

# Consumer Deposit Potholes



Patti Blenden  
April 2016

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## Reserve Requirements

- Transaction accounts require reserves
  - “Demand accounts”
- Savings accounts do not require reserves
  - “A deposit or account with respect to which the depositor is not required by the deposit contract but may at any time be required by the depository institution to give written notice of an intended withdrawal not less than seven days before withdrawal is made”

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## Early Withdrawal Penalties

- Mandates an early withdrawal penalty on all time deposits
  - At least 7 days' simple interest on withdrawals made within 6 days of opening or renewal
- Anything in addition to this is at the bank's option
- Can be waived in limited circumstances (death, for instance)

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## Transaction Limits

- Restricts the number of transactions permitted from savings accounts (including money market accounts, MMDAs)
  - No more than 6 preauthorized transfers or withdrawals may be allowed per month or statement cycle (whichever is longer)
    - ACH withdrawals
    - Overdraft coverage or sweep transfers
    - Transactions performed over telephone lines (includes Internet banking withdrawals or transfers)
    - Includes check, draft, debit card or similar orders made payable to a third party

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### Transaction Limits

- No limits
  - Deposits
  - Payments for loans at the same bank
  - Withdrawals made by mail, by messenger, ATM, or performed in person
- Reserve against transaction accounts

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### Preventing Violations

- Must monitor transactions and limit the “more than occasional” violation
  - This includes closing down frequent violators’ accounts, if necessary
  - Convert to a transaction account (can be interest-bearing)
- 3 times in a rolling 12-month period is considered excessive

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## Electronic Fund Transfer Act (Reg E)



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## EFTA – Reg E Purpose

- EFTA enacted in 1978
- Protects individual consumers engaging in electronic transfers and require disclosures
- Establish the rights, liabilities and responsibilities of all parties involved in an electronic funds transfer



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## Covered Transactions (§ 1005.3)

- ATM and debit card transactions
- Payments under a bill payment system unless specifically noted otherwise
- ACH debits & credits
- Preauthorized transfers
- Transfer where merchant scans check's MICR line



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## Error Resolution (§ 1005.7(10))

- We recommend editing statement stock message to specify benefits for CONSUMER accounts for Reg E error resolution
- Must annually transmit resolution procedures required in initial disclosure
- Similar to Appendix A, Model Form A-3
- Can alternatively meet requirement by including a "short form" on or with periodic statement
- If no statements are sent, must annually send full error resolution
- Include special provisions related to late disputes



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## EFT Error (§ 1005.11)

- Unauthorized EFT
- Incorrect EFT to or from consumer account
- Omission of an EFT from statement
- Computational or bookkeeping error
- Receipt of incorrect amount of money at an ATM or other cash dispensing terminal
- EFT not properly identified
- Consumer request for clarification or info to determine whether an error was made

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## Unauthorized Transactions

Transaction that was initiated  
by someone other than  
account holder and the  
account holder did not  
receive any benefit from the  
transfer



(§ 1005.11)

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## **NOT** an Unauthorized EFT

(§ 1005.2(m))

- EFT with fraudulent intent by the consumer or person acting in concert with consumer
- EFT error committed by a financial institution or its employees
- EFT initiated by person other than consumer owner to whom the consumer owner furnished the card, code or other means of access unless owner notified the bank that transfers by that other person are no longer authorized

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## Error Resolution Responsibilities

- Customer must notify financial institution as soon as error is known or suspected
- Financial institution must investigate the potential error and quickly resolve appropriately
- Cannot hold consumer's negligence against them
- Visa/MC are more supportive of holding cardholders accountable for negligence



(§ 1005.11)

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## Customer's Responsibilities (§ 1005.11)

- Oral or written notice
  - within 2 business days following learning of the loss or theft **-OR-**
  - within 60 calendar days of transmittal of statement containing first error
- Bank's option to require written notice within 10 business days to receive provisional credit
  - name, account number and description of error

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## Bank's Responsibilities (§ 1005.11)

- Investigate and notify customer of results within time period specified by regulation
- If error can't be resolved within period can take extra time if following actions are taken within 10 business days:
  - re-credit disputed funds on provisional basis **IF** written customer notice received as requested
  - advise consumer within 2 business days of provisional credit
  - give consumer full use of provisional funds

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## Bank Investigation Timelines

- Customer notifies the bank verbally – investigation begins **immediately** even if the bank requests written notification as part of its procedures
- Customer notifies the bank in writing via mail – investigation begins on the date the notice is **mailed**, not the date the notice is received
- Bank cannot delay the investigation waiting on paperwork from the consumer.

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## Dispute Resolution Clock is Ticking!

- New customer
  - 20 business days
- Existing customer
  - 10 business days
- Debit card transactions authorized by VISA/MC (NO PIN!)
  - Visa 5 business days
  - MC 10 business days
- NACHA
  - Most consumer transactions must be returned within 60 calendar days



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## Investigation Resolution

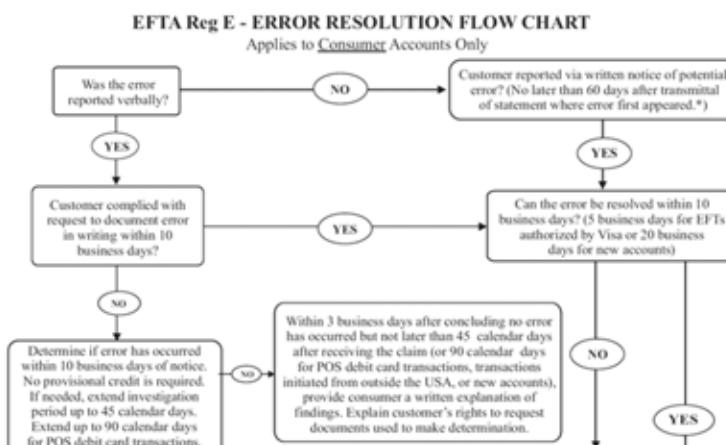


- If error did occur:
  - correct error within 1 business day of determination, refund must include interest and charges
  - provide written or oral notice to customer
- If error did not occur:
  - provide written notice that error didn't occur or was of different amount within 3 business days of bank determination date
  - if you must take back provisional credit, provide customer written notice of the date of debit and that you will honor checks up to the amount of the debit for up to 5 business days

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(§ 1005.11)

## Error Resolution Flow Chart



Free Download from [www.finsolinc.com/compliancetools.htm](http://www.finsolinc.com/compliancetools.htm)

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## Provisional Funds

- Not required if customer did not submit the written complaint per your instructions
- If provisional funds reversed, give notice of date and amount of reversing transaction
- Honor without charge any third party debits for 5 business days after notice is sent
- Honor third party items totaling amount less than or equal to amount provisionally re-credited and then reversed

(§ 1005.11)

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## Honoring Items After Provisional Credit is Reversed

- The bank is only obligated to honor third party items, not withdrawals the consumer makes on his or her own behalf.
- This provision protects the bank from potential abuse by the consumer to withdraw any provisional funds immediately.
- Remember not to assess overdraft charges for any of the third party items paid during the five business day period.

(§ 1005.11)

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(§ 1005.11)

## Two Types of Reg E Customer Liability

- Access Device Missing or Stolen
- Customer Statement Includes Unauthorized Transactions



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### Two Business Day Rule Example

- Consumer learns of loss at 6:00 PM on Friday. Assuming Saturday is a business day and Sunday is not\*, the 2-business-day period begins on Saturday and expires at 11:59 PM on Monday – NOT at the close of business Monday. (§ 1005.11)

\* Remember that you must establish and define your business days in your initial disclosure!

Refer to FDIC's matrix in their Reg E chapter!



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### Two Business Day Notice Rule

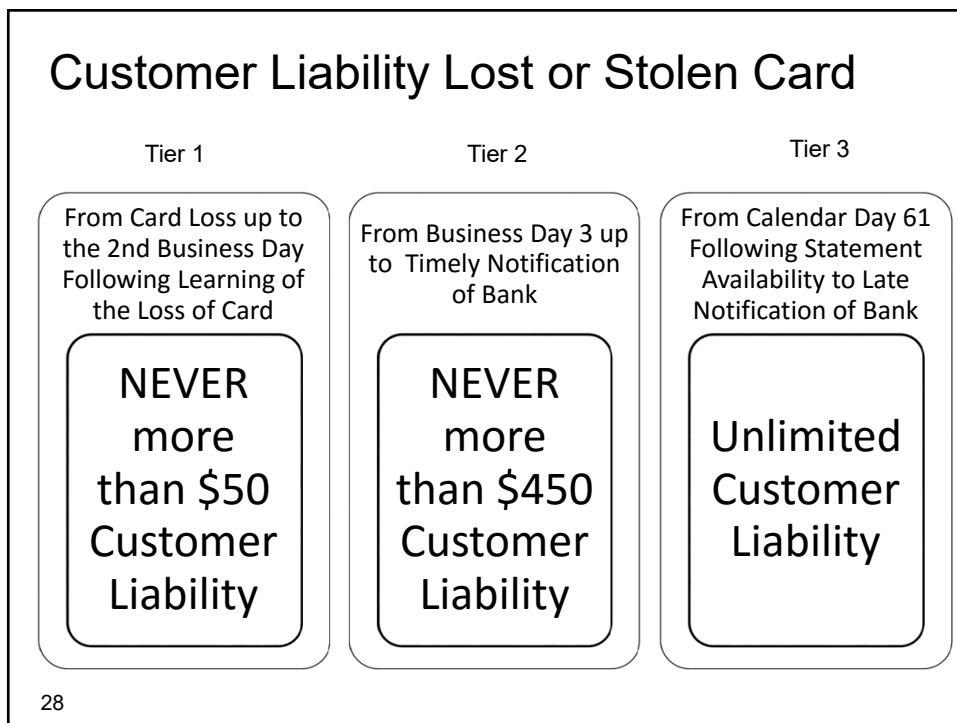
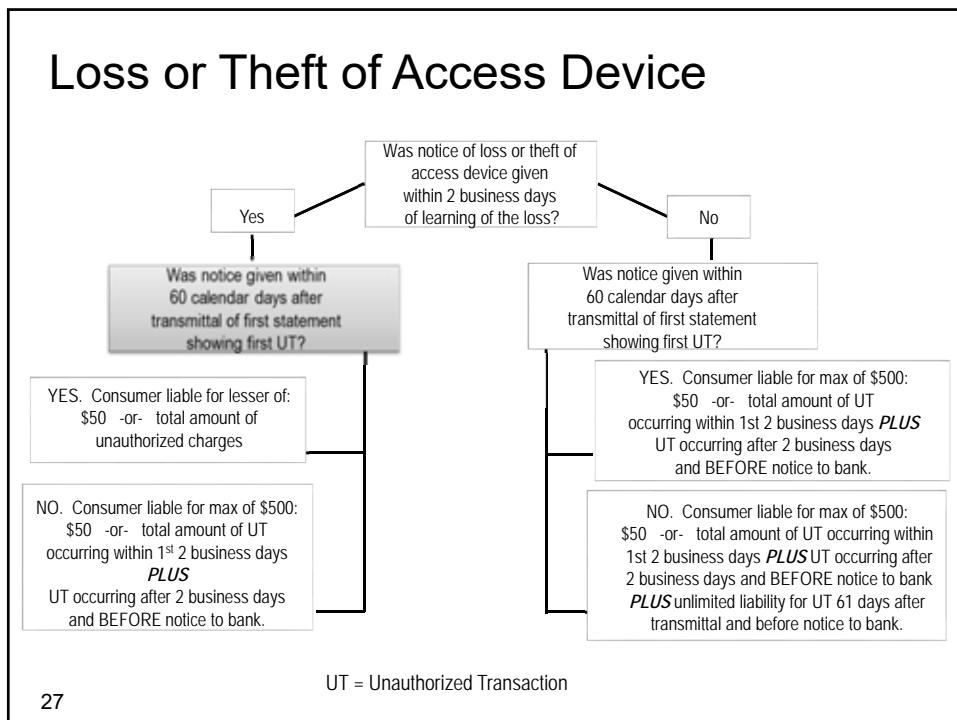
- Does **NOT** include the day the consumer learns of the loss or theft or any day that is not a business day
- Calculated based on two 24-hour business days without regard to bank's business hours or time of day the consumer learns of loss or theft
  - Business day ends at midnight!



