

3:30 p.m. – 4:30 p.m.

Exam - Lending Compliance 1

Thursday, June 9

8:00 a.m. – 9:00 a.m.

Retake - Exam - Lending Compliance 1

9:00 a.m. – 12:00 p.m.

Lending Compliance 2 - Loan Servicing, Open-End Credit

12:00 p.m. – 12:30 p.m.

LUNCH

12:30 p.m. – 5:00 p.m.

Flood Insurance, SAFE Act, Military Lending Regulations, Homeownership Counseling Act, and HMDA

Friday, June 10

9:00 a.m. – 10:00 a.m.

Exam - Lending Compliance 2

11:00 a.m. – 12:00 p.m.

Retake - Exam - Lending Compliance 2

WEEK II:

Tuesday, June 14

9:00 a.m. – 12:30 p.m.

12:30 p.m. – 1:00 p.m.

1:00 p.m. – 4:00 p.m.

Lending Compliance 3 – Fair Lending, Regulation B

LUNCH

CRA and Fair Credit Reporting Act

Wednesday, June 15

8:00 a.m. – 9:00 a.m.

9:30 a.m. – 12:30 p.m.

12:30 p.m. – 1:00 p.m.

1:00 p.m. – 5:00 p.m.

Exam - Lending Compliance 3

Deposit and Marketing Compliance – E-Sign, Regulation

DD – TISA, Regulation CC

LUNCH

Regulation P, Right to Financial Privacy, Regulation E,

Regulation GG, UDAAP

Thursday, June 16

8:00 a.m. – 9:00 a.m.

9:00 a.m. – 12:00 p.m.

2:00 p.m. – 3:00 p.m.

4:00 p.m. – 5:00 p.m.

Re-Take Exam - Lending Compliance 3

Deposit and Marketing Compliance – Consumer Sales of

Insurance, Nondeposit Investment Programs,

Advertisement of Membership, Marketing & Advertising

Exam - Deposit and Marketing Compliance

Re-Take Exam – Deposit and Marketing Compliance

E-Sign Act

1



Learning Objectives

By the end of this chapter, you should be able to:

- Understand the disclosure requirements the bank must provide to the consumer to comply with the E-Sign Act
- Ensure the bank receives demonstrated consent from the consumer to receive electronic disclosures and certain other documents in a compliant manner
- Know the various key words and definitions related to the E-Sign Act

Overview

The Electronic Signatures in Global and National Commerce Act (E-Sign Act), was signed into law on June 30, 2000. The E-Sign Act **does not have an implementing regulation** however many of the regulations incorporate the Act into them. The Act provides a general rule of **validity for electronic records and signatures** for transactions in or affecting interstate or foreign commerce. The E-Sign Act **allows the use of electronic records to satisfy any statute, regulation, or rule of law requiring that such information be provided in writing, if the consumer has affirmatively consented to such use and has not withdrawn such consent.** Certain **requirements** must be met by the bank and the consumer in order to comply with the E-Sign Act.

Electronic Disclosure & Statements

Requirements

Prior to obtaining a consumer's consent to receive disclosures and other documents allowable by regulation electronically, the bank must **provide the consumer with a clear and conspicuous statement informing the consumer:**

1. Of any right or option to have the record provided or made available on paper or in a non-electronic form, and the right to withdraw consent, including any conditions, consequences, and fees in the event of such withdrawal;
2. Whether the consent applies only to the particular transaction that triggered the disclosure or to identified categories of records that may be provided during the course of the parties' relationship (all future deposit accounts opened, all future loans originated, etc.);
3. Describing the procedures the consumer must use to withdraw consent and to update information needed for the bank to contact the consumer electronically;
4. Informing the consumer how the consumer may nonetheless request a paper copy of a record and whether any fee will be charged for that copy; and
5. Of the hardware and software requirements for access to and retention of electronic records.

Consumers must consent electronically, and it must be in a manner that reasonably demonstrates the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent. An oral communication or a recording of an oral communication does not qualify as a reasonable demonstration.



How can a bank demonstrate consent?


- * **Third-party vendor:** Often times banks will use a third-party vendor to obtain and demonstrate consumer consent. This option takes the “leg-work” off of the bank. However, the bank must ensure that the third-party is following all regulatory requirements.
- * **E-mail:** Banks will send an e-mail to the consumer with a document attached (typically PDF) that provides the consumer with the E-Sign requirements as well as instructions to provide consent. Typically, the bank will ask the consumer to reply to the e-mail with their consent to receive electronic disclosures as well as a specific code found within the PDF. This will demonstrate that the consumer was able to open the PDF. This is a manual process for banks.

Discussion: How is your bank demonstrating consent for both the deposit side and lending side?

Change in Hardware or Software Requirements – Section 101(c)(1)(D)

If a change in the hardware or software requirements needed to access or retain electronic records creates a material risk that the consumer will not be able to access or retain subsequent electronic records subject to the consent, a bank must:

1. Provide the consumer with a statement of:
 - a. The revised hardware and software requirements for access to and retention of electronic records, and
 - b. The right to withdraw consent without the imposition of any condition, consequence, or fee for such withdrawal;
2. Comply with the requirements of demonstrated consumer consent requirements of the law.



- * Involve compliance personnel when relying on electronic delivery of products and services.
- * Establish a regular audit or review that independently identifies bank products and services (e.g. deposit accounts), activities and other information consumers can access electronically.
- * Focus on how changes in vendors or other third-parties affect E-Sign compliance. Vendors often assist banks in complying with the act.
- * Be sure you are able to explain and show your examiners how you demonstrate consent. Go through the process yourself to ensure it works. Provide instructions, screen prints, etc.

Definitions

Consumer: An individual who obtains, through a transaction, products or services which are used primarily for personal, family, or household purposes, and also means the legal representative of such an individual.

Electronic: Relating to technology, having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

Electronic Agent: A computer program or an electronic or other automated means used independently to initiate an action to respond to electronic records or performances in whole or in part without review or action by an individual at the time or the action or response.

Electronic Record: A contract or other record created, generated, sent, communicated, received, or stored by electronic means.

Electronic Signature: 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.

Federal Regulatory Agency: An agency as that term is defined in section 552(f) of Title 5, United States code.

Information: Data, text, images, sounds, codes, computer programs, software, databases, or the like

Person: An individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, governmental agency, public corporation or any other legal or commercial entity.

Record: Information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

Self-Regulatory Organization: An organization or entity that is not a Federal regulatory agency or a State, but that is under the supervision of a Federal regulatory agency and is authorized under Federal law to adopt and administer rules applicable to its members that are enforced by such organization or entity, by a Federal regulatory agency, or by another self-regulatory organization.

State: Includes the District of Columbia and the territories and possessions of the United States.

Transaction: An action or set of actions relating to the conduct of business, consumer, or commercial affairs between two or more persons, including any of the following types of conduct:

- The sale, lease, exchange, licensing, or other disposition of:
 - personal property, including goods and intangibles,
 - services, and
 - any combination thereof; and
- The sale, lease, exchange, or other disposition of any interest in real property, or any combination thereof.

Resources for the E-Sign Act

Regulation 15 USC 96: <https://uscode.house.gov/view.xhtml?path=/prelim@title15/chapter96&edition=prelim>

Complete Act/Law: <https://www.govinfo.gov/content/pkg/PLAW-106publ229/pdf/PLAW-106publ229.pdf>

FDIC Exam Manual: <https://www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/documents/10/x-3-1.pdf>

Consumer Compliance Outlook Article: https://consumercomplianceoutlook.org/2009/fourth-quarter/q4_02/

Regulation DD — Truth in Savings Act

2



12 CFR 1030



Learning Objectives

By the end of this chapter, you should be able to:

- Know which customers and accounts Regulation DD applies to
- Ensure that disclosure requirements and notices are being followed at your bank
- Understand the special rules that apply to overdrafts and what available balances may be given to a consumer by automated systems

Overview

Regulation DD, implements the Truth in Savings Act (TISA) and is governed by the Bureau. The purpose of Regulation DD is to enable consumers to make informed decisions about their accounts at banks through the use of uniform disclosures. The disclosures aid comparison shopping by informing consumers about the fees, annual percentage yield, interest rate, and other terms for deposit accounts. A consumer is entitled to receive disclosures under all of the following circumstances:

- When an account is opened
- Upon request
- When the terms of the account are changed
- When a periodic statement is sent
- For most time accounts, before the account matures

The regulation also includes requirements on the payment of interest, the methods of calculating the balance on which interest is paid, the calculation of the annual percentage yield, and advertising.

Coverage

Regulation DD applies to all **consumer deposit accounts**. It covers both interest-bearing and noninterest-bearing accounts.

- **Account:** An account is a **deposit account** at a bank that is held by or offered to a **consumer**. It includes time, demand, savings and negotiable order of withdrawal (NOW) accounts.
- **Consumer:** A consumer is a **natural person** who holds an account **primarily for personal, family, or household purposes**, or to whom such an account is offered. A consumer does not include accounts held by a natural person on behalf of another in a professional capacity or accounts held by individuals as sole proprietors.

Initial Account Disclosures (1030.4)

Timing

A bank must provide account disclosures to a consumer **when a new account is opened**, under the following circumstances:

1. **Before an account is opened** or a service is provided, whichever is earlier, when the **consumer is present at the bank or the account is opened electronically**; or
2. Deliver in the **mail no later than 10 business days after the account is opened** or the service is provided, whichever is earlier, if the consumer is not present at the bank.

A bank must provide account disclosures to a consumer (**anyone who requests, not just customers**) **upon their request**:

1. At the time of the request when made **in person**; or
2. Within a **reasonable time after the request when the request is not made in person** (E-sign rules do not apply as long as the consumer agrees and provides an e-mail address).

When providing **requested** disclosures, the bank must:

1. Specify an **interest rate and annual percentage yield** that were offered within the most recent **seven calendar days**;
2. State that the rate and yield are **accurate as of an identified date**;
3. State the **maturity** of a time account as a **term rather than a date**; and
4. Provide a **telephone number** consumers may call to obtain current rate information.



Key Terms

- **Annual percentage yield** means a percentage rate reflecting the total amount of interest paid on an account, based on the interest rate and the frequency of compounding for a 365-day period and calculated according to the rules in Appendix A or Regulation DD.
- **Interest rate** means the annual rate of interest paid on an account which does not reflect compounding. For the purposes of the account disclosures in 1030.4(b)(1)(i), the interest rate may, but need not, be referred to as the “annual percentage rate” in addition to being referred to as the “interest rate.”
- **Stepped-rate account** means an account that has two or more interest rates that take effect in succeeding periods and are known when the account is opened.
- **Tiered-rate account** means an account that has two or more interest rates that are applicable to specified balance levels. Two options: (1) base the rate on the highest tier achieved for the full balance; (2) base the rate on the balance within each tier.

Content

1. Rate Information
 - a. The “annual percentage yield” and the “interest rate,” using those terms.
 - i. Fixed-rate accounts — include the period of time the interest rate will be in effect.
 - ii. Variable rate accounts — include the fact that the interest rate and APY may change, how the interest rate is determined, the frequency with which the interest rate may change and any limitation on the amount the interest rate may change.
 - iii. “Tiered-rate” accounts — include each interest rate and corresponding APY for each specified balance level.
 - iv. “Stepped-rate” accounts — include a single composite APY, the interest rates and the period of time each will be in effect, and when the initial rate offered for a specified time on a variable-rate account is higher or lower than the rate that would otherwise be paid on the account.
2. Compounding and Crediting Interest
 - a. Frequency – the frequency with which interest is compounded and credited. Banks may choose how often to compound interest (monthly, quarterly, etc.).
 - b. Effect of closing an account – if consumer will forfeit interest if they close the account before accrued interest is credited, a statement that interest will not be paid in such cases.

3. Balance Information

- a. Minimum balance requirements – disclose any minimum balance requirements and how the balance is determined to:
 - i. Open the account;
 - ii. Avoid the imposition of a fee; or
 - iii. Obtain the APY disclosed

NOTE: You do not have to disclose the lack of a minimum balance.

- b. Balance computation method – an explanation of the balance computation method used to calculate interest on the account; and
- c. Interest accrual start date – a statement of when interest begins to accrue on noncash deposits.

4. Fees

- a. The amount of any fee that may be imposed in connection with the account (or an explanation of how the fee will be determined) and the conditions under which the fee may be imposed.

Examples of fees to disclose:



- Maintenance fees, such as monthly service fees
- Fees to open or close an account
- Fees related to deposits or withdrawals, including ATM fees
- Fees for special services, such as stop-payment fees, balance inquires, verification of deposits, and returned checks (unpaid and physical inclearing)
- Fees that may be assessed against an account which is linked to another account's activity
- Overdraft fees: In satisfying this requirement banks must specify the categories of transactions for which an overdraft fee may be imposed. An exhaustive list of transactions is not required. It is sufficient for a bank to state that the fee applies to overdrafts "created by check, in-person withdrawals, ATM withdrawal, or other electronic means," as applicable. Disclosing a fee "for overdraft items" would not be sufficient.

Examples of fees that do not need to be disclosed:



- Fees for services offered to both account and nonaccount holders such as wire transfers and gift cards
- Incidental fees, such as garnishment or attorneys fees, and fees for photocopying

5. Transaction limitations

- a. Any limitations on the number or dollar amount of withdrawals or deposits.

6. Bonuses

- a. The amount or type of any bonus, when the bonus will be provided, and any minimum balance and time requirements to obtain the bonus.
 - i. A bonus is a premium, gift, award, or other consideration worth more than \$10 (whether in the form of cash, credit, merchandise, or any equivalent) given or offered to a consumer during a year in exchange for opening, maintaining, renewing, or increasing an account balance. The term does not include interest, other consideration worth \$10 or less given during a year, the waiver or reduction of a fee, or the absorption of expenses.

7. Time Account Requirements

- a. There are special disclosure requirements for time account. The following must be disclosed:
 - i. The maturity date;
 - ii. Whether an early withdrawal penalty exists or not, how it is calculated, and the conditions for its assessment;
 - iii. If compounding interest occurs during the term of the time account and that interest may be withdrawn prior to maturity, a statement that the annual percentage yield assumes interest remains on deposit until maturity and that a withdrawal will reduce earnings; and
 - iv. Whether the time account is automatically renewable or not at maturity and what the grace period will be.

Reg DD By the Numbers

Payment of Interest (1030.7)

Section 1030.7 covers the payment of interest, including how to determine the balance on which to pay interest, the daily periodic rate to use, and the date interest begins to accrue.

A bank must calculate interest on the full amount of principal in an account for each day by using one of the following methods (Note: The balance used to calculate interest must be the same as that used to earn interest):

1. **Daily Balance Method:** The daily periodic rate is applied to the full amount of principal in the account each day, OR
2. **Average Daily Balance Method:** A periodic rate is applied to the average daily balance in the account for the period. The average daily balance is determined by adding the full amount of principal in the account for each day of the period and dividing that figure by the number of days in the period.

The following are prohibited calculation methods:

1. **Ending-Balance Method:** Interest is paid on the balance in the account at the end of the period.
2. **Low-Balance Method:** Interest is paid based on the lowest balance in the account for any day in that period.
3. **Investable-Balance Method:** Interest is paid on a percentage of the balance, excluding the amount set aside for reserve requirements.

Account Exceptions:

- Banks are not required to pay interest after time accounts mature.
- Banks must pay interest on funds in a dormant or inactive account as defined by the banks policies.

APY Rounding & Accuracy (1030.3(f))

Rounding: The APY, the APY Earned, and the Interest Rate must be rounded to the nearest one-hundredth of one percentage point (.01%) and expressed to two decimal places.

Accuracy: The APY and the APY Earned will be considered accurate if not more than one-twentieth of one percentage point (.05%) above or below the APY and APY Earned determined according to Regulation DD Appendix A calculations.

Verification of Accuracy

Even though the bank's deposit or core software will most likely provide the APR calculation based on the information input by the banker or hard coded into the system, compliance and audit personnel should review disclosures and accounts to ensure the "numbers" are calculated correctly.

The FFIEC Annual Percentage Yield (APY) Computational Tool is a tool that can be used to verify the accuracy of the disclosed APY on disclosures, including advertisements and periodic statements. The tool can be found online at <https://www.ffiec.gov/calculators.htm>

Disclosures and Advertisements

New Account

Institution Name

Account Type/Description

Account Holder

Account Type

- Regular Rate (Include Variable Rate - No Premium or Discount)
- Stepped Rate (Include Variable Rate - With Premium or Discount)
- Tiering Method A (Fixed or Variable Rate)
- Tiering Method B (Fixed or Variable Rate)

Measurement For Interest Compounding

- None
- Days
- Months
- Years

Number of Days Between Compounding ⓘ

Days in Year

- 365
- 366

If leap year, count 2/29

- Yes
- No

Required Interest Withdrawal Method

- Not Required
- Days
- Months

Periodic Statements

New Account

Institution Name

Account Type/Description

Account Holder

Account Type

- Fixed Rate (Regular)
- Variable Rate (Stepped)
- Fixed Rate (Tier A)
- Fixed Rate (Tier B)

Measurement For Interest Compounding

- None
- Days

Number of Days Between Compounding ?

1

Days in Year

- 365
- 366

If leap year, count 2/29

- Yes
- No

Subsequent Disclosure (1030.5)

Regulation DD specifies if and when notice must be given to consumers when there is a change in the terms of the disclosure most recently provided to the consumer.

Change in Terms - Advance Notice

A bank must give **advance notice** to affected consumers of any change in a term required to be disclosed if the change may **reduce the annual percentage yield or adversely affect the consumer**. The notice must include the **effective date** of the change. The notice must be mailed or delivered **at least 30 calendar days** before the effective date of the change.

- Change-in-term notices may be provided on or with a periodic statement or in another mailing. If the bank provides notice through **revised account disclosures**, the changed term must be **highlighted** in some manner.

Change in Terms - No notice

A notice does **not need to be sent** in the following instances:

- Changes in the interest rate and corresponding changes in the APY for **variable-rate accounts**
- Changes in **check printing fees**
- **Automatic changes** upon the occurrence of a stated event provided the bank described the condition of the change in the initial account disclosure
- Changes in any term for **time accounts with maturities of one month or less**

Time Account Notices

Timing

For time accounts with a maturity **longer than one month that renew automatically** at maturity, banks must provide the disclosures:

1. At least **30 calendar days before maturity** of the existing account; or
2. At least **20 calendar days before the end of the grace period** on the existing account, provided a grace period of at least five calendar days is allowed.

For time account **longer than one year that do not renew automatically** at maturity, banks must provide the disclosures **at least 10 calendar days before maturity**.

Content

If the maturity is **one year or less but longer than one month**, the bank may:

1. Provide the same information required for **terms longer than one year**; or
2. Disclose:
 - i. The **date** the existing account **matures** and the **new maturity date** if the account is renewed;
 - ii. The **interest rate and the annual percentage yield** for the new account if they are known (or that those rates have not yet been determined, the date when they will be determined, and a **telephone number** the consumer may call to obtain the interest rate and the annual percentage yield that will be paid for the new account); and
 - iii. Any difference in the terms of the new account as compared to the existing account.

If the maturity is **longer than one year**, the bank must provide a **full set of account disclosures** that include the **date the existing account matures**. If the interest rate and annual percentage yield that will be paid for the **new account are unknown** when disclosures are provided, the bank must **state** that those rates have **not yet been determined**, the date when they will be determined, and a **telephone number** consumers may call to obtain the interest rate and the annual percentage yield that will be paid for the new account.

For time accounts **longer than one year that do not renew automatically**, the bank must disclose the **maturity date and whether interest will be paid after maturity**.

Periodic Statements (1030.6)

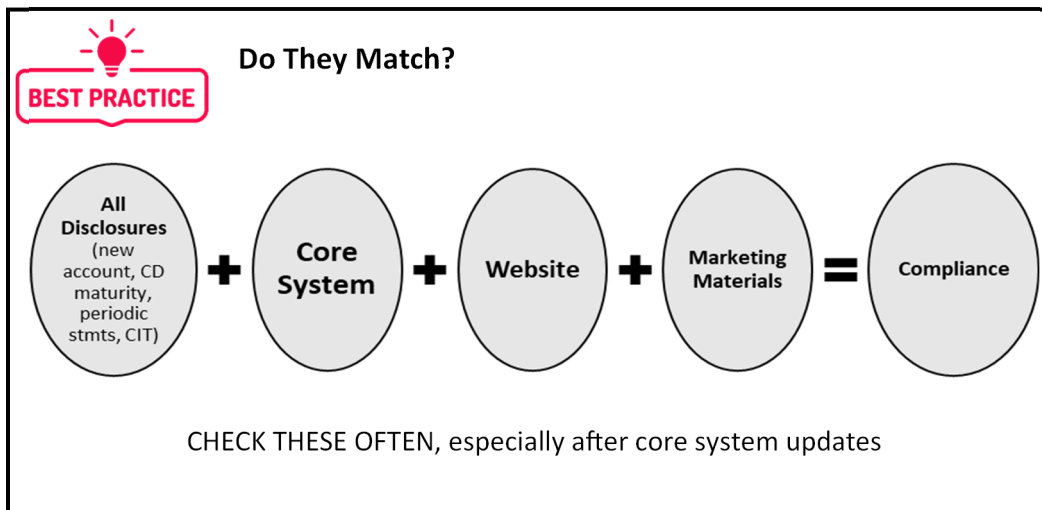
In general, Regulation DD does not require banks to provide periodic statements. However, if the bank does, there are **specific content requirements**. Keep in mind, Regulation E (discussed in a future chapter) *does* require periodic statements under certain circumstances and has separate content requirements.


Content Requirements to be disclosed during the statement period:

1. **Annual Percentage Yield (APY) earned**;
2. **Amount of interest earned**;
3. **Fees imposed and debited** to the account;
 - i. The fees must be **itemized by type and dollar amounts**. When fees of the same type are imposed more than once in a statement period, they may be **itemized separately or grouped together** and disclosed as a total dollar amount for all fees of that type.

Fees that may not be grouped together include:

- a. Monthly maintenance and excess-activity fees
 - b. "Transfer" fees if different dollar amounts are imposed
 - c. Fees for electronic fund transfers and fees for other services, such as balance-inquires
 - d. Fees for paying overdrafts and fees for returning checks or other items unpaid
4. Number of days in the statement period or start/end dates; and
 5. Total Overdraft and Returned Item fees as required by 1030.11(a).



 **Discussion**

- * How do you validate all of your deposit account parameters and disclosures for accuracy (process, timing, internal audit, out-source)?

Additional Disclosure Requirements for Overdraft Services (1030.11)

Key Terms

Bounce Protection: An automated discretionary overdraft service that covers inclearing items that overdraw an account up to a certain dollar amount. A ready reserve or overdraft line of credit as contracted under Regulation Z is not considered an automated overdraft service.

Ad Hoc: The bank has an “Ad hoc” overdraft system when someone or a group of persons are designated to review the daily overdraft report to determine whether or not to pay on items that have overdrawn an account.

Section 1030.11 contains periodic statement and advertising requirements for certain discretionary overdraft services. The requirements address concerns about the uniformity and adequacy of information provided to consumer when they overdraw their deposit accounts. Specifically, they address certain types of services – sometime referred to as “bounce-protection”– which banks offer to pay consumer’s checks and other items when there are insufficient funds in the account. The requirements apply to all banks, regardless of whether they have an automated overdraft service or an “ad hoc” overdraft system.

Periodic Statement Disclosures for Overdraft Fees

The bank must disclose on its periodic statements (if it provides periodic statements) separate totals for the statement period and for the calendar year to date for:

1. The total dollar amount for all fees or charges imposed on the account for paying checks or other items when there are insufficient or unavailable funds and the account becomes overdrawn, using the term “Total Overdraft Fees”; and
2. The total dollar amount for all fees or charges imposed on the account for returning items unpaid.

The aggregate fee disclosure must be placed in close proximity to the disclosure of any fee(s) that may be imposed in connection with the account and must use a substantially similar format as shown below:

	Total for this period	Total year-to-date
Total Overdraft Fees	\$60.00	\$150.00
Total Returned Item Fees	\$0.00	\$30.00

Total **Overdraft Fees** include:

- Per-item fees as well as interest charges, daily or other periodic fees, or fees charged for maintaining an account in overdraft status, whether the overdraft is by check, debit card transactions, or by any other transaction type
- Fees charged when there are insufficient funds because previously deposited funds are subject to a hold or are uncollected

Total **Overdraft Fees** do not include:

- Fees for transferring funds from another account of the consumer to avoid an overdraft, or fees charged under a service subject to Regulation Z (“ready reserve line or credit”)

Total **Returned Items Fees** include:

- All fees charged to the account for dishonoring or returning checks or other items drawn on the account

Total **Returned Items Fees** do not include:

- Fees imposed when deposited items are returned by the originating bank

Disclosure of Account Balances on Automated Systems

In general, this rule covers how a bank displays a consumer’s account balance information on automated systems, such as an ATM’s, online banking, and telephone banking, when the bank will advance additional funds to cover insufficient or unavailable funds in a consumer’s account.

Amounts that cannot be included:

- Discretionary amounts provided through an overdraft service
- A ready reserve or overdraft line of credit amount as contracted under Regulation Z
- An amount available in another account of the consumer in which funds are automatically transferred – often referred to a “sweep”

Amounts above may be included, provided the bank prominently states that any such balance includes additional amounts and, if applicable, that additional amounts are not available for all transactions.

- A bank may not simply state that the second balance is the “available balance”.
- The bank may state the second balance includes “overdraft funds”. Disclosure must be sufficient to indicate that overdraft related funds are included.

Automated systems MAY include the below amounts, without disclosure.

- Funds that are deposited in the consumer's account, such as from a check, that are not yet made available for withdrawal in accordance with Regulation CC
- Funds that are held by the bank to satisfy a prior obligation of the consumer (for example, to cover a hold for an ATM or debit card transaction that has been authorized but for which the bank has not yet settled)

Record Retention (1030.9)

A bank must retain evidence of compliance with Regulation DD for a minimum of two years after the date disclosures are required to be made or action is required to be taken.

Resources for Regulation DD

CFPB Exam Manual: https://files.consumerfinance.gov/f/documents/102012_cfpb_truth-savings-act-tisa_procedures.pdf

FDIC Exam Manual: <https://www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/documents/6/vi-3-1.pdf>

OCC Comptroller's Handbook: <https://www.occ.treas.gov/news-issuances/bulletins/2010/bulletin-2010-29.html>

FED Consumer Compliance Handbook: <https://www.federalreserve.gov/boarddocs/supmanual/cch/tis.pdf>

FFIEC APY Calculation Tool: <https://www.ffiec.gov/calculators.htm>

Regulation CC: Expedited Funds Availability Act

3



Learning Objectives

By the end of this chapter, you should be able to:

- Understand when to provide the required disclosures regarding the bank's funds availability policy
- Know when funds must be made available to the customer for certain types of deposits and when the bank may extend that availability
- Understand the general provisions of Check 21 and substitute checks

Overview

Regulation CC implements two laws—the Expedited Funds Availability Act (EFA Act) and the Check Clearing for the 21st Century Act (Check 21). The regulation sets forth the requirements that banks make funds deposited into transaction accounts available according to specified time schedules and that they disclose their funds availability policies to their customers. It also establishes rules designed to speed the collection and return of checks and electronic checks and describes requirements that affect banks that create or receive substitute checks, including requirements related to consumer disclosures and expedited recredit procedures.

Regulation CC contains four subparts. The first three implement the Expedited Funds Availability Act, and the fourth implements Check 21. Specifically:

- Subpart A—Defines terms and provides for administrative enforcement

- Subpart B—Specifies **availability schedules**, or timeframes within which banks must make funds available for withdrawal and rules concerning exceptions to the schedules; **disclosure** of funds availability policies; payment of interest; and bank liability for noncompliance
- Subpart C—Sets forth rules concerning the **expeditious return** of checks and electronic checks; the responsibilities of paying and returning banks; notice of nonpayment for large-dollar returns by the paying bank; check and electronic check indorsement standards; and other related changes to the check-collection system
- Subpart D—Contains provisions concerning the requirements a **substitute check** must meet to be the legal equivalent of an original check; bank duties, warranties, and indemnities associated with substitute checks; expedited recredit procedures for consumers and banks; and consumer disclosures regarding substitute checks

The regulation has been amended many times over the years and will **continue to be amended in the coming years as payments system evolve and technology moves faster and faster**. Regulation CC was not moved from the Federal Reserve Board as a result of the Dodd Frank Act, however the Bureau works jointly with the FRB to issue amending final rules.

Coverage

Regulation CC applies to **BOTH consumer and non-consumer account but ONLY applies to transactions accounts**. Savings and money market accounts are excluded from Regulation CC.

Definitions

Account: A deposit as defined in Regulation D (12 CFR 204.2(a)(1)(i)) that is a transaction account as described in Regulation D (12 CFR 204.2(e)). Account generally includes accounts at a bank from which the account holder is permitted to make transfers or withdrawals by negotiable or transferable instrument, payment order of withdrawal, telephone transfer, electronic payment, or other similar means for the purpose of making payments or transfers to third persons or others. An account also includes accounts at a bank from which the account holder may make third-party payments at an ATM, remote service unit, or other electronic device, including by debit card, but the **term does not include savings deposits or accounts described in Regulation D (12 CFR 204.2(d)(2)) even though such accounts permit third party transfers**.

NOTE: Savings accounts are still excluded from the definition of an account even if you allow an unlimited number of transfers.

An account may be in the form of:

1. A **demand deposit account**,
2. A negotiable order of withdrawal account,
3. A share draft account,
4. An automatic transfer account, or
5. Any other transaction account described in 12 CFR 204.2(e).

Available for withdrawal: With respect to funds deposited, available for withdrawal means **available for all uses generally permitted** to the customer for actual and finally collected funds under the bank's account agreement or policies, such as for payment of checks drawn on the account, certification of checks drawn on the account, electronic payments, withdrawals by cash, and transfers between accounts.

Business day: A calendar day **other than Saturday, Sunday, or designated Federal Holiday (essentially days the Fed is open).**

Check:

1. A negotiable demand draft drawn on or payable through or at an office of a bank;
2. A negotiable demand draft drawn on a **Federal Reserve Bank or a Federal Home Loan Bank;**
3. A negotiable demand draft drawn on the **Treasury of the United States;**
4. A demand draft drawn on a **State government or unit of general local government that is not payable through or at a bank;**
5. A **United States Postal Service money order;** or
6. A **traveler's check** drawn on or payable through or at a bank.;

NOTE: The **term check includes an original check and a substitute check.** The term check does not include a non-cash item or an item payable in a medium other than United States money.

Check processing region: The geographical area served by an office of a Federal Reserve Bank for purposes of its check processing activities. Currently only located in Ohio. **This means all checks are local** (even though regulation still references local and nonlocal).

Substitute check: A **paper reproduction** of an original check that:

1. Contains an image of the **front and back** of the original check;
2. Bears a **MICR line** that contains all the information appearing on the MICR line of the original check at the time that the original check was issued and any additional information that was encoded on the original check's MICR line before an image of the original check was captured;
3. Conforms in paper stock, dimension, and otherwise with **ANS X9.100-140** (unless the Board by rule or order determines that a different standard applies); and
4. Is **suitable for automated processing** in the same manner as the original check.
5. Has to contain the official legend that says: **"This is a legal copy of your check. You can use it the same way you would use the original check."**

Initial Regulation CC Disclosure (229.15-18)

General Disclosure Requirements

A bank **must**:

- Make the disclosures **clearly and conspicuously in writing**;
- Provide the disclosures in a **form the customer may keep**, except those posted at locations where employees accept consumer deposits and ATMs and the notice on pre-printed deposit slips; and
- Describe the funds as being **available** for withdrawal on “the ____ business day **after**” the day of deposit.

A bank **may**:

- Only provide the disclosures **once to a customer that hold multiple accounts** if the accounts are subject to the same availability policies;
- Only provide **one disclosure to jointly held accounts**; and
- Not provide a disclosure to a customer that holds a **dormant or inactive account**.

Timing of Initial Disclosure

Disclosures must be provided to the customer **before opening a new account and upon oral or written request** by the customer.

A bank must send a notice to holders of consumer accounts **at least 30 days before implementing a change (“good” or “bad”)** to the bank's availability policy regarding such accounts, except when a change that expedites the availability of funds it **may be disclosed not later than 30 days after implementation**.

Content of Initial Disclosure

To meet the requirements of a specific availability policy disclosure, a bank must provide a disclosure describing the bank's policy as to when funds deposited in an account are available for withdrawal. The disclosure must contain the following:

1. A **summary** of the bank's availability policy;
2. A description of any **categories of deposits or checks used by the bank when it delays availability and when each category will be available for withdrawal** (including a description of the bank's business days and when a deposit is considered received);
3. A description of any of the **exception holds** that may be invoked by the bank, including the **time following a deposit that funds generally will be available for withdrawal** and a statement that the bank will **notify the customer** if the bank invokes one of the exceptions;

4. A description of any **case-by-case policy of delaying availability** that may result in deposited funds being available for withdrawal later than the time periods stated in the bank's availability policy; and
5. A description of how the customer can **differentiate between a proprietary and a nonproprietary ATM**, if the bank makes funds from deposits at nonproprietary ATMs available for withdrawal later than funds from deposits at proprietary ATMs.

Additional Requirements

A bank must include on all **preprinted deposit slips** furnished to its customers a notice that deposits may not be available for immediate withdrawal.

A bank must **post in a conspicuous place** in each location where its employees receive deposits to consumer accounts, a notice that sets forth the time periods applicable to the availability of funds deposited in a consumer account.

A bank must **post or provide a notice at each ATM** location that funds deposited in the ATM may not be available for immediate withdrawal.

