



## Division of Depositor and Consumer Protection

### Dallas Region Quarterly Newsletter

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### Automated Overdraft Program and One-Time Debit and ATM Opt-In Procedure Considerations

This article addresses scenarios we have recently encountered involving overdraft programs and the interplay with Regulation E opt-in requirements. It includes information on effective practices to help prevent violations and potential consumer harm and considerations regarding appropriate corrective action when these situations are identified.

#### Background

Regulation E contains requirements impacting overdraft programs. Section 1005.17(b) prohibits a financial institution from assessing a fee or charge on a consumer's account for paying an Automated Teller Machine (ATM) or one-time debit card transaction pursuant to the institution's overdraft program, unless the institution provides the customer a notice that is substantially similar to Model Form A-9; provides a reasonable time for the consumer to affirmatively consent, or opt-in; obtains the consumer's affirmative consent, or opt-in; and provides the consumer with confirmation of the consumer's consent. Further, Section 1005.17(g) requires the bank to revoke the customer's opt-in selection when the financial institution terminates the customer's overdraft program. Per official staff commentary, this could occur in situations where the financial institution terminates the program as a result of excessive use.

#### Problematic Opt-in Processes

Some institutions have prescribed criteria to qualify for an automated overdraft program such as minimum timeframes for having a banking relationship with that institution, deposit activity and history, and other transaction requirements. For example, an account must be open for at least sixty days, have one direct deposit, and a positive balance to be eligible for the overdraft program. New accountholders are not enrolled until they have met the prescribed requirements and are not eligible to have one-time debit and ATM transactions paid. However, we are seeing situations where new account representatives will describe the automated overdraft program and one-time debit and ATM card opt-in requirements at account opening, and allow customers to complete the opt-in election at that time, implying consumers have full access to the institution's opt-in overdraft program. In effect, this could be described as a "pre-emptive" opt-in. The potential

for violations and consumer harm arises when the affirmative opt-in status is activated in the deposit processing platform before automated overdraft coverage becomes effective. In such cases, most one-time debit card or ATM transactions that would overdraw the account are declined because there is no overdraft program in place. However, it is possible, either through an automated process or through manual account review, for overdraft charges to be assessed in required-pay or force-pay transactions. In such force-pay transactions, the new accountholder who has opted-in, but has not yet qualified for the overdraft program, is assessed a fee for a transaction that must be paid and for which no fee would be assessed if the consumer had not pre-emptively opted-in. In essence, these accountholders are assessed overdraft fees without receiving access to the automated overdraft payment program. In other words, accountholders that pre-emptively opt in are being charged overdraft fees that would otherwise be prohibited, a scenario that may violate the Federal Trade Commission's Section 5 prohibitions against Unfair or Deceptive Acts or Practices (Section 5).

#### Revoking the Opt-in Election

When accountholders are terminated from an overdraft program for excessive use or other reasons, they are no longer eligible for the overdraft program, including the payment of one-time debit and ATM transactions that overdraw the account. Per the previously described Regulation E requirements, the affirmative opt-in selection must be revoked in these cases. We have identified instances where bank personnel are unaware of this requirement, and the opt-in selection remains active in the deposit account processing platform even though the accountholder is no longer enrolled in the overdraft payment program. Similar to the new accountholder scenario, potential violations and consumer harm can result from fees assessed for force-pay transactions. Since the opt-in is still active, it is possible for accountholders to be charged overdraft fees in force-pay transactions, in error.

Examiners have also identified issues related to some financial institutions' practice of continuing to assess overdraft fees after extending customers' loans (often referred to as "fresh start loans") to satisfy outstanding negative balances, despite providing disclosures to the contrary. Specifically, customers sign agreements and receive disclosures stating that until the fresh start loan

## Automated Overdraft Program and One-Time Debit and ATM Opt-In Procedure Considerations (continued)

is fully repaid, a customer no longer has access to the overdraft program. Nevertheless, the financial institutions continue to assess fees for required-pay or force-pay transactions that overdraw customers' accounts. This practice is problematic as it conflicts with the agreement terms that use of the overdraft program would be suspended during the fresh start loan repayment period. As a result of the conflicting information that is provided to customers in the fresh start loan agreement (and other disclosures) compared to the institution's actual practice, there is a potential for consumer harm, as well as violations of Regulation E and/or Section 5. The representations in the agreements and disclosures could mislead consumers to believe that once approved for a fresh start loan, they will be removed from the overdraft program and accordingly will not incur any additional overdraft fees until reinstated in the overdraft program.