(§ 1005.11)

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## DEPOSITS



## DEPOSITS

### Customer Liability Examples

**Business Days: M – F excluding Banking Holidays**

	Example 1	Liability	Example 2	Liability
Loss Occurred (Day 0)	Monday		Monday	
Learns of Loss	Wednesday		Monday Day 0	
Customer Notified Bank	Friday		Friday	
Unauthorized Trans Monday	Monday (-D2) \$100	Customer \$ 50 Bank \$ 50	Monday (D0) \$100	Customer \$ 50 Bank \$ 50
Unauthorized Trans Tuesday	Tuesday (-D1) \$100	Customer \$ 0 Bank \$ 100	Tuesday (D1) \$100	Customer \$ 0 Bank \$ 100
Unauthorized Trans Wednesday	Wednesday (D0) \$200	Customer \$ 0 Bank \$ 200	Wednesday (D2) \$200	Customer \$ 0 Bank \$ 200
Unauthorized Trans Thursday	Thursday (D3) \$600	Customer \$ 0 Bank \$ 600	Thursday (D3) \$600	Customer \$ 450 Bank \$ 150
<b>TOTAL LIABILITY</b>		<b>Customer \$ 50 Bank \$ 950</b>		<b>Customer \$500 Bank \$ 500</b>

### Unauthorized Transfers on Periodic Statement

Was notice of UT given  
within 60 calendar days  
after transmittal of first  
statement  
Showing first UT?

UT = Unauthorized  
Transaction

Yes

No

Consumer has no liability.

Consumer not liable for UT in first  
60 days. Unlimited liability for UT  
occurring 61+ calendar days after the  
periodic statement and BEFORE  
notice to bank.

### Customer Liability Unauthorized Transfers on Periodic Statement

Tier 1

From 1<sup>st</sup> Statement including  
Unauthorized Transactions thru the  
60<sup>th</sup> Calendar Day Following  
Statement Availability

**\$ 0  
Customer  
Liability**

Tier 2

From Calendar Day 61 Following  
Statement Availability up to  
Late Notification of Bank

**Unlimited  
Customer  
Liability**

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### Consumer Statement Liability Examples

- Statement Liability Example # 1
  - Consumer account is debited in May for unauthorized EFT of \$200 and by means other than access device.
  - Consumer notifies bank within 60 days of transmittal of May statement and therefore consumer has no liability.
- Statement Liability Example # 2
  - Consumer account is debited for unauthorized EFT for \$200 and by means other than access device during May statement. Another withdrawal of \$400 on Day 61 following statement availability.
  - Consumer notifies bank on Day 62 after transmittal of May statement. Consumer has no liability from that point forward since the bank should be able to stop future unauthorized trans.
  - Consumer liable for \$200 occurring before notice to bank and before 60 days from statement transmittal. Consumer liable for \$400 occurring on Day 61 following statement availability.

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## Reg E Customer Liability Tiers

Notification Date	Customer Liability
Within 2 business days of discovering the loss or theft of an access device	Maximum of \$50 of the total fraudulent activity occurring within the first 2 business days
Business days 3 or more following discovery of the loss or theft of an access device but within 60 calendar days from the statement where the 1 <sup>st</sup> unauthorized transaction appears	Maximum of \$500: \$450 of transactions occurring on business days 3 or more until 60 days following the statement where the 1 <sup>st</sup> unauthorized transaction appears + the \$50 above
Greater than 60 calendar days following the statement where the 1 <sup>st</sup> unauthorized transaction appears	Access device used: Unlimited liability for transactions after the 60-day threshold plus the previous 2 tiers Access device not used: Only the transactions after the 60-day threshold

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## Which Rules Apply???

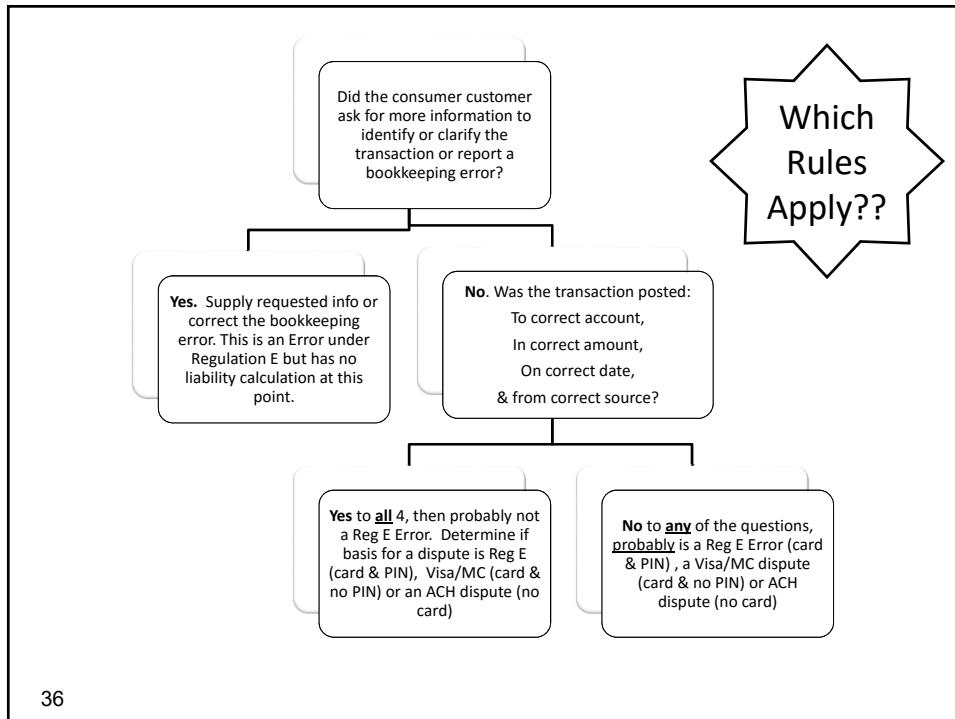
- Start by identifying the specific electronic transaction channel
  - Consumer or Commercial Customer
  - Transaction Type
    - ACH (NACHA and Reg E rules)
    - PIN-based debit card transaction (Reg E rules)
    - PIN-less debit card transaction (Visa/MC and Reg E rules)

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### Which Rules Apply??? (cont.)

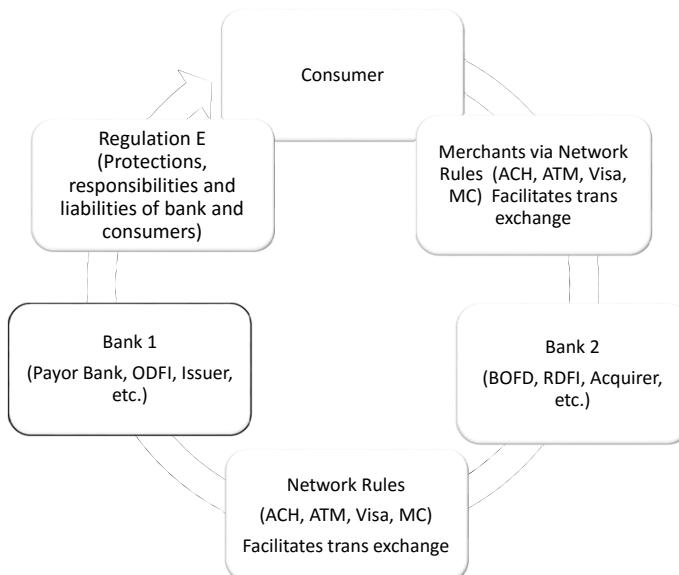
- Did the transaction post as authorized? Can you answer ALL of these questions with a “Yes?”
  - To the correct account?
  - In the correct amount?
  - On the correct date?
  - From the correct source?
- If so, the transaction is probably not a Reg E Error

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## DEPOSITS

### Consumer Protection and Network Rules



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### Consumer ACH Protections

```
graph TD; ODFI[ODFI] --- ODFIList["• ODFI agrees to allow its customer to originate and/or receive ACH  
• NACHA Operating Rules define the relationship between ODFI & RDFI (between banks, not between bank & consumers)"]; RDFI[RDFI] --- RDFIList["• NACHA rules facilitate ACH acceptance and return  
• Regulation E defines the bank's and consumer's responsibilities, liability and protections"]; Consumer[Consumer] --- ConsumerList["• Agreement with their Bank  
• Account signer contract defines the account operations & EFT guidelines  
• Regulation E protects the consumer in its relationship with the Bank"]
```

The diagram shows the roles of ODFI, RDFI, and Consumer in ACH protection. ODFI is associated with the NACHA Operating Rules and the relationship between banks. RDFI is associated with NACHA rules facilitating ACH acceptance and return, and Regulation E defining bank and consumer responsibilities. Consumer is associated with agreements with their bank, account signer contracts, and Regulation E protection.

- ODFI
  - ODFI agrees to allow its customer to originate and/or receive ACH
  - NACHA Operating Rules define the relationship between ODFI & RDFI (between banks, not between bank & consumers)
- RDFI
  - NACHA rules facilitate ACH acceptance and return
  - Regulation E defines the bank's and consumer's responsibilities, liability and protections
- Consumer
  - Agreement with their Bank
  - Account signer contract defines the account operations & EFT guidelines
  - Regulation E protects the consumer in its relationship with the Bank

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## 2010 Debit Card & ATM Rules



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### July 2010 Everyday Debit Rule: Opt-In

- Opt-in for ATM and one-time debit card transactions
  - Fed decided consumers would not exercise rights, and chose the conservative approach requiring OPT-IN
  - Rule does not apply to overdrafts related to checks, ACH or recurring debit card transactions
- Four requirements:
  - Provide opt-in notice, segregated from other info
  - Provide reasonable opportunity to opt in

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## Opt-In Notice Requirements

- Notice must be segregated from all other information and cannot be combined with an initial Reg E disclosure
- Very strict disclosure content rules
  - The content must be “substantially similar” to the model form provided (Reg E Model A-9)
- Customize the opt-in notice content a great deal since overdraft service description, fees, limits and opt-in methods are all based on each bank’s policy

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## Opt-In Notice Contents

- Standard overdraft practices and the transaction types for which an ODP fee or charge may be imposed
- Standard or general overdraft practices, not just your policies for ATM and one-time debit transactions.
- Dollar amount of all ODP fees or charges assessed
- If fee is calculated based of the # of times account has been overdrawn, the overdraft \$\$, or other factors, disclose maximum fee and the calculation.
- Maximum number of overdraft fees or charges per day, or no limit
- Consumer’s right to opt in for ATM and one-time debit

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## Opt-In Notice Restrictions

- Required notice may not contain any information not specified in, or otherwise permitted, by the rule
- Permitted modifications include:
  - Content stating that the consumer has the right to opt in to, or opt out of, the payment of overdrafts under the institution's overdraft service for other types of transactions, such as checks, ACH transactions, or automatic bill payments;
  - A means for the consumer to exercise this choice; and
  - Disclosure of the associated returned item fee and

<sup>43</sup>

<sup>43</sup> Disclosure of the associated returned item fee and

## Opt-In Requirement

- An “opt-in” by the consumer does not allow the institution to cover a particular transaction. If the consumer does not opt-in, it only allows the institution to cover the transaction if it does cover the transaction.
- Consumers who “opt-in” have the right to revoke consent later



<sup>44</sup> 44

## Opt-In Exceptions

- If you have a policy and practice of declining to cover ALL overdrafts on ATM or one-time debit card transactions with respect to a particular type of account, the notice and “opt-in” requirements do not apply to that account or group of accounts
- Final Rule does not apply to overdraft transactions other than by ATM or one-time debit, such as by check, Automated Clearing House (“ACH”) transactions or recurring debits

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## Non-Discrimination Provisions

- Regulation includes two provisions designed to ensure that consumers do not feel compelled to opt in, and therefore have a meaningful choice with respect to the overdraft service and prohibit:
  - Conditioning the opt-in
  - Variation of account terms

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## Consumers Electing Not to Opt-In

- If a consumer does not “opt-in” to your institution’s overdraft payment services, you may decline ATM withdrawals and one-time debit card transactions that would overdraw the consumer’s account.
- You may elect to cover overdrafts in these circumstances, but may not charge a fee for doing so.
- The Final Rule specifically prohibits declining the payment of a check, ACH transaction, or other type of transaction that may overdraw a consumer’s account,  
<sup>47</sup>

## Additional Opt-In Rules

- A consumer may affirmatively consent to or revoke prior consent for ATM and debit card overdraft service at any time
- You can always cover an overdraft of an ATM or one-time debit card transaction without a fee
- Institutions can and should continue to make overdraft payments discretionary

<sup>48</sup> Institutions can require a consumer to make an opt-in

## No Exceptions to Fee Prohibition

- Under the final rule, banks cannot charge overdraft fees unless the bank has provided notice and obtained the consumer's opt-in
- The final rule does not have any exceptions to the fee prohibition
- The final rule does permit institutions to charge fees for overdrawn accounts



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## Recap: New Compliance Procedures

- Before charging overdraft fee, you are required to:
  - Provide notice about your service options
  - Provide an opportunity to opt-in
  - Obtain the opt-in
  - Confirm the opt-in
  - Inform consumer of his or her right to revoke
  - Notice and confirmation can be provided in writing or electronic form following appropriate protocol

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**Gift Card Disclosures**  
**Effective January 31, 2011**



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**Gift Card Disclosures per Credit Card Act**

- Reg E was amended to implement the gift card provisions at Title IV of the Credit Card Accountability, Responsibility and Disclosure Act of 2009 (Credit Card Act)
- Mandatory compliance date was 1/31/11



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## Regulation E Changes

- “Gift cards” includes gift certificates, store gift cards and general-use prepaid cards
- The Credit Card Act mandated changes to gift cards that protect consumers from unexpected costs:
  - Limits inactivity (dormancy) fees
  - Improves disclosure requirements
  - Reins in expiration (“valid through”) dates
- Covers any entities involved in the issuance, distribution or sale of Gift Cards

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## Two Primary Types of Gift Cards

- Closed-loop gift cards
  - Majority of the gift card market, are typically issued by a merchant, not by a financial institution, and generally can only be used to make purchases at the merchant or group of merchants.
- Open-loop gift cards
  - Generally issued by financial institutions, typically carry a card network brand logo, can be used at a wide variety of merchants and are more likely to carry fees (transaction fees, issuance fee, etc.)