A bank that operates an off-premises ATM from which deposits are removed not more than two times each week must disclose at or on the ATM the **days on which deposits made at the ATM will be considered received.**

Funds Availability Rules

Note: A detailed chart of the following pages is located at the end of this chapter.

Date of Deposit (229.19(a))

Funds are considered deposited at various times depending on where the deposit is received, the method it was delivered it, and the timing. The following apply:

Location/Method/Time	Considered Deposited/Received
Deposited at a staffed facility or branch (teller line)	At the time of receipt (before cutoff time)
Mailed to the bank	Day the bank receives the deposit
Placed in a night drop/lock box	Day on which the deposit is removed from the facility and available for processing
Deposited into ATMs not on or within 50 feet of the bank and funds are normally removed from the ATM not more than two times each week	Day the funds are removed from the ATM
Deposited on a non-banking day	The next business day
Deposited after a cut-off hour set by the bank	The next business day

Next Day Availability (229.10)

The following types of deposits must be made available no later than the first business day after the banking day on which the deposit is received:

- **Cash** – when deposited in person to an employee of the bank
- **Electronic payments** – when the bank receives collected funds and account information
- **On-us checks**
- **US Treasury check** – when deposited into an account held by the payee (does not have to be in person)
- **US Postal Service money order** – when deposited into an account held by the payee AND in person to an employee of the bank
- **Federal Reserve Bank or Federal Home loan Bank check** – when deposited into an account held by the payee AND in person to an employee of the bank
- **State or local government check** – when deposited in person to an employee of the bank, into an account held by the payee, and deposited in bank located in the same state
- **Cashier's, certified, or teller checks** – when deposited into an account held by the payee AND in person to an employee of the bank

The first \$225 dollars of any check deposit (that is not one of the above) must be made available the next business day regardless of how the check was deposited. There are exceptions to this rule for certain delayed funds availability rules.

2nd Day Availability (229.12)

The following types of deposits must be made available no later than the second business day after the banking day on which the deposit is received:

- Cash – when NOT deposited in person to an employee of the bank
- Checks subject to the Next Day Availability rules that do not comply with the requirements of the next day rules (in person, different account).
- All other checks

Delayed Funds Availability

The regulation provides for exceptions that allow banks to exceed the maximum hold periods specified in the availability schedules and their banks policy. The exceptions are considered "safeguards" because they offer banks a means of reducing risk.

Exceptions include:

- Case-by-Case Holds
- Exception Holds

Case-by-case holds (229.16 (c))

A bank that has a policy of making deposited funds available for withdrawal sooner than required (next day instead of second day for allowed items) may extend the time when funds are available up to the time periods allowed under the regulation on a case-by-case basis (typically the second business day).

When a depository bank extends the time that funds will be available for withdrawal on a case-by-case basis, it must provide the depositor with a written notice that includes:

- The customer's account number
- The date of the deposit
- The amount of the deposit that is being delayed
- The day the funds will be available for withdrawal (can be specific or general)

The notice must be provided at the time of the deposit, unless the deposit was not made in person to an employee of the depository bank or the decision to delay availability was made after the time of the deposit. If notice is not given at the time of the deposit, the depository bank must mail or deliver the notice to the customer no later than the first business day following the banking day the deposit was made.

A depository bank that extends the time when funds will be available for withdrawal on a case-by-case basis and does not furnish the depositor with written notice at the time of deposit may not assess any fees for any subsequent overdrafts (including use of a line of credit) or return of checks or other debits to the account if:

- The overdraft or return of the check or other debit would not have occurred except for the fact that the deposited funds were delayed under section 229.16 (c)(1) of Reg CC; and
- The deposited check was paid by the paying bank.

Exception Holds (229.13)

The regulation provides for availability exceptions in six situations:

1. New accounts
2. Deposits in excess of \$5,525 on any one day ("large deposits")

3. Checks that have been returned unpaid and are being redeposited
4. Deposits to accounts that have been repeatedly overdrawn
5. Cases in which the bank has reasonable cause to believe the check being deposited is uncollectible
6. Emergency conditions

For deposits subject to exceptions to the availability schedules, other than deposits into new accounts, the depository bank is permitted to delay availability for a reasonable time beyond the schedule. Generally, a reasonable period is considered to be no more than one business day for on-us checks and five business days for other checks (total of seven days).

New Accounts

An account is considered a “new” account for the first 30 calendar days it is open, beginning on the date the account is established. An account is not considered “new” if each customer on the account has had, within 30 calendar days before the account is established, another account at the bank for at least thirty calendar days.

- Cash and electronic deposits are subject to the normal availability schedules depending on how the deposit was received (next day and 2nd day).
- The first \$5,525 of a day’s aggregate deposits of all government, cashiers, certified, or teller checks must be made available the next business day. The amount in excess of \$5,525 must be made available no later than the ninth business day.

The \$225 rule does not apply to new accounts.

Large Deposits

A depository bank may extend hold schedules when deposits other than cash or electronic payments exceed \$5,525 on any one day. The bank must make the first \$5,525 available for withdrawal according to the bank’s availability policy, if funds are provided earlier than allowed) or the case-by-case policy. The remainder of the funds are subject to the extended time frames allowed.



Examples:

- Banks policy of (next day availability):
 - Customer deposits \$12,000 in checks. \$5,525 must be made available the next business day and the remaining \$6,475 must be made on the seven business days after the date of deposit.

- Case-by-case:
 - Customer deposits \$12,000 in checks. \$225 must be made available the next business day, \$5,300 must be made the second business day, and the remaining \$6,475 must be made on the seven business days after the date of deposit. These amounts must be adjusted if any of the checks are subject to the next day availability. You can hold next day items over \$5,525 but you cannot put a case-by-case hold on them.

Redeposited Checks

A depository bank may delay making the funds from a check available if the check had previously been deposited and returned unpaid. The exception does not apply to checks that were previously returned unpaid because of a missing indorsement or because the check was postdated when presented.

The \$225 rule does not apply to redeposited checks. You can hold the full amount of next day items.

Repeat Overdrafts

If a customer's account, or accounts, have been repeatedly overdrawn during the preceding six months, the bank may delay making the funds from a check available. A customer's account may be considered repeatedly overdrawn in two ways:

1. The exception may be applied if the account was overdrawn or would have been overdrawn had check or other charges been paid, for six or more banking days during the preceding six months.
2. The exception may be applied to customers who incurred overdrafts on two banking days within the preceding six-month period if the negative balance in the account(s) at that time was \$5,525 or more. The exception may also apply if the account would have been overdrawn by \$5,525 or more had the check or other charges been paid.

The \$225 rule does not apply to repeat overdrafts. You can hold the full amount of next days items.

Reasonable Cause to Doubt Collectability

The basis for reasonable cause may include, for example, communication with the paying bank indicating that:

- A stop-payment order has been placed on the check
- There are insufficient funds in the drawer's account to cover the check
- The check will be returned unpaid

The reasonable cause exception may also be invoked in cases in which:

- The check was deposited **six months after the date of the check** (stale date)
- The check was **postdated** (future date)
- The depository bank believes that the depositor may be engaged in check **kiting**
- The depository bank has **other confidential information**, such as the insolvency or pending insolvency of the customer

The reasonable cause exception may not be invoked based on the fact that the check is of a particular class or is deposited by a particular class of persons (ex. credit cards).

The \$225 rule does not apply to doubtful collectability.

! Refusal to verify funds is not a reasonable cause to doubt collectability.

Emergency Conditions

Banks may suspend the availability schedule under the following emergency conditions:

- An interruption of **communications or computer** or other equipment facilities;
- **Suspension of payments** by another bank;
- **War**; or
- Any **emergency condition beyond the control** of the bank.

Notices

The general notice of exception must include the following:

1. The customer's **account number**;
2. The **date of the deposit**;
3. The **amount of the deposit that will be delayed**;
4. The **reason the exception was invoked**; and
5. The **time period the funds will be available for withdrawal** (unless unknown, as in an emergency situation).

If the deposit is made at a staffed facility, the notice may be given to the person making the deposit, regardless of whether that person is the customer who holds the account. If the deposit is not made at a staffed facility, the exception notice may be mailed to the customer no later than the business day following the banking day of deposit.

If the depository bank discovers a reason to delay the funds subsequent to the time the notice should have been given, the bank must notify the customer about the hold as soon as possible, but no later than the business day after the facts become known.

NOTE: When redepositing a return item in which you will place a hold on, you must determine the date of availability from the date of the first deposit.

Emergency Condition holds do not require notice.

If most of the checks deposited into a particular nonconsumer account qualify for either the large-deposit exception or the redeposited-check exception, the bank may send a one-time notice.

Repeated Overdraft holds require only one notice to the customer that specifies the period of time that the exception is invoked.

Fees

If a bank invokes the reasonable-cause exception and does not inform the customer in writing at the time of the deposit, it may not charge the customer any overdraft or returned-check fees resulting from the hold if:

- The deposited check is paid by the paying bank; and
- The overdraft would not have occurred or the check would not have been returned had the bank not imposed the reasonable-cause hold.

Record Retention

The bank must retain “reasonable cause” notices for a period of two years from the date the exception is invoked.

Hold Notice Scenarios

Complete the sample hold notice for the scenarios below, if allowed.

Scenario #1:

James Monroe, a familiar customer, presents a check for deposit in the amount of \$4,220.00 on Monday, February 2nd in the morning. James has had his account opened for 5 years and has an average balance of \$8,000.00. The account has had no NSF activity. You call on the check for \$4,220.00 and are told there are insufficient funds in the account to pay for the check. Can you do anything to protect your bank? What?

Notice of Delayed Availability		
To: James Monroe 1234 East Street New York, NY 11101	From: ABC Bank 12 Broadway Ave. New York, NY 11101	Date of Notice: 2/2/2019 Account #: 11111111 Amount of Deposit: \$4,220.00 Date of Deposit: 2/2/2019
<p>We are delaying the availability of \$_____ from this deposit. These funds will be available on the _____ business day after the day of your deposit.</p> <p>We are delaying the availability of \$_____ from this deposit. These funds will be available on the _____ business day after the day of your deposit.</p> <p>We are delaying the availability of \$_____ from this deposit. These funds will be available on the _____ business day after the day of your deposit.</p> <p>We are taking this action because:</p> <p><input type="checkbox"/> New Account</p> <p><input type="checkbox"/> Large Dollar Hold (\$5525.00 and greater)</p> <p><input type="checkbox"/> Check deposited was previously returned unpaid</p> <p><input type="checkbox"/> Account repeatedly overdrawn in the last six months</p> <p><input type="checkbox"/> Reasonable Cause to Doubt Collectability: <i>(select a reason below)</i></p> <p style="padding-left: 20px;"><input type="checkbox"/> We are unable to verify the endorsement of a joint payee</p> <p style="padding-left: 20px;"><input type="checkbox"/> We received notice that the check is being returned unpaid</p> <p style="padding-left: 20px;"><input type="checkbox"/> Some information on the check is not consistent with other information on the check</p> <p style="padding-left: 20px;"><input type="checkbox"/> There are erasures or other apparent alterations on the check</p> <p style="padding-left: 20px;"><input type="checkbox"/> The routing number of the paying bank is not a current routing number</p> <p style="padding-left: 20px;"><input type="checkbox"/> The check is postdated or has a stale date</p> <p style="padding-left: 20px;"><input type="checkbox"/> Information from the paying bank indicates the check may not be paid</p> <p style="padding-left: 20px;"><input type="checkbox"/> We have been notified that the check has been lost or damaged in collection</p> <p style="padding-left: 20px;"><input type="checkbox"/> We received confidential information the check may not be paid</p>		
<p>If you did not receive this notice at the time you made the deposit and the check you deposited is paid, we will refund to you any fees for overdrafts or returned checks that result solely from the additional delay that we are imposing. To obtain a refund of such fees, please call us at 800-111-1111 or write to us at our address stated above.</p>		

Scenario #2

Cathy McClain has been with the bank for four years. She has no history of overdrafts and has an average balance of \$2,800. Ms. McClain is presenting a check, on Tuesday June 7th, for \$20,000 made payable to herself and is drawn on a bank in another state. Can you do anything to protect your bank? What?

Notice of Delayed Availability		
To: Cathy McClain 12 West Bakers St. Detroit, MI 45120	From: Hometown Bank 329 East Rutherford St. Detroit, MI 45120	Date of Notice: 6/7/2018 Account #: 11111111 Amount of Deposit: \$20,000.00 Date of Deposit: 6/7/2018
<p>We are delaying the availability of \$_____ from this deposit. These funds will be available on the _____ business day after the day of your deposit.</p> <p>We are delaying the availability of \$_____ from this deposit. These funds will be available on the _____ business day after the day of your deposit.</p> <p>We are delaying the availability of \$_____ from this deposit. These funds will be available on the _____ business day after the day of your deposit.</p> <p>We are taking this action because:</p> <p><input type="checkbox"/> New Account</p> <p><input type="checkbox"/> Large Dollar Hold (\$5525.00 and greater)</p> <p><input type="checkbox"/> Check deposited was previously returned unpaid</p> <p><input type="checkbox"/> Account repeatedly overdrawn in the last six months</p> <p><input type="checkbox"/> Reasonable Cause to Doubt Collectability: <i>(select a reason below)</i></p> <p><input type="checkbox"/> We are unable to verify the endorsement of a joint payee</p> <p><input type="checkbox"/> We received notice that the check is being returned unpaid</p> <p><input type="checkbox"/> Some information on the check is not consistent with other information on the check</p> <p><input type="checkbox"/> There are erasures or other apparent alterations on the check</p> <p><input type="checkbox"/> The routing number of the paying bank is not a current routing number</p> <p><input type="checkbox"/> The check is postdated or has a stale date</p> <p><input type="checkbox"/> Information from the paying bank indicates the check may not be paid</p> <p><input type="checkbox"/> We have been notified that the check has been lost or damaged in collection</p> <p><input type="checkbox"/> We received confidential information the check may not be paid</p>		
<p>If you did not receive this notice at the time you made the deposit and the check you deposited is paid, we will refund to you any fees for overdrafts or returned checks that result solely from the additional delay that we are imposing. To obtain a refund of such fees, please call us at 800-111-1111 or write to us at our address stated above.</p>		

Other Requirements

Payments of Interest (229.14)

A bank must begin accruing interest on interest-bearing accounts no later than the business day on which it receives provisional credit for the deposited funds. A bank may rely on the availability schedule of the Federal Reserve Bank, FHLB, or its correspondent bank when determining when the bank receives credit.

Money market deposit accounts, savings deposit accounts, and time deposit accounts are not subject to the general rule concerning the timing of interest payment.

Employee Training (229.19(f))

The Expedited Funds Availability Act requires banks to inform each employee (typically annually) who performs duties subject to the act about its requirements. The Act and Regulation CC also require banks to establish and maintain procedures designed to ensure and monitor employee compliance with the requirements.



Subpart C of Regulation CC

Subpart C covers the check-collection system and includes rules to speed the collection and return of checks. Basically, these rules cover the return responsibilities of paying and returning banks, notices of non-payment for large-dollar returns by the paying bank, and mandatory check indorsement standards. This section is not discussed within these materials as most processing occurs electronically, is handled by the operations department or a third-party processor. New rules went into effect on July 1, 2018. It is important operations staff are aware of these rules.

Substitute Checks

General Provisions of a Substitute Check (229.51)

Legal Equivalence

A substitute check for which a bank has provided the warranties described in 229.52 is the legal equivalent of an original check for all persons and all purposes, including any provision of federal or state law, if the substitute check:

1. Accurately represents all of the information on the front and back of the original check as of the time the original check was truncated; and
2. Bears the legend, "This is a legal copy of your check. You can use it the same way you would use the original check".

Expedited Recredit for Consumers (229.54)

Circumstances Giving Rise to a Claim

A consumer may make a claim for a recredit with respect to a substitute check if the consumer asserts in good faith that:

1. The consumer's account was charged for a substitute check that was provided to the consumer;
2. The consumer's account was improperly charged, or the consumer has a warranty claim;
3. The consumer suffered a loss; and
4. The consumer needs the original check or a sufficient copy to determine the validity of the claim.

Procedures for Making Claims

A consumer must make his or her claim for a recredit under this section with the bank that holds the consumer's account in accordance with the timing, content, and form requirements.

1. Timing of claim

The consumer must submit his or her claim such that the bank receives the claim by the end of the 40th calendar day after the calendar day on which the bank mailed or delivered, by a means agreed to by the consumer:

- a. The periodic account statement that contains information concerning the transaction giving rise to the claim; or
- b. The substitute check giving rise to the claim.

If the consumer cannot submit his or her claim by the 40th calendar day as listed above due to **extenuating circumstances**, the bank must extend the 40-calendar-day period by an additional **reasonable amount of time**.

If the bank requires the claim be in writing, the notice by the consumer is considered timely so long as the **oral notice** was received within the time frames listed above.

2. Content of the claim

The consumer's claim must include the following information:

- a. A **description of the consumer's claim**, including the reason why the consumer believes his or her account was improperly charged for the substitute check or the nature of his or her warranty claim with respect to such check;
- b. A statement that the consumer **suffered a loss and an estimate** of the amount of that loss;
- c. The **reason why production of the original check** or a sufficient copy is necessary to determine whether or not the charge to the consumer's account was proper or the consumer's warranty claim is valid; and
- d. Sufficient information to allow the bank to **identify the substitute check and investigate the claim**.

Action on Claims

A bank that receives a claim must act as follows:

1. Valid consumer claim

- a. If the bank determines that the consumer's **claim is valid**, the bank must:
 - i. **Recredit** the consumer's account for the amount of the consumer's loss, up to the amount of the substitute check, **plus interest** if the account is an interest-bearing account, no later than the **end of the business day after the banking day on which the bank makes that determination**; and
 - ii. Send to the consumer the **notice in writing**.

2. Invalid consumer claim

- a. If a bank determines that the consumer's **claim is not valid**, the bank must send to the consumer the notice of recredit, **in writing**.

3. Recredit pending investigation

- a. If the bank has not taken an action before the end of the 10th business day after the banking day on which the bank received the claim, the bank must by the end of that business day:
 - i. Recredit the consumer's account for the amount of the consumer's loss, up to the lesser of the amount of the substitute check or \$2,500, plus interest on that amount if the account is an interest-bearing account;
 - ii. Send to the consumer the notice of recredit, in writing; and
 - iii. Recredit the consumer's account for the remaining amount of the consumer's loss, if any, up to the amount of the substitute check, plus interest if the account is an interest-bearing account, no later than the end of the 45th calendar day after the banking day on which the bank received the claim and notify the consumer in writing.

4. Reversal of Recredit

- b. The bank may reverse a recredit that it has made to a consumer account, plus interest that the bank has paid, if any, on that amount, if the bank determines that the consumer's claim was not valid; and notifies the consumer in writing.

Notices Relating to Consumer Expedited Recredit Claims

1. Notice of Recredit

- a. A bank that recredits a consumer's account must send notice to the consumer of the recredit no later than the business day after the banking day on which the bank recredits the consumer's account. This notice must describe the amount of the recredit; and the date on which the recredited funds will be available for withdrawal.

2. Notice that the Consumer's Claim is not Valid

- a. If a bank determines that a substitute check for which a consumer made a claim under this section was in fact properly charged to the consumer's account or that the consumer's warranty claim for that substitute check was not valid, the bank must send notice to the consumer no later than the business day after the banking day on which the bank makes that determination. This notice must:
 - i. Include the original check or a sufficient copy, except as provided in 229.58;
 - ii. Demonstrate to the consumer that the substitute check was properly charged, or the consumer's warranty claim is not valid; and

- iii. Include the information or documents (in addition to the original check or sufficient copy), if any, on which the bank relied in making its determination or a statement that the consumer may request copies of such information or documents.

3. Notice of a Reversal of Recredit

- a. A bank that reverses an amount it previously recredited to a consumer's account must send notice to the consumer no later than the business day after the banking day on which the bank made the reversal. This notice must include the information provided on a notice stating that the consumer's claim is not valid and also describe:
 - i. The amount of the reversal, including both the amount of the recredit (including the interest component, if any) and the amount of interest paid on the recredited amount, if any, being reversed; and
 - ii. The date on which the bank made the reversal.

Consumer Awareness & Disclosure Requirements (229.57)

Consumer Disclosures

Each bank must provide a brief disclosure, at account opening, to specific consumer customers that describes:

1. That a substitute check is the legal equivalent of an original check; and
2. The consumer recredit rights that apply when a consumer in good faith believes that a substitute check was not properly charged to his or her account.

Who and When to Provide

A bank must provide this disclosure to consumer customers who routinely receive their canceled checks in their periodic statement.

A bank must also provide the disclosure to a consumer customer who receives a substitute check on an occasional basis, including when a consumer receives a substitute check in response to a request for a check or a copy of a check and when a check deposited by the consumer is returned to the consumer as an unpaid item in the form of a substitute check.

The bank must provide this disclosure at the time of the request, if feasible. Otherwise, the bank must provide the disclosure no later than when the bank provides a substitute check in response to the consumer's request.

A bank must provide the disclosure to a consumer customer in these cases even if the bank previously provided the disclosure to the consumer.

Resources for Regulation CC

FDIC Exam Manual: <https://www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/documents/6/vi-1-1.pdf>

FED Consumer Compliance Handbook: <https://www.federalreserve.gov/boarddocs/supmanual/cch/efaa.pdf>

FED Model Disclosure Statements for Substitute Checks: <https://www.frbservices.org/assets/education/events/check21regccmodeldisclosure.pdf>

FFIEC Frequently Asked Questions on Check 21: <https://www.ffiec.gov/exam/check21/faq.htm>

Regulation CC – Funds Availability Chart

Item Deposited	How the deposit is made	Availability
Cash	Deposit made in person to an employee	Next business day
	Other than in person	2 nd Business Day
On-Ups Items		Next Business Day
Local Checks	Amounts up to \$5,525	1 First \$225 available Next Business Day 2 Remainder available 2 nd Business Day
	Amounts over \$5,525	See Large Deposit Exception Hold
Electronic Payments	Pre-authorized payments (Direct Deposit)	Same day funds collected
	Others	Next Business Day
Federal Reserve Bank Check Federal Home Loan Bank Check Cashier's, Certified, or Teller's Checks	Deposited in person; and Deposited into the named payee's account	Next Business Day
	Not deposited in person and deposited into the named payee's account	2 nd Business Day
	Deposited into account other than the named payee's whether or not in person	2 nd Business Day
U.S. Treasury Check	Deposited into named payee's account	Next Business Day
	Deposited into account other than the named payee	2 nd Business Day
U.S. Postal Money Orders	Deposited in person; and deposited into the named payee's account	Next Business Day
	Not deposited in person and deposited into the named payee's account	2 nd Business Day
State or Local Government Checks	Deposited in person and deposited into the named payee's and account	Next Business Day
	Not deposited in person and deposited into the named payee's account	2 nd Business Day
	Deposited into account other than the named payee's whether or not in person	2 nd Business Day
ATM Deposits*	Deposits at a proprietary (owned by the credit union) ATM	1 First \$225 available Next Business Day 2 Remainder available 2 nd Business Day
	Deposits at a non-proprietary (not owned by the credit union) ATM	5 th Business Day

*U.S. Treasury Checks deposited into a proprietary ATM receive next-day availability if deposited into the account of the named payee. The \$225 rule does not apply to checks deposited into nonproprietary ATMs.

Item Deposited	How the deposit is made	Availability
Large Deposit – Aggregate amounts over \$5,525	Aggregate amounts over \$5,525	1 First \$225 available Next Business Day 2 \$5,300 available 2 nd Business Day 3 Remainder available 7 th business day
	On-Us Item(s) – Aggregate amounts over \$5,525	1 First \$225 available Next Business Day 2 Remainder available 2 nd Business Day
<ul style="list-style-type: none"> • Redeposited Checks-returned unpaid once already • Repeated Overdrafts-overdrawn 6 or more banking days in 6 months or overdrawn greater than \$5,525 on 2 or more banking days in 6 months • Reasonable Cause to Doubt Collectibility • Emergency Conditions (computer failure, severe weather) 	Local Checks	7 th Business Day
	On-Us Item(s)	2 nd Business Day
NEW ACCOUNTS		
Cash	Deposit made in person to an employee	Next business day
	Otherwise	2 nd Business Day
Local Checks	There is no maximum time frame for when funds must be made available.	
Electronic Payments	Pre-authorized payments (Direct Deposit)	Same day funds collected
	Others	Next Business Day
U.S. Postal Money Orders, cashier's, teller's, certified checks, checks drawn on FRB or FHLB, state and local government checks, and traveler's checks	Deposited into named payee's account for amounts up to \$5,525	Next Business Day
	Deposited into named payee's account for amounts over \$5,525	9 th Business Day
U.S. Treasury Checks	Whether or not in person, deposited into named payee's account for amounts up to \$5,525	Next Business Day
	Amounts over \$5,525	9 th Business Day

Regulation P—Consumer Privacy

4



Learning Objectives

By the end of this chapter, you should be able to:

- Define key terms within Regulation P
- Know which persons are required to receive the bank's privacy notice
- Understand the privacy and opt out notice requirements of Regulation P
- Know the limitations of what can be shared with others

Overview

Regulation P establishes rules governing duties of a bank to provide particular notices and sets limitations on its disclosure of nonpublic personal information. A bank must provide notice of its privacy policies and practices and allow the consumer to opt out of the disclosure of the consumer's nonpublic personal information to a nonaffiliated third-party. Regardless of whether a bank shares non-public personal information, the bank must provide notice of its privacy policies and practices to its customers.

Regulation P only applies to consumers who obtain products and services from banks for personal use. It does not apply to commercial customers.

Regulation P is governed by The Bureau and was recently amended in August 2018.

Definitions

Consumer: An individual who obtains or has obtained a financial product or service from the bank that is to be used primarily for personal, family, or household purposes, or that individual's legal representative.



Examples of consumers:

- An individual who applies for credit for personal, family, or household purposes is a consumer of a financial service, regardless of whether the credit is extended.
- An individual who provides nonpublic personal information in order to obtain a determination about whether he or she may qualify for a loan to be used primarily for personal, family, or household purposes is a consumer of a financial service, regardless of whether the loan is extended.
- An individual who provides nonpublic personal information in connection with obtaining or seeking to obtain financial, investment, or economic advisory services is a consumer regardless of whether the bank establishes a continuing advisory relationship.
- If the bank holds ownership or servicing rights to an individual's loan that is used primarily for personal, family, or household purposes, the individual is the bank's consumer, even if the bank holds those rights in conjunction with one or more other institutions. (The individual is also a consumer with respect to the other banks involved.) An individual who has a loan in which the bank has ownership or servicing rights is the bank's consumer, even if the bank, or another institution with those rights, hire an agent to collect on the loan.



Examples of non-consumers:

- An individual who is a consumer of another bank is not a consumer solely because the bank acts as agent for, or provide processing or other services to, that bank.
- An individual is not a consumer solely because he or she has designated the bank as trustee for a trust.
- An individual is not a consumer solely because he or she is a beneficiary of a trust for which the bank is a trustee.
- An individual is not a consumer solely because he or she is a participant or a beneficiary of an employee benefit plan that the bank sponsors or for which the bank acts as a trustee or fiduciary.

Customer: A consumer who has a "customer relationship" with the bank.

Customer Relationship: A continuing relationship between a consumer and the bank under which it provides one or more financial products or services to the consumer that are to be used primarily for personal, family, or household purposes.



Example of continuing relationship

- Consumer has a deposit or investment account with the bank
- Consumer obtains a loan from the bank
- Consumer has a loan for which the bank owns the servicing rights
- Consumer purchases an insurance product from the bank
- Consumer holds an investment product through the bank, such as when it acts as a custodian for securities or for assets in an Individual Retirement Arrangement (IRA)
- Consumer enters into an agreement or understanding with the bank whereby it undertakes to arrange or broker a home mortgage loan for the consumer
- Consumer enters into a lease of personal property with the bank
- Consumer obtains financial, investment, or economic advisory services from the bank for a fee



Example of NO continuing relationship:

- The consumer obtains a financial product or service only in isolated transactions, such as using the bank's ATM to withdraw cash from an account at another bank or purchasing a cashier's check or money order
- The bank sells the consumer's loan and does not retain the rights to service that loan

Affiliate: Any company that controls, is controlled by, or is under common control with another company (generally 25%). Includes a person employed jointly with a non-affiliate.

Nonaffiliated Third-party: Any person except:

- The bank's affiliate(s) (see definition above); or
- A person employed jointly by the bank and any company that is not the bank's affiliate (but nonaffiliated third-party includes the other company that jointly employs the person).

**Nonaffiliated third-party* includes any company that is an affiliate solely by virtue of the bank or the bank's affiliate's direct or indirect ownership or control of the company in conducting merchant banking or investment banking activities of the type described in section 4(k) & (4) (H) or insurance company investment activities of the type described in section 4(k) & (4)(I) of the Bank Holding Company Act .

Nonpublic Personal Information:

- Includes:
 - Personally identifiable financial information; and
 - Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived using any personally identifiable financial information that is not publicly available.



Example:

- ◆ Nonpublic personal information includes any list of individuals' names and street addresses that is derived in whole or in part using personally identifiable financial information that is not publicly available, such as account numbers.

- Does not Include:
 - Publicly available information, except as listed above; or
 - Any list, description, or other grouping of consumers (and publicly available information pertaining to them) that is derived *without* using any personally identifiable financial information that is not publicly available.



Example:

- ◆ Nonpublic personal information does not include any list of individuals' names and addresses that contains only publicly available information, is not derived in whole or in part using personally identifiable financial information that is not publicly available and is not disclosed in a manner that indicates that any of the individuals on the list is a consumer of a bank.

Personally Identifiable Financial Information: Any information:

- A consumer provides to the bank to obtain a financial product or service from the bank;
- About a consumer resulting from any transaction involving a financial product or service between the bank and a consumer; or
- The bank otherwise obtains about a consumer in connection with providing a financial product or service to that consumer.



Examples Included:

- o Information a consumer provides to the bank on an application to obtain a loan, a credit card, or other financial product or service.
- o Account balance information, payment history, overdraft history, and credit or debit card purchase information.
- o The fact that an individual is or has been one of the bank's customers or has obtained a financial product or service from the bank.
- o Any information about a consumer if it is disclosed in a manner that indicates that the individual is or has been the bank's consumer.
- o Any information that a consumer provides to the bank or that the bank or its agent otherwise obtain in connection with collecting on, or servicing, a loan or a credit account.
- o Any information the bank collects through an internet "cookie" (an information collecting device from a Web server).
- o Information from a consumer report.



Examples Not Included:

- o A list of names and addresses of customers of an entity that is not a bank.
- o Information that does not identify a consumer, such as aggregate information or blind data that does not contain personal identifiers such as account numbers, names, or addresses.

Initial Privacy Notice

Coverage (1016.4(a)-(b))

The bank must provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to:

1. An individual who becomes the bank's customer; and
2. A consumer about whom the bank discloses any nonpublic personal information to any nonaffiliated third-party, unless allowed by any of the exceptions.

*Not required for business customers (purpose for the bank product or service)



Existing Customers

When an existing customer obtains a new financial product or service from the bank, the bank does not need to provide another privacy notice unless the privacy notice has been revised since the last time the customer received the notice.

Timing (1016.4(e))

The bank must provide a clear and conspicuous notice that accurately reflects its privacy policies and practices to:

1. An individual who becomes the bank's customer, not later than when the bank establishes a customer relationship (generally advance notice is required); and
2. A consumer, before the bank discloses any nonpublic personal information about the consumer to any nonaffiliated third-party, unless allowed by any of the exceptions.



Exception to Prior Notice:

The bank may provide the initial privacy notice within a reasonable time after establishing a customer relationship if:

- Establishing the customer relationship is not at the customer's election (if the bank acquires a customer's deposit liability or the servicing rights to a customer's loan from another bank and the customer doesn't have a choice about your acquisition).
- Providing notice not later than when you establish a customer relationship would substantially delay the customer's transaction and the customer agrees to receive the notice at a later time (telephone request to open account involving prompt delivery of such product).

Format of the Initial Privacy Policy

Privacy notices must be clear and conspicuous, meaning they must be reasonably understandable and designed to call attention to the nature and significance of the information contained in the notice. The regulation provides a model form that banks may use. The use of the Model Privacy Form is not required, however use of the Model Form as provided in Appendix A of Regulation P ensures compliance with the content requirements of the regulation.

Delivery of Initial Privacy Notice

Receipt (1016.9(a)-(d))

Banks must provide any privacy notices and opt out notices so that each consumer can reasonably be expected to receive the actual notice in writing, or electronically (if E-Sign compliant).



Examples of **Reasonable** Expectation of Receipt

- A bank may reasonably expect that a consumer will receive actual notice if the bank:
 - Hand-delivers a printed copy of the notice to the consumer
 - Mails a printed copy of the notice to the last known address of the consumer
 - Posts the notice on the electronic site and require the consumer to acknowledge receipt of the notice as a necessary step to obtaining a particular financial product or service



Examples of **Unreasonable** Expectation of Receipt

- The bank may *not*, however, reasonably expect that a consumer will receive actual notice of your privacy policies and practices if the bank:
 - Only posts a sign in its branch or office or generally publish advertisements of its privacy policies and practices
 - Sends the notice via electronic mail to a consumer who does not obtain a financial product or service from it electronically
 - Provides notice solely by orally explaining the notice, either in person or over the telephone

Retention (1016.9(e)-(g))

Banks must provide the initial notice, the annual notice (if required) and the revised notice (if applicable) so that the customer can retain them or obtain them later in writing, or electronically (if E-Sign compliant).



