



Deposit Compliance: Common Violations and Trends

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June 27, 2017



Before we get started...

- Today's presentation slides can be downloaded at www.wolfandco.com/webinars/2017
- The session will last about 45 minutes, and we'll then have time for Q & A.
- Our audience will be muted during the session.
- Please send your questions in using the "Questions Box" located on the webinar's control panel.

About Wolf & Company, P.C.

- Established in 1911
- Offer Audit, Tax, and Risk Management services to over 250 financial institutions
- Offices located in:
 - Boston, Massachusetts
 - Springfield, Massachusetts
 - Albany, New York
 - Livingston, NJ
- Over 200 professionals



As a leading regional firm founded in 1911, we provide our clients with specialized industry expertise and responsive service.

Financial Institution Expertise

- Over 60 Risk Management Professionals:
 - IT Assurance Services Group
 - Internal Audit Services Group
 - Regulatory Compliance Services Group
 - WolfPAC® Solutions Group
- Provide services to over 250 financial institutions:
 - Approximately 90 FIs with assets > \$1B
 - Approximately 25 publicly traded FIs
 - Constant regulatory review of our deliverables
- Provide Risk Management Services in 27 states and 2 U.S. territories

Today's Objectives

As part of today's session we will:

- Learn about recent enforcement actions, penalties or other high priority regulator concerns over deposit compliance
- Identify possible issues and concerns with newer products and services
- Learn about common audit and examiner issues on deposit compliance areas



Outline

1. Regulatory Hot Buttons
2. New Technologies, Products and Services
3. Common Audit and Exam Issues
4. Questions?



REGULATORY HOT BUTTONS

The Wells Fargo logo is centered on the slide. It consists of a solid red square with the words "WELLS" and "FARGO" stacked vertically in a bold, yellow, serif font.

September 2016 - Wells Fargo

- Penalties from CFPB, OCC, City of Los Angeles
- Unauthorized opening of accounts and other products in order to meet sales goals
- Customers charged with fees for never authorized services



July 2016 - Santander

- Penalized by CFPB
- Usage of telemarketing services to get customers to opt into overdraft services, at times without consent
- Deceived customers about service being free, fees involved
- Falsely characterized calls as not being sales related



October 2016 – TCF National Bank

- Penalized by CFPB
- Made overdraft services appear mandatory, pushed service in misleading fashion
- Bonus strategy for staff on overdraft opt-ins, employees feared termination if 80% opt-in goal not met
- Existing customers opted in with limited explanation

Enforcement Actions



November 2015 – Bank of Louisiana

- Penalized by FDIC
- Failed to investigate Regulation E error resolution claims without police report, refused to accept oral notification
- Insufficient documentation and disclosures missing language
- Customers charged undisclosed debit card fee

Lessons from Enforcement Actions

- Are sales goals, incentive programs, etc... encouraging employees to break the rules?
- What is the institution's culture with respect to sales and compliance?
- Do we ensure processes and controls are in place to ensure accounts opened are legitimate?
- Are we careful with how overdraft opt-in programs are marketed, explained and run?
- Are we overtly requiring things from consumers that the regulation does not in order to comply?

NEW TECHNOLOGIES, PRODUCTS AND SERVICES

Rewards Checking Products



Rewards

Rewards Checking are becoming increasingly popular in the industry

Common features:

- High interest rate up to a specified dollar cap
- Refunds or waives ATM fees/surcharges
- Requirement to obtain e-statements, perform specified number of debit card transactions each qualification cycle

There are two ways a tiered rate account can be structured under Regulation DD:

Tiering Method A

Account earns one single rate on entire balance, depending on what tier the balance is in

Tiering Method B

The portion of the balance for each tier is paid the interest rate applied to that tier

Rewards Checking products commonly use Method B

Rewards Checking Products - Tiers

Improperly disclosing APYs for Tiering Method B is one of the most common audit issues we run across.

Example:

\$0.01 - \$25,000.00 earns 1.99 interest rate

\$25,000.01 and up earns 0.05 interest rate

The APY for the second tier must be disclosed as a range (X.XX% APY – Y.YY% APY)



Other Rewards Checking issues:

- Failure to reference that transactions must “post and clear”
- Improper or confusing references to ATM fee/surcharge waivers
- Confusion over “qualification cycle”

Online Account Opening

Online account opening usage continues to increase.

In order to provide disclosures electronically, the institution will need to ensure compliance with ESIGN

Prior to replacing paper disclosures, the institution must:

- Provide a disclosure identifying the consumer's rights relating to electronic disclosures
- Obtain consent **in a manner that demonstrates the consumer can access the electronic disclosures**

Online Account Opening

Common ESIGN issues:

- Consent is obtained after or at the same time the account opening disclosures are provided
- Consent is not obtained in the required manner (ex. signed paper form)
- ESIGN disclosure is missing certain required language

Such issues can also be a concern for electronic statements

Online Account Opening

Other common online account opening issues:

- Specific Annual Percentage Yield, Interest Rate and Maturity Date not provided as part of account opening process
- Failure to timely update online versions of disclosures when changes are made the paper versions



Person to Person Transfer Services

Services that enable a consumer to transfer funds between accounts at different banks or to third parties (ex. “Pop Money”).

Such services are considered “Access Devices” under Reg. E and subject to applicable Protections.