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## **Gift Card Disclosures**

- Before a gift certificate, store gift card, or general-use prepaid card is purchased, the issuer or seller must disclose to the consumer certain information.
- The fees and terms and conditions of expiration that are required to be disclosed prior to purchase may not be changed after purchase.

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## **Gift Card Dormancy or Activity Fees**

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

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## **Gift Card Expiration Dates**

- No person can sell or issue a gift certificate, store gift card, or general-use prepaid card with an expiration date, unless:
  - Established policies and procedures to provide a reasonable opportunity to purchase a certificate or card with at least 5 years remaining until expiration date. The expiration date for the underlying funds is at least the later of:
    - 5 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
    - The certificate or card expiration date, if any.

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## **Gift Card (Certificate) Disclosures**

- Must be provided on the certificate or card, as applicable:
  - Expiration date for underlying funds or, fact they do not expire;
  - A toll-free number and web site a consumer may use to obtain a replacement certificate or card after it expires if the underlying funds may be available; and
  - Except where a non-reloadable certificate or card has an expiration date at least 7 years from the date of manufacture, a statement disclosed with equal prominence and in close proximity to the certificate or card expiration date, that: (i) the certificate or card expires, but the underlying funds either do not expire or expire later than the certificate or card, and (ii) the consumer may contact the issuer for a replacement card;
- No replacement fee or charge is imposed for providing certificate or card holder with remaining balance in some other manner prior to the funds' expiration date, unless such certificate or card has been lost or stolen.

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## What Transactions are Covered?

### "Remittance transfer"

- Electronic transfer of funds requested by a sender to a designated recipient that is sent by a remittance transfer provider
- Generally applies whether or not sender holds an account and whether or not transfer is an electronic fund transfer

### "Sender"

- Consumer in a State who primarily for personal, family, or household purposes requests a remittance transfer provider to send a remittance transfer to a designated recipient
- "State" means any state, territory, or possession of the U.S.; D.C.; Puerto Rico; or any political subdivision thereof

### "Designated recipient"

- Any person specified by a sender to receive a remittance transfer at a location in a foreign country

## What Transactions are Covered?

### Covered

- Consumer-to-consumer transfers
- Consumer-to-business transfers

### Not Covered

- Business-to-consumer transfers
- Business-to-business transfers

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## What Transactions are Covered?

### Closed-network transfers

- Consumer transfers sent through a money transmitter, including transfers funded by cash

### Open-network transfers

- Consumer-initiated international wire transfers
- Consumer-initiated international ACH transactions

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## DEPOSITS

### What Transactions are NOT Covered?



Consumer providing debit or credit card directly to foreign merchant  
►  
Independent transfer of card to a third party in foreign country

Consumers providing checking account number directly to foreign merchant; merchant initiates ACH payment request at consumer's bank

Transfers of \$15 or less  
**AND**  
Certain transfers in connection with purchase/sale of securities

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### Transaction Coverage Examples

Example	Yes	No
Consumer sends cash at a money transmitter located in Colorado to a business recipient in France	✓	
Business sends cash at a money transmitter located in Colorado to a consumer recipient in France		✓ - business is not a "sender"
Consumer wires money from a bank account in California to a consumer bank account in Brazil	✓	
Consumer sends an ACH from a bank account in California to make a mortgage payment in Brazil	✓	
Consumer sends cash at a money transmitter in California to a consumer recipient in Colorado		✓ - recipient is not located in a foreign country
Consumer buys a prepaid card in the US and provider gives or mails prepaid card to that consumer in the U.S.		✓ - provider does not know whether consumer will send the card abroad
Consumer buys a prepaid card in US and the provider mails prepaid card directly to recipient abroad	✓	
Consumer has a U.S.-based bank account, and bank mails an ATM card on that account to a recipient abroad		✓ -- ATM card associated with sender's account that is located in the U.S.

### Who is a Remittance Transfer Provider?

Remittance transfer providers include any person that provides remittance transfers in the “normal course of business”:

- “Normal course of business”  $\geq$  100 remittance transfers in **both** current year and prior calendar year
- Safe harbor re: “normal course of business”

Allowed a 6 month transition period when cross the 100 threshold

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### Normal Course of Business – Example

2013	2014	2015
65 transfers N/A	73 transfers Not a remittance transfer provider	124 transfers Transfers 1-100 = not a remittance transfer provider Transfers 101 – 124 = facts and circumstances test applies (If considered a provider, allowed up to six month transition period)

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## Remittance Transfer Provider Requirements

### Obligations include:

- Disclosure
- Cancellation
- Error resolution



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## Disclosure Requirements

### Prior to Payment

- Prepayment disclosure
  - Amount to be transferred
  - Front-end fees and taxes
  - Exchange rate
  - Covered third party fees
  - Total amount to be received by designated recipient
  - Disclaimer concerning recipient institution fees and foreign taxes when appropriate

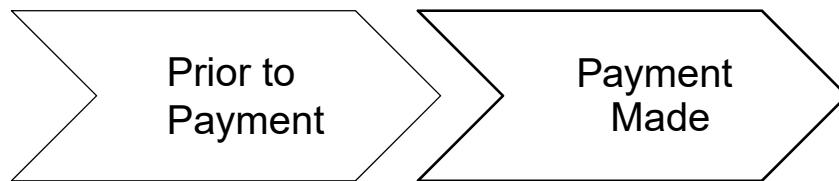
### Payment Made

- Receipt
  - All information required in pre-payment disclosure
  - Date of availability
  - Name of designated recipient
  - Error resolution/cancellation rights
  - State regulator and CFPB contact information
  - Transfer date (for transfers scheduled 3+ business days before date of transfer and first in series of preauthorized RTs)

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## Disclosure Requirements (Alternative)



- Combined disclosure
- Contains same info as receipt
- Proof of payment

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## Foreign Language Disclosure Requirements

Written or electronic

- English; and
- Each foreign language principally used to advertise, solicit, or market at an office; or language primarily used by sender with provider (if principally used to advertise, solicit or market)

Oral, mobile app or text

- Language primarily used by sender with provider (even if not principally used to advertise, solicit, or market)

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## Model Disclosure Forms

Forms A- 30  
through A-37

- English

Forms A- 38  
through A-40

- Spanish

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## Estimates

### **Two types of exceptions to providing exact amounts**

#### 1. Temporary exception

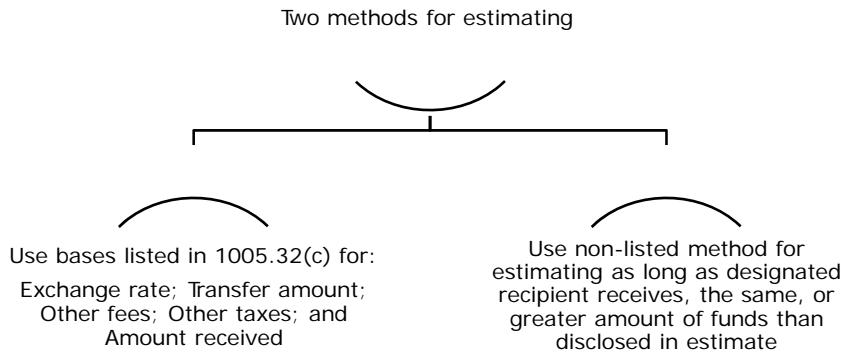
- Applies to insured depository institutions and credit unions
- Available until July 21, 2015 with CFPB option to extend for up to another 5 years

#### 2. Permanent exception

- Laws of recipient country
- Method by which transactions made in recipient country
- Transfers scheduled 5+ business days before the date of transfer
- Optional disclosure of non-covered third-party fees and foreign taxes

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### Estimates



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### Safe Harbor Countries List

- This list is effective on October 28, 2013. The CFPB will consider suggestions and input on additions or deletions made on or before March 17th, 2014.
- Countries currently on list
  - Aruba
  - Brazil
  - China
  - Ethiopia
  - Libya

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### Remittance Transfers Scheduled in Advance

- Estimates
- For one-time transfer or first in a series of preauthorized remittance transfers scheduled 5+ business days before the date of transfer:
  - Estimates permitted in pre-payment disclosure/receipt provided when transfer scheduled
  - Accurate receipt required (unless statutory exception applies)
- For subsequent preauthorized transfers:
  - Pre-payment disclosures generally not required
  - Accurate receipt required (unless statutory exception applies)

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### Remittance Transfers Scheduled in Advance

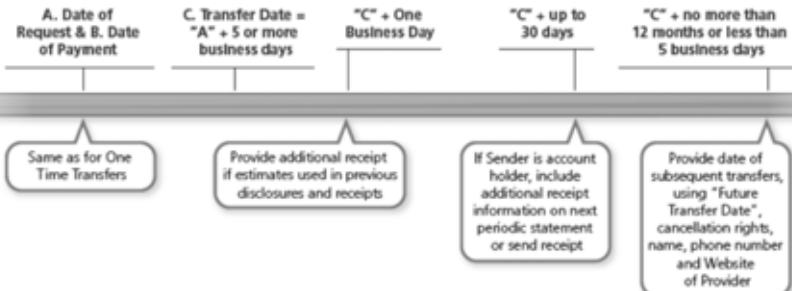
- **Transfer date / future transfer date(s)**
- For one-time RTs scheduled 3+ business days in advance and first-in-series of preauthorized RTs, disclose transfer date on initial and subsequent receipts
- For subsequent preauthorized RTs, also disclose future date or dates of subsequent transfers; cancellation rights statement; provider contact info
  - General flexibility in how disclosed (5 business days–12 months)
  - Subsequent preauthorized RTs scheduled < 4 business days out, must be on initial receipt for first transfer.
- **Cancellation / refund**
- For any remittance transfer scheduled at least three business days in advance, sender must cancel at least three business days before the scheduled date of transfer.