Examples include:

- Hand-delivering a printed copy of the notice to the customer
 - Mailing a printed copy of the notice to the last known address of the customer
 - Making the current privacy notice available on a Web site (or a link to another Web site) for the customer who obtains a financial product or service electronically and agrees to receive the notice at the Web site
-

Joint Notice (1016.9(f))

The bank may provide a joint notice from it and one or more of its affiliates or other banks, as identified in the notice, as long as the notice is accurate with respect to the bank and the other organizations.

If two or more consumers jointly obtain a financial product or service from the bank, it may satisfy the initial, annual, and revised notice requirements by providing one notice to those consumers jointly.

Annual Privacy Notice

General rule (1016.5(a) & (b)(1)-(2))

In general, the bank must provide a clear and conspicuous notice to customers that accurately reflects the bank's privacy policies and practices not less than annually during the continuation of the customer relationship.

- Annually means at least once in any period of 12 consecutive months during which that relationship exists. The bank may define the 12-consecutive-month period (i.e. calendar year or rolling year), but the bank must apply it to the customer on a consistent basis.

The annual notice does not need to be provided to the following types of customer relationships or accounts:

- Former customers
- Dormant or inactive accounts as defined by the bank's policies
- Paid-off, charged-off, or sold w/o servicing loans
- Open-end credit in which statement or notices are no longer sent or servicing has discontinued

Exception to Annual Privacy Notice (1016.5(e))

In August 2018, the Bureau amended Regulation P's annual privacy notice requirements to align with the FAST Act of 2015. The amendments provide an exception under which banks that meet certain conditions are not required to provide annual privacy notices to customers.

To qualify for this exception, a bank:

1. Must not share nonpublic personal information about its customers to nonaffiliated third parties; **and**
2. Have not changed its policies and practices with regard to disclosing nonpublic personal information from the policies and practices that were disclosed to the customer in the most recent privacy notice provided to the customer.

A bank loses this exception if:

1. It changes its policies or practices in such a way as described in 1016.8 (change requiring opt out) that requires the bank to provide a revised privacy notice. The bank must provide an annual privacy notice as stated in the general rule, treating the revised privacy notice as the initial privacy notice. Once providing the revised privacy notice and the annual notice, the bank may qualify for the exception again, **or**
2. It changes its policies or practices in such a way as described in 1016.8 that does not require you to provide a revised privacy notice, the bank must provide an annual privacy notice within 100 days of the change in its policies or practices. Once providing the notice, the bank may qualify for the exception again.

Content of Privacy Notices (1016.6(a))

The initial, annual, and revised privacy notices must include each of the following items of information, in addition to any other information the bank wishes to provide that applies to the bank and to the consumer to whom the bank sends the privacy notice:

1. The categories of nonpublic personal information that the bank collects;
2. The categories of nonpublic personal information that the bank discloses;
3. The categories of affiliates and nonaffiliated third parties to whom the bank discloses nonpublic personal information, other than those parties to whom the bank discloses information under 1016.14 and 1016.15;
4. The categories of nonpublic personal information about the banks former customers that it discloses and the categories of affiliates and nonaffiliated third parties to whom the discloses nonpublic personal information about its former customers, other than those parties to whom the bank discloses information under 1016.14 and 1016.15;
5. If the bank discloses nonpublic personal information to a nonaffiliated third-party under 1016.13 (and no other exception in 1016.14 or 1016.15 applies to that disclosure), a separate statement of the categories of information the bank discloses and the categories of third parties with whom the bank has contracted;
6. An explanation of the consumer's right to opt out of the disclosure of nonpublic personal information to nonaffiliated third parties, including the method(s) by which the consumer may exercise that right at that time;
7. Any disclosures the bank makes under the Fair Credit Reporting Act (15 U.S.C. 1681a(d)(2)(A)(iii)) regarding information sharing among affiliates; and
8. The banks policies and practices with respect to protecting the confidentiality and security of nonpublic personal information.

Description of Nonaffiliated Third Parties Subject to Exceptions (1016.6(b))

If the bank discloses nonpublic personal information to third parties pursuant to an exception in Section 14 or 15, the bank is not required to list those exceptions in the initial or annual privacy notes. It is sufficient to state that the bank makes disclosures to other nonaffiliated companies by stating:

1. “For your everyday business purposes, such as [include all that apply] to process transactions, maintain accounts, respond to court orders and legal investigation, or report to credit bureaus.”; or
2. “As permitted by law.”

Revisions to Privacy Policies (1016.8)

A bank must not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third-party other than as described in the initial notice that you provided to that consumer, unless:

1. The bank has provided to the consumer a clear and conspicuous revised notice that accurately describes its policies and practices;
2. The bank has provided to the consumer a new opt out notice;
3. The bank has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third-party, to opt out of the disclosure; and
4. The consumer does not opt out.

Except as otherwise permitted by 1016.13, 1016.14, and 1016.15 of this part, the bank must provide a revised notice before it:

1. Discloses a new category of nonpublic personal information to any nonaffiliated third-party;
2. Discloses nonpublic personal information to a new category of nonaffiliated third-party; or
3. Discloses nonpublic personal information about a former customer to a nonaffiliated third-party, if that former customer has not had the opportunity to exercise an opt out right regarding that disclosure.

A revised notice is not required if the bank discloses nonpublic personal information to a new nonaffiliated third-party that the bank adequately described in its prior notice. For example: Revised notice is not required if the initial notice said “We share with third parties such as insurance companies.” At the time the bank was only sharing with Geico and State Farm, but is now also sharing with Progressive.

Opt Out Notices

General Rule (1016.7(a))

If an opt out notice is required, the bank must provide a clear and conspicuous notice to each of its consumers that accurately explains the right to opt out. The notice must state:

1. That the bank discloses or reserves the right to disclose nonpublic personal information about the consumer to a nonaffiliated third-party;
2. That the consumer has the right to opt out of that disclosure; and
3. A reasonable means by which the consumer may exercise the opt out right.



Examples for providing reasonable means to opt out:

- Designate check-off boxes in a prominent position on the relevant forms with the opt out notice
- Include a reply form together with the opt out notice that includes the address to which the form should be mailed
- Provide an electronic means to opt out, such as a form that can be sent via electronic mail or a process at your Web site, if the consumer agrees to the electronic delivery of information
- Provide a toll-free telephone number that consumers may call to opt out.



Examples for not providing reasonable means to opt out:

- The only means of opting out is for the consumer to write his or her own letter to exercise that opt out right
- The only means of opting out as described in any notice subsequent to the initial notice is to use a check-off box that you provided with the initial notice but did not include with the subsequent notice

Combined Form (1016.7(b))

The bank may provide the opt out notice together with or on the same written or electronic form as the initial notice that was provided.

Initial Notice Required (1016.7(c))

If the bank provides the opt out notice later than required for the initial notice in accordance with 1016.4 of this part, the bank must also include a copy of the initial notice with the opt out notice in writing or, if the consumer agrees, electronically.

Joint Relationships (1016.7(d))

If two or more consumers jointly obtain a financial product or service from the bank, it may provide a **single opt out notice**. The opt out notice must **explain how** the bank will **treat an opt out** direction by a joint consumer.

Any of the joint consumers may exercise the right to opt out. The bank may either:

1. Treat an opt out direction by a joint consumer as **applying to all** of the associated joint consumers; or
2. Permit each joint consumer to **opt out separately**.

If the bank permits each joint consumer to opt out **separately**, it must **permit one of the joint consumers to opt out on behalf of all** of the joint consumers.



Example.

If John and Mary have a joint checking account with the bank and arrange for the bank to send statements to John's address, it **may do any of the following**, but must **explain in the opt out notice** which opt out policy the bank will follow:

- Send a **single opt out notice** to John's address, but the bank must **accept an opt out direction from either John or Mary**.
- Treat an opt out direction by either John or Mary as **applying to the entire account**. If the bank does so, and John opts out, the bank may not require Mary to opt out as well before implementing John's opt out direction.
- Permit John and Mary to make **different opt out directions**. If the bank does so:
 - It must permit John and Mary to **opt out for each other**;
 - If both opt out, it must permit both to notify you in a **single response** (such as on a form or through a telephone call); and
 - If **John opts out and Mary does not**, it may only disclose nonpublic personal information about Mary, but **not about John and not about John and Mary jointly**.

Opt Out Election (1016.7(g)&(h))

The bank **must comply with a consumer's opt out direction as soon as reasonably practicable** after it receives it. A consumer may exercise the right to **opt out at any time**. A consumer's direction to opt out is **effective until the consumer revokes** it in writing or, if the consumer agrees, electronically.



When a customer relationship terminates, the customer's opt out direction continues to apply to the nonpublic personal information that the bank collected during or related to that relationship. If the individual subsequently establishes a new customer relationship with the bank, the opt out direction that applied to the former relationship does not apply to the new relationship.

Limits on Disclosures

Nonaffiliated Third Parties (1016.10)

Except as otherwise authorized in this part, the bank may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer to a nonaffiliated third-party unless:

1. The bank has provided to the consumer an initial notice;
2. The bank has provided to the consumer an opt out notice (when applicable);
3. The bank has given the consumer a reasonable opportunity, before it discloses the information to the nonaffiliated third-party, to opt out of the disclosure; and
4. The consumer does not opt out.


Application of opt out to all consumers and all nonpublic personal information.

The bank must comply with these rules regardless of whether the bank and the consumer have established a customer relationship. Unless the bank complies, it may not, directly or through any affiliate, disclose any nonpublic personal information about a consumer that it has collected, regardless of whether it collected it before or after receiving the direction to opt out from the consumer.

Partial opt out

The bank may allow a consumer to select certain nonpublic personal information or certain nonaffiliated third parties with respect to which the consumer wishes to opt out.

Exceptions to Sharing Restrictions

 **Key Idea**

It is important to understand the differences between the exception sections 13, 14 and 15 as they are referred to these #'s throughout the industry.

13 – Joint marketing
14 – Processing and servicing
15 – Other Transactions


Section 13 – Exception to Opt Out for Servicers and Joint Marketers (12 CFR 1016.13)

The opt out requirements do not apply when the bank provides nonpublic personal information to a nonaffiliated third-party to perform services for the bank or functions on its behalf, if the bank:

1. Provides the initial notice; and
2. Enters into a contractual agreement with the third-party that prohibits the third-party from disclosing or using the information other than to carry out the purposes for which the bank disclosed the information, including use under an exception in 1016.14 or 1016.15 in the ordinary course of business to carry out those purposes.

The services a nonaffiliated third-party performs for the bank may include marketing of your own products or services or marketing of financial products or services offered pursuant to joint agreements between you and one or more organizations.

- Joint agreement means a written contract pursuant to which the bank and one or more organizations jointly offer, endorse, or sponsor a financial product or service.

 **Examples of Section 13 Exception (Joint Marketing & Service Providers)**

1. The bank hires a third-party to send post-cards on its behalf, to existing bank mortgage customers with sound Loan-to-Value (LTV) on their current mortgages. The bank will market a new HELOC special to these selected customers. The bank provides the list of customers to the company sending the post-cards. The bank is allowed to provide the list under the Section 13 Exception rules.
2. The bank is sending a survey to customers and is using a 3rd party to conduct/distribute the survey. The bank must provide information to the 3rd party for delivery. The bank is allowed to provide the list under the Section 13 Exception rules without offering the customer an opt-out provided contractual requirements regarding use of information is in place.
3. The bank offers a branded credit card through another financial institution. The bank provides the other institution a list of names of its customers for the other institution to market the bank branded credit card. Because this arrangement is with another FI, this would be exempt under the joint marketing provision.

Section 14 – Exception to Notice and Opt Out for Processing and Servicing Transactions (12 CFR 1016.14)

The requirements for initial notice and the opt out, and for service providers and joint marketing do not apply if the bank discloses nonpublic personal information as necessary to effect, administer, or enforce a transaction that a consumer requests or authorizes, or in connection with:

1. Servicing or processing a financial product or service that a consumer requests or authorizes;
2. Maintaining or servicing the consumer's account with the bank, or with another entity as part of a private label credit card program or other extension of credit on behalf of such entity; or
3. A proposed or actual securitization, secondary market sale (including sales of servicing rights), or similar transaction related to a transaction of the consumer.

Necessary to effect, administer, or enforce a transaction means that the disclosure is:

1. Required, or is one of the lawful or appropriate methods, to enforce the banks rights or the rights of other persons engaged in carrying out the financial transaction or providing the product or service; or
2. Required, or is a usual, appropriate or acceptable method:
 - a. To carry out the transaction or the product or service business of which the transaction is a part, and record, service, or maintain the consumer's account in the ordinary course of providing the financial service or financial product;
 - b. To administer or service benefits or claims relating to the transaction or the product or service business of which it is a part;
 - c. To provide a confirmation, statement, or other record of the transaction, or information on the status or value of the financial service or financial product to the consumer or the consumer's agent or broker;
 - d. To accrue or recognize incentives or bonuses associated with the transaction that are provided by the bank or any other party;
 - e. To underwrite insurance at the consumer's request or for reinsurance purposes, or for any of the following purposes as they relate to a consumer's insurance: account administration, reporting, investigating or preventing fraud or material misrepresentation, processing premium payments, processing insurance claims, administering insurance benefits (including utilization review activities), participating in research projects, or as otherwise required or specifically permitted by Federal or state law; or

- f. In connection with:
 - i. The authorization, settlement, billing, processing, clearing, transferring, reconciling or collection of amounts charged, debited, or otherwise paid using a debit, credit, or other payment card, check, or account number, or by other payment means;
 - ii. The transfer of receivables, accounts, or interests therein; or
 - iii. The audit of debit, credit, or other payment information.



Example of Section 14 Exception (Processing & Servicing Transactions)


The bank provides bank customer information to various vendors in order to complete customer transactions. This sharing is allowed through Section 14 Exceptions. These vendors may include, and are not limited to: Core Processors, Card Processing Companies, Mortgage Servicers, State/Government Lien Offices

Section 15 – Other Exceptions (1016.15)

The requirements for initial and opt out notice and for service providers and joint marketing do not apply when the bank discloses nonpublic personal information:

1. With the consent or at the direction of the consumer, provided that the consumer has not revoked the consent or direction;
2. To protect the confidentiality or security of your records pertaining to the consumer, service, product, or transaction;
3. To protect against or prevent actual or potential fraud, unauthorized transactions, claims, or other liability;
4. For required bank risk control or for resolving consumer disputes or inquiries;
5. To persons holding a legal or beneficial interest relating to the consumer;
6. To persons acting in a fiduciary or representative capacity on behalf of the consumer;
7. To provide information to insurance rate advisory organizations, guaranty funds or agencies, agencies that are rating you, persons that are assessing your compliance with industry standards, and your attorneys, accountants, and auditors;
8. To the extent specifically permitted or required under other provisions of law and in accordance with the Right to Financial Privacy Act of 1978, to law enforcement agencies, a state insurance authority, self-regulatory organizations, or for an investigation on a matter related to public safety;
9. To a consumer reporting agency in accordance with the Fair Credit Reporting Act or from a consumer report reported by a consumer reporting agency;

10. In connection with a proposed or actual sale, merger, transfer, or exchange of all or a portion of a business or operating unit if the disclosure of nonpublic personal information concerns solely consumers of such business or unit;
11. To comply with Federal, state, or local laws, rules and other applicable legal requirements;
12. To comply with a properly authorized civil, criminal, or regulatory investigation, or subpoena or summons by Federal, state, or local authorities; or
13. To respond to judicial process or government regulatory authorities having jurisdiction over the bank for examination, compliance, or other purposes as authorized by law.

 **Examples of Section 15 Exception (Other Information Requests)**

The bank shares non-public personal information to a third-party upon request from the customer. Examples may include:

- Bob wants the bank to send his last three account statements to his accountant.
- Jane uses Quicken to manage her finances and Quicken pulls Jane's transaction activity into the software through the bank's online banking platform.

The Section 15 Exceptions also allow a bank to provide customer information to third-parties in which the bank uses to perform certain legal and compliance activities such as the bank's legal counsel, third-party auditors, and regulatory agencies. More specifically, to the extent required by law, banks may share customer information when properly complying with Right to Financial Privacy Act information requests, BSA/AML reporting requirements and credit reporting activities under FCRA.

Redisclosure and Reuse (1016.11)

If the bank receives nonpublic personal information from a nonaffiliated bank under an exception in 1016.14 or 1016.15 of this part, the bank's disclosure and use of that information is limited as follows:

1. The bank may disclose the information to the affiliates of the bank from which it received the information;
2. The bank may disclose the information to its affiliates, but the affiliates may, in turn, disclose and use the information only to the extent that the bank may disclose and use the information; and
3. The bank may disclose and use the information pursuant to an exception in 1016.14 or 1016.15 in the ordinary course of business to carry out the activity covered by the exception under which you received the information.



Example.

If the bank receives a customer list from a nonaffiliated bank in order to provide account processing services under the exception in §1016.14(a), the bank may disclose that information under any exception in §1016.14 or §1016.15 in the ordinary course of business in order to provide those services. For example, the bank could disclose the information in response to a properly authorized subpoena or, to the bank's attorneys, accountants, and auditors. The bank could not disclose that information to a third-party for marketing purposes or use that information for its own marketing purposes.

If the bank receives nonpublic personal information from a nonaffiliated bank other than under an exception in 1016.14 or 1016.15, the bank may disclose the information only:

1. To the affiliates of the bank from which it received the information;
2. To the banks affiliates, but the affiliates may, in turn, disclose the information only to the extent that the bank can disclose the information; and
3. To any other person, if the disclosure would be lawful if made directly to that person by the bank from which the bank received the information.



Example.

If you obtain a customer list from a nonaffiliated bank outside of the exceptions in 1016.14 and 1016.15:

- The bank may use that list for your own purposes; and
- The bank may disclose that list to another nonaffiliated third-party only if the bank from which it purchased the list could have lawfully disclosed the list to that third-party. That is, the bank may disclose the list in accordance with the privacy policy of the bank from which it received the list, as limited by the opt out direction of each consumer whose nonpublic personal information the bank intend to disclose, and it may disclose the list in accordance with an exception in 1016.14 or 1016.15, such as to its attorneys or accountants.

If the bank discloses nonpublic personal information to a nonaffiliated third-party under an exception in 1016.14 or 1016.15, the third-party may disclose and use that information only as follows (these rules mirror receiving but the bank is now the one disclosing pursuant to an exception):

1. The third-party may disclose the information to the banks affiliates;
2. The third-party may disclose the information to its affiliates, but its affiliates may, in turn, disclose and use the information only to the extent that the third-party may disclose and use the information; and

3. The third-party may disclose and use the information pursuant to an exception in §1016.14 or §1016.15 in the ordinary course of business to carry out the activity covered by the exception under which it received the information.

If the bank **discloses** nonpublic personal information **to** a nonaffiliated third-party **other than under an exception** in 1016.14 or 1016.15 of this part, the third-party may disclose the information only (these rules mirror receiving but the bank is now the one disclosing other than pursuant to an exception):

1. To the banks affiliates;
2. To its affiliates, but its affiliates, in turn, may disclose the information only to the extent the third-party can disclose the information; and
3. To any other person, if the disclosure would be lawful if the bank made it directly to that person.

Other Laws

Regulation P may conflict with other laws, such as;

- Fair Credit Reporting Act
 - Nothing in Regulation P must be construed to modify, limit, or supersede the operation of the Fair Credit Reporting Act (15 U.S.C. 1681). In short, **FCRA supersedes Reg. P to the extent of conflict.**
- State Laws 12 CFR 1016.17
 - Regulation P must not be construed as superseding, altering, or affecting any statute, regulation, order, or interpretation in effect in any state, except to the extent that such state statute, regulation, order, or interpretation is inconsistent with the provisions of Regulation P, and then only to the extent of the inconsistency. In short, **Reg. P supersedes CONFLICTING state law.**

Completing the Privacy Disclosure

Determining how to complete the privacy disclosure accurately based on the bank's products, services, and sharing practices can be difficult. The **instructions on how to complete each field** accurately can be found within the Appendix of Regulation P :

https://www.ecfr.gov/cgi-bin/text-idx?SID=30dae0b096177178e3e293f63c6e3c71&mc=true&node=ap12.8.1016_117.1&rgn=div9

(beginning at C. Information Required in the Model Privacy Form)

The Federal Reserve developed a Privacy Notice Online Form Builder to help “fill in the blanks” if the bank chooses to use the Model Form. The Form Builder can be found at -

https://www.federalreserve.gov/bankinfo/privacy_notice_instructions.pdf.

Most Community Bank's use the model privacy form that does not provide an opt out notice as they do not typically share information with others. The following pages are a guide through each section of the form (for non-sharing, no opt-out).

FACTS	WHAT DOES DO WITH YOUR PERSONAL INFORMATION?
Why? b	Financial companies choose how they share your personal information. Federal law gives consumers the right to limit some but not all sharing. Federal law also requires us to tell you how we collect, share, and protect your personal information. Please read this notice carefully to understand what we do.
What? c	<p>The types of personal information we collect and share depend on the product or service you have with us. This information can include:</p> <ul style="list-style-type: none"> ■ Social Security number and ■ _____ and ■ _____ and <p>When you are <i>no longer</i> our customer, we continue to share your information as described in this notice.</p>
How? d	<p>All financial companies need to share _____ personal information to run their everyday business. In the section below, we list the reasons financial companies can share their _____ personal information; the reasons _____ chooses to share; and whether you can limit this sharing.</p>

- a. **Last revised date:** The bank must insert in the upper right-hand corner the date on which the notice was last revised.
- b. **Why?:** This box is **already completed** in the model form and should not be altered.
- c. **What?:** The bulleted list identifies the types of personal information that the bank collects and shares. **All banks must use the term “Social Security number” in the first bullet.** Bank must use five (5) of the following terms to complete the bulleted list: Income; account balances; payment history; transaction history; transaction or loss history; credit history; credit scores; assets; investment experience; credit-based insurance scores; insurance claim history; medical information; overdraft history; purchase history; account transactions; risk tolerance; medical-related debts; credit card or other debt; mortgage rates and payments; retirement assets; checking account information; employment information; wire transfer instructions.
- d. **How?:** In the first two blanks, enter what the bank calls its customers (**clients, consumers, customers**, etc.). In the third blank enter the **name of the bank**.

Page 1 – bottom section

	Reasons we can share your personal information	Does a share?	Can you limit this sharing?
d	For our everyday business purposes— such as to process your transactions, maintain your account(s), respond to court orders and legal investigations, or report to credit bureaus	b	c
e	For our marketing purposes— to offer our products and services to you		
f	For joint marketing with other financial companies		
g	For our affiliates' everyday business purposes— information about your transactions and experiences		
h	For our affiliates' everyday business purposes— information about your creditworthiness		
i	For our affiliates to market to you		
j	For nonaffiliates to market to you		

Questions? Call _____ or go to _____

- a. **Does ___share?:** Enter the name of the bank.
- b. **Middle Column:** Each of these boxes must contain a “Yes” or “No” depending on the item listed in the left column.
- c. **Right Column:** Each of these boxes must contain one of the following:
 - “Yes” if the bank is required to or voluntarily provides an opt-out;
 - “No” if the bank does not provide an opt-out; or
 - “We don’t share” if it answers “No” in the middle column.
- d. **For our everyday business purposes-:** This reason incorporates sharing information under 1016.14 and 1016.15 and with service providers pursuant to 1016.13 other than the purposes specified in paragraphs C.2(d)(2) or C.2(d)(3) of the Model Form Instructions.
- e. **For our marketing purposes-:** This reason incorporates sharing information with service providers by a bank for its own marketing pursuant to 1016.13 of this part. A bank that shares for this reason may choose to provide an opt-out.
- f. **For joint marketing with other financial companies-:** This reason incorporates sharing information under joint marketing agreements between two or more banks and with any service provider used in connection with such agreements pursuant to 1016.13. A bank that shares for this reason may choose to provide an opt-out.
- g. **For our affiliates’ everyday business purposes-(transactions):** This reason incorporates sharing information specified in sections 603(d)(2)(A)(i) and (ii) of the FCRA. A bank that shares for this reason may choose to provide an opt-out. There is an exception for transaction/experience information.

- h. **For our affiliates' everyday business purposes-(creditworthiness):** This reason incorporates sharing information pursuant to section 603(d)(2)(A)(iii) of the FCRA. A bank that shares for this reason **must** provide an opt-out.
- i. **For our affiliates to market to you:** This reason incorporates sharing information specified in section 624 of the FCRA. This reason may be omitted from the disclosure table when:
- The bank **does not have affiliates (or does not disclose** personal information to its affiliates);
 - The **bank's affiliates do not use personal information in a manner that requires an opt-out;** or
 - The bank provides the **affiliate marketing notice separately.**

Banks that include this reason **must** provide an opt-out of indefinite duration. A bank that is required to provide an affiliate marketing opt-out, but does not include that opt-out in the model form under this part, must comply with section 624 of the FCRA and 12 CFR part 1022, subpart C, with respect to the initial notice and opt-out and any subsequent renewal notice and opt-out. A bank not required to provide an opt-out may elect to include this reason in the model form.

- j. **For nonaffiliates to market to you:** This reason incorporates sharing described in 1016.7 and 1016.10(a). A bank that shares personal information for this reason **must** provide an opt-out.

Page 2	
Who we are	
Who is providing this notice? a	
What we do	
How does protect my personal information? b	To protect your personal information from unauthorized access and use, we use security measures that comply with federal law. These measures include computer safeguards and secured files and buildings.
How does collect my personal information? c	We collect your personal information, for example, when you <ul style="list-style-type: none"> ■ _____ or ■ _____ or ■ _____
Why can't I limit all sharing? d	Federal law gives you the right to limit only <ul style="list-style-type: none"> ■ sharing for affiliates' everyday business purposes—information about your creditworthiness ■ affiliates from using your information to market to you ■ sharing for nonaffiliates to market to you State laws and individual companies may give you additional rights to limit sharing.

- a. **Who is providing this notice?:** This question may be omitted where only one bank provides the model form and that bank is clearly identified in the title on page one. Two or more banks that jointly provide the model form must use this question to identify themselves as required by 1016.9(f) .
- b. **How does [insert bank name] protect my personal information?:** The bank may only provide additional information pertaining to its safeguards practices following the designated response to this question. Such information may include information about the bank's use of cookies or other measures it uses to safeguard personal information. Banks are limited to a maximum of 30 additional words.
- c. **How does [insert bank name] collect my personal information?:** Banks must use five of the acceptable terms as stated in the commentary to the rules to completed the bullets in this question.
- d. **Why can't I limit sharing?:** The text in this box is predetermined and does not need to be altered unless the bank describes state privacy law provisions in the "Other important information" box at the bottom of page 2. If so, the bank must use the bracketed sentence: "See below for more on your rights under state law."

Page 2—bottom section

Definitions	
Affiliates a	Companies related by common ownership or control. They can be financial and nonfinancial companies. ■
Nonaffiliates b	Companies not related by common ownership or control. They can be financial and nonfinancial companies. ■
Joint marketing c	A formal agreement between nonaffiliated financial companies that together market financial products or services to you. ■
Other important information	
d	

- a. **Affiliates:** As required by 1016.6(a)(3) of this part, where *[affiliate information]* appears, the bank must:
1. If it has no affiliates, state: “*[name of bank] has no affiliates*”;
 2. If it has affiliates but does not share personal information, state: “*[name of bank] does not share with our affiliates*”; or
 3. If it shares with its affiliates, state, as applicable: “*Our affiliates include companies with a [common corporate identity of bank] name; financial companies such as [insert illustrative list of companies]; nonfinancial companies, such as [insert illustrative list of companies]; and others, such as [insert illustrative list].*”
- b. **Nonaffiliates:** As required by 1016.6(c)(3) of this part, where *[nonaffiliate information]* appears, the bank must:
1. If it does not share with nonaffiliated third parties, state: “*[name of bank] does not share with nonaffiliates so they can market to you*”; or
 2. If it shares with nonaffiliated third parties, state, as applicable: “*Nonaffiliates we share with can include [list categories of companies such as mortgage companies, insurance companies, direct marketing companies, and nonprofit organizations].*”

- c. **Joint Marketing:** As required by 1016.13 of this part, where *[joint marketing]* appears, the bank must:
1. If it does not engage in joint marketing, state: "*[name of bank] doesn't jointly market*"; or
 2. If it shares personal information for joint marketing, state, as applicable: "*Our joint marketing partners include [list categories of companies such as credit card companies].*"
- d. **Other Important Information:** This box is optional. The space provided for information in this box is not limited. Only the following types of information can appear in this box.
1. State and/or international privacy law information; and/or
 2. Acknowledgement of receipt form.

Resources for Regulation P

Regulation: https://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title12/12cfr1016_main_02.tpl

Amendment to Annual Privacy Notice: https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/bcfc_glba-privacy-notices_final-rule_amendment_2018-08.pdf

CFPB Exam Manual: <https://www.consumerfinance.gov/compliance/supervision-examinations/privacy-consumer-financial-information-gramm-leach-bliley-act-glba-examination-procedures/>

FDIC Exam Manual: <https://www.fdic.gov/regulations/compliance/manual/8/viii-1.1.pdf>

OCC Comptroller's Handbook: <https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-handbook/files/privacy-consumer-financial-info/index-privacy-of-consumer-financial-information.html>

FED Consumer Compliance Handbook: <https://www.federalreserve.gov/boarddocs/supmanual/cch/consumer.pdf>

CFPB Resources Page for Privacy Notices: <https://www.consumerfinance.gov/compliance/compliance-resources/other-applicable-requirements/privacy-notices/>

Model Privacy Forms: & Instructions: https://www.federalreserve.gov/bankinfo/privacy_notice_instructions.pdf

Privacy Notice FAQs *(Note: These FAQs were published in December 2011 prior to: (1) the new codification as a CFPB regulation, therefore citation references are out of date; and (2) Regulation P was amended on 8/10/2018, therefore the FAQs regarding the annual privacy notice may be inaccurate. However, much of the content is still relevant and helpful.):* <https://www.federalreserve.gov/regulations/cg/faq.pdf>

Right to Financial Privacy

5



Learning Objectives

By the end of this chapter, you should be able to:

- Know what documents the bank must receive from a government agency in order to release customer information
- Know when customer information can be released to a government agency requesting such information
- Understand when a bank may be reimbursed by the government agency for costs associated with gathering and providing customer information

Overview

The Right to Financial Privacy Act was enacted in 1978 and covers requests for financial records that banks receive from a federal government authority. The RFPA includes rules about the process federal government authorities must follow and compliance requirements for banks responding to and keeping records of the requests. Banks are entrusted with customers' personal data and must safeguard this data from being released in error or without authority. Privacy and confidentiality are critical responsibilities of banks.

When the law was enacted, the stated purpose for the RFPA was threefold:

1. Require that customers receive notice before disclosure of their financial records to the government;
2. Give customers a right to challenge release of their records to the government; and
3. Require government agencies to show records of compliance.

The RFPA covers requests from **federal** government authorities (the federal government, its officers, agents, agencies, and departments) for financial records of a bank's customer. **The law does not cover requests by private businesses or state or local government.**

Note: The Right to Financial Privacy is not the same as the Gramm-Leach-Bliley Act or Regulation P – Privacy of Consumer Financial Information. The RFPA is a separate law that does not have an implementing regulation.

Definitions

Customer: Any person or authorized representative of that person who **utilized or is utilizing any service of a bank**, or for whom a bank is acting or has acted as a fiduciary, in relation to an account maintained in the person's name.

Person: An individual or partnership of **five or fewer individuals**. Partnerships of six or more and *all* corporations regardless of size are not a person.

Financial Record: An original of, a copy of, or information known to have been derived from any record held by a bank **pertaining to a customer's relationship with the bank.**

Government Authority: Any **agency or department of the United States**, or any officer, employee or agent thereof.

Requirements

To obtain access to, copies of, or information contained in a customer's financial records, a **government authority, generally, must first obtain one of the following:**

- An **authorization**, signed and dated by the customer, that identifies the records, the reasons the records are being requested, and the customer's rights under the act
- An **administrative subpoena or summons**
- A **search warrant**
- A **judicial subpoena**
- A **formal written request by a government agency** (to be used only if no administrative summons or subpoena authority is available)

A bank may not release a customer's financial records until the government authority seeking the records certifies in writing that it has complied with the applicable provision of the act. In addition, the bank **must maintain a record** of all instances in which a customer's records are disclosed to a government authority pursuant to customer authorization. The records should include the **date, the name of the government authority, and an identification of the records disclosed.** Generally, the customer has a right to inspect the records.

A bank must begin assembling the required information upon receipt of the agency's summons or subpoena or judicial subpoena and **must be prepared to deliver the records upon receipt of the written certificate of compliance.**

FORM DOJ-461
Certificate of Compliance with the Right to Financial Privacy Act of 1978

United States Department of Justice
Washington, D.C. 20530

**CERTIFICATE OF COMPLIANCE
WITH THE RIGHT TO FINANCIAL PRIVACY ACT OF 1978**

TO: _____

(Name and Address of Financial Institution)

FROM: _____
(Name of Government Agency)

I hereby certify that the applicable provisions of the Right To Financial Privacy Act of 1978, 12 U.S.C. Secs.3401-3422, have been complied with as to the

(Summons, Subpoena or Formal Written Request)

presented on _____, 20__ for the following financial records of
_____:

_____, 20__ _____
(Date) (Signature)

(Name and Title of Official)

(Address) (Government Agency)

(Telephone)

Pursuant to the Right To Financial Privacy Act of 1978, good faith reliance upon this certificate relieves your institution and its employees and agents of any possible liability to the customer in connection with the disclosure of these financial records. See Sec. 1103(b) of the Right To Financial Privacy Act, 12 U.S.C. Sec. 3403(b).