Person to Person Transfer Services

Issues that arise include:

- Disclosure either not provided, or lacking Reg. E-required content
- Disclosed terms fail to consider inconsistent state law (ex. MA liability cap)
- Limits either not disclosed or can fluctuate, causing Reg. E changes in terms issues
- Failure to properly disclose fees
- OFAC considerations

COMMON AUDIT AND EXAM ISSUES

Account Disclosures

Common issues:

- Missing transaction limitations in Reg. E disclosure
- Not providing Reg. E disclosure in close proximity to triggering event (ex. new access device)
- Referencing that there are fees, but not providing specific fee details (amount, conditions)



Changes in Terms

Issues include:

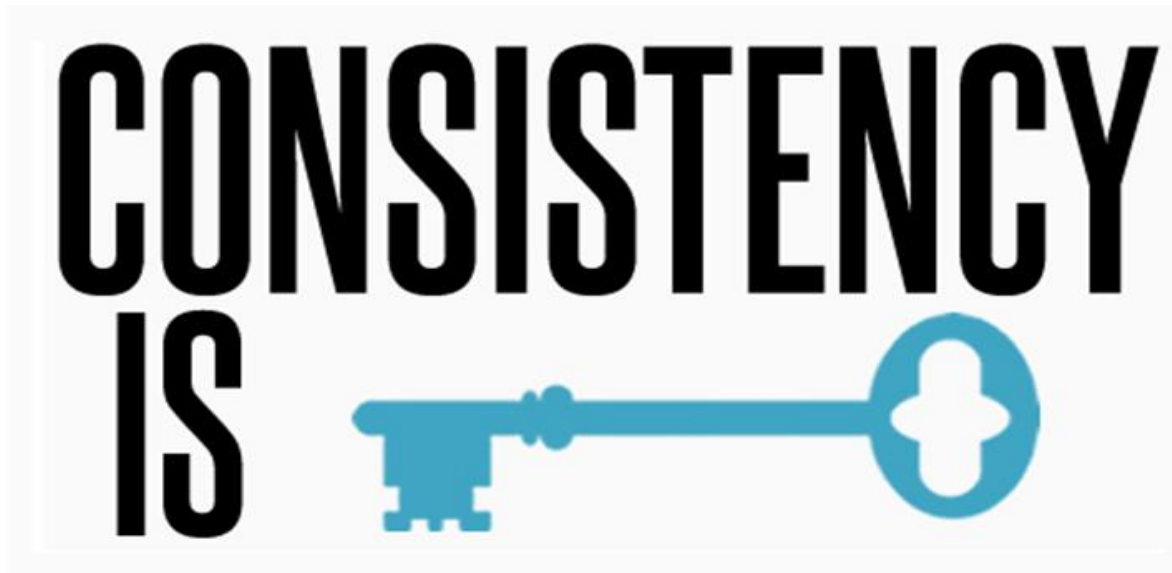
- Failure to provide proper explanation of changes (ex. sending new disclosure only)
- Not capturing all changed fees or terms
- Failure to provide notice of beneficial changes under Regulation CC



Consistency of Terms

Regulation DD requires all account titles, fees and terms to be consistent

What should be an easy to comply with requirement is nonetheless seen all the time as an issue



Consistency of Terms

Causes of issues:

- System restrictions/limitations
- Updates not carrying over to all applicable documents
- Multiple people involved in creation of documents
- Failure to have control to review advertisements and materials back to relevant disclosures

Overdraft Issues

Areas of concern:

- Improperly assessing overdraft fees based on memo post holds
- Opt-in issues
- Continuous overdraft fees
- Failure to have monitoring over excessive users
- Improper advertising



Deposit Advertising

Advertising issues include:

- Failure to state that rate can change after the account is opened
- Not identifying minimum tier balance to earn APY in equal prominence/proximity as disclosed APY
- Including bonus in ad, but not including required disclosures
- Improper segregation of insured deposits and uninsured NDIP



Error Resolution

Common issues:

- Failure to provide final notification for ACH error resolution claims
- Failure to resolve ACH error resolution claim by 45th day due to lack of signed notice
- Failure to apply error resolution protections to less commonly disputed transaction types (ex. online banking, bill pay, foreign remittance)
- Providing dispute notification letters with incorrect language

Error Resolution

More issues:



- Requiring the consumer to provide a police report before moving forward with the investigation
- Accepting notification/investigating only when notification is provided in writing
- Mixing up Reg. E rules and Mastercard/VISA rules
- Not refunding all fees impacted by error
- Other timing issues

Regulation D

Issues include:

- Failing to track wire transfers not performed in person
- Turning off certain features but permitting consumer to violate Reg. D limits through other means
- Treating all checks subject to Reg. D while not removing those written as a withdrawal by the account holder
- Improper “excessive transfer fee” application

Funds Availability

Common issues:

- 24 hour hold at ATM resulting in failure to provide availability by start of next business day
- Actual funds availability schedule does not match disclosure
- Hold notice completion



Identity Theft Red Flags

Service provider oversight is one of our most commonly seen issues in an Identity Theft Red Flag Program audit.

Requirement:

Whenever a financial institution or creditor engages a service provider to perform an activity in connection with one or more covered accounts the financial institution or creditor should take steps to ensure that the activity of the service provider is conducted in accordance with reasonable policies and procedures designed to detect, prevent, and mitigate the risk of identity theft.

Identity Theft Red Flags

Common Service Provider Issues:



- Failure to have any relevant documentation
- Documentation or contracts on file, but solely speak to GLBA privacy or non-Identity Theft Red Flag related Fair Credit Reporting Act rules
- Failure to have formal process to identify relevant service providers
- Failure to identify closing attorneys as applicable service providers (based on nature of services)

Questions?

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