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## DEPOSITS

### Remittance Transfer Timelines

#### Disclosures and Receipts-Preauthorized Transfer\*



\*One transfer scheduled 5 or more business days in advance of date of transfer or 1st in a series of preauthorized transfers

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### Cancellation and Refund

Sender cancels  
within 30 minutes  
of payment

Provider refunds  
within 3 business  
days of request

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### Error Resolution Process

Sender reports error within 180 days of disclosed date of availability

Provider must investigate and make determination within 90 days

Provider must report results to sender within 3 business days after completing investigation

If error occurred, must correct error within 1 business day, or as soon as reasonably practicable, of receiving sender's instructions

79

### Types of Errors

#### Errors generally include:

- Incorrect amount of currency paid by sender
- Incorrect amount of currency received
- Late or non-delivery of remittance transfer

#### Errors do NOT include:

- Status inquiries
- Recipient-requested changes
- Changes in amount or type of currency if provider relied on information provided by the sender

80

## Exception to General Error Provisions

- Account numbers or institution identifier mistakes by a sender: Five required conditions for new exception to apply
  1. The provider can demonstrate that the sender provided an incorrect recipient institution identifier
  2. For institution identifier errors, the provider has used reasonably available means to verify the identifier
  3. The provider gave appropriate notice to the sender
  4. The funds were deposited into the wrong account
  5. The provider used reasonable efforts to attempt to recover the funds

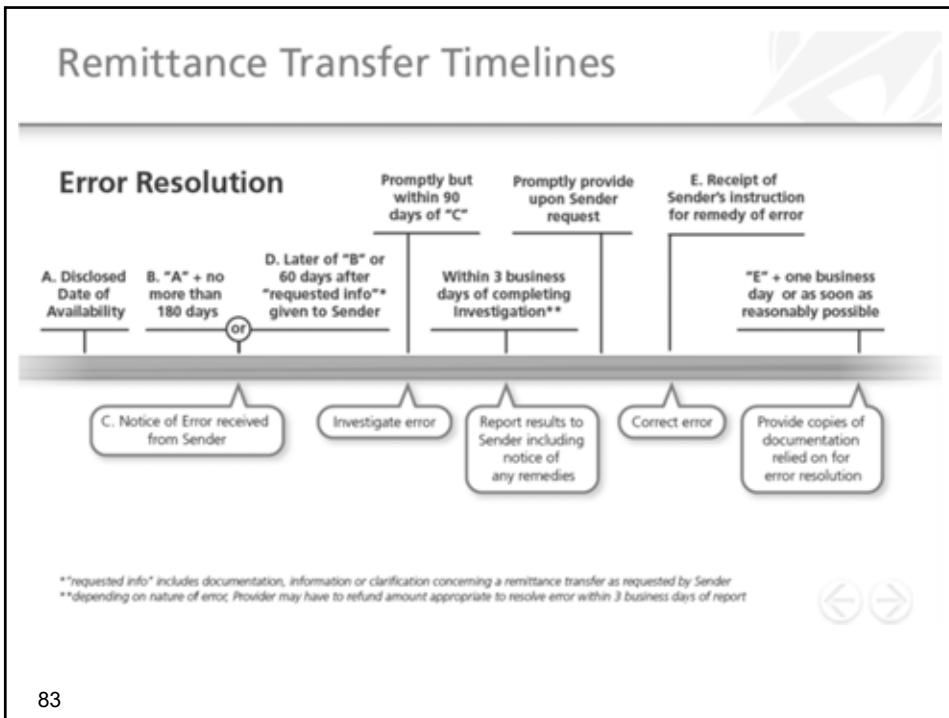
81

## Error Resolution Remedies & Liability

- Refund or Resend
- and
- Refund fees and taxes paid by the sender
  - Note: If for failure to make funds available to designated recipient, including late delivery and non-delivery.
- Provider strictly liable for violation by an agent, when such agent acts for the provider.

82

## DEPOSITS



83

### Change in Application of UCC 4A

- UCC article 4A governs international wire transfers for consumers today.
- After effective date of the rule, article 4A will no longer apply to international consumer wire transfers.
- Fed has amended Regulation J to clarify that this regulation continues to apply to a Fedwire funds transfers even if the funds transfer is a "remittance transfer" under the Electronic Fund Transfer Act ("EFTA"). 77 FR 21854 (April 12, 2012).
- The Clearing House Interbank Payments System ("CHIPS") amended its Rules and Administrative Procedures on March 8, 2012, to provide that funds transfers through CHIPS will be governed by the laws of New York, including Article 4A of the New York Commercial Code regardless of whether funds transfer is a remittance transfer governed by EFTA. In the case of an inconsistency between New York law and EFTA, EFTA controls.

84

## DEPOSITS

### Remittance Transfer Timelines

#### Record Retention

A. Date required Disclosures are made available

(A) + 2 years\*

Retain evidence of compliance with Regulation E

\*exception if investigation or enforcement action by enforcement agency is in effect

85 85

### [www.nacha.org/content/1073-solutions-center](http://www.nacha.org/content/1073-solutions-center)

LOG IN REGISTER MY PROFILE NACHA-ESTORE

Search

MEMBERS AND COMMUNITY NACHA OPERATING RULES EDUCATION AND EVENTS RISK MANAGEMENT PAYMENTS IN ACTION NACHA AND THE ACH NETWORK

Home / Payments in Action / Industry Needs / 1073 Solutions Center

1073 Solutions Center

Understanding International Remittances Under 1073

Make Sure Your Financial Institution Complies

④ An increasing number of customers need to transfer money across borders, so it's critical that your financial institution knows how to handle international remittances. Section 1073 of the Dodd-Frank Act, by adding a few additional steps to completing those cross-border payments, increases protection for both banks and consumers. NACHA is committed to helping you understand how the regulations affect your institution.

Payments in Action

Direct Deposit and Direct Payment via ACH

Industry Needs

International ACH Transactions (IAT) Solutions Center

• 1073 Solutions Center

1073 Resources

Opt-In Programs

Submit a Rule or Program Idea

Direct Deposit and Direct Payment News

86 86

## DEPOSITS

<http://www.consumerfinance.gov/remittances-transfer-rule-amendment-to-regulation-e/>



### International Fund Transfers

SMALL ENTITY COMPLIANCE GUIDE  
VERSION 2.0

Send money abroad  
with more confidence.



87

### Record Retention (§ 1005.13)

- Institutions are required to maintain evidence of compliance for at least two years.
- The period may be extended by the agency supervising the institution.
- It may also be extended if the institution is subject to an action filed under section 910, 915, or 916(a) of the EFTA relating to the liability of institutions for making EFTs and to institutions' civil and criminal liability for failure to comply with the act and the regulation.

88

## General Liability (EFTA 910)

- As provided by section 910 of the EFTA, institutions are liable for all damages caused by failure to make an EFT in accordance with the terms and conditions of the account, in timely manner, or in the correct amount, when properly instructed by consumer to do so.
- Section 910 also includes the conditions under which an institution is not liable for failing to make an EFT and the circumstances under which an institution is liable for failure to stop payment of preauthorized debits.

89

## Civil Liability (EFTA 915)

- Unless an error is resolved in accordance with the Reg E error resolution procedures, an institution may be liable for civil damages for failure to comply with the law.
  - Individual action - actual and statutory damages between \$100 and \$1000
  - Class action - actual and statutory damages up to the lesser of \$500,000 or 1% of bank's net worth
  - Banks could also have to pay the court costs and the attorneys' fees in both individual lawsuits or class actions

90

## Criminal Liability (EFTA 916)

- Individuals who knowingly and willfully fail to comply with any provision of the Electronic Fund Transfer Act may be fined up to \$5,000 or imprisoned up to one year, or both.
- Those who fraudulently use debit cards may be fined up to \$10,000 and imprisoned up to ten years, or both.

91

## Expedited Funds Availability (Reg CC)



92

## Expedited Funds Availability

- Mandates maximum delays for checks deposited into consumer or commercial transaction accounts
- Regulates check collection system
- Outlines responsibilities of certain parties within the check collection process
- Defines endorsement standards
- Addresses Check 21 requirements
- *Proposal pending that will shift RDC loss liability to bank allowing creation of electronic image*

93

## Transaction Accounts

- Accounts which permit an unlimited number of payments to third parties, telephone transfers, and preauthorized transfers (ACH)
- Business and personal deposit accounts
- By bank policy, you can elect to extend coverage to all deposit accounts if you declare that in your initial disclosures



94

## Policy Statement Availability

- Posted wherever consumer deposits are accepted (not required at drive-ins)
- Posted on all proprietary ATM's where deposits are accepted
- Provide upon customer request
- To communicate policy changes (before if changes are more restrictive or after if availability will be expedited)



95

## Hold Notice Verbiage



Funds will be available on  
the X **business day**  
following the **banking day**  
of deposit noted above

96

### Issue: What Day Is It ? ? ?



§ 229.2(g)

- **Business Day**
  - Monday through Friday, except Federal banking holidays
- **Banking Day**      § 229.2(f)
  - any business day when bank is open for essentially all of its services
  - day ends at your established cutoff time
- Saturday and Sunday are **NOT** included in either definition, regardless of your hours

Solution: Check out my date charts!!!

97

### Issue: What Affects Availability?

1. Who deposited the item?
2. What was deposited?
3. Where was it deposited?
4. When was it deposited?
5. Why should you place a hold to delay availability?

*Solution: Check out my Quick Reference Guide!!!*

98

## Next Day Availability §229.1

- Cash
- Electronic Payments
- U.S. Treasury Checks\*
- “On-us” Checks
- U.S. Postal Service Money Orders\*
- FRB and FHLB checks\*
- State and local governments checks\*
- Cashier’s, certified, and teller’s checks\*
- First \$200 of other delayed checks

99

## Next-Day Availability

- Next Day availability is not required if the deposit is not made “in-person” to an employee of the bank (i.e., would not apply if deposit made at ATM and night drop deposits)
- It will be a 2nd business day item for:
  - Cash
  - U.S. Treasury Checks
  - U.S. Postal Service Money Orders
  - Local FRB, FHLB, state and local government, cashier’s, certified & teller’s checks

100

### Special Rules for Cash Withdrawals §229.12(d)

- Applies to all checks not given next day treatment
- May extend hold for cash withdrawals by one business day
- \$400 cash must be available by 5 pm on “normal” availability day
  - This requirement does not supersede ATM withdrawal limits!



101

### Non-Continental Deposits

- For depository branches in
  - Alaska
  - Hawaii
  - Puerto Rico or
  - U.S. Virgin Islands
- One business day may be added for items payable by a bank not located in that state



102

## Non-Proprietary ATMs

- Must meet all 3 of the following criteria:
  1. Not owned or operated exclusively by the depository bank;
  2. Not located on bank premises (which includes the bank's outside walls); and
  3. Not located within 50 feet of the depository bank and identified as being owned and operated by someone else
- All funds deposited must be available by 5th business day (and the \$200 rule doesn't apply)
- None of our bank clients allow deposits at non-proprietary ATMs.

103

## Two Categories of Holds

### Case-by-Case Holds

- used when your policy is to provide availability earlier than regulation requires (next day availability on all items)
- invoke holds at your discretion
- doesn't require reason if invoking the 2 days delay

### Exception Holds

- can be used whether you extend normal availability to the limit under regs or give next day regularly
- must give a written notice with a specific reason for the delay in availability

§ 229.13

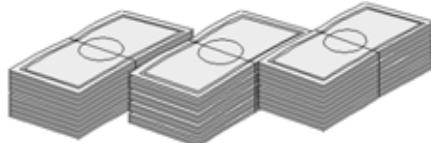
104

§ 229.16

## Case by Case Hold

- Place on a per deposited item basis at bank's discretion
- Any reason acceptable and not required to disclose the reason for the hold
- Can be held up to 2 business days (local checks)

*Must make the first \$200 available the next business day!*



105

## First \$200 Available Next Day

- Only required for case-by-case holds and only 1 first \$200 per day per customer
- Multiple deposits with CBC holds on each would not require first \$200 for each deposit, only one per customer per day!
- If the customer is overdrawn (OD), you have in effect already granted them an advance and you can reduce the first \$200 by the overdrawn amount.
- OD by \$80, only required to give them \$120 (\$200 – 80) next day
- OD by \$225, not required to give them any \$\$\$ (\$200 – 225 = -\$25) for next day availability

106

## Exception Holds §229.13

- Placed on a per deposited item basis
- Reason must qualify as a regulatory exception
- Can be held for up to 7 business days (local)
- Special Rules for New Accounts

107

## Why Delay Availability?

§ 229.13

- Six discretionary exceptions to protect you!
  - New accounts
  - Large deposits
  - Redeposited items
  - Repeat overdrafts
  - Reasonable cause
  - Emergency conditions

108

## Notice of Exception Hold

§ 229.13

- Written notice given at time of customer transaction if deposit made in person
- By business day following banking day when facts are known or when deposit not made in person



109

## Written Notice Must Contain:

Bank Name &amp; Telephone #

Notice of Hold

Account #

Deposit Date

Notice Date

Subject to delay \$\_\_\_\_\_

Date or Business Day  
Funds Available

*Must also  
include notice  
regarding option  
to obtain refund  
of NSF fees if  
Notice not  
provided at time  
of deposit*

Reason for the Exception Hold  
(if applicable)

110

## New Accounts

§ 229.13(a)

- Open less than 30 days AND each account owner is not an established customer with other transaction accounts!
- You want to know how they handle checking accounts!