Exceptions

In general, exceptions to the notice and certification requirements cover situations pertinent to routine banking business, information requested by supervisory agencies, and requests subject to other statutory requirements. Specific exceptions include records:

- Submitted by banks to any court or agency when perfecting a security interest, proving a claim in bankruptcy, or collecting a debt for itself or a fiduciary
- Requested by a supervisory agency in connection with its supervisory, regulatory, or monetary functions (including regular examinations and any investigations relating to consumer complaints)
- Sought in accordance with procedures authorized by the Internal Revenue Code (records that are intended to be accessed by procedures authorized by the Tax Reform Act of 1976)
- Required to be reported in accordance with any federal statute (or rule promulgated thereunder, such as the Bank Secrecy Act)
- Requested by the Government Accountability Office for an authorized proceeding, investigation, examination, or audit directed at a federal agency
- Subject to a subpoena issued in conjunction with proceedings before a grand jury (except for cost reimbursement and the restricted use of grand jury information)
- Requested by a government authority subject to a lawsuit involving the bank customer. Note: The records may be obtained under the Federal Rules of Civil and Criminal Procedure.

Customer Authorization

A customer may authorize disclosure if he/she furnishes to the bank and to the Government authority seeking to obtain such disclosure a signed and dated statement which:

1. Authorizes such disclosure for a period not in excess of three months;
2. States that the customer may revoke such authorization at any time before the financial records are disclosed;
3. Identifies the financial records which are authorized to be disclosed;
4. Specifies the purposes for which, and the Government authority to which, such records may be disclosed; and
5. States the customer's rights under this title.

Customer authorization must not be required as a condition of doing business with any bank.

The customer has the right, unless the Government authority obtains a court order, to obtain a copy of the record. The bank must keep of all instances in which the customer's record is disclosed to a Government authority pursuant to this section, including the identity of the Government authority to which such disclosure is made.

Subpoena and Summons (12 USC 3405)

A Government authority may obtain financial records under the RFPA pursuant to an administrative or judicial subpoena or summons if:

- There is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry; and
- A copy of the subpoena or summons has been served to the customer on or before the date on which the subpoena or summons was served to the bank along with a notice stating the nature of the law enforcement inquiry and how to obtain such records or to stop the information from being sent.

A customer has 10 days from the date of in-person delivery or 14 days from the date the government authority mailed the notice to file a sworn statement and motion to quash the subpoena or summons. The bank must not provide the information to the government agency prior to these "waiting periods".

Search Warrants (12 USC 3406)

No later than ninety days after the Government authority serves the search warrant, it must mail to the customer's last known address a copy of the search warrant along with a notice stating that records were obtained from the bank, the purpose of obtaining such information, and the customer rights under the RFPA. The court may grant a delay in the mailing of this notification for an additional 90 days.

NOTE: Banks may not disclose the existence of a search warrant to a customer.

Formal Written Request (12 USC 3408)


A Government authority may obtain financial records under the RFPA pursuant to a formal written request if:

- No administrative summons or subpoena authority reasonable appears to be available;
- The request is authorized by regulation;
- There is reason to believe that the records sought are relevant to a legitimate law enforcement inquiry; and

- A copy of the request has been served to the customer on or before the date on which the subpoena or summons was served to the bank along with a notice stating the nature of the law enforcement inquiry and how to obtain such records or to stop the information from being sent.

A customer has 10 days from the date of in-person delivery or 14 days from the date the government authority mailed the notice to file a sworn statement and motion to quash the request. The bank must not provide the information to the government agency prior to these “waiting periods”.

Delayed Notice Requirements


Key Idea

Government Loan Guarantees:

If your bank is involved in government guaranteed lending, the federal agency is required to give the loan applicant a notice of its access right when the customer initially applies for a loan. Banks must keep record of this notice.

Under certain circumstances, a government entity may request a court order delaying the customer notice for up to ninety days. This delay may be granted if the court finds that earlier notice would result in endangering the life or physical safety of any person, flight from prosecution, destruction of or tampering with evidence, or intimidation of potential witnesses or would otherwise seriously jeopardize or unduly delay an investigation, trial, or official proceeding.

Bank Liability

A customer may collect civil penalties from any government agency or department that obtains, or any bank or employee of the bank who discloses, information in violation of the act. A bank that relies in good faith on a federal agency’s certification may not be held liable to a customer for the disclosure of financial records.

Penalties include:

- 1) actual damages
- 2) \$100, regardless of the volume of records involved
- 3) court costs and reasonable attorney’s fees
- 4) punitive damages the court may allow for willful or intentional violations

Record Retention

Although there are no specific record-retention requirements in the act, banks should retain copies of all administrative and judicial subpoenas, search warrants, and formal written requests given to them by federal government agencies or departments along with the written certification required.



- * Centralize the person(s) who performs the tasks.
- * Develop a worksheet that provides the timing of receipt, delivery, request information, and documentation provided.
- * Keep detailed copies of documents.
- * Get legal counsel involved if uncertain.
- * Train staff that receive mail and deliveries and staff who process because of the importance & timing requirements.
- * Include in the banks overall risk assessment.

Cost Reimbursements (Regulation S at 12 CFR 219)

With certain exceptions, government entities must reimburse banks for the cost of providing the information. This reimbursement may include costs for assembling or providing records, reproduction and transportation costs, or any other costs reasonably necessary or incurred in gathering and delivering the requested information. The Board's Regulation S establishes rates and the conditions under which these payments may be made. The schedule can be found in Appendix A or Section 219.3 of Reg S.



Note: Actual reimbursements may not exceed the time it takes to gather the information to get reimbursed.

A bank is not entitled to reimbursement under this subpart for costs incurred in assembling or providing financial records or information related to:

- **Security interests, bankruptcy claims, and debt collection.** Any financial records provided as an incident to perfecting a security interest, proving a claim in bankruptcy, or otherwise collecting on a debt owing either to the bank itself or in its role as a fiduciary.
- **Government loan programs.** Financial records that are necessary to permit the appropriate government authority to carry out its responsibilities under a government loan, loan guaranty or loan insurance program.
- **Nonidentifiable information.** Financial records that are not identified with or identifiable as being derived from the financial records of a particular customer.
- **Financial supervisory agencies.** Financial records disclosed to a financial supervisory agency in the exercise of its supervisory, regulatory, or monetary functions with respect to a bank.
- **Internal Revenue summons.** Financial records disclosed in accordance with procedures authorized by the Internal Revenue Code.

- **Federally required reports.** Financial records required to be reported in accordance with any federal statute or rule promulgated thereunder.
- **Government civil or criminal litigation.** Financial records sought by a government authority under the Federal Rules of Civil or Criminal Procedure or comparable rules of other courts in connection with litigation to which the government authority and the customer are parties.
- **Administrative agency subpoenas.** Financial records sought by a government authority pursuant to an administrative subpoena issued by an administrative law judge in an adjudicatory proceeding subject to 5 U.S.C. 554, and to which the government authority and the customer are parties.
- **Investigation of the bank or its noncustomer.** Financial records sought by a government authority in connection with a lawful proceeding, investigation, examination, or inspection directed at the bank in possession of such records, or at an entity that is not a customer as defined in 219.2 of this part.
- **General Accounting Office requests.** Financial records sought by the General Accounting Office pursuant to an authorized proceeding, investigation, examination, or audit directed at a government authority.
- **Federal Housing Finance Board requests.** Financial records or information sought by the Federal Housing Finance Board (FHFB) or any of the Federal home loan banks in the exercise of the FHFB's authority to extend credit to banks or others.
- **Department of Veterans Affairs.** The disclosure of the name and address of any customer to the Department of Veterans Affairs where such disclosure is necessary to, and used solely for, the proper administration of benefits programs under laws administered by that Department.

Resources for the Right to Financial Privacy Act

FDIC Exam Manual: <https://www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/documents/8/viii-3-1.pdf>

OCC Comptroller's Handbook: <https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-handbook/files/other-consumer-protection-laws-regs/index-other-consumer-protection-laws-regs.html>

FED Exam Manual: <https://www.federalreserve.gov/boarddocs/supmanual/cch/priv.pdf>

Right to Financial Privacy Act of 1978—Index of Forms: <https://www.justice.gov/archives/jm/criminal-resource-manual-444-right-financial-privacy-act-1978-index-forms>

Cost Reimbursement Rules & Amounts: https://www.ecfr.gov/cgi-bin/text-idx?SID=7d1c5abd3afc6e324a34bba86cac6d49&node=pt12.2.219&rgn=div5#se12.2.219_13

IB Magazine Article: https://www.ecfr.gov/cgi-bin/text-idx?SID=7d1c5abd3afc6e324a34bba86cac6d49&node=pt12.2.219&rgn=div5#se12.2.219_13

Regulation E: Electronic Funds Transfers

6



Learning Objectives

By the end of this chapter, you should be able to:

- Define which account types and transactions apply to Regulation E
- Understand the disclosure requirements under Regulation E
- Know when to provide periodic statements to the consumer and the contents to be included
- Know how to process a notice of error and understand the liability the consumer holds
- Determine if your bank will allow consumers to opt-in to overdraft services and know how to apply overdraft fees to an account
- Understand the basics of special card accounts including gift cards and prepaid accounts
- Have a general understanding of the remittance transfer rules under Reg E

Overview

Regulation E, the **Electronic Funds Transfer Act** establishes the basic rights, liabilities, and responsibilities of **consumers** who use **electronic fund transfer** (EFT) services and of **banks** that offer these services. Regulation E's primary goal is to protect consumers who engage in electronic fund transfers. EFT services include transfers through automated teller machines, point-of-sale terminals, automated clearinghouse systems, telephone bill-payment plans in which periodic or recurring transfers are contemplated, remote banking programs, and remittance transfers.

Among its provisions, Regulation E specifies procedures that banks must follow for investigating and resolving errors alleged by consumers for EFTs such as an unauthorized ATM withdrawal. The regulation also specifies the extent to which a consumer can be held liable for unauthorized EFTs.

Regulation E applies to **consumer accounts only**. The Bureau has authority over Reg E.

Applicability

Accounts

The requirements of the regulation apply only to an **account for which an agreement for EFT services to or from the account** has been entered into between:

1. The **consumer and the bank**; or
2. The **consumer and a third-party** when the account-holding bank has **received notice of the agreement and the fund transfers have begun**.

“Account” means a **demand deposit (checking), savings, or other consumer asset account (other than an occasional or incidental credit balance in a credit plan) held directly or indirectly by a bank and established primarily for personal, family, or household purposes**.

Other types of accounts exist including various “card” accounts and prepaid accounts. The definitions of these specific account types are discussed later in this

Electronic Fund Transfer

The term “**electronic fund transfer**” means **any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a bank to debit or credit a consumer's account**. The term includes, but is not limited to:

- **Point-of-sale** transfers;
- **Automated teller machine** transfers;
- **Direct deposits or withdrawals** of funds;
- Transfers initiated by **telephone**;
- Transfers resulting from **debit card transactions**, whether or not initiated through an electronic terminal;

- Computer initiated transfers not expressly prohibited;
- Online banking transactions;
- ACH transactions;
- Electronic fund transfer using information from a check; and
 - This part applies where a check, draft, or similar paper instrument is used as a source of information to initiate a one-time electronic fund transfer from a consumer's account. The consumer must authorize the transfer.
- Collection of returned item fees via electronic fund transfer.
 - The person initiating an electronic fund transfer to collect a fee for the return of an electronic fund transfer or a check that is unpaid, including due to insufficient or uncollected funds in the consumer's account, must obtain the consumer's authorization for each transfer. A consumer authorizes a one-time electronic fund transfer from his or her account to pay the fee for the returned item or transfer if the person collecting the fee provides notice to the consumer stating that the person may electronically collect the fee, and the consumer goes forward with the underlying transaction.

Exclusions

- **Checks.** Any transfer of funds originated by check, draft, or similar paper instrument; or any payment made by check, draft, or similar paper instrument at an electronic terminal.
- **Check guarantee or authorization.** Any transfer of funds that guarantees payment or authorizes acceptance of a check, draft, or similar paper instrument but that does not directly result in a debit or credit to a consumer's account.
- **Wire or other similar transfers.** Any transfer of funds through Fedwire or through a similar wire transfer system that is used primarily for transfers between banks or between businesses. Except those covered by the remittance transfer rules of 1005.31.
- **Securities and commodities transfers.** Any transfer of funds the primary purpose of which is the purchase or sale of a security or commodity, if the security or commodity is:
 - Regulated by the Securities and Exchange Commission or the Commodity Futures Trading Commission;

- o Purchased or sold through a broker-dealer regulated by the Securities and Exchange Commission or through a futures commission merchant regulated by the Commodity Futures Trading Commission; or
- o Held in book-entry form by a Federal Reserve Bank or Federal agency.
- **Automatic transfers by account-holding bank.** Any transfer of funds under an agreement between a consumer and a bank which provides that the bank will initiate individual transfers without a specific request from the consumer:
 - o Between a consumer's accounts within the bank;
 - o From a consumer's account to an account of a member of the consumer's family held in the same bank; or
 - o Between a consumer's account and an account of the bank, except that these transfers remain subject to 1005.10(e) regarding compulsory use and sections 916 and 917 of the Act regarding civil and criminal liability.
- **Telephone-initiated transfers.** Any transfer of funds that:
 - o Is initiated by a telephone communication between a consumer and a bank making the transfer; and
 - o Does not take place under a telephone bill-payment or other written plan in which periodic or recurring transfers are contemplated.

Documentation and Disclosures

The Initial Disclosure (1005.7)

Timing

Banks must provide the required disclosures at the time a consumer contracts for an electronic fund transfer service or before the first electronic fund transfer is made involving the consumer's account.

Disclosures given by a bank earlier than the regulation requires (for example, when the consumer opens a checking account) need not be repeated when the consumer later enters into an agreement with a third-party to initiate preauthorized transfers to or from the consumer's account, unless the terms and conditions differ from those that the bank previously disclosed. This interpretation also applies to any notice provided about one-time EFTs from a consumer's account initiated using information from the consumer's check. On the other hand, if an agreement for EFT services to be provided by an account-holding bank is directly between the consumer and the account-holding bank, disclosures must be given in close proximity to the event requiring disclosure, for example, when the consumer contracts for a new service.

If a consumer opens a new account permitting EFTs at a bank, and the consumer has already received Reg E disclosures for another account at that bank, the bank need only disclose terms and conditions that differ from those previously given.

Content

checklist information

1. Liability of the consumer;
2. Telephone number and address of the person or office to be notified when the consumer believes that an unauthorized EFT has been or may be made;
3. The bank's business days (days the bank is open for substantially all functions);
4. The type of EFTs that the consumer may make and any limitation on the frequency and dollar amount of the transfers;
5. Fees imposed by the bank for EFTs ;
6. Summary of the consumer's right to receipts, periodic statements, and notices regarding preauthorized transfers;
7. Summary of the consumer's right to stop payment of a preauthorized EFT and how to place a stop payment order;
8. The bank's liability for failure to make or stop certain transfers;
9. The circumstances under which, in the ordinary course of business, the bank may provide information concerning the consumer's account to third parties;

10. Error resolutions notice – substantially similar to Model Form A-3 of Appendix A of Regulation E; and
11. A notice that a fee may be imposed by an ATM operator, when the consumer initiates an EFT or makes a balance inquiry, and by any network used to complete the transaction.

Change in Terms Notice (1005.8(a))

A bank must mail or deliver a written notice to the consumer, at least 21 days before the effective date, of any change in a term or condition required to be disclosed, if the change would result in:

1. Increased fees for the consumer;
2. Increased liability for the consumer;
3. Fewer types of available electronic fund transfers; or
4. Stricter limitations on the frequency or dollar amount of transfers.

A bank need not give prior notice if an immediate change in terms or conditions is necessary to maintain or restore the security of an account or an electronic fund transfer system. If the bank makes such a change permanent and disclosure would not jeopardize the security of the account or system, the bank must notify the consumer in writing on or with the next regularly scheduled periodic statement or within 30 days of making the change permanent.

Error Resolution Notice (1005.8(b))

For accounts to or from which electronic fund transfers can be made, a bank must mail or deliver to the consumer, at least once each calendar year, an error resolution notice substantially similar to Model Form A-3(a).

Alternatively, a bank may include an abbreviated notice substantially similar to the error resolution notice (Model Form A-3(b)), on or with each periodic statement required by Regulation E. *Note:* Most community banks choose this option.

★ Model Form A-3(b): Error Resolution Notice

In Case of Errors or Questions About Your Electronic Transfers Telephone us at [insert telephone number] or Write us at [insert address] as soon as you can, if you think your statement or receipt is wrong or if you need more information about a transfer on the statement or receipt. We must hear from you no later than 60 days after we sent you the FIRST statement on which the error or problem appeared.

(1) Tell us your name and account number (if any). (2) Describe the error or the transfer you are unsure about, and explain as clearly as you can why you believe it is an error or why you need more information. (3) Tell us the dollar amount of the suspected error.

We will investigate your complaint and will correct any error promptly. If we take more than 10 business days to do this, we will credit your account for the amount you think is in error, so that you will have the use of the money during the time it takes us to complete our investigation.

Receipts at Electronic Terminals (1005.9(a))

A bank must make a receipt available to a consumer at the time the consumer initiates an electronic fund transfer at an electronic terminal. The receipt must set forth the following information, as applicable:

1. **Amount.** The amount of the transfer. A transaction fee may be included in this amount, provided the amount of the fee is disclosed on the receipt and displayed on or at the terminal.
2. **Date.** The date the consumer initiates the transfer.
3. **Type.** The type of transfer and the type of the consumer's account(s) to or from which funds are transferred. The type of account may be omitted if the access device used is able to access only one account at that terminal.
4. **Identification.** A number or code that identifies the consumer's account or accounts, or the access device used to initiate the transfer. The number or code need not exceed four digits or letters to comply with the requirements.
5. **Terminal location.** The location of the terminal where the transfer is initiated, or an identification such as a code or terminal number. Except in limited circumstances where all terminals are located in the same city or state, if the location is disclosed, it must include the city and state or foreign country and one of the following:
 - i. The street address; or
 - ii. A generally accepted name for the specific location; or
 - iii. The name of the owner or operator of the terminal if other than the account-holding bank.
6. **Third-party transfer.** The name of any third-party to or from whom funds are transferred.

Transactions of \$15 or less are exempt from the receipt requirements.

Periodic Statements (1005.9(b))

Generally, a bank must send a periodic statement for each monthly cycle in which an electronic fund transfer has occurred; and must send a periodic statement at least quarterly if no transfer has occurred but EFT activity is allowed on the account.

Exceptions:

1. **Preauthorized transfers to accounts.** For accounts that may be accessed only by preauthorized transfers to the account the following rules apply:

- i. *Passbook accounts.* For passbook accounts, the bank need not provide a periodic statement if the bank updates the passbook upon presentation or enters on a separate document the amount and date of each electronic fund transfer since the passbook was last presented.
 - ii. *Other accounts.* For accounts other than passbook accounts, the bank must send a periodic statement at least quarterly.
2. **Intra-institutional transfers.** For an electronic fund transfer initiated by the consumer between two accounts of the consumer at the same bank, documenting the transfer on a periodic statement for one of the two accounts satisfies the periodic statement requirement.

The periodic statement must set forth the following information, as applicable:

1. **Transaction information.** For each electronic fund transfer occurring during the cycle:
 - a. The amount of the transfer;
 - b. The date the transfer was credited or debited to the consumer's account;
 - c. The type of transfer and type of account to or from which funds were transferred;
 - d. For a transfer initiated by the consumer at an electronic terminal (except for a deposit of cash or a check, draft, or similar paper instrument), the terminal location described in 1005.9(a)(5); and
 - e. The name of any third-party to or from whom funds were transferred.
2. **Account number.** The number of the account (may be truncated).
3. **Fees.** The amount of any fees assessed against the account during the statement period for electronic fund transfers, the right to make transfers, or account maintenance.
4. **Account balances.** The balance in the account at the beginning and at the close of the statement period.
5. **Address and telephone number for inquiries.** The address and telephone number to be used for inquiries or notice of errors, preceded by "Direct inquiries to" or similar language. The address and telephone number provided on an error resolution notice under 1005.8(b) given on or with the statement satisfies this requirement.
6. **Telephone number for preauthorized transfers.** A telephone number the consumer may call to ascertain whether preauthorized transfers to the consumer's account have occurred.

Pre-authorized Transfer Rules (1005.10)

Preauthorized Credits

When a person initiates preauthorized electronic fund transfers to a consumer's account at least once every 60 days and the bank does not provide positive notice to the consumer that the transfer has been initiated, the account-holding bank must provide notice to the consumer by:

1. Providing oral or written notice of the transfer within two business days after the transfer occurs; or
2. Providing oral or written notice, within two business days after the date on which the transfer was scheduled to occur, that the transfer did not occur; or
3. Providing a readily available telephone line that the consumer may call to determine whether the transfer occurred and disclosing the telephone number on the initial disclosure of account terms and on each periodic statement.

Preauthorized Debits

Preauthorized EFT debits from a consumer's account may be initiated by a person when written authorization is provided by the consumer or similarly authenticated by the consumer. The consumer must be able to retain a copy of the authorization. The E-sign Act applies to this provision.

Stop Payments

A consumer may stop payment of a preauthorized electronic fund transfer from the consumer's account by notifying the bank orally or in writing at least three business days before the scheduled date of the transfer. The bank may require the consumer to give written confirmation of a stop-payment order within 14 days of an oral notification. A bank that requires written confirmation must inform the consumer of the requirement and provide the address where confirmation must be sent when the consumer gives the oral notification. An oral stop-payment order ceases to be binding after 14 days if the consumer fails to provide the required written confirmation.

Compulsory Use

No bank may condition an extension of credit to a consumer on the consumer's repayment by preauthorized electronic fund transfers, except for credit extended under an overdraft credit plan or extended to maintain a specified minimum balance in the consumer's account.

A bank may offer a program with a reduced APR or other cost-related incentive for an automatic repayment feature, provided the program with the automatic payment feature is not the only loan program offered by the bank for the type of credit involved.

No bank may require a consumer to establish an account for receipt of electronic fund transfers with a particular bank as a condition of employment or receipt of a government benefit.

Consumer Liability for Unauthorized Transfers (1005.6)

A consumer may be liable for an unauthorized EFT depending on when the consumer notifies the bank and whether an access device was used to conduct the transaction. Under the EFT Act, there is no bright-line time limit within which consumers must report unauthorized EFTs. The extent of the consumer's liability is determined solely by the consumer's promptness in notifying the bank.

General Requirements

A consumer may only be held liable for an unauthorized transaction so long as:

1. The bank provided all of the required disclosures under Regulation E;
2. Any access device used to affect the EFT was an accepted access device; and
3. The bank is able to identify the consumer to whom the access device was issued.

Other factors may not be used as a basis to hold consumers liable. Regulation E expressly prohibits the following factors as the basis for imposing greater liability than is permissible under Regulation E, such as:

1. The consumer was negligent (e.g., wrote a PIN on an ATM card);
2. An agreement between the consumer and the bank provides for greater liability; or
3. The consumer is liable for a greater amount under state law.

Limitations on Liability

The limitations on the amount of consumer liability for unauthorized EFTs, the time limits within which consumers must report unauthorized EFTs, and the liability for failing to adhere to those time limits, are listed on the chart on the next page.

The bank may impose less consumer liability than is provided in Regulation E based on state law or the bank's deposit agreement.

If a consumer's delay in notifying a bank was due to extenuating circumstances, such as extended travel or hospitalization, the time periods for notification specified in the chart on the next page must be extended to a reasonable time.

A consumer gives notice to a bank about unauthorized use when the consumer takes reasonable steps to provide the bank with the pertinent information. At the consumer's option, notice may be given in person, by telephone, or in writing. Notice may also be considered given when the bank becomes aware of circumstances leading to the reasonable belief that an unauthorized transfer has been or may be made.

Event	Timing of Consumer Notice to Bank	Maximum Liability
Loss or theft of access device	Within two business days <u>after learning of loss or theft</u> .	Less of \$50, OR total amount of unauthorized transfers.
Loss or theft of access device	More than two business days after learning of loss or theft up to 60 calendar days after transmittal of statement showing first unauthorized transfer made with access device.	Less of \$500, OR the sum of: (a) \$50 or the total amount of unauthorized transfers occurring in the first two business days, which ever is less; AND (b) The amount of unauthorized transfers occurring after two business days and before notice to the bank.
Loss or theft of access device	More than 60 calendar days after transmittal of statement showing first unauthorized transfer made with access device.	For transfers occurring within the 60-day period, the lesser of \$500, OR the sum of: (a) Lesser of \$50 or the amount of unauthorized transfers in first two business days; AND (b) The amount of unauthorized transfers occurring after two business days. For transfers occurring after the 60-day period, unlimited liability (until the bank is notified).
Unauthorized transfer(s) not involving loss or theft of an access device.	Within 60 calendar days after transmittal of the periodic statement on which the unauthorized transfer first appears.	No liability.
Unauthorized transfer(s) not involving loss or theft of an access device.	More than 60 calendar days after transmittal of the periodic statement on which the unauthorized transfer first appears.	Unlimited liability for unauthorized transfers occurring 60 calendar days after the periodic statement and before notice to the bank.

Late notice does not mean unlimited liability for all transactions

i.e. ACH Transactions



Examples & Commentary on Reg E Consumer Liability

- The basic liability limit is \$50. For example, the consumer's card is lost or stolen on Monday and the consumer learns of the loss or theft on Wednesday. If the consumer notifies the bank within two business days of learning of the loss or theft (by midnight Friday), the consumer's liability is limited to \$50 or the amount of the unauthorized transfers that occurred before notification, whichever is less.
- The fact that a consumer has received a periodic statement that reflects unauthorized transfers may be a factor in determining whether the consumer had knowledge of the loss or theft, but cannot be deemed to represent conclusive evidence that the consumer had such knowledge.
- The second tier of liability is \$500. For example, the consumer's card is stolen on Monday and the consumer learns of the theft that same day. The consumer reports the theft on Friday. The \$500 limit applies because the consumer failed to notify the bank within two business days of learning of the theft (which would have been by midnight Wednesday). How much the consumer is actually liable for, however, depends on when the unauthorized transfers take place. In this example, assume a \$100 unauthorized transfer was made on Tuesday and a \$600 unauthorized transfer on Thursday. Because the consumer is liable for the amount of the loss that occurs within the first two business days (but no more than \$50), plus the amount of the unauthorized transfers that occurs after the first two business days and before the consumer gives notice, the consumer's total liability is \$500 (\$50 of the \$100 transfer plus \$450 of the \$600 transfer, in this example). But if \$600 was taken on Tuesday and \$100 on Thursday, the consumer's maximum liability would be \$150 (\$50 of the \$600 plus \$100).
- The first two tiers of liability do not apply to unauthorized transfers from a consumer's account made without an access device. If, however, the consumer fails to report such unauthorized transfers within 60 calendar days of the bank's transmittal of the periodic statement, the consumer may be liable for any transfers occurring after the close of the 60 days and before notice is given to the bank. For example, a consumer's account is electronically debited for \$200 without the consumer's authorization and by means other than the consumer's access device. If the consumer notifies the bank within 60 days of the transmittal of the periodic statement that shows the unauthorized transfer, the consumer has no liability. However, if in addition to the \$200, the consumer's account is debited for a \$400 unauthorized transfer on the 61st day and the consumer fails to notify the bank of the first unauthorized transfer until the 62nd day, the consumer may be liable for the full \$400.



VISA & Mastercard Rules

- \$0 liability for Branded Cards if:
 - Visa Zero – requires immediate notification
 - Mastercard – requires “prompt” notification
- Unlimited liability if the bank can prove the customer committed fraud



ACH Transactions

Must follow NACHA rules along with the Reg E investigation time frames (next section) – make sure you know how to process these types of transaction as they require specific coding and documentation (WSUD).

Error Resolution Procedures (1005.11)

Definition of “Error”

The term “error” means:

1. An unauthorized electronic fund transfer;
2. An incorrect electronic fund transfer to or from the consumer's account;
3. The omission of an electronic fund transfer from a periodic statement;
4. A computational or bookkeeping error made by the bank relating to an electronic fund transfer;
5. The consumer's receipt of an incorrect amount of money from an electronic terminal;
6. An electronic fund transfer not identified in accordance with 1005.9 or 1005.10 (a); or
7. The consumer's request for documentation required by 1005.9 or 1005.10 (a) or for additional information or clarification concerning an electronic fund transfer, including a request the consumer makes to determine whether an error exists under 1005.11(a)(1)(i) through (vi).

The term “error” **does not** include:

1. A **routine inquiry** about the consumer's account balance;
2. A request for information for **tax or other recordkeeping purposes**;
3. A request for **duplicate copies** of documentation; or
4. **Terminal receipts for transfers of \$15 or less.**

Notice of Error

A bank must comply with the requirements of this section with respect to any oral or written notice of error from the consumer that:

1. Is received by the bank **no later than 60 days after the bank sends the periodic statement** or provides the passbook documentation, required by 1005.9 on which the alleged error is first reflected—**NOTE: liability provisions still apply**;
2. Enables the bank to **identify the consumer's name and account number**; *and*
3. Indicates **why the consumer believes an error exists** and includes to the extent possible the type, date, and amount of the error, except for requests described in 1005.11(a)(1)(vii).

A bank may require the consumer to give **written confirmation** of an error within 10 business days of an oral notice. If the consumer does not provide written notice within the 10 business days, the bank need **not provisionally credit** the consumer's account.

Investigations

Timing of Investigation ———

After receiving a notice of error, the bank **must** do all of the following:


1. **Promptly investigate** the oral or written allegation of error; and
2. Complete its investigation within **10 business days** (5 days for VISA; 20 days for new accounts).



The clock starts the day of notification from the consumer (oral, electronic, etc.). **Do not delay the investigation due to requiring written confirmation of error from the consumer (if the bank requires such).**

The bank may take up to 45 calendar days (90 days for Point-of-Sale; 90 days for new accounts) to complete its investigation provided it:

1. Provisionally credits the funds (including interest, where applicable) to the consumer's account within the 10 business-day period;
2. Advises the consumer within two business days of the provisional crediting (may be done orally or in writing); and
3. Gives the consumer full use of the funds during the investigation.

 A bank need not provisionally credit the account to take up to 45 calendar days to complete its investigation if the consumer fails to provide the required written confirmation of an oral notice of error, if the bank so requires. This does not mean that you can ignore the notice of error. It simply means you do not have to provide provisional credit.

Notification of Investigation

If an error occurred:

1. Correct the error within one business day after determining that an error has occurred, including interest; and
2. Report the results of its investigation within three business days after completing its investigation (may be done orally or in writing).

If no error occurred:

1. Mail or deliver a **written** notice within three business days after concluding its investigation containing the following:
 - a. An explanation of its findings;
 - b. The date and amount of the debit (only if provisional credit was given);
 - c. A statement that the bank will honor (without charge) checks and preauthorized debits for five business days after delivery of the notice— NOTE: Alternatively the bank can debit the account 5 days after the notice is provided; and
 - d. A notice of the consumer's rights to request the documents upon which the bank relied in making its determination.



CFPB Regulation E FAQs

The CFPB FAQs regarding Regulation E Error Resolution provide great insight and examples. It is important to review these if you have questions regarding a customer notice of error.

<https://www.consumerfinance.gov/compliance/compliance-resources/deposit-accounts-resources/electronic-fund-transfers/electronic-fund-transfers-faqs/>

Issuing Access Devices (1005.5)

A bank may **only issue an access device** to a consumer:

1. In response to an **oral or written request** for the device or as a renewal of, or
2. In **substitution for**, an accepted access device whether issued by the bank or a successor.



Key Terms

Access Device: A card, code, or other means of access to a consumer's account to initiate electronic fund transfers.

A bank may distribute an access device to a consumer on an **unsolicited** basis if the access device is:

1. Not **validated**, meaning that the bank has not yet performed all the procedures that would enable a consumer to initiate an electronic fund transfer using the access device;
2. Accompanied by a clear **explanation** that the access device is not validated and how the consumer may dispose of it if validation is not desired;
3. Accompanied by Regulation E **initial account disclosures**; and
4. **Validated only** in response to the consumer's oral or written request for validation, after the bank has verified the consumer's identity by a reasonable means.

Service Providing Institutions (1005.14)

A person that provides an electronic fund transfer **service** to a consumer but that does not hold the consumer's account is subject to all requirements of 1005.14 if the person:

1. **Issues a debit card** (or other access device) that the consumer can use to access the consumer's account held by a bank; and
2. **Has no agreement with the account-holding bank regarding such access.**



Key Terms

Automated Teller Machine Operator: Any person that operates an ATM at which a consumer initiates an electronic fund transfer or a balance inquiry and that does not hold the account to or from which the transfer is made, or about which an inquiry is made.

Disclosures at ATMs (1005.16)

An "automated teller machine operator" that imposes a fee on a consumer for initiating an electronic fund transfer or a balance inquiry must provide a **notice** that a fee will be imposed for providing electronic EFT services or a balance inquiry that discloses the amount of the fee.

An ATM operator must provide the notice either by showing it **on the screen** of the ATM or by **providing it on paper**, before the consumer is committed to paying a fee.

Record Retention (1005.13(b))

Any bank subject to Regulation E must retain evidence of compliance for a period of not less than two years from the date disclosures are required to be made or action is required to be taken.

Requirements for Overdraft Services (1005.17)


In recent years overdraft protection services have been extended to cover overdrafts resulting from non-check transactions, including ATM withdrawals, debit card transactions at point-of-sale terminals, on-line transactions, preauthorized transfers, and ACH transactions.

Section 1005.17 was added in the 2009 revision to Regulation E. It provides consumers with a choice to **opt into** their banks' overdraft protection program and be charged a fee for overdrafts for **ATM and one-time debit card transactions**. It also requires disclosure of the fees and terms associated with the bank's overdraft service.