### Effective Practices to Help Ensure Compliance

There are steps that can be taken to avoid violations and consumer harm. One option is to adopt procedures whereby customers may only opt-in for Regulation E purposes once they actually qualify for overdraft programs. Alternatively, if pre-emptive opt-in procedures

are used, strong internal controls should be in place to ensure the opt-in status is not activated in the deposit processing platform until the accountholder is actually enrolled in the overdraft program. When accountholders are removed from the overdraft program, financial institutions should also ensure effective internal controls are in place to revoke or deactivate the opt-in status in their systems. This should be the case whether the removal is due to the origination of a fresh start loan, excessive use, or other reasons. Finally, consider periodic monitoring or audits to ensure continued compliance with applicable opt-in and revocation requirements to mitigate potential for consumer harm.

### Corrective Action

If you self-identify violations or potential issues described in this article, management should immediately modify procedures to prevent consumer harm, identify any customers harmed by the practices, and address any harm resulting from the practices, such as by providing any appropriate restitution. Section II-2.1 of the FDIC Compliance Examination Manual discusses [Evaluating the Impact of Consumer Harm](#). As always, feel free to contact the FDIC with any questions.

## New Money Smart Instructor Supplement: Scenarios for Financial Inclusion

Do you feel more connected with a product or message when you can identify with the person speaking or the characters being portrayed? Most people do. That's one of the ideas behind the FDIC's newest *Money Smart* financial education Instructor/Trainer Supplement, [Scenarios for Financial Inclusion](#). This is a resource for bankers to consider as they use FDIC's Money Smart curricula or their own financial education resources.

Each of the four scenarios in this resource features someone with a disability thinking about a financial decision:

- Ming has Down syndrome and is considering opening a checking account;
- Terrence was recently diagnosed with multiple sclerosis and wants to modify his home;
- Portia is blind and learns about a new savings opportunity; and
- Juan, a veteran, has a service-connected disability and wants to buy a home.

Providing stories about people encountering everyday financial situations is also a powerful way to help promote economic inclusion for everyone. The scenarios provide an interactive way for *Money Smart* instructors to introduce new information and financial topics. Some topics may be new to both instructors and training participants, such as centers for independent living, alternative financing programs, ABLE savings accounts that allow people with disabilities to save money without losing eligibility for public benefits, and Department of Veterans Affairs' home loan guarantees.

We include three core discussion questions with possible answers for each scenario. Instructors can also use the additional questions and resources in the supplement to foster further discussion. We designed the scenarios to accompany specific instructor-led *Money Smart for Adults* modules, yet they can also be used on their own or with other materials.

The document is available in a print-ready format, a format compliant with accessibility standards for people with disabilities, and in hard copy.

### [Scenarios for Financial Inclusion](#)

Download a copy: <https://www.fdic.gov/consumers/consumer/moneysmart/scenarios.pdf>

Order hard copies: <https://catalog.fdic.gov/money-smart-adults-english-download>

Learn more about Money Smart: <https://www.fdic.gov/moneysmart>

Questions? Email [Dalcommunityaffairs@fdic.gov](mailto:Dalcommunityaffairs@fdic.gov)

## Regulatory Developments Year-in-Review

As we come to the end of another year, it is helpful to review changes to consumer compliance regulations, exam procedures, and guidance that may affect your institution.

The table below chronologically lists some of the regulations, exam procedures, guidance, and other information effective in 2017, as well as several upcoming changes effective in 2018. The table provides a brief summary for each item, hyperlinks to applicable reference documents, and the effective date of each change. The table is based on information available at the time of publication. While this information does not reflect every legislative or regulatory change affecting your institution, we hope that it assists your institution with locating information about some important changes.