111

## New Account Holds

(Customer(s) for less than 30 days)

- Next-day requirements still apply to
  - Cash & electronic credits;
  - First \$5,000 of “next day” check items including travelers checks (but not on-us checks)
- Remainder of next day items by 9th business day
  - Except “on-us”
- No limit on local items
- Generally use 9 or 11 business days; otherwise have to justify the time period used

112

## Large Deposits

§ 229.13(b)

- Extended holds can be placed on aggregate check deposits when in excess of \$ 5,000
- Extended hold ONLY on amount over the first \$5,000!!!! Think of it in “tiers!”
- You can aggregate deposits for one day to all accounts owned by customer
  - all owners don’t have to be the same on all accounts

113

## Redeposited Checks

§ 229.13(c)

- Checks returned unpaid can be delayed when being redeposited
- Do not apply exception to checks returned for the reasons below if problems have been corrected and are now being redeposited due to:
  - lack of endorsement
  - postdated (future dated) checks that are no longer postdated

114

## Repeat Overdrafts

§ 229.13(d)

- An account is repeatedly overdrawn if it has either
  - negative balance for 6 or more banking days in last 6 months (or balance would have been negative if checks had been returned and not posted)
  - negative balance (or would have been negative if check had not been returned) over \$5,000 for 2 or more banking days in the last 6 months
- The repeat overdraft exception is not calculated on the *number* of overdraft items honored or returned, but on the number of banking days the account was in an overdraft position, or would have been if items had not been returned

115

## Reasonable Cause

§ 229.13(e)



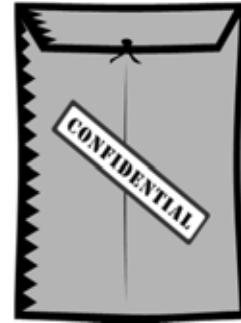
- Based on facts that would lead a reasonable person to doubt the collectability of a check
- Cannot be based on class of check (e.g., out-of-town checks, insurance checks or credit card checks) or based on the class of the depositor (e.g., race or national origin)
- Must provide a reason in written notice of delay and retain more detailed justification on bank's copy

116

## RC: Confidential Information

§ 229.13(e)

- Occasions when your information may indicate check is in question
  - potential kiting
  - check issuer declaring bankruptcy
- Don't have to be specific on customer's copy of notice
  - document reasons on the bank's internal copy



117

## RC: Joint Endorsements

§ 229.13(e)

- "We are unable to verify the endorsement of a joint payee."
- If the check is payable to more than one individual or entity with an "AND" in the payee line, this is a very useful exception when all payee parties are not present at the bank.

118

## RC: Inconsistent Check Information

§ 229.13(e)

- “Some information on the check is inconsistent with other information on the check.”
- For example, make sure the numerical amount matches the written amount on the check. If not, this might indicate a problem with the check. Or perhaps the RTTN on the check does not match the geographic region where the payee bank is located. Could be many more inconsistencies.

119

## RC: Check Erasures or Alterations

§ 229.13(e)

- “There are erasures or other apparent alterations on the check.”
- Be careful in accepting for deposit any checks that have apparent alterations – maybe the payee name is marked through and then another name is written in above it. Perhaps the amount is scratched out or you can see there is white-out over the original amount, etc.
- Remember you don’t have to accept items for deposit. You can refuse them or you can send for collection.

120

## RC: Post-Dated or Stale-Dated Checks

- “The check is postdated (future-dated) or stale dated (over six months old).”
- Examine checks carefully to ensure that you feel they are still collectable. Uniform Commercial Code does not require a paying bank to refuse payment on these types of checks. UCC acknowledges that banks do not examine every check, actually hardly any checks, before they are paid. But, it does certainly increase the risk of collection. For example, what if the customer has closed the account a check was written on 9 months ago?

121

§ 229.13(e)

## RC: History of Returned Deposit Items

- “A check you deposited was previously returned unpaid.”
- If you have a customer with a history of returned deposited items, you should probably consider the account a higher risk of returned items, therefore making the checks deposited potentially worthy of delayed availability.

122

§ 229.13(e)

## RC: Notice of Returned Check

§ 229.13(e)

- “We received notice that the check you deposited is being returned unpaid.”
- You have the right to debit the customer’s account for the amount of the returned check as soon as you receive notice from the paying bank. If you do not debit it immediately, at least place a hold on the check to protect you from losses.

123

## Emergency Conditions

§ 229.13(f)



- Provide notice within a reasonable timeframe, depending on circumstances
  - Telecommunications outage
  - Equipment failure
  - War or disaster
  - Emergency condition beyond the control of the bank

124

### Holds on Other Funds

#### Check Deposit

- You can place hold on another account of the depositor at your bank
- Cannot place hold on any account for an on-us check cashed, only for checks drawn on another bank
- Can't place hold on another account in excess of Reg CC guidelines by type that would apply to the deposited item
- Don't forget to apply the \$200 rule, if applicable, when placing these holds on other funds



125

### Employee Training and Compliance

- Section 229.19(f) requires each institution to establish procedures to ensure compliance with the requirements of Regulation CC
- Each institution must provide each employee who performs duties subject to the requirements of this subpart with a statement of the procedures applicable to that employee
- Regulatory exams expect training on a regular basis for personnel with Reg CC responsibility
- We highly recommend annual training!

126

## Record Retention

- A bank must retain evidence of compliance with the requirements imposed by this subpart for not less than 2 years.
- Records may be stored by use of microfiche, microfilm, magnetic tape, or other methods capable of accurately retaining and reproducing information.

127

## Record Retention (cont.)

- However, if the bank has actual notice that it is being investigated, or is subject to an enforcement proceeding by its Regulation CC examination agency, or has been served with notice of an action filed under this section, it must retain the records pertaining to the action or proceeding pending final disposition of the matter, unless an earlier time is allowed by order of the agency or court.

128

### Issue: We all need more practice!



- Included in your handouts are 4 example scenarios and sample solutions for each scenario.
- Use these in training your personnel to ensure they understand Reg CC solutions!

129

### SOLUTIONS: Free Reg CC Tools



- You can download free Reg CC Quick Reference Guide charts & date charts:
  - [www.finsolinc.com/compliancetools.htm](http://www.finsolinc.com/compliancetools.htm) See # 9 – 12
- OCC's Depository Services Compliance Booklet
  - <http://www.occ.gov/publications/publications-by-type/comptrollers-handbook/depserv.pdf>
- FDIC's Compliance Examination Handbook
  - [http://www.fdic.gov/regulations/compliance/manual/index\\_pdf.html](http://www.fdic.gov/regulations/compliance/manual/index_pdf.html)
  - Expedited Funds Availability "Job Aids"
- FRB's Consumer Compliance Handbook
  - [www.federalreserve.gov/boarddocs/supmanual/supervision\\_ch.htm](http://www.federalreserve.gov/boarddocs/supmanual/supervision_ch.htm)

130

## Appendix: Defined Check Types



131

## US Currency and Coin

§ 229.10(a)



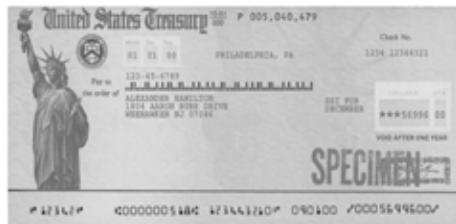
- Hold periods are determined by the perceived level of risk associated with each type of item deposited
- Cash is obviously the lowest risk item unless it is counterfeit!!
- Next day availability unless the cash was deposited in the ATM or night drop – then you can delay availability to the 2nd business day

132

## Treasury Checks

§ 229.2(k)  
§ 229.10(c)

- Issued by the federal government
- Routing number's first 4 digits are "0000"
- Reg CC classifies as much lower risk of final payment



*SOLUTION: Be sure to download the security features poster at: [www.fms.treas.gov/checkclaims/check-security-poster-april-09.pdf](http://www.fms.treas.gov/checkclaims/check-security-poster-april-09.pdf)*

133

## Other Government Checks

§ 229.2(k) & § 229.10(c)

- Issued by a Federal Reserve Bank or a Federal Home Loan Bank
- State or local general purpose government unit (such as city, county, parish, town, township, village, etc.)
  - Excludes special purpose units like local school board, fire department, etc.
- US Postal money orders are always considered **local** checks for exceptions

134

§ 229.2(k) &amp; § 229.10(c)

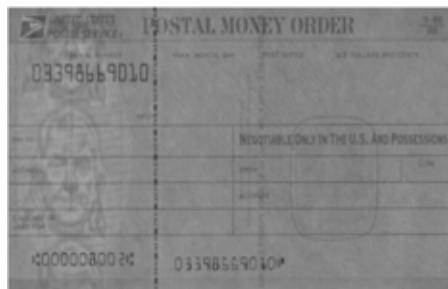
## US Postal Money Orders

- This special treatment ONLY applies to those money orders issued by the US Postal Service
- Money orders issued by private labels (Citicorp, Travelers, etc.) are not covered by this special treatment and should be treated as local checks according to the RTTN
- USPS Domestic Money Orders should never have a face value of more than \$1,000 and no more to one person than 10 per day are sold at one location. International USPS MO are limited to \$700 face value.
- Issue: FAVORITE FRAUDULENT ITEM LATELY!!!

135

## US Postal Money Orders

Solution: Know the security features of USPS Money Orders!!! To verify, call the Money Order Verification System at 1-866-459-7822. If you suspect fraud, call the U.S. Postal Inspection Service at 1-877-876-2455 (select option 4).



[www.usps.com/stascmo/docs/uspo.txt](http://www.usps.com/stascmo/docs/uspo.txt) for Missing Money Orders

136

## Local Government



- A city, county, town, village or other general purpose political subdivision of YOUR state
- Does not include special purpose units like school districts, water districts, etc.

§ 229.2(k) & § 229.10(c)

137

## Cashier's Checks



§ 229.2(i) & § 229.10(c)

- Common types of official checks that basically guarantee payment by issuer
  - Teller Check - drawn on another bank
  - Cashier Check - drawn on your bank
  - “Official Check” generic term used frequently, not in UCC
- Excludes checks for other purposes like payroll or accounts payable

138

### Certified Check

§ 229.2(j) & § 229.10(c)

- Bank has certified that the drawer's signature is genuine and that funds have been set aside to pay the check
- Not very common in today's banking environment



139

### Checks Drawn on a FRB or FHLB

- Federal Reserve Bank checks often issued for principal and interest payments on federal debt instruments. Could also be issued for other purposes.
- Federal Home Loan Bank checks are often used by savings associations as teller's checks (official checks).
- This definition in Reg CC includes both categories since these are the functional equivalent of Treasury checks or teller's checks.

§ 229.2(k) & § 229.10(c)

140

### Traveler's Checks



- Identified on its face as a “traveler’s check” and requires purchaser’s signature at time of purchase and again at negotiation of check
- Treat the same as official checks **ONLY** when a new depositor opens an account
  - subject to next day availability rules
- Treat as local check when deposited into an existing account
  - use RTTN to determine paying bank
  - can delay availability 2 Days for Local checks

§ 229.2(hh) & § 229.13(a)

141

### On-Us Checks

- Checks drawn on accounts within your institution
- Next day availability unless being held under one of the permissible exception scenarios



142

## Local Checks

§ 229.2(r) & (v)

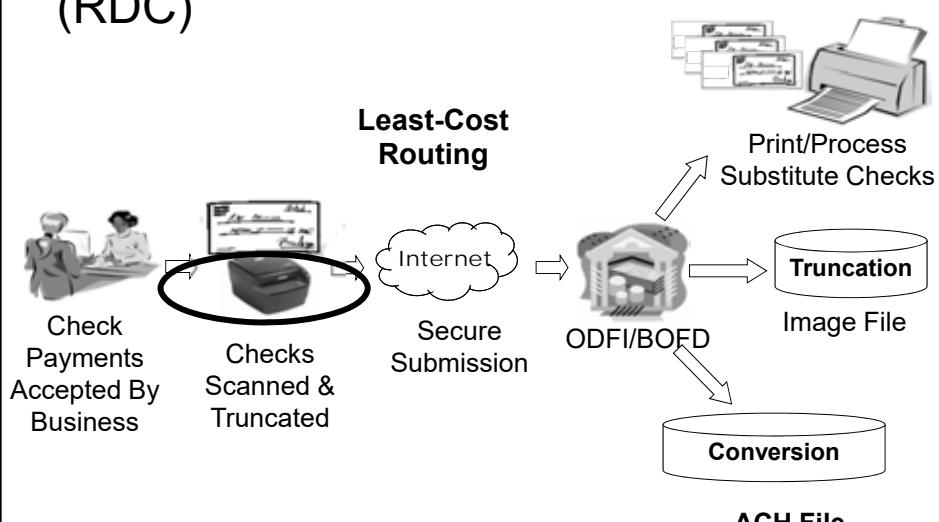


- Local checks are drawn on institutions within the same check processing region where the check was deposited as defined by Appendix A in Reg CC
- The nonlocal designation was eliminated effective 2/27/10

Effective February 26, 2010, all check processing centers  
Were consolidated into one.