These rules apply to all accounts subject to Regulation E.

General Rule

The bank may assess a fee for paying an **ATM or one-time debit card transaction** pursuant to an "overdraft service" only if it has met the following requirements:



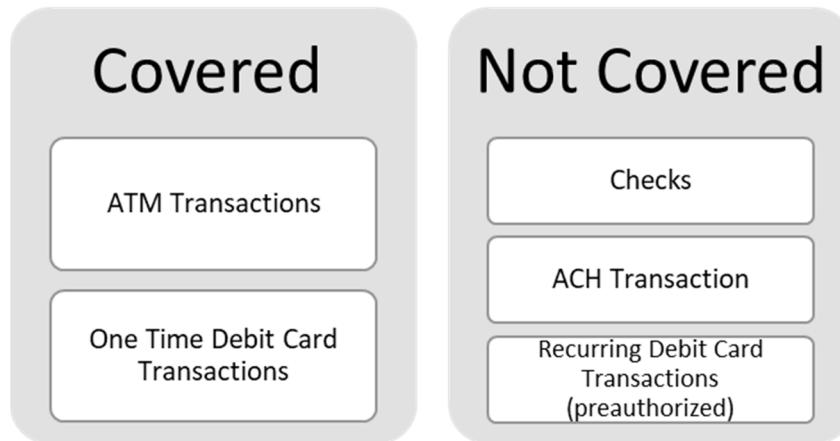
Key Terms

Overdraft Service: A service in which the bank assesses a fee or charge on a consumer's account for paying a transaction when funds are insufficient or unavailable in the account. It does **not** include transfers from lines of credit subject to **Reg. Z** or automatic transfers from other accounts held by the consumer ("**sweeps**").

1. The bank has provided the consumer with a written (or, if the consumer agrees, electronic) **notice**, segregated from all other information, describing the overdraft service;
2. The bank has provided a **reasonable opportunity** for the consumer to affirmatively consent (**opt in**) to the overdraft service for ATM and one-time debit card transactions;
3. The bank has obtained the **consumer's affirmative consent (opt in)** for ATM and one-time debit card transactions; and
4. The bank has **mailed or delivered written** (or, if the consumer agrees, electronic) **confirmation of the consent**, including a statement informing the consumer of the **right to revoke consent**. A bank complies if it adopts reasonable procedures to ensure that it assesses overdraft fees only for transactions paid after mailing or delivering the confirmation to the consumer.

These rules apply to **all banks** whether or not the bank has an automated overdraft service such as “bounce protection” or an “ad hoc” overdraft system. In addition, the notice and opt-in requirements of the Rule do not apply to a bank that has a **policy and practice of declining to authorize and pay** any ATM or one-time debit card transaction when it has a reasonable belief that the consumer does not have sufficient available funds to pay the transaction. However, even if the bank has such a policy and practice, it still may **not assess a fee** for paying ATM or one-time debit card transactions if the consumer has not opted in.

Coverage



Overdraft Processing

For consumers who have **not opted in**, banks are **prohibited from charging overdraft fees** for paying those transactions. This prohibition applies to **daily or sustained overdraft fees, negative balance fees, or similar fees**. However, the rule does not prohibit a bank from assessing these fees if the negative balance is attributable, in whole or part, to a check, ACH or other transaction not subject to the fee prohibition. However, if the negative balance is attributable in part to an ATM transaction, for example, and in part to a check, a fee may be assessed based on the date when the check is paid into overdraft, not the date of the ATM or onetime debit transaction.

Simply because a consumer affirmatively consents to the bank’s overdraft services, does **not mean the bank has to pay the overdraft** caused by an ATM or one-time debit card transaction.

Conditioning Payments of Overdrafts on Consumer’s Opt-In

The bank **must not condition** the payment of any overdrafts for checks, ACH transactions, and other types of transactions on the consumer affirmatively consenting to the banks overdraft services nor can it decline to pay transactions because the consumer has not affirmatively consented to opt-in. Generally speaking, a bank must apply the **same criteria** for deciding when to pay overdraft whether or not the consumer has opted-in or not.

Same Account Terms, Conditions, & Features

A bank must provide to consumers who do not opt-in to the overdraft service for ATM and one-time debit card transactions the **same account terms, conditions, and features** that it provides to consumers who do opt-in, except for the overdraft service for ATM and one-time debit card transactions. This requirement includes, but is not limited to:

- **Interest rates** paid
- **Fees** assessed
- The **type of ATM or debit card** provided to the depositor
- **Minimum balance** requirements
- **Online bill payment** services

Content of Notice

The Opt-in Notice must include:

- **Overdraft service.** A **brief description** of the bank's overdraft service and the types of transactions for which a fee or charge for paying an overdraft may be imposed, including ATM and one-time debit card transactions;
- **Fees imposed.** The **dollar amount of any fees or charges** assessed by the bank for paying an ATM or one-time debit card transaction pursuant to the bank's overdraft service, including any **daily or other overdraft fees**. If the amount of the fee is determined on the basis of the number of times the consumer has overdrawn the account, the amount of the overdraft, or other factors, the bank must disclose the **maximum fee** that may be imposed;
- **Limits on fees charged.** The **maximum number of overdraft fees or charges that may be assessed per day**, or, if applicable, that there is no limit;
- **Disclosure of opt-in right.** An explanation of the **consumer's right to affirmatively consent** to the bank's payment of overdrafts for ATM and one-time debit card transactions pursuant to the bank's overdraft service, including the methods by which the consumer may consent to the service; and
- **Alternative plans for covering overdrafts.** If the bank offers a line of credit subject to Regulation Z or a service that transfers funds from another account of the consumer held at the bank to cover overdrafts, the bank must state that fact. A bank may, but is not required to, list additional alternatives for the payment of overdrafts.

If applicable, the bank may modify the content required above to indicate that the **consumer has the right to opt into, or opt out of, the payment of overdrafts under the bank's overdraft service for other types of transactions**, such as checks, ACH transactions, or automatic bill payments; to provide a means for the consumer to exercise this choice; and to disclose the associated returned item fee and that additional merchant fees may apply. The bank may also disclose the consumer's right to revoke consent.

A-9 – Model Consent Form for Overdraft Services

What You Need to Know about Overdraft and Overdraft Fees

An overdraft occurs when you do not have enough money in your account to cover a transaction, but we pay it anyway. We can cover your overdrafts in two different ways:

1. We have standard overdraft practices that come with your account.
2. We also offer overdraft protection plans, such as a link to a savings account, which may be less expensive than our standard overdraft practices. To learn more, ask us about these plans.

This notice explains our standard overdraft practices.

What are the standard overdraft practices that come with my account?

We do authorize and pay overdrafts for the following types of transactions:

- Check and other transactions made using your checking account number
- Automatic bill payments

We do not authorize and pay overdrafts for the following types of transactions unless you ask us to (see below):

- ATM Transactions
- Everyday debit card transactions

We pay overdrafts at our discretion, which means we do not guarantee that we will always authorize and pay any type of transaction.

If we do not authorize and pay an overdraft, your transaction will be declined.

What fees will I be charged if (institution name) pays my overdraft?

Under our standard overdraft practices:

- We will charge you a fee of up to \$30 each time we pay an overdraft.
- Also, if your account is overdrawn for 5 or more consecutive business days, we will charge an additional \$5 per day.
- There is no limit on the total fees we can charge you for overdrawing your account.

What if I want (institution name) to authorize and pay overdrafts on my ATM and everyday debit card transactions?

If you also want to authorize and pay overdrafts on ATM and everyday debit card transactions, call [telephone number], visit [website], or complete the form below and [present it at a branch] mail it to:

Methods for Opt-In

A bank provides such reasonable methods for opting-in, if:

- **By mail.** The bank provides a form for the consumer to fill out and **mail** to affirmatively consent to the service.
- **By telephone.** The bank provides a readily-available **telephone line** that consumers may call to provide affirmative consent.
- **By electronic means.** The bank provides an **electronic means** for the consumer to affirmatively consent. For example, the bank could provide a form that can be accessed and processed at its Web site, where the consumer may click on a check box to provide consent and confirm that choice by clicking on a button that affirms the consumer's consent.
- **In person.** The bank provides a form for the consumer to complete and present at a **branch or office** to affirmatively consent to the service.
- **Account opening.** A bank may provide notice regarding the bank's overdraft service **prior to or at account-opening**. A bank may require a consumer, as a necessary step to opening an account, to choose whether or not to opt into the payment of ATM or one-time debit card transactions pursuant to the bank's overdraft services.

Joint Accounts

If two or more consumers jointly hold an account, the bank must treat the affirmative consent of any of the joint consumers as affirmative consent for that account. Similarly, the bank must treat a revocation of affirmative consent by any of the joint consumers as revocation of consent for that account.

Continuing Right & Revocation

A consumer's affirmative consent to the bank's overdraft service is **effective until revoked** by the consumer (**in the same manner**(s) you allow opt-in), or unless the bank terminates the service.

A consumer may also revoke consent at any time in the manner made available to the consumer for providing consent. A bank must implement a consumer's revocation of consent as **soon as reasonably practicable**.



TCF Bank Enforcement Action

The Bureau alleged in its lawsuit that, when attempting to obtain Reg E Opt-in consent, TCF obscured the fees it charged and made consenting to overdraft fees seem mandatory for new customers to open an account. In July 2018, TCF agreed to pay \$25 million in restitution to customers who were charged overdraft fees. The order also imposed a civil money penalty of \$5 million.

****Ensure your Reg E Overdraft Opt-In policies and procedures do not violate UDAAP.**

Gift Cards & Certificates (1005.20)

The Regulation E gift card rules impose disclosure requirements and substantive restrictions on store gift cards, gift certificates, and general-use prepaid cards concerning fees and expiration dates. Banks offering these products, even if not the card issuers, must ensure compliance with the required disclosures and restrictions. To satisfy the disclosure requirements, banks should consider whether they meet the clear and conspicuous standard and whether the disclosures are the correct size and in the correct location.

Definitions of Card Types

Gift certificate: A card, code, or another device that is:

1. Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount that may not be increased or reloaded in exchange for payment; and
2. Redeemable upon presentation at a single merchant or an affiliated group of merchants for goods or services.

Store gift card: A card, code, or another device that is:

1. Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and
2. Redeemable upon presentation at a single merchant or an affiliated group of merchants for goods or services.

General-use prepaid card: A card, code, or another device that is:

1. Issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in a specified amount, whether or not that amount may be increased or reloaded, in exchange for payment; and
2. Redeemable upon presentation at multiple, unaffiliated merchants for goods or services, or usable at automated teller machines.

Loyalty, award, or promotional gift card: A card, code, or another device that:

1. Is issued on a prepaid basis primarily for personal, family, or household purposes to a consumer in connection with a loyalty, award, or promotional program;
2. Is redeemable upon presentation at one or more merchants for goods or services, or usable at automated teller machines; and

3. Sets forth the following disclosures, as applicable:
- a. A statement indicating that the card, code, or other device is issued for loyalty, award, or promotional purposes, which must be included on the front of the card, code, or other device;
 - b. The expiration date for the underlying funds, which must be included on the front of the card, code, or other device;
 - c. The amount of any fees that may be imposed in connection with the card, code, or other device, and the conditions under which they may be imposed, which must be provided on or with the card, code, or other device; and
 - d. A toll-free telephone number and, if one is maintained, a Web site, that a consumer may use to obtain fee information, which must be included on the card, code, or other device.

Dormancy fee and Inactivity fee: A fee for non-use of or inactivity on a gift certificate, store gift card, or general-use prepaid card.

Service fee: A periodic fee for holding or use of a gift certificate, store gift card, or general-use prepaid card. A periodic fee includes any fee that may be imposed on a gift certificate, store gift card, or general-use prepaid card from time to time for holding or using the certificate or card.

Activity: Any action that results in an increase or decrease of the funds underlying a certificate or card, other than the imposition of a fee, or an adjustment due to an error or a reversal of a prior transaction.

Exclusions

The terms “gift certificate,” “store gift card,” and “general-use prepaid card”, as defined above, do not include any card, code, or other device that is:

- Useable solely for telephone services
- Reloadable and not marketed or labeled as a gift card or gift certificate (see earlier definitions). The term “reloadable” includes a temporary non-reloadable card issues solely in connection with a reloadable card, code, or other device
- A loyalty, award, or promotional gift card (as defined earlier)
- Not marketed to the general public
- Issues in paper form only

- Redeemable solely for admission to events or venues at a particular location or group of affiliated locations, or to obtain goods or services in conjunction with admission to such events or venues, either at the event or venue or at specific locations affiliated with and in geographic proximity to the event or venue.

Gift Card Disclosures

Generally, gift card disclosures must be provided in written or electronic format and in a manner that is “clear and conspicuous.” As explained in the Commentary, this means disclosures that are readily understandable and, in a location, and size that are readily noticeable to consumers. While the final rule does not require a particular type size, the print must contrast with and otherwise not be obstructed by the background on which it is printed.

Certain disclosures must be made on the certificate, card, code, or other device. A disclosure made in an accompanying terms and conditions document, on packaging surrounding a certificate or card, or on a sticker or other label affixed to a certificate or card does not constitute a disclosure on the certificate or card.

In some cases, gift certificates or cards are issued in the form of a code provided by telephone. In this instance, the disclosures may be provided orally prior to purchase. After the disclosures are provided orally, the issuer must promptly provide to the consumer a written or electronic copy of the code or confirmation and the required disclosures must be contained on the copy.

Timing of Disclosure

The disclosures required by the rules must be provided before a certificate or card is purchased regardless of whether the certificate or card is purchased in person, online, by telephone, or by other means. The fees and terms and conditions of expiration that are disclosed may not be changed after purchase.

Prohibition on Imposition of Fees or Charges

No person may impose a dormancy, inactivity, or service fee with respect to a gift certificate, store gift card, or general-use prepaid card, unless:

1. There has been no activity with respect to the certificate or card, in the one-year period ending on the date on which the fee is imposed;
 2. The following are stated, as applicable, clearly and conspicuously on the gift certificate, store gift card, or general-use prepaid card:
 - a. The amount of any dormancy, inactivity, or service fee that may be charged;
 - b. How often such fee may be assessed; and
 - c. That such fee may be assessed for inactivity; and
 3. Not more than one dormancy, inactivity, or service fee is imposed in any given calendar month.
-

Prohibition on Sale of Gift Certificates or Cards with Expiration Dates

No person may sell or issue a gift certificate, store gift card, or general-use prepaid card with an expiration date, unless:

1. The person has established policies and procedures to provide consumers with a reasonable opportunity to purchase a certificate or card with at least five years remaining until the certificate or card expiration date;
2. The expiration date for the underlying funds is at least the later of:
 - a. Five years after the date the gift certificate was initially issued, or the date on which funds were last loaded to a store gift card or general-use prepaid card; or
 - b. The certificate or card expiration date, if any.

Prepaid Account Rules (1005.18)

As of April 1, 2019, Regulation E final rules were effective regarding prepaid accounts. The final rule modified general Regulation E requirements to create tailored provisions governing disclosures, limited liability and error resolution, periodic statements, and adds new requirements regarding the posting of account agreements.

Most of the requirements found in Regulation E are handled by the “issuer” of the prepaid accounts/cards, which most community banks are not. They are “re-sellers” of the accounts/cards. However, bank personnel need to have a general understanding of the rules as sellers of the accounts. If your bank is an issuer of prepaid accounts/cards, you will need to know the rules in great detail.

This section will give a brief overview of the rules related to Regulation E. The CFPB has published a Small Entity Compliance Guide to help banks implement these rules: https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/201701_cfpb_Intl_Money_Transfer_Small_Entity_Compliance_Guide.pdf.

Definition

A **prepaid account is** a product that is one or more of the following:

1. A payroll card account
 - a. An account that is directly or indirectly **established through an employer** and to which electronic fund transfer of the consumer's wages, salary, or other **employee compensation** (such as commissions) are made on a **recurring basis**, whether the account is operated or managed by the employer, a third-party processor, a bank, or any other person.
2. A government benefit account
 - a. An account **established by a government agency** for distributing **government benefits** to a consumer electronically, such as through ATMs or POS terminals, but does not include an account for distributing needs-tested benefits in a program established under state or local law or administered by a state or local agency.
3. An account that is **marketed or labeled as "prepaid"** and that is redeemable upon presentation at **multiple, unaffiliated merchants** for goods or services or usable at ATMs; or
4. An account:
 - a. That is **issued on a prepaid basis** in a specified amount or not issued on a prepaid basis but **capable of being loaded with funds** thereafter,
 - b. Whose **primary function** is to conduct transactions with **multiple, unaffiliated merchants** for goods or services, or at **ATMS**, or to conduct **person-to-person transfers**, and
 - c. That is **not** a checking account, share draft account, or negotiable order of withdrawal account.

A **prepaid account is not** one or more of the following:

1. An account that is loaded only with **funds from a HSA account**, flexible spending arrangement, medical savings account, health reimbursement arrangement, dependent care assistance program, or transit or parking reimbursement arrangement;
2. An account that is directly or indirectly established through a third-party and loaded only with **qualified disaster relief payments**;
3. A **gift card, store gift card, loyalty, award or promotional gift card**, or **general-use prepaid card** as defined in the Gift Cards & Certificates section of this chapter; or
4. An account established for distributing **needs-tested benefits** in a program established under state or local law or administered by a state or local agency.

Disclosures

A bank must provide certain disclosures **before** a consumer acquires a prepaid account.

Short Form Disclosure

The short form disclosure sets forth the prepaid account's **most important fees and certain other information** to facilitate consumer understanding of the account's key terms and comparison shopping among prepaid account programs. There are **specific content, form, and formatting requirements** for the Short Form Disclosure as well as additional requirements for payroll cards (1005.18(b)(2)&(3)).

Long Form Disclosure

The long form disclosure provides a **comprehensive list of all of the fees** associated with the prepaid account and **detailed information on how those fees are assessed**, as well as certain other information about the prepaid account program (including any relation to Regulation Z, if applicable). There are specific content, form, and formatting requirements for the Long Form Disclosure (1005.18(b)(4)).

The Long Form Disclosure is not required if the following conditions are met: **Retail location exemption**

on short form disclosure

1. The prepaid account access device is contained **inside the packaging material**;
2. The disclosure is provided on or is visible through an outward-facing, external surface of a prepaid account access device's packaging material;
3. The disclosure includes the required information that allows a consumer to access the information by telephone and via a website; and
4. If the bank does not provide the disclosure inside the prepaid account packaging material, and it is not otherwise already mailed or delivered to the consumer within 30 days of obtaining the consumer's contact information, the bank may provide the disclosure in electronic form without regard to E-sign consent.

Additional Regulation E Prepaid Account Rules

Access to Account Information

The final rule adopts an **alternative to Regulation E's periodic statement requirement** that permits issuers to make available to consumers certain methods for accessing information about their prepaid accounts in **lieu of sending periodic statements**. The final rule also adopts a requirement that issuers provide summary totals of the fees they have assessed against the prepaid account on a monthly and annual basis.

Agreements

Under the final rule, prepaid account issuers must submit their prepaid account agreements to the Bureau. The final rule also requires that prepaid account issuers publicly post on their own websites prepaid account agreements that are offered to the general public. Banks must make any agreements not posted on their own websites available upon request for consumers who have prepaid accounts under those agreements.

Liability and Error Resolution

The final rules extends Regulation E's limitation on liability to prepaid account (except unverified prepaid accounts), modifies the time period for reporting unauthorized EFTs if the issuer relies on the periodic statement alternative, and provides an alternative that allows an issuer to comply with the rules by limiting the consumer's liability for unauthorized EFT reported by the consumer within 120 days after the EFT was credited or debited to the consumer's prepaid account.

A prepaid account (other than a payroll card account or government benefit account) is not subject to the Prepaid Rule's limited liability and error resolution requirements if the issuer has not successfully completed its consumer identification and verification process with respect to that prepaid account. Specific criteria must be met by the issuer in order to state that it has not verified the account.

Remittance Transfers

The final rule makes several revisions to the rules governing remittance transfers in subpart B of Regulation E (discussed in the next section of this chapter) that are intended to continue the current application of those rules to prepaid products. Specifically, they clarify that for prepaid accounts other than payroll card accounts and government benefit accounts, the location of these accounts does not determine where funds are being sent to or from for purposes of application of the rules in Subpart B. They also clarify that the temporary exception allowing insured banks to use estimates when providing certain disclosures does not apply to prepaid accounts, unless the prepaid account is a payroll card account or government benefit account.

Overdraft Credit Features


The final rule amends Regulations E and Z generally to regulate prepaid accounts that offer overdraft credit features. Specifically, the final rule generally covered under Regulation Z's credit card rules any credit feature offered in conjunction with a prepaid account where the credit feature is offered by the prepaid account issuer, its affiliate, or its business partner and credit can be accessed in the course of a transaction conducted with the prepaid card to obtain goods or services, obtain cash, or conduct P2P transfers. The final rule's provisions regarding "hybrid prepaid-credit cards" are largely housed in new Regulation Z 1026.61.

Remittance Transfer Rule (1005.30-.36)

Subpart B of Regulation E, also known as Remittance Transfer Rules, provides disclosures, error resolution, and cancellation and refund rights to consumers who send remittance transfers to be received by other consumers or businesses in a foreign country. The CFPB has published a Small Entity Compliance Guide to help banks implement these rules.

https://files.consumerfinance.gov/f/documents/cfpb_remittance-transfers_small-entity-compliance-guide.pdf

Types of Remittance Transfers



Key Terms

Remittance Transfer:
An electronic transfer of funds conducted by a remittance transfer provider at the request of a sender to a designated recipient. Small transfers in the amount of \$15 or less are excluded.

- Transfers in cash or by another method conducted through a money transmitter or a bank.
 - Consumer wire transfers conducted by a bank upon a sender's request to wire money from the sender's account to a designated recipient.
 - An addition of funds to a prepaid card by a participant in a prepaid card program, such as a prepaid card issuer or its agent, that is directly engaged with the sender to add these funds, where the prepaid card is sent or was previously sent by a participant in the prepaid card program to a person in a foreign country, even if a sender retains the ability to withdraw such funds.
 - Consumer International ACH transactions sent by the sender's bank at the sender's request.
- Online bill payments* and other electronic transfers that a sender schedules in advance, including preauthorized remittance transfers, made by the sender's bank at the sender's request to a designated recipient.

*Electronic only, not payments in which the bank produces a paper check for the payment

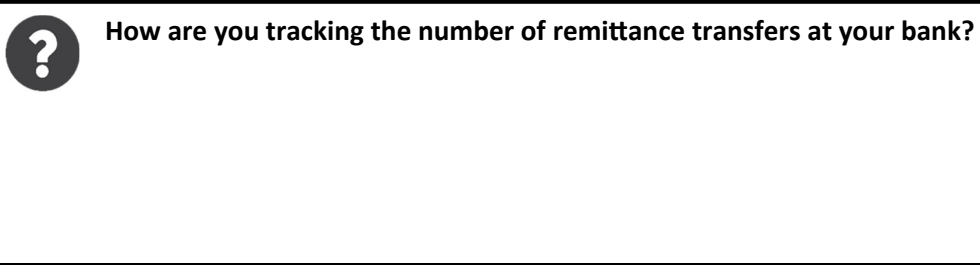
Coverage

The rule applies to providers, who are defined as persons providing remittance transfers to consumers in the "normal course of business."

Normal Course of Business:

- A person who made 500 or fewer remittance transfers in the previous calendar year and continues to make 500 or fewer remittance transfers in the current year is deemed to not be providing remittance transfers in the normal course of business.

- Once the provider exceeds 500 transfers in the current year, the provider is deemed to provide remittance transfers in the normal course of business. The provider has a reasonable period of up to six months to comply with the remittance transfer requirements.



Disclosures

Banks who must comply with the remittance transfer rules must give the sender specific disclosures at certain stages of the remittance transfer process. The rule requires providers to give senders a pre-payment disclosure when a transfer request is made, but prior to payment for the transfer. Providers must also provide a receipt when payment is made for the transfer. Model Disclosure Forms are provided in Appendix A of Regulation E.

Combined Disclosure

As an alternative to providing separate pre-payment and receipt disclosures, a remittance transfer provider may provide the information in the receipt in a single disclosure when the sender requests the remittance transfer, but prior to payment for the transfer. If this combined disclosure is provided and the sender completes the transfer, the remittance transfer provider must provide the sender with proof of payment when payment is made for the remittance transfer. For one-time transfers scheduled at least five business days in advance, or for the first in a series of preauthorized transfers, the provider may provide confirmation that the transaction has been scheduled in lieu of the proof of payment if payment is not processed at the time the remittance transfer is scheduled. No further proof of payment is required when payment is later processed.

Right to Cancel

Except for certain remittance transfers scheduled in advance, a remittance transfer provider generally must comply with any oral or written request to cancel a remittance transfer from the sender that is received by the provider no later than 30 minutes after the sender makes payment in connection with the remittance transfer if:

1. The request to cancel enables the provider to identify the sender's name and address or telephone number and the particular transfer to be cancelled; *and*
2. The transferred funds have not been picked up by the designated recipient or deposited into an account of the designated recipient.

Resources for Regulation E

CFPB Exam Manual for Reg E: <https://www.consumerfinance.gov/compliance/supervision-examinations/electronic-fund-transfer-act-efta-examination-procedures/>

CFPB Exam Manual for Prepaid Accounts: <https://www.consumerfinance.gov/compliance/supervision-examinations/prepaid-account-examination-procedures/>

CFPB Exam Manual for Remittance Transfers: <https://www.consumerfinance.gov/compliance/supervision-examinations/remittance-transfer-examination-procedures/>

CFPB Resource Page for Prepaid Cards: <https://www.consumerfinance.gov/compliance/compliance-resources/consumer-cards-resources/prepaid-cards/>

CFPB Resource Page for Remittance Transfers: <https://www.consumerfinance.gov/compliance/compliance-resources/deposit-accounts-resources/remittance-transfer-rule/>

FDIC Exam Manual for Reg E: <https://www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/documents/6/vi-2-1.pdf>

FDIC Exam Manual for Overdraft Programs: <https://www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/documents/5/v-14-1.pdf>

OCC Comptroller's Handbook for Reg E: <https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-handbook/files/electronic-fund-transfer-act/index-electronic-fund-transfer-act.html>

FED Consumer Compliance Handbook: <https://www.federalreserve.gov/boarddocs/supmanual/cch/efta.pdf>

FDIC FIL 81-2010—Overdraft Payment Programs and Consumer Protection Final Overdraft Payment Supervisory Guidance: <https://www.fdic.gov/news/financial-institution-letters/2010/fil10081.html>

FDIC Overdraft Payment Program Supervisory Guidance FAQs: <https://www.fdic.gov/news/events/overdraft/FAQ.html>

Regulation GG: Unlawful Internet Gambling

7



Learning Objectives

By the end of this chapter, you should be able to:

- Know the parties involved within Regulation GG
- Ensure your bank has policies and procedures in place to comply with Regulation GG

Overview

The Unlawful Internet Gambling Enforcement Act of 2006 (UIGEA) was enacted to prohibit banks from accepting payments from any person engaged in the business of betting or wagering with a business in unlawful internet gambling. The Act is implemented through Regulation GG requires financial transaction providers that participate in the five designated payment systems to establish and implement policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit the processing of restricted transactions. The Regulation sets forth guidance regarding the types of policies and procedures that will be deemed acceptable.



Often times a bank places the responsibility for UIGEA compliance with the BSA Officer or department, however UIGEA compliance is separate and independent from the legal scope of BSA/AML requirements, the BSA/AML program rule, and examination mandates for BSA/AML compliance programs.

Definitions

Actual knowledge: When a particular fact with respect to that transaction or commercial customer is known by or brought to the attention of:

- An individual in the organization responsible for the organization's compliance function with respect to that transaction or commercial customer; or
- An officer of the organization.

Bet or wager: The staking or risking by any person of something of value upon the outcome of a contest of others, a sporting event, or a game subject to chance, upon an agreement or understanding that the person or another person will receive something of value in the event of a certain outcome.

Block: To reject a particular transaction before or during processing, but it does not require freezing or otherwise prohibiting subsequent transfers or transactions regarding the proceeds or account.

Card issuer: Any person who issues a credit card, debit card, prepaid card, or stored value card, or the agent of such person with respect to such card.

Commercial customer: A person that is not a consumer and that contracts with a non-exempt participant in a designated payment system to receive, or otherwise accesses, payment transaction services through that non-exempt participant.

Consumer: A natural person.

Bank: A State or national bank, a State or Federal savings and loan association, a mutual savings bank, a State or Federal credit union, or any other person that, directly or indirectly, holds an account belonging to a consumer. The term does not include a casino, sports book, or other business at or through which bets or wagers may be placed or received.

Financial transaction provider: A bank, credit card issuer, bank, operator of a terminal at which an electronic fund transfer may be initiated, money transmitting business, or international, national, regional, or local payment network utilized to effect a credit transaction, electronic fund transfer, stored value product transaction, or money transmitting service, or a participant in such network, or other participant in a designated payment system.

Internet: The international computer network of interoperable packet switched data networks.

Internet gambling business: The business of placing, receiving or otherwise knowingly transmitting a bet or wager by any means which involves the use, at least in part, of the Internet, but does not include the performance of the customary activities of a financial transaction provider, or any interactive computer service or telecommunications service.

Operator of a designated payment system: An entity that provides centralized clearing and delivery services between participants in the designated payment system and maintains the operational framework for the system. In the case of an automated clearinghouse system, the term “operator” has the same meaning as provided in the ACH Rules.

Participant: An operator of a designated payment system, a financial transaction provider that is a member of, or has contracted for financial transaction services with, or is otherwise participating in, a designated payment system, or a third-party processor. This term does not include a customer of the financial transaction provider, unless the customer is also a financial transaction provider otherwise participating in the designated payment system on its own behalf.

Reasoned legal opinion: A written expression of professional judgment by a State-licensed attorney that addresses the facts of a particular client’s business and the legality of the client’s provision of its services to relevant customers in the relevant jurisdictions under applicable federal and State law, and, in the case of intratribal transactions, applicable tribal ordinances, tribal resolutions, and Tribal-State compacts. A written legal opinion will not be considered “reasoned” if it does nothing more than recite the facts and express a conclusion.

Restricted transaction: Any of the following transactions or transmittals involving any credit, funds, instrument, or proceeds that the Act prohibits any person engaged in the business of betting or wagering (which does not include the activities of a financial transaction provider, or any interactive computer service or telecommunications service) from knowingly accepting, in connection with the participation of another person in unlawful Internet gambling:

1. Credit, or the proceeds of credit, extended to or on behalf of such other person (including credit extended through the use of a credit card);
2. An electronic fund transfer, or funds transmitted by or through a money transmitting business, or the proceeds of an electronic fund transfer or money transmitting service, from or on behalf of such other person; or
3. Any check, draft, or similar instrument that is drawn by or on behalf of such other person and is drawn on or payable at or through any bank.

Unlawful Internet gambling: To place, receive, or otherwise knowingly transmit a bet or wager by any means which involves the use, at least in part, of the Internet where such bet or wager is unlawful under any applicable Federal or State law in the State or Tribal lands in which the bet or wager is initiated, received, or otherwise made. The term does not include placing, receiving, or otherwise transmitting a bet or wager that is excluded from the definition of this term by the Act as an intrastate transaction or an intra-tribal transaction, and does not include any activity that is allowed under the Interstate Horseracing Act of 1978 (15 U.S.C. 3001 et seq.; see 233.1(a)). The intermediate routing of electronic data must not determine the location or locations in which a bet or wager is initiated, received, or otherwise made.

Designated Payment Systems & Requirement of Participants

Regulation GG designates five payment systems as covered by the Act. The designated payment systems are (i) automated clearing house (ACH) systems, (ii) card systems, (iii) check collection systems, (iv) money transmitting businesses, and (v) wire transfer systems.

Payment System	Non-Exempt Participants	Safe Harbor Policies & Procedures: General Requirements
Card System (credit, debit, stored value)	<ul style="list-style-type: none"> Card Issuers Merchant acquirers Operators Third-party processors 	<ul style="list-style-type: none"> Due diligence; or Use of codes to identify restricted transactions and ongoing monitoring for codes; and Restricted transactions procedures.
Automated Clearing House	<ul style="list-style-type: none"> RDFI, credit transactions ODFI, debit transactions Gateway operator for cross-border debits Third-party processors for any of 1, 2, or 3 	<ul style="list-style-type: none"> Due diligence; Restricted transactions procedures; and For inbound cross-border ACH debit transactions, notice to correspondent bank in case of actual knowledge of restricted transactions.
Wire Transfer	Beneficiary's bank	<ul style="list-style-type: none"> Due diligence; and Restricted transactions procedures.
Check Collection	<ul style="list-style-type: none"> Depository bank First U.S. bank for cross-border check receipts 	<ul style="list-style-type: none"> Due diligence; Restricted transactions procedures; and For cross-border transactions, notice to correspondent bank in case of actual knowledge of restricted transactions.
Money Transmitting Businesses	Operators of money transmitting businesses that permit initiation of funds transmissions remotely, such as via Internet or telephone.	<ul style="list-style-type: none"> Due diligence; Ongoing monitoring by the operator to detect potential restricted transactions; and Restricted transaction procedures.

Policies and Procedures

The rule requires all non-exempt participants in designated payment systems to establish and implement policies and procedures reasonably designed to identify and block or otherwise prevent or prohibit restricted transactions. Neither the Act nor the rule imposes a strict liability standard with respect to the processing of restricted transactions. Participants are permitted to design and implement policies and procedures tailored to their operations and may use different policies and procedures with respect to different business lines. The rule provides examples of reasonably designed policies and procedures that would meet the requirements of the rule for each designated payment system. While these policies and procedures are not the exclusive means of compliance, they will be treated as a safe harbor for purposes of regulatory compliance.