Type	Subject	Summary	Effective Date
Final Rule	Home Mortgage Disclosure Act	<p>The final rule amends Regulation C. Changes to HMDA data reporting requirements will become effective in phases:</p> <ul style="list-style-type: none"> <li>• Low-volume institutions excluded from coverage (2017 data collection under current rule)</li> <li>• 2018 data collection under new rule (for reporting in 2019)</li> <li>• Changes to enforcement provisions and additional amendments to reporting provisions</li> <li>• Quarterly reporting required for large volume reporters; adjustment of threshold for open-end lines of credit</li> </ul> <p><a href="#">Link to Federal Register – 2015 HMDA Rule</a></p> <p><a href="#">Link to Federal Register – 2017 Amendments</a></p> <p><a href="#">Link to CFPB's HMDA Implementation Resources Page</a></p>	<p>1/1/17</p> <p>1/1/18</p> <p>1/1/19</p> <p>1/1/20</p>
Notice	Equal Credit Opportunity Act	<p>The CFPB published a notice pursuant to the Equal Credit Opportunity Act (ECOA), concerning the new Uniform Residential Loan Application (URLA) and the collection of expanded HMDA information about ethnicity and race in 2017.</p> <p>At any time from January 1, 2017, through December 31, 2017, a creditor may, at its option, permit applicants to self-identify using disaggregated ethnic and racial categories as amended by the 2015 HMDA final rule. During this period, a creditor adopting the practice of permitting applicants to self-identify using disaggregated ethnic and racial categories shall not be deemed to violate ECOA.</p> <p><a href="#">Link to Federal Register</a></p>	1/1/17
Final Guidance	Uniform Interagency Consumer Compliance Rating System	<p>The Federal Financial Institutions Examination Council (FFIEC) issued final revisions to the Uniform Interagency Consumer Compliance Rating System to reflect the regulatory, supervisory, technological, and market changes that occurred in the years since the system was established. The revisions are designed to more fully align the rating system with the FFIEC agencies' current risk-based, tailored examination approaches.</p> <p><a href="#">Link to Federal Register</a></p>	3/31/2017
Final Rule	Deposit Account Recordkeeping	<p>The FDIC adopted a final rule to facilitate prompt payment of FDIC-insured deposits when large insured depository institutions fail. The final rule establishes additional requirements for insured depository institutions that have two million or more deposit accounts.</p> <p><a href="#">Link to Federal Register</a></p>	4/1/17

<sup>1</sup> The earliest effective date is noted. Other provisions may have subsequent effective dates. Please refer to links for specific dates.

**Regulatory Developments Year-in-Review** (continued)

Type	Subject	Summary	Effective Date
FDIC Financial Institution Letter	Guidelines for Appeals of Material Supervisory Determinations	<p>The FDIC adopted revised <i>Guidelines for Appeals of Material Supervisory Determinations</i> (Guidelines), which govern appeals by FDIC-supervised institutions to Division Directors and the Supervision Appeals Review Committee. The revised Guidelines expand the circumstances under which banks may appeal a material supervisory determination and enhance consistency with the appeals processes of other federal banking agencies.</p> <p><a href="#">Link to FDIC Financial Institution Letter (FIL)-42-2017</a></p>	7/18/17
Final Rule	Military Lending Act	<p>Mandatory compliance date with the Military Lending Act for credit card accounts under an open-end (not home-secured) consumer credit plan.</p> <p><a href="#">Link to Federal Register</a></p>	10/3/17
Final Rule	Mortgage Servicing Rules under the Real Estate Settlement Procedures Act and the Truth in Lending Act	<p>On August 4, 2016, the CFPB amended certain mortgage servicing rules issued in 2013 (2016 Mortgage Servicing Final Rule). Among other things, the 2016 Mortgage Servicing Final Rule clarifies, revises, or amends Regulation X provisions regarding force-placed insurance notices, policies and procedures, early intervention, and loss mitigation requirements and Regulation Z provisions regarding prompt crediting and periodic statement requirements. It also provides that confirmed successors in interest are “borrowers” and “consumers” entitled to the protections of the servicing rules in Regulation Z and Regulation X.</p> <p>On June 27, 2017, the CFPB made several non-substantive corrections to those 2016 amendments. The corrections address two typographical errors, the authority citation for Regulation Z, and several amendatory instructions relating to certain official commentary to apply the correct effective date.</p> <p>On October 4, 2017, the CFPB issued an interim final rule to amend the provision related to the timing for mortgage servicers to provide modified written early intervention notices to borrowers who have invoked their cease communication rights under the Fair Debt Collections Practices Act (FDCPA).</p> <p>Provisions effective April 19, 2018, are discussed below.</p> <p><a href="#">Link to Federal Register – Final Rule</a></p> <p><a href="#">Link to Federal Register – Corrections to Final Rule</a></p> <p><a href="#">Link to Federal Register – Interim Final Rule</a></p> <p><a href="#">Link to CFPB’s Mortgage Servicing Implementation Resources Page</a></p>	10/19/17
Interpretive Rule	Fair Debt Collections Practices Act	<p>The CFPB issued an interpretive rule under the FDCPA to clarify the interaction of the FDCPA and specified mortgage servicing rules in Regulations X and Z. The interpretive rule constitutes an advisory opinion for purposes of the FDCPA and provides safe harbors from liability for servicers acting in compliance with specified mortgage servicing rules in particular situations.</p> <p><a href="#">Link to Federal Register</a></p>	10/19/17