143

## Remote Deposit Capture (RDC)



144

## Remote Deposit Capture (RDC)

- RDC is a deposit transaction delivery system that allows an institution to receive digital information from deposit documents captured at remote locations
  - Institution's branches,
  - ATMs,
  - Domestic and foreign correspondents, or
  - Locations owned or controlled by commercial or retail customers of the financial institution

145

## Efficient Delivery System



- Nothing new about taking deposits... but
- RDC should be considered a new delivery system and as such, the related risks should be assessed and evaluated before the bank implements this delivery system
  - Legal
  - Compliance
  - Reputation
  - Operational

FFIEC January 2009 Guidance

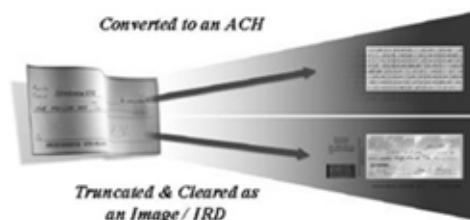
146

## Advantages of RDC

- RDC can decrease processing costs, support new and existing banking products, and improve customers' access to their deposits
- Do not underestimate the additional risks to those historically inherent in traditional deposit delivery systems

147

## Options for Clearing Checks



Clearing Method	Advantages	Disadvantages
Check 21 •Reg CC	•Applies to all checks •Generally provides faster availability	•Can be more costly than ACH (IRDs)
ACH •Reg E	•Less expensive than checks •Day 2 Operations	•Applies to only "eligible items" •Requires notification

148

### Issue: RDC Risk Management



- Privacy of nonpublic personal information in compliance with Gramm-Leach-Bliley Act Information Security requirements
  - Bank retention of check e-data from the bank's customer's customers
  - Bank customer now has paper and e-data files
- Customer information will be transmitted over the Internet generally and therefore is at risk, once again, for interception

149

### Legal and Compliance Risks

- How is the deposit item going to be settled?
  - Image Replacement Document (IRD)
  - Check 21 – Reg CC
    - Proposed Rules Change - 2015
  - ACH Rules – NACHA
  - Electronic Funds Transfer Act – Reg E
  - State Law – Uniform Commercial Code (UCC)
  - Fed Operating Circulars & Reg J
  - Contractual agreements with all parties

150

### Operational Risks



- Physical and system control over RDC systems
- Original deposit items at customer locations
- Electronic file creation, transmission and retention
- Retained nonpublic personal information

151

### Customer Location/Device Risks



- Faulty or outdated equipment or software
- Inadequate procedures
- Inadequate training of customer employees
  - Poor document processing
  - Poor image quality
  - Inaccurate electronic data
  - Intentional or unintentional alteration of deposit item
  - Duplicate submission of deposit data
    - Electronically or via original check

152

## Increased Fraud Risk



- Verification of proper endorsement
  - Forged or missing endorsement
- Check alteration detection
  - Chemical “washing” or other alteration may be obscured in imaging or electronic conversion
- Counterfeit checks
- Duplicate item processing
- Check kiting!!!

153

## Authentication & Encryption

- Appropriate sign-on and access to the system
- Multi-factor authentication and layered security for high-risk funds transfer
- Internet transmissions
- Access to stored data
- Encryption appropriate to data sensitivity

154

## Risk Mitigation & Controls

- Customer Due Diligence
- Vendor Due Diligence
- RDC Training for Customers
- Contracts and Agreements
- Deposit Limits
  - Per item, day or week, etc.
- Business Continuity
- Other Mitigation and Control Considerations



155

## Customer Due Diligence

- Establish risk-based guidelines to qualify bank customers before allowing access, similar to underwriting a loan customer
- RDC is considered a higher risk service for BSA/AML program and your BSA program should be modified accordingly
- Set thresholds for activity acceptance and performance (deposit history, average balance, etc.)
- Consideration of subsequent withdrawal
  - Wire transfer, ACH origination, debit cards

156

## Higher Risk Customers

- FFIEC and NACHA guidance includes footnotes identifying higher risk customers
  - Online payment processors
  - Certain credit-repair services
  - Certain mail order and telephone order companies (MOTO)
  - Online gambling operations
  - Businesses located offshore
  - Adult entertainment businesses



157

## Vendor Due Diligence

- Do your homework when selecting your vendor
  - How long have they been in business?
  - Do their systems properly integrate into your existing core processing systems?
- Utilize your existing vendor management processes to be very careful in processing your customers' electronic deposits

158

## RDC Customer Training



- Train the Trainer
- Implementation training
- Emphasize the importance of daily processing, secure record retention, balancing and avoiding duplicate transmissions
- Periodic training, especially for customers with high rate of employee turnover or high rates of user problems

159

## RDC Contracts & Agreements

- Strong, well-written contracts and customer agreements with your third-party service providers, with other banks in the deposit chain and with your customers
- Specify control requirements and the consequences of non-compliance
- Many rights and responsibilities of the customer for physical equipment and documents to be covered

160

## Business Continuity

- Bank's ability to recover and resume RDC operations to meet customer service requirements in the event of a disruption
  - Location and volume of customers
  - What about your customer's ability to recover and resume operations? Storage of physical items and electronic records?



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## Detection of Duplicates



- System controls should be implemented across all products, accounts and delivery channels
- Users, various locations and accounts
- RDC location, lockbox, ATM, Mail drop locations, branches, inclearings
- Checks and checks converted into ACH items

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## Effective Ongoing Oversight



- Develop and implement risk measuring and monitoring systems for sound decision-making
  - What is our current volume of RDC activity?
  - Who are our customers and what industry concentrations exist?
  - Are there other red flags for our customers?
    - Delinquent loans
    - Increased NSF and uncollected funds?
    - Returned checks or customer complaints?
  - What is our fraud rate within our customer base?
  - What is the fraud trend within the industry?

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## Ongoing Customer Education

- Send emails to your customers regularly to remind them of their responsibilities
  - Endorsements
  - Check retention and secure storage
  - Terminal security and access
  - Employee responsibilities
  - Required deposits



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### Customer Activity Analysis: *Snapshots and Trends*

- Total dollar amount of deposits, daily and weekly
  - Volume and dollar amount of deposited items
- Duplicate item frequency
- Processing error frequency
- Return items volume and dollar amount
- CAR/LAR/ICR adjustment processing
  - CAR – Courtesy amount recognition (numeric amount)
  - LAR – Legal amount recognition (amount in words)
  - ICR – Intelligent Character Recognition (software interpretation and comparison of CAR/LAR)

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### Proposed Reg CC Amendments Expected to be Finalized Fall 2015



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### Reg CC Proposal: Encourage Electronic Check Returns

- Summary of FRB Proposal
- Effective 6 months following final rule publish date
- The Federal Reserve re-proposed a rule designed to encourage banks to send and receive returned checks electronically. Regulation CC governs the processing and returning of paper checks; the Fed proposed that electronic checks and electronic returned checks exchanged by agreement be subject to the same rules unless a sending and receiving bank agree otherwise.
- The proposal also puts forward two alternative return processing frameworks for comment.
  - First: Eliminate the two-day expeditious return requirement and requiring formal notice only if a paying bank returns a paper check.
  - Second: The expeditious return requirement would be retained for checks that are being returned to a receiving bank electronically, eliminating the formal notice requirement. The Fed proposed to retain Reg CC's current same-day settlement treatment for paper checks, and it requested additional comments on applying Reg CC's existing check warranties to checks that are collected electronically.

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### Reg CC: EFAA Proposal

- **Return Requirements** – The proposal provides two alternative frameworks for return requirements to encourage institutions that currently request paper returns to transition to electronic returns:
  - **Proposed Alternative 1**: The expeditious-return requirement currently imposed on paying financial institutions and returning financial institutions for returned checks would be eliminated. Also, there would be a notice-of-nonpayment requirement only for paying financial institutions that send a paper return.
  - **Proposed Alternative 2** : The current expeditious-return requirement— using the current two-day test— would be retained only for checks returned to a depository financial institution electronically via another financial institution, but the notice-of-nonpayment requirement would be eliminated for all types of checks.

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### Reg CC Returns

- Currently, under Reg CC's expeditious-return provisions, a paying bank that decides not to pay a check must return the check in an expeditious manner, under the "two-day test" or "forward-collection test."
- To meet the current two-day test, a paying bank must send a returned check such that the check would normally be received by the depositary financial institution no later than 4:00 p.m. (local time of depositary financial institution) on the second business day following the banking day on which the check was presented to the paying institution.
- To meet the current forward-collection test, a paying bank must send the returned check in a manner that a similarly situated financial institution would send a check of similar amount as the returned check, drawn on the depositary institution, and deposited for forward collection in the similar institution by noon on the banking day following the banking day on which the check was presented to the paying institution.
- Reg CC also permits a paying institution to send a returned check either directly to the depositary institution or to any financial institution agreeing to handle the return expeditiously.

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### Reg CC Returns (cont.)

- Reg CC also currently requires a paying financial institution that decides not to pay a check in the amount of \$2,500 or more to provide a notice of nonpayment to the depositary financial institution such that the notice is received by the depositary institution by 4:00 p.m. (local time of the depositary financial institution) on the second business day following the banking day on which the check was presented.
- Return of the check itself would also satisfy the notice of nonpayment if the return meets the timeframe requirement for a notice of nonpayment.

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## Remote Deposit Capture (RDC)

- Remote deposit capture is where a financial institution permits its member or customer to make a deposit by sending an electronic image of the front and back of a check.
- **For RDC, the proposal would allow a bank that accepts deposit of an original check to recover directly from a financial institution that permitted its member or customer to deposit the check through remote deposit capture.**
- The Fed believes the depositary financial institution that accepts an original paper check should not bear the loss if that check has been deposited multiple times.
- The proposal also provides for a new RDC indemnity relating to cover banks receiving the deposit of an original paper check returned unpaid, because it was previously deposited (and paid) using RDC.

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## Same Day Settlement for Electronic Checks

- The proposal would retain, without change, Reg CC's current same-day settlement rule for paper checks. Section 229.36(f) of Reg CC currently requires a paying financial institution to provide same-day settlement for checks presented in accordance with reasonable delivery requirements established by the paying financial institution and presented at a location designated by the paying institution by 8 a.m. (local time of the paying institution) on a business day.
- The Fed no longer believes it is necessary to specify terms for electronic same-day settlement in Reg CC because almost all banks currently use electronic check presentment and the terms of electronic presentment can be determined by agreement.
  - The 2011 proposal would have folded electronic same-day settlement provisions into Reg CC.

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### Electronic Checks & Returns under Reg CC

- Under the proposal, electronic checks and electronic returned checks that financial institutions exchange by agreement would be subject to the check collection and return provisions under Reg CC, unless otherwise agreed by the sending and receiving institutions.
- Currently, the check collection and return provisions related to acceptance of returned checks, presentment, and warranties do not apply to electronic images of checks (electronic images) or to electronic information related to checks, because collection and return of electronic checks is governed by agreements between financial institutions.
- The proposal would apply Check-21-like warranties to electronic images and electronic information.

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### Electronically Created Items

- Electronically-created items are electronic images that resemble images of the fronts and backs of paper checks **but that were created electronically and not from, for example, scanning a paper check to create the electronic image.**
- Electronically-created items may also be referred to as “electronic payment orders” or “EPOs.” The proposal would also require a **financial institution (FI) sending an electronically-created item to indemnify subsequent transferees for losses caused by the fact the item was not derived from a paper check.**
- Indemnities related to electronically-created items are added to expand existing §229.34 warranties to those items. Proposed § 229.34(b) would provide that a **bank that transfers an electronically-created item indemnifies each transferee, any subsequent collecting FI, the paying FI, and any subsequent returning FI against any loss, claim, or damage resulting from fact that the image or information was not derived from a paper check.**
- An electronically-created item cannot be used to create a legal substitute check per Check 21 Act and Reg CC because an electronically-created item is not derived from a paper check. The indemnity in proposed §229.34(b) would protect a financial institution that receives an electronically-created item, creates a substitute check from it, and incurs losses because the substitute check it created was not the legal equivalent of the original check.

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## Truth in Savings Act (Reg DD)



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## Why Truth in Savings?