A non-exempt participant may rely on a written statement or notice from the operator that the system operator's policies and procedures are designed to comply with the rule, unless and until the participant is notified by its regulator that the operator's policies are not compliant and should not be relied upon. If a non-exempt participant relies on such a statement from the operator and is in compliance with the system operator's policies and procedures, the participant would not be expected to design its own policies and procedures for transactions through that system.

The preamble to the rule notes that participants may implement due diligence procedures by incorporating them into existing account-opening due diligence procedures, for example, under Bank Secrecy Act/Anti-Money Laundering (BSA/AML) compliance processes.

Due Diligence Safe Harbor

The rule provides a safe harbor that focuses on a due diligence process in establishing a commercial customer relationship as the core policy and procedure for reducing the risk that restricted transactions will be introduced into the payment system. Under the rule, adequate due diligence on a commercial account could include the following:

1. **Written notice to all commercial accountholders** that the account must not be used for restricted transactions;

QUICK TIPS

This can be included within you're the bank's account agreement or terms and conditions document.

2. **Risk assessment for each commercial account opened** on or after the rule's compliance date to determine whether the accountholder poses more than a minimal risk of engaging in restricted transactions. If the bank's normal account-opening due diligence indicates that the customer poses a minimal risk of engaging in an Internet gambling business, no further due diligence need be done;

QUICK TIPS

Bank's often include one or two due diligence questions on their new account application or worksheet that the commercial customer should answer to determine their level of risk.

3. **Obtaining required documentation** if the commercial customer presents more than a minimal risk of engaging in an Internet gambling business. If the bank cannot determine whether the commercial accountholder poses a minimal risk of engaging in an Internet gambling business, then the bank should obtain the following documentation from the customer:
 - a. A certification from the customer that it does not engage in an Internet gambling business; or
 - b. If the customer does engage in an Internet gambling business:
 - i. Either a copy of the commercial license from a State or tribal authority authorizing the customer to engage in the business or a reasoned legal opinion (as defined in the rule) that demonstrates that the business does not involve restricted transactions; and
 - ii. A written commitment by the customer to advise the participant of any changes in its legal authority to engage in the Internet gambling business; and
 - iii. A third-party certification that the customer's systems for engaging in the Internet gambling business are reasonably designed to ensure that the business will remain within legal limits.



It is recommended that you also obtain a Reasoned Legal Opinion.

Actual Knowledge of Internet Gambling Business

Under the rule's safe harbor for use, whenever a participant has actual knowledge that an existing commercial customer is engaging in an Internet gambling business, the participant should have procedures to obtain, from the accountholder the documentation appropriate for commercial customers that present more than a minimal risk of engaging in Internet gambling and who cannot certify that they are not engaging in an Internet gambling business.

Actual Knowledge of Restricted Transactions

Under the rule's safe harbor for use, whenever a participant has actual knowledge that a commercial customer has engaged in restricted transactions, the participant should have procedures to follow relating to continued transaction processing, account review, suspicious activity filing, and account closure. The rule does not specify when transactions must be limited or accounts closed, only that the bank should have procedures in place.

Banks are not required by Regulation GG to proactively collect information independently to develop actual knowledge of restricted transactions.



What does this mean for the bank?

- * Have a **policy** in place.
- * Obtain **written statement or notice from the operator that the system operator's policies and procedures are designed to comply with the rule.**
- * **Ask your business customers** if they are involved in the applicable transaction types, if so, get proper documentation.
- * Validate periodically, that your **account terms and conditions** have the required Regulation GG language, especially after system updates.
- * Perform an **annual review and obtain the required documentation again.**

Resources for Regulation GG

FED Compliance Guide to Small Entities: <https://www.federalreserve.gov/supervisionreg/regggcg.htm>

FDIC FIL-35-2010—UIGEA Examination Guidance and Procedures: <https://www.fdic.gov/news/financial-institution-letters/2010/fil10035.html>

Unfair, Deceptive or Abusive Acts or Practices (UDAAP)

8



Learning Objectives

By the end of this chapter, you should be able to:

- Explain what an unfair, deceptive, or abusive act or practice is
- Create and maintain a UDAAP compliance program
- Identify acts and practices that prompt regulators to issue UDAAP enforcement actions

Overview

Unfair, deceptive, or abusive acts and practices (UDAAPs) can cause significant financial injury to consumers, erode consumer confidence, and undermine the financial marketplace. Advances in banking technology and changes in lending organization structure give banks the ability to structure financial products in increasingly complex ways and to market such products with increasingly sophisticated methods. The pace and complexity of these advances heighten the potential risk for consumer harm. This potential risk, coupled with identified abusive practices, warrants increased scrutiny by the federal enforcement agencies.

The first version of UDAAP, originally referred to as Section 5 of the FTC Act, was introduced in 1938. In 2004, the FTC expanded the section to include “deceptive” and “unfair acts and practices”, and UDAP was born. 2010's Dodd-Frank Wall Street Reform Act introduced the “abusive” statutory standard, changing UDAP to UDAAP, and refocused regulatory attention on this area of compliance. In addition, Dodd-Frank made the Consumer Financial Protection Bureau the primary enforcer of the law. In 2011, the CFPB began oversight of UDAAP compliance.

“Unfair” Acts or Practices

The standard for unfairness is that an act or practice is unfair when:

1. It causes or is likely to cause substantial injury to consumers;
 - May or may not include monetary harm. ****could also include reputation harm**
 - Small amount of harm to a large number of people or substantial harm to one person.
 - Actual injury is not required, as harm could be substantial if it merely raises the risk of harm.
 - Emotional harm is not typically part of the definition.
2. The injury is not reasonably avoidable by consumers; and **intent to cause injury is NOT required**
 - Interferes with the consumer's ability to effectively make decisions or to avoid the injury.
 - Prevents a consumer from comparison shopping or choosing advantageous alternatives.
 - If the practice is pervasive in the industry, regulators are more likely to find the practice unfair if there aren't alternatives.
3. The injury is not outweighed by countervailing benefits to consumers or to competition.
 - Offsetting benefits could include lower prices to the consumer or a wider availability of products and services because of competition.
 - The costs to society as a whole are high due to any increased burdens.



Example of “Unfair” UDAAP Violation

The CFPB announced a settlement with USAA Federal Savings Bank in January 2019 to pay \$3.5 million dollars, plus restitution due to re-opening closed accounts to process certain incoming debits and/or credits without obtaining the consumer's prior authorization and providing timely notice to consumers informing them when their accounts had been re-opened.

When USAA reopened accounts to process debits, some account balances became negative and therefore potentially subject to various fees, including overdraft fees and fees for non-sufficient funds. When USAA reopened an account to process a credit, banks had the opportunity to initiate debits to the account and draw down the funds, possibly resulting in a negative balance and the accumulation of fees. USAA's practice of reopening accounts potentially impacted, among others, consumers who had closed their accounts because a stop payment order or error resolution process was ineffective. When USAA processed a credit through an account that USAA had

reopened, funds in the account became available to entities attempting to debit funds, including any entity related to a previous dispute or stop payment request.

USAA's practice of reopening consumer accounts without obtaining consumers' prior authorization and providing timely notice caused substantial injury to consumers that was not reasonably avoidable or outweighed by any countervailing benefit to consumers or to competition.

"Deceptive" Acts or Practices

A representation, omission, act or practice is deceptive when:

1. The representation, omission, or practice **misleads or is likely to mislead the consumer;**

Deception is not limited to situations in which a consumer has already been misled. Instead, an act or practice may be deceptive if it is **likely** to mislead consumers.

A representation may be an **expressed or implied** claim or promise, and it may be **written or oral**.

Written disclosures may be insufficient to correct a misleading statement or representation.

The **FTC's "Four Ps"** test can assist in the evaluation of whether a representation, omission, act, or practice is **likely to mislead**:

- Is the statement **prominent** enough for the consumer to notice?
- Is the information **presented** in an **easy-to-understand** format that does **not contradict** other information in the package and at a time when the consumer's attention is not distracted elsewhere?
- Is the **placement** of the information in a location where consumers can be **expected to look or hear**?
- Is the information in **close proximity** to the claim it qualifies?

2. The **consumer's interpretation** of the representation, omission, act, or practice is **reasonable under the circumstances, and**

The majority of consumers in the target class do not share the consumer's interpretation, so long as a significant **minority of such consumers is misled**.

3. The misleading representation, omission, act or practice must be **material**.

Materiality is assessed by the ability of the consumer to **make and understand a decision**.

Deception of a consumer occurs if their **understanding of cost or restrictions** is not clear and concise.

If a representation or claim is not presumed to be material, it still would be considered material if there is evidence that it is **likely to be considered important by consumers**.



Example of “Deceptive” UDAAP Violation:

The Federal Reserve Board issued a **consent order** against **Community Trust Bank, Inc.**, Pikeville, Kentucky, for unfair and deceptive practices, requiring the bank to pay about **\$4.75 million** in restitution to approximately **11,000 consumers** and to make certain enhancements to its consumer compliance program.

The Board found that the bank violated section 5 of the Federal Trade Commission Act in its offering of deposit account **add-on products** to consumers. The bank represented to consumers that **all of the add-on product benefits would be effective upon enrollment** when, in fact, consumers had to take **additional steps to receive some of their benefits**. The bank did **not adequately disclose** the additional steps prior to enrollment and did **not explain to consumers that they would be billed regardless of benefit activation**. The bank also acquired deposit accounts from another insured depository institution where the accountholders had already enrolled in certain of the Initial Add-On Products, and after acquiring these deposit accounts from that insured depository institution, **the accountholders were charged monthly fees despite the fact that the accountholders did not receive all of the benefits included in the Initial Add-On Products**.

The Board found those practices to be unfair or deceptive acts or practices and unsafe or unsound banking practices.

“Abusive” Acts or Practices

An act or practice is abusive when it:

1. **Materially interferes with ability of consumer to understand a term or condition of the product or service; or**
2. **Takes unreasonable advantage** of any of the following:
 - A **lack of understanding** on the part of the consumer of the material risks, costs, or conditions of the product or service;
 - The **inability of the consumer to protect its interests** in selecting or using a consumer financial product or service; or
 - The **reasonable reliance** by the consumer on a covered person to act in the interests of the consumer

High Risk = products targeted to vulnerable populations (elderly, military, financially distressed, etc.)

★ Example of “Abusive” UDAAP Violation

The CFPB filed a complaint in federal district court alleging that SettleIt, Inc. engaged in abusive acts or practices under the Consumer Financial Protection Act of 2010 (CFPA) and violated the Telemarketing Sales Rule (TSR). The CFPB claimed SettleIt: (1) failed to disclose its relationship to certain creditors and then regularly prioritizing those creditors in settlements of consumers’ debts; (2) claimed that its programs could be completed without consumers having to borrow more money but then steering consumers into high-cost loans to pay off third-party creditors; (3) failed to clearly and conspicuously disclose the costs of its services; (4) required consumers to pre-authorize settlements so that SettleIt could resolve consumers’ debts without their express consent. The Bureau and SettleIt filed a proposed order that, if entered by the court, would require SettleIt to return at least \$646,000 in fees to consumers, pay a \$750,000 civil penalty, and stop settling debts for creditors with which it shares an ownership interest.

UDAAP Compliance Program

UDAAP compliance management programs should be designed to include measures aimed at avoiding unfair, deceptive and abusive practices. UDAAP compliance programs should include:

- Organization charts and process flowcharts designed to avoid unfair, deceptive, and abusive practices.
- Written policies and procedures detailing how the organization avoids and intends to avoid unfair, deceptive, and abusive practices. They may include:
 - Employee Conduct
 - ◆ Initial and ongoing training initiatives
 - ◆ Performance review and/or audits
 - ◆ Discipline policies and records or disciplinary actions
 - ◆ Compensation programs
 - Service Provider Conduct
 - ◆ Performance reviews and/or audits
 - ◆ Compensation programs
 - ◆ Monitoring initiatives
 - ◆ Agreements and contractual performance standards
- Organizational monitoring and audit procedures designed to identify and avoid unfair, deceptive, and abusive practices. Examples of items that may be reviewed:
 - Advertisement and marketing documentation
 - New product development documentation
 - Documentation of software testing
 - Procedural manuals, including those for servicing and collections
 - Consumer complaints
 - Customer disclosures, notices, agreements, and periodic statements for each product and service reviewed
 - Agreements with third-parties

- o Compensation programs
- o Promotional materials
- o Telemarketing scripts
- o Recorded calls for telemarketing or collections
- o Software parameters
- o Relevant marketing and advertising materials, including website pages
- o Bank training materials
- o Fee Schedules

Consumer Complaints

Consumer complaints can be an indicator of unfair or amiss behavior at banks. And while such behavior may not have been intended, banks should take careful steps to review and respond to all complaint activity. Experience has demonstrated that complaints often originate in the activities associated with products and service areas carrying heightened UDAAP risk.

It is important to note that no area of the bank is immune to complaint activity and should be monitored closely by all compliance personnel. Consumer complaints may emerge from both internal products and services as well as third parties used by the bank to offer products and services to customers.

Internal UDAAP Risk Exposure

The following products and services have empirically carried greater potential for consumer complaints and corresponding UDAAP violations. Banks must ensure that if they offer any of these, that the compliance department and senior management review the policies, procedures and documentation closely before proceeding:

- Add-On Products (e.g., identity theft protection or credit protection)
- Secured/Subprime Credit Cards
- Subprime or High Cost Mortgages
- Negative Amortization Mortgages
- Deferred Loan Interest and All Loan Costs
- Gift Cards
- Fee-Based Overdraft Protection Plans

- Payday, Deposit Advance or Tax Refund Anticipation Loans
- Prepaid Cards
- Reverse Mortgages
- Student Loans
- Rewards or Account Bonuses
- Remittance Transfers
- Age-Based Deposit Products with a Credit Feature

Questions the bank should ask itself when considering these specific products and services as well as its other business functions may include:

- Do products or services penetrate geographic or consumer markets differently?
- Does the bank have an aggressive sales or cross-selling culture?
- Does the bank set sales goals and incentives?
- Can consumers apply for a specific product or service and end-up with a different product or service than that requested?
- Does the bank place holds on any deposits?
- Do any of the bank's products require customers to jump through complex or non-transparent hoops to obtain a benefit?
- Is pricing structured or products bundled in a way that makes it difficult for consumers to understand?
- Is it difficult to reach the bank's customer service department to resolve a complaint?
- Are there any products or services generating voluminous fees?

External UDAAP Risk Exposure

Consumers may complain directly to the bank about third-party processes, procedures, products, and services. If the bank utilizes third-parties to provide products and services to its customers, the bank may be held liable for any wrongdoing. The following list of activities outlines some, but not all, which have triggered complaints and corresponding UDAAP violations associated with third-parties.

- Loan Servicing Do these 3rd parties post & credit consumer payments in a timely manner?
- Loan Collection Do these 3rd parties have a monitoring system in place?
- Unsecured Loans Originated through a Debt-Relief Third-Party

- Fee Structure of Third-Party
- Chargeback Rates
- Prescreening Activity
- Telemarketing
- Activity on Behalf of a Bank



Complaints & UDAAP

- * How often does your bank evaluate its complaint procedures?
- * Does review of your bank's complaint activity include complaints related to third parties your bank contracts with to do business on its behalf?
- * Do your bank's procedures include reporting complaint activity back to the appropriate business lines and supervisory team?
- * How does your bank document complaint response and resolution?

UDAAP Violations

Under the Dodd Frank Act, it is unlawful for any provider of consumer financial products and services or a service provider to engage in any unfair, deceptive or abusive act or practice. There is **no implementing regulation** to follow. **UDAAP can be challenging to understand and comply with.** This is due, in part at least, to the following factors:

- It is broad in scope and **may lack formal or complete definitions.**
- Although it is a singular law, UDAAP can **intertwine with other consumer protection laws and regulations.** This may lead to varying interpretations. Other laws include: **Reg Z, Reg DD, Reg B, Fair Debt Collection Practices Act, Fair Credit Reporting Act, and the Gramm-Leach-Bliley Act.**
- UDAAP is sometimes used more generally to include regulations related to good and fair practices. It is, **what you SHOULD do, not necessarily what you CAN do.**

Recent Findings

- TD Bank was ordered to pay \$122 million to resolve claims that it charge consumers fees without consent on its optional overdraft service. The CFPB said the bank violated the Electronic Fund Transfer Act (EFTA) by charging consumers overdraft fees for ATM and one-time debit-card transactions without their consent, after claiming it was a free service. The Bank required new customers to sign its overdraft notice with the “enrolled” option pre-checked without mentioning the service to the consumer at all. They deliberately obscured, or attempted to obscure, the overdraft notice to prevent a new customer’s review of their pre-marked “enrolled” status in the service. The Bank engaged in abusive acts or practices by materially interfering with consumers’ ability to understand the services terms and conditions.
- The Bureau alleges that for several years Fifth Third, without consumers’ knowledge or consent: opened deposit and credit card accounts in consumers’ names; transferred funds from consumers’ existing accounts to new, improperly opened accounts; enrolled consumers in unauthorized online -banking services; and activated unauthorized lines of credit on consumers’ accounts. The Bureau alleges that Fifth Third violated the Consumer Financial Protection Act’s prohibition against unfair and abusive acts or practices as well as the Truth in Lending Act and the Truth in Savings Act and their implementing regulations.

Hot Topics

Based on third party audit findings, recent exams, guidance published by the regulators, and consumer complaints, a list of high risk areas organically develops to help banks know where to focus their attention. Below is a list of current hot topics.

- Debt Collection
 - Failure to disclose in subsequent communications that communication is from a debt collector
 - Failure to send notice of debt
 - Overdraft Practices
 - Multiple Overdraft/NSF Fees on “One Item” - fee for first presentment and second fee for re-presentment when disclosure says “per item”
 - Balance Calculation Methods—ledger balance vs available balance
 - Transaction Processing Order
 - Customer Disclosure Inaccuracies and UDAAP issues
 - Regulation E
 - Errors in processing unauthorized transaction disputes in a timely manner and providing timely and proper notification
 - Prematurely closing investigations and denied claims when consumer failed to submit supplemental information beyond that which the bank may require
 - Misrepresenting overdraft protection services
 - Loan Servicing
 - Loss mitigation processes
 - ◆ Failing to provide certain required loss mitigation notices, providing incomplete notices, or not providing notices within the time required by the regulation
 - Student Loans
 - ◆ Stating monthly amounts due in periodic statements that exceeded those authorized by consumers’ loan notes, where either the servicers automatically debited incorrect amounts or, for borrowers not enrolled in auto debit, the borrowers submitted an inflated payment or were assessed a late fee for failing to submit the inflated payment by the due date.
-

- o Charging more than the amounts authorized by their loan modification agreements
 - o Misrepresentation regarding loss mitigation and foreclosures
- Payday Lending
 - o Failing to apply borrowers' payments to their loans
 - o Inaccurate disclosure of annual percentage rate
 - o Failure to include a fee in calculation of finance charge and annual percentage rate
 - o Failure to retain evidence of compliance with Regulation Z
 - o Adverse action notices that failed to disclose the principal reason(s) for adverse action
 - o Unfair imposition of unauthorized and undisclosed fee
- Fair Credit Reporting Act
 - o Reporting incorrect date of first delinquency
 - o Failure to investigate disputes submitted by consumers, telling customer to dispute with CRA rather than the bank directory, and not investigating in a timely manner
 - o Failing to provide required disclosures such as credit score disclosures, range of credit scores, or information about the consumer reporting agency providing the consumer report

Resources for UDAAP

CFPB Exam Manual: https://files.consumerfinance.gov/f/documents/102012_cfpb_unfair-deceptive-abusive-acts-practices-udaaps_procedures.pdf

FDIC Exam Manual: <https://www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/documents/7/vii-1-1.pdf>

OCC Comptroller's Handbook: <https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-handbook/files/unfair-deceptive-act/index-udaap.html>

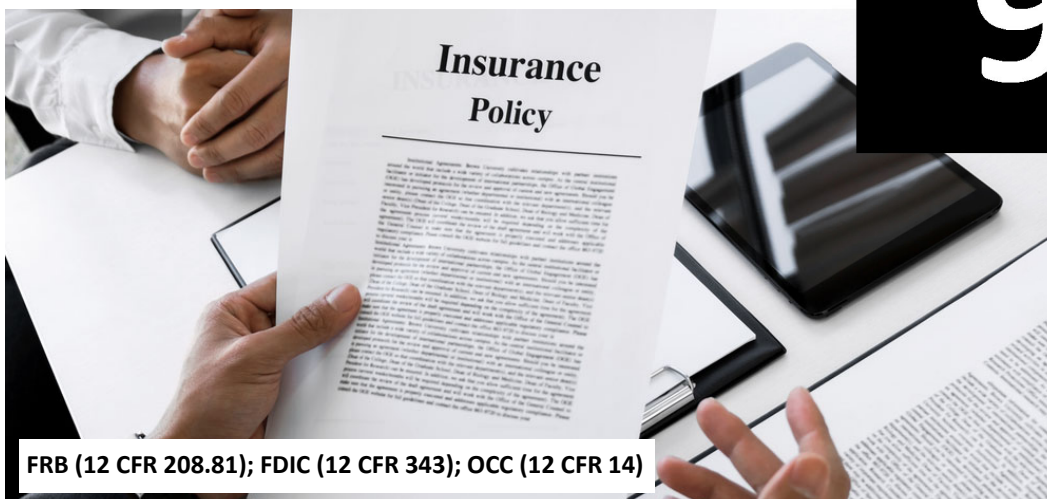
CFPB Bulletin 2013-07—Collection of Consumer Debts: https://files.consumerfinance.gov/f/201307_cfpb_bulletin_unfair-deceptive-abusive-practices.pdf

FDIC FIL-81-2010— Overdraft Payment Programs and Consumer Protection Final Overdraft Payment Supervisory Guidance: <https://www.fdic.gov/news/financial-institution-letters/2010/fil10081.html>

FDIC Overdraft Program Supervisory Guidance FAQs: <https://www.fdic.gov/news/events/overdraft/FAQ.html>

Consumer Sales of Insurance

9



FRB (12 CFR 208.81); FDIC (12 CFR 343); OCC (12 CFR 14)



Learning Objectives

By the end of this chapter, you should be able to:

- Comply with the requirements under the rules if your bank sells various insurance products
- Know what activities are prohibited in relation to selling insurance to a consumer
- Understand what disclosures are required under the rules
- Know when and how to provide the required disclosure and how to document receipt

Overview

Pursuant to the Gramm-Leach-Bliley Act (GLBA), the federal banking agencies have adopted regulations concerning **consumer protection in the sale of insurance by banks.**

Insurance products are not FDIC-insured and may involve investment risk. Consequently, examiners must assess the quality of a bank's Compliance Management System (CMS) as it pertains to the retail sale of insurance and annuities. Examiners must consider whether the CMS appropriately manages the risks involved in these activities, including whether the CMS is compliant with the rules.

Scope and Coverage

The consumer sales of insurance rules establish consumer protections in connection with **retail sales practices, solicitations, advertising, or offers of any insurance product or annuity to a consumer by:**

- **Any bank; or**
- **Any other person that is engaged in such activities at an office of the bank or on behalf of the bank.**

Definitions

Affiliate: A company that controls, is controlled by, or is under common control with another company.

Bank: A state member bank.

Company: Any corporation, partnership, business trust, association or similar organization, or any other trust (unless by its terms the trust must terminate within twenty-five years or not later than twenty-one years and ten months after the death of individuals living on the effective date of the trust). It does not include any corporation the majority of the shares of which are owned by the United States or by any State, or a qualified family partnership, as defined in section 2(o)(10) of the Bank Holding Company Act of 1956, as amended (12 U.S.C. 1841(o)(10)).

Consumer: An individual who purchases, applies to purchase, or is solicited to purchase from you, insurance products or annuities primarily for personal, family, or household purposes (U.S.C. 1841(o)(10)).

Electronic Media: Any means for transmitting messages electronically between you and a consumer in a format that allows visual text to be displayed on equipment, for example, a personal computer monitor.

Office: The premises of a bank where retail deposits are accepted from the public.

Subsidiary: Has the same meaning as in section 3(w)(4) of the Federal Deposit Insurance Act (12 U.S.C. 1813(w)(4)).

Prohibited Practices

Anti-coercion and anti-tying rules

The bank may not engage in any practice that would lead a consumer to believe that an extension of credit, in violation of section 106(b) of the Bank Holding Company Act Amendments of 1970 (12 U.S.C. 1972), is conditional upon either:

1. The purchase of an insurance product or annuity from the bank or any of its affiliates; or
2. An agreement by the consumer not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

Prohibition on misrepresentations

The bank may not engage in any practice or use any advertisement at any office of, or on behalf of, the bank or a subsidiary of the bank that could mislead any person or otherwise cause a reasonable person to reach an erroneous belief with respect to:

1. The fact that an insurance product or annuity sold or offered for sale by the bank or any subsidiary of the bank is not backed by the Federal government or the bank or the fact that the insurance product or annuity is not insured by the Federal Deposit Insurance Corporation;
2. In the case of an insurance product or annuity that involves investment risk, the fact that there is an investment risk, including the potential that principal may be lost and that the product may decline in value; or
3. In the case of a bank or subsidiary of the bank at which insurance products or annuities are sold or offered for sale, the fact that:
 - i. The approval of an extension of credit to a consumer by the bank or subsidiary may not be conditioned on the purchase of an insurance product or annuity by the consumer from the bank or a subsidiary of the bank; and
 - ii. The consumer is free to purchase the insurance product or annuity from another source.

Prohibition on Domestic Violence Discrimination

The bank may not sell or offer for sale, as principal, agent, or broker, any life or health insurance product if the status of the applicant or insured as a victim of domestic violence or as a provider of services to victims of domestic violence is considered as a criterion in any decision with regard to insurance underwriting, pricing, renewal, or scope of coverage of such product, or with regard to the payment of insurance claims on such product, except as required or expressly permitted under State law.

What You Must Disclose

1. Credit Disclosure/Solicitation Disclosure

In the case of an application for credit in connection with which an insurance product or annuity is solicited, offered, or sold, the bank must disclose that the bank may not condition an extension of credit on either:

- a. The consumer's purchase of an insurance product or annuity from the bank or any of its affiliates; or
- b. The consumer's agreement not to obtain, or a prohibition on the consumer from obtaining, an insurance product or annuity from an unaffiliated entity.

FEDERAL CREDIT APPLICATION INSURANCE DISCLOSURE

I have applied for an extension of credit with you. You are soliciting, offering, or selling me an insurance product or annuity in connection with the extension of credit. FEDERAL LAW PROHIBITS YOU FROM CONDITIONING THE EXTENSION OF CREDIT ON EITHER: (1) My purchase of an insurance product or annuity from you or any of your affiliates; or (2) My agreement not to obtain, or a prohibition on me from obtaining an insurance product or annuity from an unaffiliated entity.

By signing, I acknowledge that I have received a copy of this form on today's date. Unless this disclosure is provided electronically or I have applied for credit by mail. I also acknowledge that you have provided this disclosure to me orally.

Name

Date

Name

Date

2. Insurance Disclosure/Purchase Disclosure

In connection with the initial purchase of an insurance product or annuity by a consumer from the bank, the bank must disclose to the consumer, except to the extent the disclosure would not be accurate, that:

- a. The insurance product or annuity is not a deposit or other obligation of, or guaranteed by, the bank or an affiliate of the bank;
- b. The insurance product or annuity is not insured by the Federal Deposit Insurance Corporation (FDIC) or any other agency of the United States, the bank, or (if applicable) an affiliate of the bank; *and*
- c. In the case of an insurance product or annuity that involves an investment risk, there is investment risk associated with the product, including the possible loss of value.

FEDERAL SALE OF INSURANCE DISCLOSURE

I am purchasing the following insurance product or annuity (Product) from you:

- The Product is NOT A DEPOSIT ACCOUNT OR OTHER OBLIGATION of any depository institution or any affiliate of any depository institution.
- The Product is NOT GUARANTEED OR INSURED by any depository institution or any affiliate of any depository institution.
- The Product is NOT INSURED by the Federal Deposit Insurance Corporation (FDIC).
- The Product, except in the case of Federal Flood Insurance or Federal Crop Insurance, is NOT INSURED by any federal government agency.
- There is INVESTMENT RISK associated with the Product, including the POSSIBLE LOSS OF VALUE.

I understand that disclosures following only apply if checked. By signing, I acknowledge that I have received a copy of this form on today's date. Unless these disclosures are provided electronically or I have purchased the Product by mail. I also acknowledge that you have provided these disclosures to me orally.

Name

Date

Name

Date

Timing and Method of Disclosures

General Rule

The *credit disclosure* must be made orally and in writing at the time the consumer applies for an extension of credit in connection with which insurance is solicited, offered, or sold

The *insurance disclosure* must be provided orally and in writing before the completion of the initial sale of an insurance product or annuity to a consumer.

Exceptions for transactions by mail

If a sale of an insurance product or annuity is conducted by mail, the bank is not required to make the oral disclosures of either the credit and insurance disclosure.

Exceptions for transactions by telephone

If the bank takes an application for such credit by telephone, it may provide the *credit disclosure* by mail, provided the bank mails it to the consumer within three days beginning the first business day after the application is taken, excluding Sundays and the legal public holidays specified in 5 U.S.C. 6103(a).

If a sale of an insurance product or annuity is conducted by telephone, the bank may provide the written insurance disclosure by mail within 3 business days beginning on the first business day after the sale, excluding Sundays and the legal public holidays specified in 5 U.S.C 6103(a).

Electronic disclosures

Subject to the requirements of section 101(c) of the Electronic Signatures in Global and National Commerce Act (12 U.S.C. 7001(c)), the bank may provide the written disclosures through electronic media instead of on paper, if the consumer affirmatively consents to receiving the disclosures electronically and if the disclosures are provided in a format that the consumer may retain or obtain later, for example, by printing or storing electronically (such as by downloading).

If the disclosures are provided electronically, oral disclosure is not required.

Format of Disclosures

1. Disclosures must be readily understandable
 - The disclosures provided must be conspicuous, simple, direct, readily understandable, and designed to call attention to the nature and significance of the information provided. For instance, the bank may use the following disclosures, in visual media, such as television broadcasting, ATM screens, billboards, signs, posters and written advertisements and promotional materials, as appropriate and consistent with paragraphs (a) and (b) of this section:
 - a. NOT A DEPOSIT
 - b. NOT FDIC-INSURED
 - c. NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY
 - d. NOT GUARANTEED BY THE BANK
 - e. MAY GO DOWN IN VALUE
2. Disclosures must be meaningful
 - The bank must provide the disclosures in a meaningful form. Examples of the types of methods that could call attention to the nature and significance of the information provided include:
 - a. A plain-language heading to call attention to the disclosures;
 - b. A type-face and type-size that are easy to read;
 - c. Wide margins and ample line spacing;
 - d. Boldface or italics for key words; and
 - e. Distinctive type size, style, and graphic devices, such as shading or sidebars, when the disclosures are combined with other information.

- The bank has not provided the disclosures in a meaningful form if it merely states to the consumer that the required disclosures are available in printed material, but the bank does not provide the printed material when required and do not orally disclose the information to the consumer when required.
- With respect to those disclosures made through electronic media for which paper or oral disclosures are not required, the disclosures are not meaningfully provided if the consumer may bypass the visual text of the disclosures before purchasing an insurance product or annuity.

Consumer Acknowledgment

The bank must obtain from the consumer, at the time a consumer receives the disclosures, or at the time of the initial purchase by the consumer of an insurance product or annuity, a written acknowledgment by the consumer that the consumer received the disclosures.

The bank may permit a consumer to acknowledge receipt of the disclosures electronically or in paper form.

If the disclosures are provided in connection with a transaction that is conducted by telephone, the bank must:

1. Obtain an oral acknowledgment of receipt of the disclosures and maintain sufficient documentation to show that the acknowledgment was given; and
2. Make reasonable efforts to obtain a written acknowledgment from the consumer.

Insurance Advertisements & Disclosures

The disclosures listed below are required in advertisements and promotional material for insurance products or annuities unless the advertisements and promotional materials are of a general nature describing or listing the services or products offered by the bank.

- a. NOT A DEPOSIT
- b. NOT FDIC-INSURED
- c. NOT INSURED BY ANY FEDERAL GOVERNMENT AGENCY
- d. NOT GUARANTEED BY THE BANK
- e. MAY GO DOWN IN VALUE

Where Insurance Activities May Take Place

A bank must, to the extent practicable, keep the area where the bank conducts transactions involving insurance products or annuities physically segregated from areas where retail deposits are routinely accepted from the general public, identify the areas where insurance product or annuity sales activities occur, and clearly delineate and distinguish those areas from the areas where the bank's retail deposit-taking activities occur.

Referrals

Any employee who accepts deposits from the public in an area where such transactions are routinely conducted in the bank may refer a consumer who seeks to purchase an insurance product or annuity to a qualified person who sells that product only if the person making the referral receives no more than a one-time, nominal fee of a fixed dollar amount for each referral that does not depend on whether the referral results in a transaction.

Qualification and Licensing Requirements for Insurance Sales Personnel

A bank may not permit any person to sell or offer for sale any insurance product or annuity in any part of its office or on its behalf, unless the person is at all times appropriately qualified and licensed under applicable State insurance licensing standards with regard to the specific products being sold or recommended.