## Regulatory Developments Year-in-Review (continued)

Type	Subject	Summary	Effective Date
Notice	Equal Credit Opportunity Act	The CFPB published a notice concerning the update of the redesigned URLA to include an applicant language preference question. The CFPB determined that the final redesigned URLA is in compliance with ECOA.  <a href="#">Link to Federal Register</a>	11/20/17
Legislation	Servicemembers Civil Relief Act	The Foreclosure Relief and Extension for Servicemembers Act of 2015 extends certain provisions under the Servicemembers Civil Relief Act (SCRA). The extended one-year period is scheduled to expire on December 31, 2017, and will return to a nine-month period under SCRA.  <a href="#">Link to Foreclosure Relief and Extension for Servicemembers Act of 2015</a>	12/31/17
Final Rule	Home Mortgage Disclosure Act	Effective date for most provisions of the 2015 HMDA rule related to institutional and transactional coverage, data collection, recording, reporting, and disclosure.  On September 13, 2017, the CFPB amended Regulation C to temporarily increase the threshold for collecting and reporting data about open-end lines of credit from 100 to 500 open-end lines of credit for the years 2018 and 2019.  <a href="#">Link to Federal Register – 2015 HMDA Rule</a>  <a href="#">Link to Federal Register – 2017 Amendments</a>  <a href="#">Link to CFPB's HMDA Implementation Resources Page</a>	1/1/18
Interagency Exam Procedures	Home Mortgage Disclosure Act	The FFIEC issued guidelines for examiners to use in assessing the accuracy of the HMDA data institutions record and report. The HMDA Examiner Transaction Testing Guidelines describe FFIEC procedures for sampling and validating HMDA data related to applications for which final action is taken in or after 2018. The Guidelines should assist financial institutions seeking to better understand the approach the FDIC will use to assess HMDA data as part of the examination process.  <a href="#">Link to FDIC Financial Institution Letter (FIL)-36-2017</a>	1/1/18
Interagency Exam Procedures	Home Mortgage Disclosure Act	The FDIC, FRB, and OCC jointly identified and designated key HMDA data fields to support the efficient and effective evaluation of financial institutions' compliance with HMDA's requirements.  <a href="#">Link to FDIC Financial Institution Letter (FIL)-51-2017</a>	1/1/18
Final Rule	Community Reinvestment Act	The FDIC, FRB, and OCC have amended their CRA regulations to revise the definitions of "home mortgage loan" and "consumer loan," as well as the public file content requirements to maintain consistency between the CRA regulations and amendments to Regulation C. In addition, the final rule contains technical corrections and removes obsolete references to the Neighborhood Stabilization Program.  <a href="#">Link to Federal Register</a>	1/1/18

