

Frequently Asked Question and Answer

September 15, 2015

Question

Under what scenarios are we permitted to advertise that we offer a “free” ATM/Debit card?

Short Answer

A financial institution will only be able to advertise the ATM/Debit Card access device as “free” as long as there are no fees imposed by the institution for the card. When there are fees associated with special services that may impact the card, the institution will want to make a determination on a case by case basis as to whether that fee materially impacts the ability to call the card “free”.

Answer Details

The rules over whether a consumer account-related service can be called “free” are governed by the Truth in Savings Act/Regulation DD (NCUA Regulation 707 for credit unions). While the Regulation itself specifically focuses on restrictions regarding identifying a deposit account as “free”; the Official Staff Interpretations provide additional guidance for *specific account services*. The Official Staff Interpretations for Regulation DD §1030.8(a) state that institutions may advertise a specific account service or feature as free if no fee is imposed for that service or feature. For example, an institution would be prohibited from calling an ATM/Debit Card free if there is a monthly fee associated with the card, or an initial fee for obtaining the card.

As it pertains to fees associated with special services that may impact the card; the institution will want to make a case by case determination as to the nature of the fee and the likelihood of its occurrence when making a determination as to whether to call the card free. In addition to the Regulation DD interpretations, the institution will also want to take steps to avoid any potential Unfair, Deceptive or Abusive Acts and Practices (“UDAAP”) issues in its advertising and documentation. While UDAAP decisions will come down to individual examiner interpretations, institutions should typically avoid labeling the card as free when there is any fee that could regularly occur, such as a fee assessed for using other institutions’ ATMs.

A service that is unlikely to occur, such as a fee associated with expedited delivery of a replacement card, would typically on its own not be considered something that would result in a Truth in Savings or UDAAP violation, unless the institution specifically refers to the expedited delivery service in its advertising or documentation while also calling the card free. Since institutions have no control over surcharges that other institutions impose for using their ATMs, the institution would not be prohibited from calling its own card free if the only such fees that could be assessed are surcharges assessed by other institutions. As a best practice, many institutions have included a reference in their advertising that other institutions may impose a surcharge when calling the card free.

If you are interested in discussing your Deposit Compliance Program or in need of a Deposit Compliance audit, please contact [Stephen King, JD, AMLP](#), Director Wolf Regulatory Compliance Services Group, at 617-428-5448 or sking@wolfandco.com; Brian Shea, CRCM, CAMS, Regulatory Compliance Manager, at 617-261-8133 or bshea@wolfandco.com; or Erica Torres, CRCM, Regulatory Compliance Manager, at 617-261-8121 or etorres@wolfandco.com.