Resources for Consumer Sales of Insurance

FDIC Exam Manual: <https://www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/documents/9/ix-2-1.pdf>

FDIC FIL—Response to Questions on Insurance Sales Practices Regulation: <https://www.fdic.gov/news/financial-institution-letters/2001/fil0184b.html>

Nondeposit Investment Products

10



Learning Objectives

By the end of this chapter, you should be able to:

- Write and review clear and reasonable policies and procedures for your bank
- Understand the disclosure requirements under the Interagency Statement
- Know what specific activities employees can engage in and how to train them
- Review your bank's nondeposit investment program for compliance

Overview

Many insured banks have expanded their activities in recommending or selling to consumers, nondeposit investment products (NDIPs) such as mutual funds, securities and annuities. Sales of NDIPs can increase a bank's marketplace competitiveness, provide consumers with additional services, and bolster earnings. However, NDIPs are financial assets that are not FDIC-insured and may contain investment risk. NDIP sales at insured banks may potentially confuse consumers and expose banks to contingent liabilities or reputation risk.

There is no actual law that defines the rules for non-deposit investment programs for banks. Outstanding guidance that governs this activity consists of:

- Interagency Statement on Retail Sales of Nondeposit Investment Products (February 1994):
 - o FDIC: FIL 9-94
 - o FRB: SR 94-11
 - o OCC: NR 94-21

- **Various Interpretations** of the Interagency Statement on Retail Sales of Nondeposit Investment Products:
 - <https://www.fdic.gov/regulations/resources/financial/>
 - <https://www.fdic.gov/news/news/financial/1998/fil9880a.pdf>
- Nondeposit Investment Product **Examination Procedures**
 - Despite significant changes in the regulatory environment over the past 23 years Interagency Statement remains unchanged. However the agencies exam manuals have been updated over the years to include current best practices.

This chapter will focus mainly on the interagency guidance and exam manuals, however bank may need to follow other rules depending on the nondeposit products and services they sell. Generally, **parties that recommend or sell securities must register with the Securities and Exchange Commission (SEC) as broker-dealers.** Once registered, broker-dealers are subject to regulation by the SEC and National Association of Securities Dealers (NASD). A bank may either register with the SEC as broker-dealers or confine their programs to a list of activities exempt from registration. Due to the capital requirements imposed on broker-dealers by the SEC, most banks prefer to limit their securities sales activities to those that do not require SEC registration. These rules can be found within the Gramm-Leach-Bliley Act (GLBA).

Scope & Applicability

The Interagency Statement applies to **all banks that sell or recommend** stocks, bonds, government and municipal securities, mutual funds, annuities, and life insurance policies when made by:

- **Employees** of the bank;
- Employees of a **third-party**, which **may or may not be affiliated** with the bank; or
- Sales resulting from a **referral of consumers by the bank** to a third-party when the **bank receives a benefit** for the referral.

Policies & Procedures

Written Statement

Banks involved in the recommendation or sale of nondeposit investment products to its consumers should adopt a **written statement** that addresses:

- The **risks** associated with the sales program;
- The **policies and procedures** outlining the features of the bank's program;

- The scope of activities of any third-party involved; and
- The procedures for monitoring compliance by third parties.

The bank's statement should be adopted and reviewed periodically by its board of directors. Banks are encouraged to consult with legal counsel with regard to the implementation of a nondeposit investment product sales program.

Policies & Procedures

The bank's policies and procedures should include the following:

1. **Compliance procedures.** The procedures for ensuring compliance with applicable laws and regulations and consistency with the provisions of the Interagency Statement.
2. **Supervision of personnel involved in sales.** A designation by senior managers of specific individuals to exercise supervisory responsibility for each activity outlined in the bank's policies and procedures.
3. **Types of products sold.** The criteria governing the selection and review of each type of product sold or recommended.
4. **Permissible use of consumer information.** The procedures for the use of information regarding the bank's consumers for any purpose in connection with the retail sale of nondeposit investment products.
5. **Designation of employees to sell investment products.** A description of the responsibilities of those personnel authorized to sell nondeposit investment products and of other personnel who may have contact with consumers concerning the sales program; and a description of any appropriate and inappropriate referral activities and the training requirements.
6. **Arrangements with Third Parties.** If a bank directly or indirectly, including through a subsidiary or service corporation, engages in activities as described above under which a third-party sells or recommends nondeposit investment products, the bank should, prior to entering into the arrangement, conduct an appropriate review of the third-party. The bank should have a written agreement with the third-party that is approved by the bank's board of directors. The agreement must contain, at a minimum a:
 - a. Description of each party's duties and responsibilities;
 - b. Description of the permissible activities by the third-party on bank premises;
 - c. Controls for the use of bank space, personnel, and equipment;
 - d. Detailed compensation arrangements for all bank and third-party personnel;

- e. Requirement that sales representatives are appropriately trained, licensed, and qualified;
- f. Requirement that the third-party comply with all applicable laws, regulations, and the Interagency Statement;
- g. Authorization for the bank to monitor the activities of the third-party and its sales representatives and to periodically review compliance with the agreement;
- h. Authorization for the bank and its banking regulatory agency to have access to such records of the third-party as are necessary or appropriate to evaluate compliance;
- i. Indemnification for the bank for potential liability caused by the third-party's sales activities; and
- j. Written employment contracts satisfactory to the bank for personnel employed by both the bank and the third-party (dual employees).

Disclosures

The banking agencies believe that recommending or selling nondeposit investment products to consumers should occur in a manner that ensures that the products are clearly differentiated from insured deposits. Conspicuous and easy to comprehend disclosures concerning the nature of nondeposit investment products and the risk inherent in investing in these products are one of the most important ways of ensuring that the differences between nondeposit products and insured deposits are understood.

Content

Disclosures with respect to the sale or recommendation of these products should, at a minimum, specify that the product is:

1. Not insured by the FDIC;
2. Not a deposit or other obligation of, or guaranteed by, the bank; and
3. Subject to investment risks, including possible loss of the principal amount invested.

Where applicable, the bank should disclose the existence of an advisory or other material relationship between the bank or an affiliate of the bank and an investment company whose shares are sold by the bank and any material relationship between the bank and an affiliate involved in providing nondeposit investment products. In addition, where applicable, the existence of any fees, penalties, or surrender charges should be disclosed.

Timing

The minimum disclosures should be provided to the consumer:

1. Orally during any sales presentation
2. Orally when investment advice concerning nondeposit investment products is provided
3. Orally and in writing prior to or at the time an investment account is opened to purchase these products
4. In advertisements and other promotional materials

Advertising

Advertisements and other promotional and sales material of nondeposit investment products must:

1. Contain the minimum disclosures
2. Not suggest or convey an inaccurate or misleading impression about the nature of the product or its lack of FDIC insurance
3. Emphasize minimum disclosures in telemarketing contracts
4. Identify the company selling the nondeposit investment products
5. Clearly segregate nondeposit investment products from deposit products, when combined

Other Disclosure Requirements

A statement, signed by the customer, should be obtained at the time such an account is opened, acknowledging that the customer has received and understands the disclosures.

Setting & Circumstances

Selling or recommending nondeposit investment products on the premises of a bank may give the impression that the products are FDIC-insured or are obligations of the bank. To minimize consumer confusion with deposit products, sales or recommendations of nondeposit investment products, banks should:

1. Conduct conversations and transaction in a physical location distinct from the area where retail deposits are taken;
2. Use signs or other means to distinguish the investment sales area from the retail deposit-taking area of the bank;

3. Restrict employees who are not authorized to sell or recommend nondeposit investment products from:
 - a. Making specific investment recommendations regarding the products;
 - b. Qualify a consumer as eligible to purchase such products; and
 - c. Accept orders for such products, even if unsolicited.

Training

The bank should ensure the following personnel are trained on specific subject matter:

1. Employees who are not authorized to sell or recommend noninvestment deposit products need:
 - a. A general understanding of the bank's products and services and that bank offers; and
 - b. To know they have limitations on what they may say to consumers.
2. Employees who are authorized to sell or recommend noninvestment deposit products need to be trained on the:
 - a. Specific products and services being sold or recommended in detail;
 - b. Legal restrictions of the products and services;
 - c. Consumer protection requirements; and
 - d. Reasonable sales practices.
 - i. Sales personnel should have reasonable grounds for believing that the specific product recommended is suitable for the particular consumer on the basis of information disclosed by the consumer. Personnel should make reasonable efforts to obtain information directly from the consumer regarding, at a minimum, the consumer's financial and tax status, investment objectives, and other information that may be useful or reasonable in making investment recommendations to that consumer.
 - ii. Sales personnel must clearly explain all investment recommendation to consumers and provide complete information to consumers regarding investment risk. Steering is strictly prohibited.

Compensation

All bank employees may receive a one-time nominal fee of a fixed dollar amount for each referral for nondeposit investment products. The payment of this referral fee should not depend on whether the referral results in a transaction.

Personnel who are authorized to sell nondeposit investment products may receive incentive compensation, such as commissions, for transactions entered into by customers. However, incentive compensation programs must not be structured in such a way as to result in unsuitable recommendations or sales being made to consumers.

Compliance Review

Banks should develop and implement policies and procedures to ensure compliance with applicable laws and regulations, the bank's internal policies and procedures, and in a manner consistent with the Interagency Statement.

Compliance procedures should:

- Identify any potential conflicts of interest and how such conflicts should be addressed;
- Provide for a system to monitor consumer complaints and their resolution;
- Call for verification that third-party sales are being conducted in a manner consistent with the governing agreement with the bank; and
- Verifying the bank's brokers and firms at www.finra.org.

The compliance function should:

- Be conducted independently of nondeposit investment product sales and management activities;
- Determine the scope and frequency of their own review; and
- Include compliance reviews in which findings are periodically reported directly to the bank's board of directors, or to a designated committee of the board.



Ways in which compliance of fair and reasonable practices may be reviewed include:

- Sample customer account files to determine that:
 - Customers sign appropriate disclosure forms;
 - Customer data has been updated periodically;
 - Securities sales staff provide complete information to customers regarding potential risks; and
 - Recommendations conform to customer goals.
- Analyze management and sales reports and promotions to:
 - Evaluate sales activity for questionable practices, such as account churning (excessive trading in a client's account mainly to generate commissions).
 - Determine if promotions have prompted unsuitable recommendation practices.

Resources for NDIP

FDIC Exam Manual: <https://www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/documents/9/ix-1-1.pdf>

OCC Comptroller's Handbook: <https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-handbook/files/retail-nondeposit-invest-products/index-retail-nondeposit-investment-products.html>

FINRA Broker Check: <https://brokercheck.finra.org/>

Advertisement of Membership

11



Learning Objectives

By the end of this chapter, you should be able to:

- Know where the Official FDIC must be displayed throughout the bank
- Include the FDIC Membership logo in all applicable marketing and advertisements

Overview

The Federal Deposit Insurance Corporation (FDIC) is an independent agency of the United States government that protects the funds depositors place in banks and savings associations.

The regulation contained in this part (12 CFR 328) describes the official sign of the FDIC and prescribes its use by insured banks. It also prescribes the official advertising statement insured banks must include in their advertisements. The rules are required by all federally insured banks.

General Insurance Coverage

FDIC insurance covers all deposit accounts (both consumer and business), including:

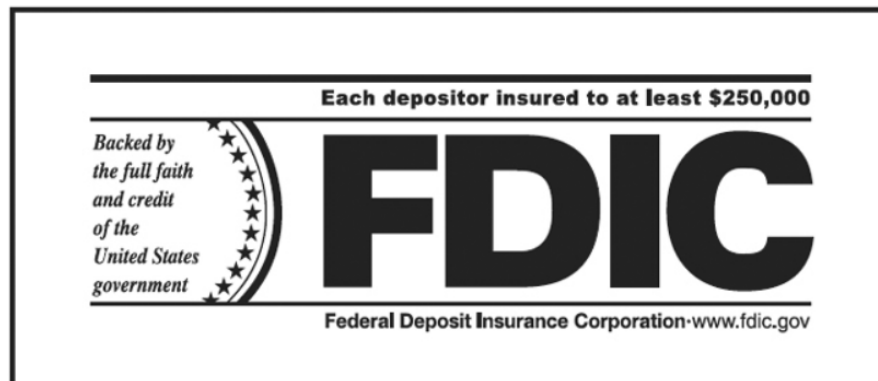
- Checking accounts
- Savings accounts
- Money market deposit account
- Certificates of deposit

FDIC insurance does not cover other financial products and services that banks may offer, such as stocks, bonds, mutual funds, life insurance policies, annuities or securities. The standard insurance amount is \$250,000 per depositor, per insured bank, for each account ownership category. The FDIC website provides many tools and resources to help bankers determine how much FDIC coverage a customer has at their bank. <https://www.fdic.gov/deposit/>

FDIC Sign

Official Sign

The official FDIC sign must be 7" by 3" in size, with black lettering and gold background, and of the following design:



A bank may display signs that vary from the official sign in size, color, or material at any location where display of the official sign is required or permitted. However, any such varied sign that is displayed must not be smaller in size than the official sign and must have the same color for the text and symbols.

Requirements for Displaying

Each insured bank shall continuously display the official sign at each station or window where insured deposits are usually and normally received in the bank's principal place of business and in all its branches. This may include:

- The teller line/window
- The drive-up window
- Bankers desks whom accept deposits

Banks are not required to display the Official FDIC Sign at the following:

- Night depositories
- ATMs

Advertising

Definition

The term “advertisement,” shall mean a commercial message, in any medium, that is designed to attract public attention or patronage to a product or business.

Statement

The official advertising statement must be of such size and print to be clearly legible and shall read as follows:

- “Member of the Federal Deposit Insurance Corporation.”; OR
- “Member of FDIC”; OR
- “Member FDIC”

Each insured bank shall include the official advertising statement in all advertisements that either promote deposit products and services or promote non-specific banking products and services offered by the bank. An advertisement promotes non-specific banking products and services if it includes the name of the insured bank but does not list or describe particular products or services offered by the bank. An example of such an advertisement would be, “Anytown Bank, offering a full range of banking services.”

Exceptions:

The following types of advertisements do not require use of the official advertising statement:

1. Statements of condition and reports of condition of an insured bank which are required to be published by State or Federal law;
2. Insured bank supplies such as stationery (except when used for circular letters), envelopes, deposit slips, checks, drafts, signature cards, deposit passbooks, certificates of deposit, etc.;
3. Signs or plates in the insured bank offices or attached to the building or buildings in which such offices are located;
4. Listings in directories;
5. Advertisements not setting forth the name of the insured bank;
6. Entries in a bank directory, provided the name of the insured bank is listed on any page in the directory with a symbol or other descriptive matter indicating it is a member of the Federal Deposit Insurance Corporation;
7. Joint or group advertisements of bank services where the names of insured banks and noninsured banks are listed and form a part of such advertisements;

8. Advertisements by radio or television, other than display advertisements, which do not exceed thirty seconds in time;
9. Advertisements which are of the type or character that make it impractical to include the official advertising statement, including, but not limited to, promotional items such as calendars, matchbooks, pens, pencils, and key chains; and
10. Advertisements which contain a statement to the effect that the bank is a member of the Federal Deposit Insurance Corporation, or that the bank is insured by the Federal Deposit Insurance Corporation, or that its deposits or depositors are insured by the Federal Deposit Insurance Corporation to at least \$250,000 for each depositor.

Non-Deposit Product

A bank must not include the official advertising statement, or any other statement or symbol which implies or suggests the existence of Federal deposit insurance, in any advertisement relating solely to non-deposit products or hybrid products.

Non-deposit Product: Includes but not limited to, insurance products, annuities, mutual funds, securities, and credit products.

Hybrid Product: A product or service that has both deposit product features and non-deposit product features. For example, a sweep account.

In advertisements containing information about both insured deposit products and non-deposit hybrid products, an insured bank shall clearly segregate the official advertising statement or any similar statement from that portion of the advertisement that relates to the non-deposit products.

Website Requirements


If a particular page in a bank's Internet site is an advertisement, then it requires inclusion of the official advertising statement unless it is subject to one of the exceptions.


The exceptions relevant to a bank's web site are as follows:

1. Advertisements not setting forth the name of the insured bank
2. Joint or group advertisements of insured banks and noninsured organizations
3. Advertisements relating to the making of loans by the bank or loan services
4. Advertisements relating to safekeeping box business or services
5. Advertisements relating to trust business or trust department services

6. Advertisements relating to real estate business or services
7. Advertisements relating to armored car services
8. Advertisements relating to service charges or analysis charges
9. Advertisements relating to securities business or securities department services
10. Advertisements relating to travel business, including traveler's checks
11. Advertisements relating to savings banks life insurance

The FDIC provides many examples of website pages, advertisements, and requirements within an Advisory Opinion from November 3, 2000. <https://www.fdic.gov/regulations/laws/rules/4000-10120.html>

 **Best Practice:** Many banks will include the membership statement in the footer of the website, however if you have nondeposit investment products or insurance products, you will not want to do this as the footer flows from page to page and it cannot be on the pages that include these non-FDIC insured products.

 **#1 - Question:** It is against regulations to use the logo on all bank advertising?

Answer: The regulations do not explicitly prohibit the use of the FDIC logo in bank advertising. In cases where the public might confuse the bank's solicitation of deposits with the accompanying solicitation of potentially confusing non-deposit obligations, the logo may contribute to public confusion. In those cases, the two products should be separately advertised, with the logo deleted from the solicitation for the non-deposit obligation. Alternatively, if the two are combined, the advertisement should make it very clear, which deposits are insured and which obligations are not insured.

#2 - Question: If the bank is giving away items at a local event, does the FDIC statement need to be on the item?

Answer: Under the membership or advertisement rules, certain items do not require the official statement or sign. Some promotional products make it difficult to put the statement on, examples include: calendars, key chains, pens/pencils.

#3 - Question: Is there a "Carve out" from the FDIC statement for social media advertisements?

Answer: Currently under the regulation social media is not directly addressed. If the bank is going to use social media for advertising. The bank must look at the definition of an advertisement and its exceptions.



Test Your Knowledge: Is FDIC Membership required of the items listed in the chart?

	YES	NO	MAYBE
Main Bank Webpage			
Radio Advertisement about CD Rates			
Bank Logo T-Shirts			
Bank Banner hanging at Ballpark			
Bank Name Listed as Sponsor in the program at local community theatre			
Bank Logo Hats			
Bank Logo Pens			
TV Advertisement about Home Equity Loan availability			
Bank Truck/Trailer			
Twitter Page			
Facebook Page			
Mobile App Main Page			
Billboard Advertisement of Bank			
Consumer Account Disclosures			
Bank Rate Sheet			
Bank 75th Anniversary Button			
45-Second Radio Advertisement			
Bank Insurance Agency Advertisement			
Brochure promoting the bank's wealth management and trust services			
Brochure promoting ALL of the bank's services			
E-mail signature lines			
Business Cards			
LinkedIn Profile (Employee, Bank)			
Transaction Receipts			

Resources for Advertisement of Membership

FDIC Exam Manual: <https://www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/documents/10/x-1-1.pdf>

Coverage Guidelines: <https://www.fdic.gov/deposit/covered/categories.html>

Advisory Opinion on use of FDIC logo on bank websites: <https://www.fdic.gov/regulations/laws/rules/4000-10120.html#fdic400000-10>

Advisory Opinion—Foreign language translation: <https://www.fdic.gov/regulations/laws/rules/4000-9420.html#fdic400095-12>

Advisory Opinion—Night depositories: <https://www.fdic.gov/regulations/laws/rules/4000-8890.html#fdic400094-17>



Learning Objectives

By the end of this chapter, you should be able to:

- Understand the trigger terms for credit and deposit accounts and the additional disclosure requirements if such trigger terms appear in an advertisement
- Know what to do if your bank uses prescreened lists obtained from a consumer reporting agency or other third-party
- Understand the disclosure requirements for deposit account marketing materials when an APY or bonus is stated
- Comply with other laws that have marketing and advertising requirements such as COPPA, CAN-SPAM, and TCPA
- Ensure your bank monitors all activity related to social media

Overview

There are a number of regulations that govern how banks advertise their products and services. These requirements cover all forms of advertising, from print, radio and television, social media, direct mail, e-mail and texting, materials displayed in the bank, website, and telephone. Many of these rules are complex and compliance can be challenging. **The general rule for ALL advertisements is that an advertisement shall not be misleading or inaccurate or misrepresent a banks actual products and services and the terms and conditions applied to them.**

The following laws and regulations have advertising compliance requirements and will be discussed in this chapter:

- Regulation Z – Truth in Lending Act: 12 CFR 1026.16 & 24 & 60
- Fair Credit Reporting Act: 15 USC 1681
- Fair Housing Act: 42 USC 3601

- Regulation DD – Truth in Savings Act: 12 CFR 1030.8
- Privacy of Consumer Financial Information: 12 CFR 1016
- The Children’s Online Privacy Protection Act (COPPA): 16 CFR 312
- Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM): 15 USC 7701 or 16 CFR 316
- Telephone Consumer Protection Act (TCPA): 47 USC 227

Other laws and regulations that have advertising compliance requirements and are detailed in other chapters of this manual or are found elsewhere include:

- FDIC Membership Advertisement
- Consumer Sales of Insurance
- Retail Sales of Non-Deposit Investment Products
- Regulation M – Consumer Leasing: 12 CFR 1013.7 (not covered in these materials)

Regulation Z – Truth in Lending Act

Regulation Z requires that loan product advertisements provide **accurate and balanced information** in a clear and conspicuous manner about rates, monthly payments, and other loan features. The advertising rules ban several deceptive or misleading advertising practices. If an advertisement for credit states specific credit terms, it **must state only those terms that actually are or will be arranged or offered by the bank.**

There are different rules for general open-end credit, credit cards, closed-end credit, and real estate secured transactions. Each are found throughout various sections of Regulation Z.

Open-End Credit (1026.16)

This section covers advertisements for ALL open-end credit transactions, including real estate secured and credit cards. It is important to read the **commentary** within the regulation for rules on **location and size of disclosures, calculations of rates and , and other specific requirements** in order to ensure your banks advertisements are in compliance with the rules.

Trigger Terms for Open-End Credit

Terms required to be disclosed by Regulation Z, **either positively or negatively**, in an advertisement, under 1026.6(b)(3) (not dwelling secured) or 1026.6(a)(1)&(2) (dwelling secured) **triggers additional disclosures.** These include:

Open-End Credit Trigger Terms (all open-end credit)		
Triggering Term	Examples	Additional Disclosures
Finance Charges	<ul style="list-style-type: none"> • Small monthly service charge on remaining balance • No closing costs • 1% origination fee <p>*Applies if finance charges are referenced positively or negatively</p>	<ul style="list-style-type: none"> • Any minimum, fixed, transaction, activity or similar charge that is a finance charge that could be imposed • Any periodic rate that may be applied that is expressed as an annual percentage rate (APR)
Any other charges imposed	<ul style="list-style-type: none"> • \$15 annual membership fee buys you \$2,000 in credit • No annual membership fees <p>*Applies if other charges are referenced positively or negatively</p>	<ul style="list-style-type: none"> • Any membership or participation fee that could be imposed

If an advertisement for credit to finance the purchase of goods or services (“credit sale”) specified in the advertisement states a periodic payment amount, the advertisement shall also state the total of payments and the time period to repay the obligation, assuming that the consumer pays only the periodic payment amount advertised. The disclosure of the total of payments and the time period to repay the obligation must be equally prominent to the statement of the periodic payment amount.

There are special disclosure requirements for open-end credit plans, not secured by a dwelling when an advertisement includes promotional or introductory rates and/or fees as well as deferred interest or similar offers. These rules can be found in 1026.16(g)&(h).

HELOC Advertisements

The advertising requirements for home equity lines of credit must follow the same disclosure requirements as open-end credit plans plus several additional requirements.

If any of the following are advertised, additional disclosures are required (in addition to the Additional Disclosures listed in the chart above which are required for all open-end credit):

Additional HELOC Requirements		
Triggering Term	When it Applies	Additional Disclosures
Finance or other charges (from open-end table above)	When the advertisement is for a HELOC and trigger terms are present (either in the ad itself or the fine print)	<p>All disclosures noted in open-end table above plus:</p> <ul style="list-style-type: none"> Any loan fee that is a percentage of the credit limit under the plan and an estimate of any other fees imposed for opening the plan, stated as a single dollar amount or a reasonable range Any periodic rate used to compute the finance charge, expressed as an annual percentage rate (APR) The maximum annual percentage rate that may be imposed in a variable rate plan
Discounted / Premium Rate	Initial rate not based on the index and margin used to make adjustments in a variable-rate plan	<ul style="list-style-type: none"> Period of time the initial rate will be in effect; and A reasonable current APR that would have been in effect using the index and margin
Balloon Payments	If an advertisement states a minimum periodic payment and a balloon payment may result if only the minimum payments are made	<ul style="list-style-type: none"> That the balloon payment will result; and The amount and timing of the balloon payment

Additional HELOC Requirements		
Triggering Term	When it Applies	Additional Disclosures
Tax Implications	If a paper or Internet advertisement states that the advertised extension of credit may exceed the fair market value of the dwelling	<ul style="list-style-type: none"> The interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for federal income tax purposes; and The consumer should consult a tax adviser for further information regarding the deductibility of interest and charges
Promotional Rates/ Payments	If any APR that may be applied to the plan is a promotional rate or any payment applicable to the plan is a promotional payment	<ul style="list-style-type: none"> The period of time the promotional APR and/or payment will apply; For a promotional rate, any APR that will apply under the plan; and For a promotional payment, the amounts and time periods of any payments that will apply under the plan. For variable-rate transactions, payments that will be based on an index and a margin must be disclosed based on a reasonable current index and margin

Promotional rate: In a variable-rate plan, any annual percentage rate that is not based on the index and margin that will be used to make rate adjustments under the plan, if that rate is less than a reasonably current annual percentage rate that would be in effect under the index and margin that will be used to make rate adjustments under the plan.


Promotional payment: For a variable-rate plan, any minimum payment applicable for a promotional period that:

- Is not derived by applying the index and margin to the outstanding balance when such index and margin will be used to determine other minimum payments under the plan; and
- Is less than other minimum payments under the plan derived by applying a reasonably current index and margin that will be used to determine the amount of such payments, given an assumed balance.
- For a plan other than a variable-rate plan, any minimum payment applicable for a promotional period if that payment is less than other payments required under the plan given an assumed balance.

Promotional Period: A period of time, less than the full term of the loan, that the promotional rate or promotional payment may be applicable.

Credit Card Solicitations and Applications (1026.60)

Credit card advertisements, solicitations and applications must comply with the same advertisements rules for open-end credit as found in 1026.16. In addition, credit card solicitations and applications have disclosure requirements under 1026.60. The required disclosures must be disclosed in tabular format as described in 1026.60(2) and substantially similar to Model Form G-10 found in Appendix G of Regulation Z.



Key Terms

Solicitation: An offer by the card issuer to open a credit or charge card account that does not require the consumer to complete an application.

Similar to account opening disclosures

Content of Disclosures

1. Annual percentage rate;
 - a. Information on variable rate, discounted initial rate, premium initial rate, penalty rates, creditworthiness rates, state varied rates
2. Fees for issuance or availability;
 - a. Annual or periodic fees that may be imposed
3. Fixed finance charge; minimum interest charge in excess of \$1.00;
4. Transaction charges;
5. Grace period ;
 - a. Date by which or the period within which any credit extended for purchase may be repaid without incurring a finance charge
6. Balance computation method;
7. Statement on charge card payments due when the periodic statement is received;
8. Cash advance fee;
9. Late payment fee;
10. Over-the-limit fee;
11. Balance transfer fee;
12. Returned-payment fee;
13. Required insurance, debt cancellation or debt suspension coverage;
14. Available credit; and
15. Web site reference to the Bureau's credit card website.

G-17(B) Account-Opening Sample

Interest Rates and Interest Charges	
Annual Percentage Rate (APR) for Purchases	8.99% This APR will vary with the market based on the Prime Rate.
APR for Balance Transfers	15.99% This APR will vary with the market based on the Prime Rate.
APR for Cash Advances	21.99% This APR will vary with the market based on the Prime Rate.
Penalty APR and When it Applies	28.99% This APR may be applied to your account if you: <ol style="list-style-type: none"> 1) Make a late payment; 2) Go over your credit limit twice in a six-month period; 3) Make a payment that is returned; or 4) Do any of the above on another account that you have with us. <p>How Long Will the Penalty APR Apply?: If your APRs are increased for any of these reasons, the Penalty APR will apply until you make six consecutive minimum payments when due.</p>
Paying Interest	Your due date is at least 25 days after the close of each billing cycle. We will not charge you any interest on purchases if you pay your entire balance by the due date each month. We will begin charging interest on cash advances and balance transfers on the transaction date.
Minimum Interest Charge	If you are charged interest, the charge will be no less than \$1.50.
For Credit Card Tips from the Consumer Financial Protection Bureau	To learn more about factors to consider when applying for or using a credit card, visit the website of the Consumer Financial Protection Bureau at http://www.consumerfinance.gov/learnmore

Fees	
Annual Fee	None
Transaction Fees	
• Balance Transfer	Either \$5 or 3% of the amount of each transfer, whichever is greater (maximum fee: \$100).
• Cash Advance	Either \$5 or 3% of the amount of each cash advance, whichever is greater.
• Foreign Transaction	2% of each transaction in U.S. dollars.
Penalty Fees	
• Late Payment	Up to \$35 .
• Over-the-Credit Limit	Up to \$35 .
• Returned Payment	Up to \$35 .
Other Fees	
• Required Account Protector Plan	\$0.79 per \$100 of balance at the end of each statement period. See back for details.

How We Will Calculate Your Balance: We use a method called "average daily balance (including new purchases)." See your account agreement for more details.

Billing Rights: Information on your rights to dispute transactions and how to exercise those rights is provided in your account agreement.

Delivery Method of Solicitations and Applications

Mail and electronic delivery

For credit card solicitations and applications that are mailed to consumers or provided in electronic form, disclosures must be accurate as of the time the disclosure are mailed or sent electronically.

An accurate APR is one in effect within 60 days before mailing or 30 days before sending electronically.

Telephone

The card issuer must disclose orally, numbers 1-7 & 14 as listed in the content requirements above, as accurate as of the time they are given, unless:

1. A fee is not imposed for the issuance of the account, or
2. The consumer has the right to reject the account, if a fee is charged for the issuance of the account; AND
3. The card issuer discloses, in writing, within 30 days after the consumer requests the account, all required disclosures and the fact that the consumer has the right to reject the plan and is not obligated to pay the fee.

General Public

"Take One"
Applications

Certain disclosures are required for credit card solicitations and applications contained in a catalog, magazine, or other generally available publication. The card issuer may choose to disclose information in one of the following three ways:

1. **Disclosure of credit information:** The card issuer may disclose all information as required and include the date the required information was printed, including a statement that the required information was accurate as of that date and is subject to change, and a toll-free telephone number or mailing address that the consumer may use to contact the card issuer for any changes.
2. **No disclosure of credit information:** The card issuer may choose to disclose none of the information required and in turn include a statement that there are costs associated with the use of the card and a toll-free telephone number or mailing address that the consumer may use to contact the card issuer to request specific information.
3. **Prompt response to requests for information:** The card issuers must disclose all required information to the consumer within 30 days of a request for information but no later than the delivery of the credit card.

Closed-End Credit (1026.24)

Regulation Z section 1026.24 provides rules for advertisements in relation to closed-end credit. Disclosure required by this section must be made **clearly and conspicuously**. There are no specific rules for the format, size or placement of the disclosures, however the commentary of 1026.24(b) specifies what is meant by clearly and conspicuously for certain types of advertisements.

Rate of Finance Charge

If an advertisement states a rate of finance charge, it shall state the rate as an **“annual percentage rate,”** using that term or **“APR”**.

If the **annual percentage rate may be increased** after consummation, the advertisement shall state that fact.

If an advertisement is for credit not secured by a dwelling, the **advertisement shall not state any other rate**, except that a *simple annual rate or periodic rate* that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

If an advertisement is for credit secured by a dwelling, the **advertisement shall not state any other rate**, except that a *simple annual rate* that is applied to an unpaid balance may be stated in conjunction with, but not more conspicuously than, the annual percentage rate.

Trigger Terms for Closed-End Credit

If any of the following **“trigger terms”** appear in an advertisement, additional disclosure language must appear in the advertisement (if applicable):

Triggering Terms	Examples	Additional
The amount of any down payment	<ul style="list-style-type: none"> Only 5 percent down As low as \$100 down Total move-in costs of \$800 	<ul style="list-style-type: none"> The amount or percentage of any down payment; The terms of repayment, which reflect the repayment obligations over the full term of the loan, including any balloon payment; and The “annual percentage rate using that term and disclose (if applicable) that the APR may be increased after consummation
The number of payments or period of repayment	<ul style="list-style-type: none"> 48-month payment term 30-year mortgage Repayment in as many as 36 monthly installments 	
The amount of any payment	<ul style="list-style-type: none"> Payable in installments of \$103 \$25 weekly \$500,000 loan for just \$1,650 per month 	
The amount of any finance charge	<ul style="list-style-type: none"> \$500 total cost of credit \$2 monthly carrying charge \$50,000 mortgages, 2 points to the borrower 	

Closed-end Loans Secured by a Dwelling (1026.24(f))

The advertising requirements for loans secured by a dwelling must follow the same disclosure requirements as closed-end credit plans plus a few additional requirements. These additional requirements **exclude television and radio advertisements** (rules found in 1026.24(g)).

Trigger Term Rules for Closed-end Loans Secured by a Dwelling

1. Disclosure of Rates

- a. If an advertisement states a **simple annual rate of interest and more than one simple annual rate of interest will apply over the term of the loan**, the following must be disclosed:
 - i. **Each simple annual rate of interest** that will apply. In variable-rate transactions, a rate determined by adding an index and margin shall be disclosed based on a reasonably current index and margin;
 - ii. The **period of time** during which each simple annual rate of interest will apply; *and*
 - iii. The **annual percentage rate** for the loan.