- Deposits are every bank's "raw materials" from which it can invest or make loans
- A very competitive market could lead to misleading ad campaigns by some banks
- Some institution's were a little too creative
- Congress wanted to "level the playing field" and better inform the public

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## Purpose

- Regulation DD/TISA is a consumer protection disclosure regulation which requires financial institutions to disclose the fees, interest rate, annual percentage yield, and other account terms for consumer deposit accounts. The regulation sets forth specific disclosure requirements for advertising, new accounts, and periodic statements.
- The disclosure requirements are designed to enable consumers to
- make meaningful comparisons and informed decisions about consumer
- deposit accounts offered by different institutions.

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## TISA and Reg DD

- Law passed in 1991 as part of FDICIA
- Effective in 1993 for most institutions
- Basically a consumer disclosure act and regulation
- Prohibits certain deposit related practices and mandates others
- Applies to all deposits offered to consumers, with or without interest
- Advertising rules are established

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### Who is a “Consumer”?

- A consumer is an individual (natural person) who holds a deposit account for a non-business purpose
  - for personal, family or household purpose
  - excludes unincorporated associations or groups since 1994



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### Basic Components of TISA

- Interest payment methods
- Disclosures
- Calculation of Annual Percentage Yield and Annual Percentage Yield Earned
- Advertising guidelines
- Enforcement, liability and record retention



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## Coverage- 12 CFR 1030.1 and 1030.2

- The Term “Depository Institutions”
  - Includes: All depository institutions such as national banks, thrifts, savings banks, state-chartered banks and any person who advertises an account offered by a depository institution, including deposit brokers.
  - Does not include: credit unions.

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## Coverage- 12 CFR 1030.1 and 1030.2

- Covered Accounts
  - Any deposit account held by or offered to a consumer.
  - Examples of covered accounts include, but are not limited to the following types of accounts:
    - Interest and non-interest bearing accounts.
    - Time, demand, savings and negotiable order of withdrawal (NOW) accounts.
    - Deposit accounts opened as a condition of obtaining a credit card
    - Individual retirement accounts (IRAs)
    - Simplified employee pension (SEP) accounts
    - Payable-on-death (POD) or Totten Trust accounts

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## Coverage- 12 CFR 1030.1 and 1030.2

- Types of accounts not covered, include but are not limited to the
- following types of accounts:
  - Government securities
  - Mutual funds
  - Annuities
  - Securities or obligations of a depository institution
  - Contractual arrangements such as repurchase agreements, interest-rate swaps and banker's acceptances

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## Coverage- 12 CFR 1030.1 and 1030.2

- Bonuses
  - Bonuses include items of value, other than interest, offered as incentives to consumers, such as, an offer to pay the final installment deposit for a holiday club account.
  - Bonuses do not include discount coupons for goods and services at restaurants or stores, items with de minimis value, and waiver or reduction of fees (even if the fees waived exceed \$10) for banking related services.
  - Items with a de minimis value of \$10 or less are not bonuses. Depository institutions may rely on the valuation standard used by the Internal Revenue Service to determine if the value of the item is de minimis.

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## Coverage- 12 CFR 1030.1 and 1030.2

### – Bonuses

- In determining if an item valued at \$10 or less is a bonus, depository institutions aggregate per account only the market value of items that may be given for a specific promotion.
- Depository institutions must aggregate per account per calendar year items that may be given to consumers.

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## General Disclosure Requirements- 12 CFR 1030.3

### • Rate Quotes

- Oral rate quotations must state the Annual Percentage Yield (APY). Interest rates may also be quoted, however, interest rates cannot be used without giving the corresponding APY. No other rate or yield (such as “tax effective yield”) is permitted.
- If the annual percentage yield is the same as the interest rate, institutions may disclose a single figure but must use both terms.

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## Account Disclosures- 12 CFR 1030.4

### – Disclosures

- Must be written in a clear and conspicuous manner and must be provided in a form the customer can keep.

### – Timing

- Consumer present: Prior to opening an account or service provided, whichever is earlier. (Service is considered “provided” when a fee required to be disclosed is assessed.)

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## Account Disclosures- 12 CFR 1030.4

### – Timing

- Consumer not present:
  - Mail or deliver the disclosures no later than 10 business days after the account is opened or service is provided, whichever is earlier, with the exception of electronic communications.
  - If a consumer who is not present at the institution uses electronic means (for example, an Internet Web site) to open an account or request a service, the disclosures must be provided before the account is opened or the service is provided.
- Disclosures must be provided to a consumer upon request.
- Sample language for account disclosures can be found in Appendix B- Model Clauses and Sample Forms.

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## Account Disclosures- 12 CFR 1030.4

- Content

- Annual Percentage Yield and interest rate, using those terms.
  - For fixed rate accounts:
    - » The period of time the interest rate will be in effect.
  - For variable rate accounts:
    - » The fact that the interest rate and APY may change.
    - » How the interest rate is determined.
    - » Any limitation on the amount the interest rate may change.

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## Account Disclosures- 12 CFR 1030.4

- Content

- Compounding and crediting:
  - The frequency with which interest is compounded and credited.
  - Effect of closing an account.



*Crediting has no effect on APY!*

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## Account Disclosures- 12 CFR 1030.4

- Disclosures- New Account
  - Balance information:
    - Minimum balance requirement to:
      - » Open the account
      - » Avoid the imposition of a fee
      - » Obtain the APY disclosed
    - Balance computation method
    - When interest begins to accrue

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## Account Disclosures- 12 CFR 1030.4

- Disclosures- New Account
  - Fees:
    - The amount of a fee or an explanation of how the fee will be determined and the conditions under which the fee will be imposed.
    - A disclosure of specific categories of transactions that may cause an overdraft fee to be imposed on the account holder.
  - Transaction limitations:
    - Any limitations on the number or dollar amount of withdrawals or deposits.

192

## Account Disclosures- 12 CFR 1030.4

- Disclosures- Time Accounts
  - Time account disclosures must include:
    - Time requirements:
      - » The maturity date
    - Early withdrawal penalties:
      - » A statement that a penalty will or may be imposed for early withdrawal, how it is calculated, and the conditions for its assessment.

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## Account Disclosures- 12 CFR 1030.4

- Disclosures- Time Accounts
  - Time account disclosures must include:
    - Early withdrawal penalties:
      - » If compounding occurs and interest may be withdrawn before maturity, a statement that the APY assumes interest remains on deposit until maturity and that a withdrawal will reduce earnings.
      - » A statement that interest cannot remain on deposit and that payout of interest is mandatory, if the account has a maturity of greater than one year and does not compound interest on an annual or more frequent basis and requires interest payouts at least annually.

194

## Account Disclosures- 12 CFR 1030.4

- Disclosures- Time Accounts
  - Time account disclosures must:
    - Disclose an APY determined in accordance with section E of Appendix A of Regulation DD.
    - Renewal policies:
      - » A statement of whether or not the account will automatically renew at maturity.
      - » If it will, a statement of whether a grace period will be provided, and its length.
      - » If not, a statement of whether interest will be paid after maturity if the consumer does not renew the account.
    - Bonuses
      - » The amount or type of any bonus, when the bonus will be provided, and any minimum balance and time requirement to obtain the bonus.

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## Subsequent Disclosures- 12 CFR 1030.5

- Change in Terms Notice
  - Advance notice required for:
    - Any change in term required to be disclosed under 1030.4(b) if the change may reduce the APY or adversely affect the consumer.
  - The advance notice shall:
    - Contain the effective date of the change.
    - Be mailed or delivered at least 30 calendar days before the effective change.
  - No notice required for:
    - Variable rate changes
    - Changes in fees assessed for check printing
    - Short term time accounts

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## Subsequent Disclosures- 12 CFR 1030.5

### – Renewal Notices

- Notices before maturity for time accounts:
  - For time deposits that renew automatically at maturity and that have maturities of longer than one month:
    - » A disclosure must be mailed or delivered at least 30 calendar days before the maturity date of the existing account.
    - » Alternatively, the disclosures may be mailed or delivered 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.
  - Maturities of longer than one year:
    - The institution shall provide the account disclosures required by 1030.4(b) along with the date the account matures.

197

## Subsequent Disclosures- 12 CFR 1030.5

### – Renewal Notices

- If the interest rate and APY to be paid on the new account are unknown when the disclosures are required the institution shall:
  - » State that those rates have not yet been determined.
  - » Provide the date they will be determined.
  - » Provide a telephone number consumers may call to obtain the interest rate and APY.

### – Maturities of one year or less but longer than one month:

- The institution shall either provide the account disclosures required by 1030.5(b)(1); or disclose to the consumer:
  - » The date the existing account matures and the new maturity date if the account is renewed.
  - » The interest rate and APY to be paid on the new account.

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## Subsequent Disclosures- 12 CFR 1030.5

### – Renewal Notices

- If the interest rate and APY to be paid on the new account are unknown when the disclosures are required the institution shall:
  - State that those rates have not yet been determined.
  - Provide the date they will be determined.
  - Provide a telephone number consumers may call to obtain the interest rate and APY.
- Any difference in the terms of the new account as compared with the terms required to be disclosed under section 1030.4(b) for the existing account.

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## Subsequent Disclosures- 12 CFR 1030.5

### – Renewal Notices

- Notice before maturity for time accounts longer than one year that do not renew automatically.
- Institutions shall provide:
  - » A disclosure that discloses to consumers the maturity date and whether interest will be paid at maturity.
  - » The disclosure shall may be mailed or delivered at least 10 calendar days before maturity of the existing account.

200

## Consumer Periodic Statements

- Reg DD does not require a periodic statement – but if one is provided it must conform to Reg DD statement requirements
- Information about account provided on a regular basis 4 or more times per year other than for passbooks or time accounts (CDs)
- Reg DD applies only to statements given to consumers

201

## Periodic Statements- 12 CFR 1030.6

- Disclosures- Periodic Statement
  - General rule
  - If a depository institution mails or delivers periodic statements, the statement shall include the following disclosures:
    - » Annual percentage yield earned during the statement period
    - » Amount of interest earned during the statement period

202

## Periodic Statements- 12 CFR 1030.6

- Disclosures- Periodic Statement
  - Any debited fees required to be disclosed under section 1030.4(b)(4), itemized by dollar amount and type.
    - » NOTE: Except as required in section 1030.11(a)(1) for overdraft payment fees, if fees of the same type are imposed more than once in a statement period, an institution may itemize fees separately or group them together and disclose a total dollar amount for all fees of the same type. Fees for paying overdrafts and for returning items unpaid are not fees of the same type and must be separately distinguished.
  - The total number of days in the statement period, or the beginning and ending dates of the period.

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## Periodic Statements- 12 CFR 1030.6

- Disclosures- Periodic Statement
  - Special rule for average-daily balance method
    - In making the disclosures described in the general rule, institutions that use the average-daily-balance method and calculate interest for a period other than the statement period shall calculate and disclose the APY earned (APYE) and amount of interest earned based on that period rather than the statement period.
    - The information regarding length of period in the general rule shall be stated for that period as well as for the statement period.

204

## Payment of Interest- 12 CFR 1030.7

- Payment of Interest
  - Permissible methods
    - Balance on which interest is calculated:
      - Institutions shall calculate interest on the full amount of principal in an account for each day by use of either the daily balance method or the average daily balance method.
    - Determination of minimum balance to earn interest:
      - Institutions shall use the same method to determine any minimum balance to earn interest as it uses to determine the balance on which interest is calculated. Institutions may use an additional method that is unequivocally beneficial to the consumer.

205

## Deposit Account Reg DD Categories

- Interest-bearing
- Fixed rate
- Variable rate
- Multiple rate
- Tiered rate
- Stepped-rate
- Time account (CD)
- Auto renewal or not auto renewal
- Non-interest bearing

206

## Payment of Interest- 12 CFR 1030.7

- Payment of Interest
  - If an institution chooses not to pay accrued interest if the consumer closes an account prior to the date accrued interest is credited, the institution must disclose this practice in the initial account disclosures.
  - Compounding and crediting policies
    - Section 1030.7(b) does not require institutions to compound or credit interest in any particular frequency.
  - Date interest begins to accrue
    - Interest shall begin to accrue not later than the business day specified for interest-bearing accounts in section 606 of the Expedited Funds Availability Act (12 USC 4005 et seq.) and implementing Regulation CC (12 CFR 229).
    - Interest shall accrue until the day funds are withdrawn.

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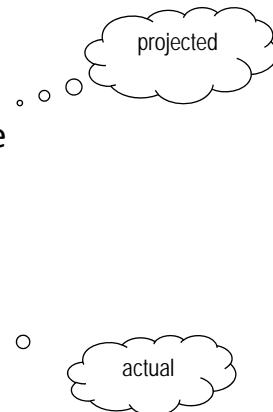
## Advertisements- 12 CFR 1030.8

- An advertisement shall not:
  - Be misleading or inaccurate or misrepresent a depository institution's deposit contract; or
  - Refer to or describe an account as "free" or "no cost" (or contain a similar term, such as "fees waived") if any maintenance or activity fee may be imposed on the account.

208

## Calculations for Disclosures and Ads

- Reg DD Appendix A contains 2 separate methods for calculating the annual percentage yield (APY) for deposit accounts:
- First method is used for determining the APY for purposes of initial disclosures and advertisements, and
- Second method is used for calculating the annual percentage yield earned (APYE) for purposes of deposit account periodic statements



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## Advertisements- 12 CFR 1030.8

- Maintenance and activity fees include:
  - Any fee imposed when a minimum balance requirement is not met, or when consumers exceed a specified number of transactions
  - Transaction and service fees that consumers reasonably expect to be imposed on a regular basis
  - A flat fee, such as a monthly service fee
  - Fees imposed to deposit, withdraw, or transfer funds, including per-check or per-transaction charges (for example, \$.25 for each withdrawal, whether by check or in person)

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## Advertisements- 12 CFR 1030.8

- Examples of fees that are not maintenance or activity fees include:
  - Check printing fees
  - Balance inquiry fees
  - Stop-payment fees and fees associated with checks returned unpaid
  - Fees assessed against a dormant account
  - Fees for ATM or electronic transfer services (such as preauthorized transfers or home banking services) not required to obtain an account

211

## Advertisements- 12 CFR 1030.8

- An advertisement shall not:
  - Use the word “profit” in referring to interest paid on an account.
- If an electronic advertisement displays a triggering term, the advertisement must clearly refer the consumer to the location where the additional required information begins. Interest rates and APYs are triggering terms.
- For an institution that promotes the payment of overdrafts in an advertisement, the advertisement must include the disclosures required by section 1030.11(b).

212

### Advertisements- 12 CFR 1030.8

#### – Permissible rates

- If a rate of return is stated, it must be stated as:
  - An Annual Percentage Yield using that term at least once in the advertisement.
  - The abbreviation “APY” may be used as long as the requirements for using the verbiage Annual Percentage Yield are met.
  - 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 (APY), to which it relates.
  - The APY must be rounded to the nearest one-hundredth of one percentage point (.01%) and expressed to two decimal places.
  - If the institution advertises tiered-rate accounts, the advertisement must state an APY for each tier, along with corresponding minimum-balance requirements.
  - If the institution advertises stepped-rate accounts, the advertisement must state all the interest rates and the time period that each rate is in effect.

213

### Advertisements- 12 CFR 1030.8

- If the Annual Percentage Yield is stated in an advertisement, the advertisement shall state the following information, to the extent applicable, clearly and conspicuously:
  - For a variable rate account, that the rate may change after account opening.
  - Time Annual Percentage Yield is offered, or a statement that it is accurate as of a specified date.
  - Minimum balance required to earn the advertised annual percentage yield.
  - For tiered-rate accounts, minimum balance required for each tier in close proximity and with equal prominence to the applicable APY, if applicable.
  - For a variable rate account, that rate may change after account opening.
  - Time Annual Percentage Yield is offered, or a statement that it is accurate as of a specified date.
  - Minimum balance required to earn the advertised annual percentage yield.
  - For tiered-rate accounts, the minimum balance required for each tier stated in close proximity and with equal prominence to the applicable APY, if applicable.

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### Advertisements- 12 CFR 1030.8

- Minimum opening deposit if it is greater than minimum balance necessary to obtain the advertised annual percentage yield.
- A statement that maintenance or activity fees could reduce the earnings on the account.
- Features of Time Accounts
  - » Term of the account
  - » A statement that a penalty will or may be imposed for early withdrawal
  - » A statement that interest cannot remain on deposit and that payout of interest is mandatory, 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 12 CFR 1030.

215

### Advertisements- 12 CFR 1030.8

- Bonuses
  - Apart from the exemption provided for certain advertisements, if a bonus is stated in an advertisement, the advertisement shall state the following information, to the extent applicable, clearly and conspicuously:
    - The Annual Percentage Yield using that term.
    - The time requirement to obtain the bonus.
    - The minimum balance required to obtain the bonus.
    - The minimum balance required to open the account (if it is greater than the minimum balance necessary to obtain the bonus).
    - When the bonus will be provided

216

## Records Retention- 12 CFR 1030.9

- Records must be kept for two years after the date the disclosures are required to be made or action required to be taken.
- Records should include rate information, advertising, and evidence of providing consumers disclosures at the appropriate time (including upon a consumer's request.)
- Examiners and auditors will review samples of advertising and disclosures, policies and procedures, and training activities, as appropriate.

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## Enforcement- 12 CFR 1030.9

- Enforcement-FIRREA Penalties- 12 USC 4301
  - Penalties up to \$7,500 per day for violations of law and regulations;
  - Penalties up to \$37,500 per day if violations or unsafe or unsound practices are engaged in recklessly or are a part of a pattern of misconduct that causes more than a minimal loss to the bank or any pecuniary gain to the parties involved;
  - Penalties up to \$1,375,000 per day against persons who knowingly or recklessly cause a substantial loss to the bank or a substantial benefit to the party.

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## DEPOSITS

### Timeline of ODP ISSUE Emergence

2005	2008	11/2008	1/1/10	5/26/10	6/1/2010	6/30/2011
Joint Guidance and Best Practices	Best Practices	FDIC Study of Bank Overdraft Programs	Reg DD amended to require aggregated MTD and YTD OD and NSF fees paid	FDIC Webinar and Conference Call	FDIC Third Party Risk Compliance Exam Procedures Issued	New FDIC Exam Manual ODP Section published

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### The Effect of Guidance?



- Guidance does not have the full force of the laws and the regulations
- However, don't underestimate the fact that they can be an issue with regards to Safety & Soundness!
- The FDIC regularly refers to the guidelines as their "Expectations" and the aggressive stance that will be taken in enforcing the "Expectations"

220

### Banks' Options for Overdrafts

- Ad hoc decision to pay or return items
- Automate transfers to cover overdrafts from other deposit accounts
- Manually transfer funds to cover overdrafts from other deposit accounts
- Assign a \$ amount to allow overdrafts up to a limit at the account level
- Offer overdraft lines of credit governed by Regulation Z
- Offer Bounce Protection – automated overdraft program
- Offer small dollar low cost closed-end loans

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### AOP or Ad Hoc Programs?

AOP  
Automated  
Overdraft  
Payment

- Partially or fully computerized
- Used by banks to determine whether NSFs qualify for overdraft coverage based on pre-determined criteria; and
- Decision to pay or return specific items generally does not rely on bank decision maker, customer or item

Ad Hoc

- Bank employee exercises judgment in making a specific decision about whether to pay or return an item
- Decisions are made based on specific considerations and knowledge of a particular customer; and
- They are provided an accommodation, not on a pre-determined basis

DANGER!

- Some overdraft payment programs have elements that are both automated and ad hoc.
- In these instances, examiners should exercise judgment in making a determination about whether a program is automated or ad hoc based on the aforementioned criteria, and consider appropriate follow-up action

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## Important Distinctions

- **Insufficient Fund Items (NSF)**
  - Debit transactions are presented for payment and the account has insufficient funds to cover the debit amount. The item is not allowed to post (or is posted and subsequently reversed out) and is returned to the payee.
- **Overdraft Items (OD)**
  - Debit transactions are presented for payment and the account has insufficient funds to cover the debit amount. The item is paid into overdraft (negative account balance) and is not returned to the payee.

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## Early Regulatory Concerns

- Marketed as a line of credit and use of the overdraft was highly encouraged
  - “Why wait until payday? Pay those unexpected bills today with no worries! Gotcha covered!”
- Marketing ODP linked to “Free” accounts, implying no fees for payment of overdrafts
- No clear definition of when ODP will apply
  - Checks, ATM withdrawals, POS transactions, etc.
- Artificial inflation of balances with ODP limit and no alert that a withdrawal will cause ODP fee
- Fees can easily use up the ODP limit without the consumer realizing it

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## Additional Regulatory Concerns

- Banks are overly reliant on ODP fees as primary source of fee income
- Pay Day lending without an Annual Percentage Rate (APR) disclosure
- Low-Income consumers bearing the brunt of the cost
- Misleading and confusing advertising and disclosures results in an uninformed consumer who misuses the programs

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## Primary FDIC ODP Issuances

2005

- Joint Guidance on Overdraft Protection Programs
- “2005 Joint Guidance” and “2005 Best Practices”
- FDIC FIL-11-2005

2008

- Guidance for Managing Third Party Risks
- Third Party Guidance
- FDIC FIL-44-2008

2010

- FDIC Overdraft Payment Supervisory Guidance
- FDIC Expectations and 2010 Supervisory Guidance
- FDIC FIL-81-2010

2011

- FDIC Compliance Manual, June 2011
- FDIC creates entirely new and separate section in exam manual
- Lending – Overdraft Payment Programs

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## Aggregate Fee Disclosures on Periodic Statements

January 2010

- Depository institutions must disclose aggregate costs of the overdraft service for the statement period and the calendar year-to-date on periodic statements

	Total For This Period	Total Year-to-Date
Total Overdraft Fees	\$60.00	\$150.00
Total Returned Item Fees	\$0.00	\$30.00

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## Reg DD Amendments 1/1/10

- Account Balance Disclosures for Automated Systems
  - Disclosures by telephone, online via Internet or ATMs
  - Balance may not include additional amounts provided to cover an item when there are insufficient funds available in the consumer's account
  - At your option, you may disclose additional account balances available to pay overdrafts IF you prominently state that any balance includes the additional amounts
  - First, disclose ledger balance that does not include any additional amounts used under for-a-fee ODP services

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## Overdraft Fees to be Disclosed

FRB Staff Interpretations clarify that overdraft fees now required to be disclosed applies only to “for-a-fee overdraft” protection services and not to fees for transferring funds from another account of the consumer to avoid an overdraft, or fees under a service subject to Reg Z



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January 2010

## Misleading or Inaccurate...

- Regulatory authority to prohibit disclosure of the additional funds was justified in the Supplementary Information by TISA Section 263(3) that prohibits misleading or inaccurate advertisements, announcements or solicitations relating to a deposit account
- The new requirements standardize a bank's disclosure of funds available for overdraft and should provide some protection against litigation under UDAP
  - Unfair or Deceptive Acts or Practices

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## DEPOSITS

### Comparison of ODP Guidance

OCC 2010 Proposal	FDIC 2010 Guidance	FDIC 2005 Guidance	Requirement
✓	✓	✓	Provide disclosures that clearly explain program
✓	✓	✓	Advertisements and marketing items must not be misleading
✓	✓	✓	Disclose payment order of items
✓	✓	✓	Avoid using the payment order of items to maximize fee income
✓	✓	✓	Comply with all applicable laws and regulations
✓			Customers should have to opt-in with continuous right to opt-out
	✓		Institutions should allow opt-out for non-electronic transactions
		✓	Provide for an opt-in, or alternatively, an opt-out
✓			Establish program eligibility criteria and analyze if consumer can repay
✓	✓	✓	Banks should establish a daily fee cap
✓	✓		Establish transaction amount below which fee won't be imposed

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Based on Wolters Kluwer's comparison

### Comparison of ODP Guidance

OCC 2010 Proposal	FDIC 2010 Guidance	FDIC 2005 Guidance	Requirement
✓	✓	✓	Monitor excessive customer usage and appropriately follow-up
	✓		Excessive usage means more than 6 overdrafts in a rolling 12-month period for which a fee was charged
✓	✓	✓	Management should exercise appropriate oversight (REPORTS!!)
	✓		Appropriate oversight includes annual review of program features
✓	✓	✓	Management oversight of third party vendors
✓		✓	Charge off overdrafts in a timely manner
	✓	✓	Train staff to explain program features and other choices
✓	✓	✓	Provide consumer alerts before overdrafts occur
	✓		Provide information on financial education workshops or counseling
	✓		Overdraft payment programs will be reviewed at each exam
		✓	Selectively report negative info to consumer reporting agencies

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Based on Wolters Kluwer's comparison



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## Financial Solutions

- Patti Joyner Blenden
- [www.finsolinc.com](http://www.finsolinc.com)
- Email  
[Blendenpg@Bellsouth.net](mailto:Blendenpg@Bellsouth.net)



*Check out our compliance tools!*

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