2. Disclosure of Payments

- a. If an advertisement states the amount of any payment, the following must be disclosed:
 - i. The **amount of each payment** that will apply over the term of the loan including **any balloon payment**. In variable-rate transactions, payments that will be determined based on the application of the sum of an index and margin shall be disclosed based on a **reasonably current index and margin**;
 - ii. The **period of time** during which each payment will apply; *and*
 - iii. In an advertisement for credit secured by a **first lien** on a dwelling, the fact that the payments do **not include** amounts for **taxes and insurance premiums**, if applicable, and that the actual payment obligation will be greater.

3. Tax Implications

- a. If an advertisement for a loan secured by the **consumer's principal dwelling** states that the advertised extension of credit may exceed the **fair market value of the dwelling**, the following must be disclosed:

- i. The interest on the portion of the credit extension that is greater than the fair market value of the dwelling is **not tax deductible for Federal income tax purposes**; *and*
- ii. The consumer should **consult a tax adviser** for further information regarding the deductibility of interest and charges.

Prohibited Acts or Practices

The following are acts or practices that are prohibited in advertisement for credit secured by a dwelling:

- The use of the word **“fixed”** to refer to rates, payments, or the credit transaction (variable-rate or payment increases), unless certain phrases are used as described in 1026.24(i)(1).
- **Misleading comparisons** between **actual or hypothetical credit payments or rates and any payment or simple annual rate that will be available** under the advertised product for a period less than the full term of the loan unless certain conditions are met as described in 1026.24(i)(2).
- **Misrepresentation about government endorsements** such as “government loan program” unless the advertisement is for a FHA loan, VA loan, or similar loan program actually endorsed by the government.
- Using the **name of the consumer’s current lender** in an advertisement that is not sent by or on behalf of the consumer’s current lender unless certain disclosure requirements are met as described in 1026.24(i)(4).
- **Misleading claims of debt elimination.**
- Using the term **“counselor”** in an advertisement to refer to a for-profit mortgage broker or mortgage banks, its employees or persons working for the broker or bank.
- **Mixed foreign-language** advertisements.



Test Your Knowledge

The following page is an advertisement for a real estate loan. Circle the trigger terms that exist and then notate what required disclosures may be missing from the advertisement and how it should be written in order to be compliant.



HOME LOAN RATES AS LOW AS 4.25% APR

20 & 30 year terms

CALL BARB WINTERS
NMLS# 546871



Equal Housing Lender



Loans are originated by First State Bank and Trust. APR = Annual Percentage Rate. 20% downpayment required for 20 and 30 year terms. Consult your tax advisor for further information related to the deductibility of interest and charges.

Fair Credit Reporting Act (FCRA)

Prescreening Rules (15 USC 1681b)


Users of consumer reports, such as banks, may obtain prescreened consumer reports to make **firm offers of credit or insurance to consumers**, unless the consumers have elected to opt out of being included on the prescreened lists.

Prescreening occurs when a bank obtains a list from a consumer reporting agency of consumers who meet certain **predetermined creditworthiness criteria** and who have not elected to be excluded from such lists. The **lists may only contain the following information:**

1. **Name and address** of a consumer
2. An identifier that is not unique to the consumer and that is used by the person solely for the purpose of **verifying the identity** of the consumer; and
3. Other information pertaining to a consumer that **does not identify the relationship or experience of the consumer with respect to a particular bank or other entity.**

As defined in Section 603(1), banks using these prescreened lists must make a **“firm offer of credit or insurance”** to each person on the list.

A bank is not required to grant credit or insurance if the consumer is not creditworthy or insurable, or cannot furnish collateral, provided that the underwriting criteria are **determined in advance**, and applied consistently.

 **Example**

A bank obtains a prescreened list from a consumer reporting agency of everyone in Sharp County with a current home mortgage loan and a credit score of 700 or higher. The bank uses this list to market a HELOC to this group of selected consumers. The bank’s additional non-consumer report criteria include a maximum debt-to-income (DTI) ratio of 50% or less. If a consumer from the list responds to the offer, but already has a DTI of 60%, the bank does not have to grant the credit.

Provide Consumer Notice

The FCRA contains the basic requirement to provide prescreened notices to consumers at the time the prescreened offer(s) are made. Beginning August 1, 2005, 16 CFR 642 and 698 of the FTC regulations require a **“short” notice** and a **“long” notice** of the **prescreened opt out information** be given with each written solicitation made to consumers using prescreened consumer reports.

The FTC developed **Model Prescreened Opt Out Notices**, which are contained in Appendix A to 16 CFR 698 of the FTC’s regulations. Appendix A contains complete sample notices and supplemental instructions.

Short Notice

The short notice shall state that the consumer has the right to opt out of receiving prescreened solicitations, and shall provide the toll-free number the consumer can call to exercise that right. The short notice also shall direct the consumer to the existence and location of the long notice, and shall state the heading for the long notice. The short notice shall not contain any other information. It must be on the front side of the first principal page, at least 12 point font, and refer to the long form notice.

Model Language

You can choose to stop receiving a “prescreened” offer of [credit or insurance] from this and other companies by calling toll-free [toll-free number]. See PRESCREEN & OPT_OUT NOTICE [on other side or other location] for more information about prescreened offers.

Long Notice

The long notice shall state the following:

1. Information contained in the consumer's consumer report was used in connection with the transaction;
2. The consumer received the offer of credit or insurance because the consumer satisfied the criteria for credit worthiness or insurability under which the consumer was selected for the offer;
3. If applicable, the credit or insurance may not be extended if, after the consumer responds to the offer, the consumer does not meet the criteria used to select the consumer for the offer or any applicable criteria bearing on credit worthiness or insurability or does not furnish any required collateral;
4. The consumer has a right to prohibit information contained in the consumer's file with any consumer reporting agency from being used in connection with any credit or insurance transaction that is not initiated by the consumer; and
5. The consumer may exercise the right to prohibit information as described in the previous bullet by notifying a notification system established for such purpose by the CRA.

Model Language

This “prescreened” offer of [credit or insurance] is based on information in your credit report indicating that you meet certain criteria. This offer is not guaranteed if you do not meet our criteria [including providing acceptable property as collateral]. If you do not want to receive prescreened offers of [credit or insurance] from this and other companies, call the consumer reporting agencies [or name of consumer reporting agency] toll-free [toll-free number]; or write [consumer agency name and mailing address].



For banks electing to send unsolicited prescreened offers, the following considerations should be made before commencing with the offer:

- * Establish criteria used for prescreened offers before requesting prescreened list from a consumer reporting agency. Document criteria clearly.
- * Make certain written solicitations contain the required disclosures of the consumers' right to opt out of the prescreened solicitations and comply with all requirements applicable at the time of the offer.
- * Ensure that if a consumer responds to a firm offer, but no longer satisfies the predetermined credit criteria, the bank documents such information in the credit file. *Note:* The bank is not required to issue the credit on original terms.
- * Retain prescreened lists and predetermined credit criteria for a period of three years, beginning on the date that the offer was made to the consumer.

Sharing Information with Affiliates (12 CFR 1022)

The bank may not use eligibility information about a consumer that it receives from an affiliate to make a solicitation for marketing purposes to the consumer, unless conditions are met by the bank or specific action is taken by the consumer. The details of the rules are discussed in the Fair Credit Reporting Act chapter of the Lending Compliance Manual.

Fair Housing Act

24 CFR 109 provides advertising rules in relation to the Fair Housing Act as prescribed by HUD, however those rules have since been removed from the Act. In response, the regulatory agency have prescribed their own set of rules. The rules can be found within the regulatory agencies exam manuals.

“Doghouse” Logo



If a printed advertisement of a loan for the purpose of purchasing, constructing, improving, repairing, or maintaining a dwelling or any loan secured by a dwelling is used, determine whether the Equal Housing Lender or Equal Housing Opportunity logo-type and legend are appropriately used.

The Equal Housing Lender (symbol of house) with legend (the phrase “Equal Housing Lender”) or the Equal Housing Opportunity (symbol of house) with the legend (the phrase “Equal Housing Opportunity”) must be used together, respectively.

This requirement may be satisfied in an oral advertisement by stating “Equal Housing Lender” or “Equal Housing Opportunity.”

Regulation DD – Truth in Savings (12 CFR 1030.8)

Section 1030.8 contains account advertising requirements for deposit accounts, including overall general rules and rules for special account features. In addition, the section describes advertising involving certain types of media and in-house posters that are exempt from Regulation DD’s advertising requirements.

Definition

An advertisement for purposes of Reg DD is a commercial message, appearing in any medium, that promotes directly or indirectly the availability or terms of, or a deposit in, a new account.



Examples of advertisements include:

- Telephone solicitations
- ATM on-screen messages
- Messages on a computer screen in the bank’s lobby
- Newspaper
- Magazine
- Promotional flyer
- Radio
- Television



Exclusions include:

- Rate sheets in a newspaper, periodical, or trade journal—unless a fee is paid by the bank
- In-person discussions with consumer about the terms for specific account
- Existing account information
- A deposit account agreement

Misleading or inaccurate advertisements

Advertisements must not be misleading or inaccurate or misrepresent a bank's account agreement. Specific rules apply to the following:

Permissible Rates

If an advertisement states a rate of return, it shall state the rate as an "annual percentage yield" using that term. The abbreviation "APY" may be used provided the term "annual percentage yield" is stated at least once in the advertisement. The advertisement shall not state any other rate, except that the "interest rate," using that term, may be stated in conjunction with, but not more conspicuously than, the annual percentage yield to which it relates.

1030.3(f) provides rules for rounding and accuracy of the APY.

- **Rounding:** The APY, the APY Earned, and the Interest Rate must be rounded to the nearest one-hundredth of one percentage point (.01%) and expressed to two decimal places.
- **Accuracy:** The APY and the APY Earned will be considered accurate if not more than one-twentieth of one percentage point (.05%) above or below the APY and APY Earned determined according to Appendix A calculations.

An advertisement for a tiered-rate account that states an annual percentage yield must also state the annual percentage yield for each tier, along with corresponding minimum-balance requirements.

An advertisement for a stepped-rate account that states an interest rate must state all the interest rates and the time period that each rate is in effect.

The term "Annual Percentage Rate" or "APR" may not be used in advertisements.

Profit

The word "profit" must not be used in referring to interest paid on an account.

Fees

A bank may not advertise an account as “free” or “no cost”, if the following maintenance and activity fees may occur on the account:

1. Any fee imposed when a minimum balance requirement is not met, or when consumers exceed a specified number of transactions.
2. Transaction and service fees that consumers reasonably expect to be imposed on a regular basis.
3. A flat fee, such as a monthly service fee.
4. Fees imposed to deposit, withdraw, or transfer funds, including per-check or per-transaction charges.

A bank may advertise an account is “free” so long as the following are met:

1. The fees charged are not included as maintenance fees or activity fees. Which include:
 - a. Check printing fees
 - b. Balance inquiry fees
 - c. Stop payment fees and fees associated with checks returned unpaid
 - d. Dormant account fees
 - e. Fees for ATM and electronic transfer services not required to obtain an account
 - f. Any fees that are not required to be disclosed under 1030.4(b)(4)
2. If an account (or specified service) is free only for a limited time so long as the time period is stated.

Overdrafts

Banks that promote the payment of overdrafts in an advertisement shall include the disclosures required by 1030.11 (discussed later). The following are examples of advertisements that would be misleading regarding overdraft services:

- Representing an overdraft service as a “line of credit” unless the service is subject to Regulation Z requirements.
- Misrepresenting when an overdraft will be honored and how soon the account must be made positive again.

Trigger Terms (1030.8(c))

Regulation DD provides rules as to when additional disclosures are required if a “trigger term” appears within an advertisement. There are only two primary triggers within Regulation DD that require additional disclosures: **APY and Bonuses**.

Stated APY

If the **annual percentage yield** is stated in an advertisement the following disclosures are required:

2. **Time annual percentage yield is offered.** The **period of time** the annual percentage yield will be offered, or a statement that the annual percentage yield is **accurate as of a specified date**.
3. **Minimum balance.** The **minimum balance required to obtain** the advertised annual percentage yield. For tiered-rate accounts, the minimum balance required for **each tier** shall be stated in close proximity and with equal prominence to the applicable annual percentage yield.
4. **Minimum opening deposit.** The **minimum deposit required to open the account**, if it is greater than the minimum balance necessary to obtain the advertised annual percentage yield.
5. **Effect of fees.** A statement that **fees could reduce the earnings** on the account.
6. **Variable rates (if applicable).** For variable-rate accounts, a statement that the **rate may change** after the account is opened.

For time accounts, in addition to the above:

1. **Time requirements.** The **term** of the account.
2. **Early withdrawal penalties:** A statement that a **penalty** will or may be imposed for early withdrawal.
3. **Required interest payouts.** For non-compounding time accounts with a stated maturity **greater than one year that do not compound interest on an annual or more frequent basis, that require interest payouts at least annually**, and that disclose an APY determined in accordance with Section E of Appendix A of Regulation DD, a statement that **interest cannot remain on deposit and that payout of interest is mandatory**.



Oral Response to Inquiries - 1030.3(e)

Banks are not required to provide rate information orally in response to a consumer's inquiry about interest rates payable on its accounts. However, if the bank chooses to do so, the employee shall state the “annual percentage yield” or “APY”. The interest rate may be stated in addition to the annual percentage yield. No other rate may be stated (i.e. periodic rate).

An oral response does not trigger any of the additional disclosures under the regulation (APY or bonus).

The oral response rules do not apply to responses about rate information for existing accounts held by the consumer at the bank.

Stated Bonus

A bonus means a premium, gift, award, or other consideration worth more than \$10 (whether in the form of cash, credit, merchandise, or any equivalent) given or offered to a consumer during a calendar year in exchange for opening, maintaining, or renewing and account, or increasing an existing account balance. The term does not include interest, other considerations worth \$10 or less given during a year, the waiver or reduction of a fee, or the absorption of expenses.

If a bonus is stated in an advertisement the following disclosures are required, as applicable:

1. The “annual percentage yield,” using that term (which then triggers the disclosure requirements for stating the APY);
2. The time requirement to obtain the bonus;
3. The minimum balance required to obtain the bonus;
4. The minimum balance required to open the account, if it is greater than the minimum balance necessary to obtain the bonus; and
5. When the bonus will be provided.



If an electronic advertisement (such as an advertisement appearing on a website) displays a trigger term, the advertisement must clearly refer the consumer to the location where the additional required information begins.

Partial Exemption for Certain Advertisements

Media Exemption

If an advertisement is made through,

- broadcast or electronic media (tv or radio – exemption not applicable to website or e-mail),
- outdoor media (billboards), or
- automated telephone response machines (exemption not applicable to Tiered-Rate Accounts),

the following disclosures are not required as previously listed:

- Variable rates
- Time APY is offered
- Minimum opening deposit
- Effect of fees
- Early withdrawal penalties
- Minimum balance required to receive bonus
- When the bonus will be provided

Indoor Sign Exemption

Signs inside the bank premise are not subject to the following requirements:

- Permissible rate requirements
- APY requirements
- Bonus requirements

However, if a sign states a rate of return, it must:

1. State the rate as an “annual percentage yield,” using that term or the term “APY.” The sign shall not state any other rate, except that the interest rate may be stated in conjunction with the annual percentage yield to which it relates; and
2. Contain a statement advising consumers to contact an employee for further information about applicable fees and terms.



Test Your Knowledge

The following page is an advertisement for a certificate of deposit. Circle the trigger terms that exist and then notate what required disclosures may be missing from the advertisement and how it should be written in order to be compliant.



*12 Month CD at 4.00% APY**


APY=ANNUAL PERCENTAGE YIELD. NEW MONEY ONLY. RATE ACCURATE AS OF 5.17.2019. EARLY WITHDRAWAL PENALTY MAY APPLY.

Member FDIC

Disclosures in Advertisements for Automated Overdraft Services (1030.11(b))

In addition to the general requirement that advertisements not be misleading, a bank that promotes the payment of overdrafts in an advertisement must also disclose in a clear and conspicuous manner:

1. The fee or fees for the payment of each overdraft;
2. The categories of transactions for which a fee for paying an overdraft may be imposed;
3. The time period by which the consumer must repay or cover any overdraft; and
4. The circumstances under which the bank will not pay an overdraft.

 ATM screens and automated telephone response machines do not require the categories of transaction for which a fee may be imposed and the circumstances in which an overdraft will not be paid.

Certain communications about the payment of overdrafts are not subject to additional advertising disclosures as listed above when:

1. An advertisement promoting a service where the bank's payment of overdrafts will be agreed upon in writing and subject to Regulation Z (12 CFR part 1026);
2. A communication by a bank about the payment of overdrafts in response to a consumer-initiated inquiry about deposit accounts or overdrafts. Providing information about the payment of overdrafts in response to a balance inquiry made through an automated system, such as a telephone response machine, ATM, or a bank's Internet site, is not a response to a consumer-initiated inquiry for purposes of this paragraph;
3. An advertisement made through broadcast or electronic media, such as television or radio;
4. An advertisement made on outdoor media, such as billboards;
5. An ATM receipt;
6. An in-person discussion with a consumer;
7. Disclosures required by federal or other applicable law;
8. Information included on a periodic statement or a notice informing a consumer about a specific overdrawn item or the amount the account is overdrawn;
9. A term in a deposit account agreement discussing the bank's right to pay overdrafts;

10. A **notice** provided to a consumer, such as at an ATM, that completing a requested transaction may trigger a fee for overdrawing an account, or a general notice that items overdrawing an account may trigger a fee;
11. **Informational or educational materials** concerning the payment of overdrafts if the materials do not specifically describe the bank's overdraft service;
12. An **opt-out or opt-in notice** regarding the bank's payment of overdrafts or provision of discretionary overdraft services; or
13. An **indoor sign** provided it contains a clear and conspicuous statement that fees may apply and that consumers should contact an employee for further information about applicable fees and terms.

Staff Commentary Relating to Overdraft Protection Advertising 1030.11(b)

1. **Examples of banks promoting the payment of overdrafts.** A bank would be required to include the advertising disclosures in 1030.11(b)(1):
 - **Promotes the bank's policy or practice of paying overdrafts** (unless the service would be subject to Regulation Z). This includes advertisements using print media such as newspapers or brochures, telephone solicitations, electronic mail, or messages posted on an Internet site. See 1030.11(b)(2) for communications that are not subject to the additional advertising disclosures.
 - Includes a message on a **periodic statement informing the consumer of an overdraft limit or the amount of funds available for overdrafts.** For example, a bank that includes a message on a periodic statement informing the consumer of a \$500 overdraft limit or that the consumer has \$300 remaining on the overdraft limit, is promoting an overdraft service.
 - Discloses an overdraft limit or includes the dollar amount of an overdraft limit in a **balance disclosed on an automated system**, such as a telephone response machine, ATM screen or the bank's Internet site. See 1030.11(b)(3).
2. **Transfer services.** The overdraft services covered by 1030.11(b)(1) **do not include a service providing for the transfer of funds** from another deposit account of the consumer to permit the payment of items without creating an overdraft, even if a fee is charged for the transfer.
3. **Electronic media.** The exception for advertisements made through broadcast or electronic media, such as television or radio, **does not apply to advertisements posted on a bank's Internet site, on an ATM screen**, provided on telephone response machines, or sent by electronic mail.

4. **Fees.** The fees that must be disclosed under 1030.11(b)(1) include per-item fees as well as interest charges, daily or other periodic fees, and fees charged for maintaining an account in overdraft status, whether the overdraft is by check or by other means. The fees also include fees charged when there are insufficient funds because previously deposited funds are subject to a hold or are uncollected. The fees do not include fees for transferring funds from another account to avoid an overdraft, or fees charged when the bank has previously agreed in writing to pay items that overdraw the account and the service is subject to Regulation Z.
5. **Categories of transactions.** An exhaustive list of transactions is not required. Disclosing that a fee may be imposed for covering overdrafts “created by check, in-person withdrawal, ATM withdrawal, or other electronic means” would satisfy the requirements of 1030.11(b)(1)(ii) where the fee may be imposed in these circumstances. See comment 4(b)(4)-5.
6. **Time period to repay.** If a bank reserves the right to require a consumer to pay an overdraft immediately or on demand instead of affording consumers a specific time period to establish a positive balance in the account, a bank may comply with 1030.11(b)(1)(iii) by disclosing this fact.
7. **Circumstances for nonpayment.** A bank must describe the circumstances under which it will not pay an overdraft. It is sufficient to state, as applicable: “Whether your overdrafts will be paid is discretionary and we reserve the right not to pay. For example, we typically do not pay overdrafts if your account is not in good standing, or you are not making regular deposits, or you have too many overdrafts.”
8. **Advertising an account as “free.”** If the advertised account-related service is an overdraft service subject to the requirements of 1030.11(b)(1), banks must disclose the fee or fees for the payment of each overdraft, not merely that a cost is associated with the overdraft service, as well as other required information.

Privacy of Consumer Financial Information

Limit on Providing Account Number Information for Marketing Purposes (1016.12)

The bank must not, directly or through an affiliate, disclose, other than to a consumer reporting agency, an account number or similar form of access number or access code for a consumer's credit card account, deposit account, share account, or transaction account to any nonaffiliated third-party for use in telemarketing, direct mail marketing, or other marketing through electronic mail to the consumer.

Exceptions

The rules do not apply if the bank discloses an account number or similar form of access number or access code:

1. To the bank's agent or service provider solely in order to perform marketing for its own products or services, as long as the agent or service provider is not authorized to directly initiate charges to the account; or
2. To a participant in a private label credit card program or an affinity or similar program where the participants in the program are identified to the customer when the customer enters into the program.

The Children's Online Privacy Protection Act (COPPA) (16 CFR 312)

COPPA was enacted to prohibit unfair and deceptive acts or practices in connection with the collection, use, or disclosure of personal information from children under the age of 13 in an online environment. Generally, the Act requires operators of Web sites or online services directed to children, or that have actual knowledge that they are collecting or maintaining personal information from children online, to provide certain notices and obtain parental consent to collect, use, or disclose information about children.

Operators must:

1. Provide notice on the Web site or online service of what information it collects from children, how it uses such information, and its disclosure practices for such information – specific requirements must be met;
2. Make reasonable efforts, taking into account available technology, to ensure that a parent of a child receives direct notice of the operator's practices with regard to the collection, use, or disclosure of personal information from children, including notice of any material change in the collection, use, or disclosure practices to which the parent has previously consented – content requirements exist;
3. Obtain verifiable parental consent prior to any collection, use, and/or disclosure of personal information from children – section 312.5 provides satisfactory means of verifiable consent as well as a safe harbor;

4. Provide a reasonable means for a parent to review the personal information collected from a child and to refuse to permit its further use or maintenance – requirements of what must be provided are included in 312.6;
5. Not condition a child's participation in a game, the offering of a prize, or another activity on the child disclosing more personal information than is reasonably necessary to participate in such activity; and
6. Establish and maintain reasonable procedures to protect the confidentiality, security, and integrity of personal information collected from children.

Controlling the Assault of Non-Solicited Pornography and Marketing Act of 2003 (CAN-SPAM) (15 USC 7701 or 12 CFR 316)

The CAN-SPAM laws were enacted to reduce spam and unsolicited pornography by prohibiting senders of unsolicited “commercial e-mail messages” from disguising the source and content of their messages and give consumers the choice to cease receiving a sender’s unsolicited commercial e-mail messages. The rules include:

Key Terms

Commercial E-mail Message:

Any e-mail message in which the primary purpose is to advertise or promote, for a commercial purpose, a commercial product or service (including content on the Internet). An e-mail message would not be considered a commercial e-mail message solely because such message includes a reference to a commercial entity that serves to identify the sender or a reference or link to an Internet Web site operated for a commercial purpose.

1. Prohibits the use of false or misleading transmission information such as:
 - a. False or misleading header information;
 - b. A “from” line that does not accurately identify any person who initiated the message; and
 - c. Inaccurate or misleading identification of a protected computer used to initiate the message because the person initiating the message knowingly uses another protected computer to relay or retransmit the message for purposes of disguising its origin.
2. Prohibits the use of deceptive subject headings.
3. Requires a functioning e-mail return address or other Internet-based response mechanism.
4. Requires that commercial e-mail messages be discontinued within 10 business days after receipt of optout notification from recipient.
5. Requires a clear and conspicuous identification that the message is an advertisement or solicitation; clear and conspicuous notice of the opportunity to decline to receive further commercial e-mail messages from the sender; and a valid physical postal address of the sender.



Key Terms

Harvesting: Obtaining e-mail addresses using an automated means from an Internet Web site or proprietary online service operated by another person, where such service/person, at the time the address was obtained, had provided a notice stating that the operator of such Web site or online service will not give, sell, or otherwise transfer electronic addresses.

Discretionary Attacks: Obtaining e-mail addresses by using an automated means that generates possible e-mail addresses by combining names, letters, or numbers into numerous permutations.

6. Prohibits address harvesting and dictionary attacks.
7. Prohibits hijacking (the use of automated means to register for multiple e-mail accounts or online user accounts from which to transmit, or enable another person to transmit, a commercial e-mail message that is unlawful).
8. Prohibits any person from knowingly relaying or retransmitting a commercial e-mail message that is unlawful.
9. Requires warning labels (in the subject line and within the message body) on commercial e-mail messages containing sexually oriented material.
10. Prohibits a person from promoting, or allowing the promotion of, that person's trade or business, or goods, products, property, or services in an unlawful commercial e-mail message.

Telephone Consumer Protection Act (TCPA)

The FCC regulations impose financial penalties on all commercial telemarketers for calling phone numbers on the "Do-Not-Call" registry. For those numbers not on the registry, the regulations set a maximum rate on the number of abandoned calls and require telemarketers to transmit caller ID information. These rules apply to banks.

Definitions

Established Business Relationship: A prior or existing relationship between a person or entity and a residential subscriber based on the subscriber's purchase or transaction with the entity within the 18 months immediately preceding the date of the telephone call or on the basis of the subscriber's inquiry or application regarding products or services offered by the entity within the three months immediately preceding the date of the call, and neither party has previously terminated the relationship. An individual may reasonably expect that an affiliate is included in an established business relationship based on products offered or the identity of the affiliate.

Telemarketer: The person or entity that initiates a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person.

Telephone Solicitation: The initiation of a telephone call or message for the purpose of encouraging the purchase or rental of, or investment in, property, goods, or services, which is transmitted to any person. Telephone solicitation does not include a call or message to any person with that person's permission, to any person with whom the caller has an established business relationship, or on behalf of a tax-exempt nonprofit organization.

General Rules

The regulations address the following:

1. The FCC's adoption of a national "Do-Not-Call" registry that expands coverage to entities regulated by the FTC.
2. No seller or entity telemarketing on behalf of the seller can initiate a telephone solicitation to a residential telephone subscriber who has registered his or her telephone number on the national "Do-Not-Call" registry.
 - a. A safe harbor exists for an inadvertent violation of this requirement if the telemarketer can demonstrate that the violation was an error and that its routine practices include:
 - i. Written procedures;
 - ii. Training of personnel;
 - iii. Maintenance of a list of telephone numbers excluded from contact;
 - iv. Use of a version of the national "Do-Not Call" registry obtained no more than three months prior to the date any call is made (with records to document compliance); and
 - v. Process to ensure that it does not sell, rent, lease, purchase, or use the do-not-call database in any manner except in compliance with regulations.
3. Companies must maintain company-specific do-not-call lists reflecting the names of customers with established business relationships who have requested to be excluded from telemarketing. Such requests must be honored for five years.
4. Telemarketing calls can only be made between the hours of 8 a.m. and 9 p.m. (local time at the called party's location).
5. All telemarketers must comply with limits on "abandoned calls" and employ other consumer-friendly practices when using automated telephone-dialing equipment.

6. All prerecorded messages, whether delivered by automated dialing equipment or not, must identify the name of the entity responsible for initiating the call, along with the telephone number of that entity that can be used during normal business hours to ask not to be called again.
7. All telemarketers must transmit caller ID information, when available, and must refrain from blocking any such transmission(s) to the consumer.
8. Unsolicited fax transmissions must be preceded by the advertiser's receipt of the express written permission and signature of the intended recipient, unless there is an "existing business relationship."

Social Media & Compliance

Social media is an increasingly mainstream technology and a proven way of conducting and building business. More and more customers of all ages are using social channels to engage with their bank, making social media a must-have component of a successful business strategy. From a compliance standpoint, social media is fundamentally more difficult than other communication channels because the messages are often public. The FFIEC published guidelines to emphasize the need for banks to have methodologies for monitoring, responding to, and reporting on social channels in a timely manner.

The guidance can be found at https://www.ffiec.gov/press/PDF/2013_Dec%20Final%20SMG%20attached%20to%2011Dec13%20press%20release.pdf.

Summary of guidance:

- A bank should have a risk management program that allows it to identify, measure, monitor, and control the risks related to social media. The size and complexity of the risk management program should be commensurate with the breadth of the bank's involvement in this medium. The guidance provides the components a risk management program should include.
- Reputation risk is the risk arising from negative public opinion. Activities that result in dissatisfied consumers and/or negative publicity could harm the reputation and standing of the bank, even if the bank has not violated any law. Privacy and transparency issues, as well as other consumer protection concerns, arise in social media environments. Therefore, a bank engaged in social media activities is expected to be sensitive to, and properly manage, the reputation risks that arise from those activities.
 - Banks should have appropriate policies in place to monitor and address in a timely manner the fraudulent use of the bank's brand, such as through phishing or spoofing attacks.
 - Working with third-parties to provide social media services can expose banks to substantial reputation risk. A bank should regularly monitor the information the third-party places on social media sites.

- The bank should have procedures to address risks from occurrences such as members of the public posting confidential or sensitive information —for example, account numbers — on the bank's social media page or site.
- Banks should be aware that employees' communications via social media may be viewed by the public as reflecting the bank's official policies or may otherwise reflect poorly on the bank, depending on the form and content of the communications. Banks should take steps to address these risks, such as establishing policies and training to address employee participation in social media representing the bank.
- The following laws and regulations may be relevant to a bank's social media activities. This list is not all-inclusive. Each bank should ensure that it periodically evaluates and controls its use of social media to ensure compliance with all applicable federal, state, and local laws and regulations, and incorporation of guidance, as appropriate.
 - **Regulation DD – The Truth in Savings Act:** Disclosures about fees, APY, interest rate, and other terms.
 - **Fair Lending Laws (ECOA & FHA):** Prohibits banks from making any oral or written statement in advertising or other marketing to applicants or prospective applicants that would discourage, on a prohibited basis, a reasonable person from making or pursuing an application.
 - **Regulation Z – The Truth in Lending Act:** Any social media communication in which a bank advertises credit products must comply with Regulation Z's advertising provisions. For electronic advertisements, such as those delivered via social media, Regulation Z permits providing the required information on a table or schedule that is located on a different page from the main advertisement if that table or schedule is clear and conspicuous and the advertisement clearly refers to the page or location.
 - **RESPA:** “Section 8” rules are prohibited in relation to social media.
 - **Fair Debt Collection Practices:** The FDCPA generally prohibits debt collectors from publicly disclosing that a consumer owes a debt. Using social media to inappropriately contact consumers, or their families and friends, may violate the restrictions on contacting consumers imposed by the FDCPA. Communicating via social media in a manner that discloses the existence of a debt or to harass or embarrass consumers about their debts or making false or misleading representations may violate the FDCPA.
 - **UDAAP:** A bank should not engage in any advertising or other practice via social media that could be deemed "unfair", "deceptive", or "abusive".
 - **FDIC Membership:** Whenever a bank advertises FDIC-insured products, regardless of delivery channel, the bank must include the official advertising statement of FDIC membership.

- o **Community Reinvestment Act:** A bank subject to the CRA should ensure that its policies and procedures addressing public comments take into account such comments when they are received through social media sites run by or on behalf of the bank. However, under the CRA, comments about the bank made on the Internet through sites that are not run by or on behalf of the bank are not necessarily deemed to have been received by the depository bank and would not be required to be retained.
- o **Gramm-Leach-Bliley Act:** A bank using social media should clearly disclose its privacy policies as required under GLBA.
- o **COPAA:** Certain social media platforms require users to attest that they are at least 13 years of age, and a bank using those sites may consider relying on such policies. However, the bank should still take care to monitor whether it is actually collecting any personal information of a person under the age of 13.



Discussion on Social Media Practices at the Bank

- * Who uses the various social media avenues?
- * What does the bank post?
- * Does the bank avoid trigger terms?
- * Is the content reviewed prior to posting by the compliance department?
- * How does the bank handle record retention?

Resources for Marke. ng & Advertising Rules

FDIC Exam Manual for COPPA: <https://www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/documents/8/viii-2-1.pdf>

FDIC Exam Manual for CAN-SPAM: <https://www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/documents/8/viii-4-1.pdf>

FDIC Exam Manual for TCPA: <https://www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/documents/8/viii-5-1.pdf>

OCC Comptroller's Handbook: <https://www.occ.treas.gov/publications-and-resources/publications/comptrollers-handbook/files/other-consumer-protection-laws-regs/index-other-consumer-protection-laws-regs.html>

FED Compliance Handbook for COPPA: <https://www.federalreserve.gov/boarddocs/supmanual/cch/coppa.pdf>

FTC COPPA FAQs: <https://www.ftc.gov/tips-advice/business-center/guidance/complying-coppa-frequently-asked-questions-0>

FTC CAN-SPAM Compliance Guide: <https://www.ftc.gov/tips-advice/business-center/guidance/can-spam-act-compliance-guide-business>