## Regulatory Developments Year-in-Review (continued)

Type	Subject	Summary	Effective Date
Final Rule	Equal Credit Opportunity Act	<p>The final rule amends Regulation B to permit creditors additional flexibility in complying with Regulation B in order to facilitate compliance with HMDA, adds certain model forms, and removes others from the Regulation. It makes various other amendments to Regulation B and its commentary to facilitate the collection and retention of information about the ethnicity, sex, and race of certain mortgage applicants.</p> <p><a href="#">Link to Federal Register</a></p>	1/1/18
Final Rule	Prepaid Accounts under the Electronic Fund Transfer Act and Truth in Lending Act	<p>The final rule creates comprehensive consumer protections for prepaid accounts under Regulations E and Z. The final rule modifies general Regulation E requirements to create tailored provisions governing disclosures, limited liability and error resolution, and periodic statements, and adds new requirements regarding the posting of account agreements. Additionally, the final rule regulates overdraft credit features that may be offered in conjunction with prepaid accounts.</p> <p>On April 25, 2017, the CFPB published a final rule delaying the effective date of the rule to April 1, 2018.</p> <p>Provisions effective October 1, 2018, are discussed below.</p> <p><a href="#">Link to Federal Register – Final Rule</a></p> <p><a href="#">Link to Federal Register – Delayed Effective Date</a></p>	4/1/18
Final Rule	Mortgage Servicing Rules under the Real Estate Settlement Procedures Act and the Truth in Lending Act	<p>Effective date for provisions of the 2016 Mortgage Servicing Final Rule related to successors in interest and periodic statements for borrowers in bankruptcy.</p> <p><a href="#">Link to Federal Register – Final Rule</a></p> <p><a href="#">Link to Federal Register – Corrections to Final Rule</a></p> <p><a href="#">Link to CFPB's Mortgage Servicing Implementation Resources Page</a></p>	4/19/18
Final Rule	Expedited Funds Availability Act	<p>The final rule modifies the current check collection and return requirements to reflect the virtually all-electronic check collection and return environment and to encourage all depository banks to receive, and paying banks to send, returned checks electronically. The current same-day settlement rule for paper checks has been retained. The rule applies existing paper-check warranties to checks that are collected electronically and also creates new warranties and indemnities related to checks collected and returned electronically and to electronically-created items.</p> <p><a href="#">Link to Federal Register</a></p>	7/1/18
Final Rule	Prepaid Accounts under the Electronic Fund Transfer Act	<p>Effective date for the requirement that issuers submit their prepaid account agreements to the CFPB.</p> <p><a href="#">Link to Federal Register</a></p>	10/1/18



**Regulatory Developments Year-in-Review** (continued)

Type	Subject	Summary	Effective Date
Final Rule	Truth in Lending-Real Estate Settlement Procedures Act Integrated Disclosure Rule	<p>The final rule modifies the federal mortgage disclosure requirements under the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA) that are implemented by Regulation Z. The rule memorializes the CFPB's informal guidance on various issues and makes additional clarifications and technical amendments. The rule also creates tolerances for the total of payments, adjusts a partial exemption mainly affecting housing finance agencies and nonprofits, extends coverage of the TILA-RESPA integrated disclosure requirements to all cooperative units, and provides guidance on sharing the integrated disclosures with various parties involved in the mortgage origination process.</p> <p>Although the final rule became effective on October 1, 2017, the mandatory compliance date is one year later.</p> <p><a href="#">Link to Federal Register</a></p>	10/1/18
Notice	FEMA Standard Flood Hazard Determination Form	<p>FEMA published a new version of the Standard Flood Hazard Determination Form (SFHDF), which is now Form 086-0-32. FEMA recommended that users of the form be given a transition period through October 2018 to move to the new version of the form.</p> <p><a href="#">Link to SFHDF and Instructions</a></p>	10/31/18

**Implementing Changes under HMDA – Obtaining a Legal Entity Identifier**

On October 28, 2015, the CFPB published amendments to Regulation C that affect which institutions report HMDA data, which transactions institutions report, and what data institutions record and report about each transaction, among other changes. Most of the changes become effective on January 1, 2018. If your institution is a HMDA reporter, make sure your implementation checklist includes an important step—obtaining a Legal Entity Identifier (LEI).

To make it easier to identify legal entities that report HMDA data and to link them to related entities, the Regulation C amendments require HMDA reporters to file HMDA data using a 20-character LEI. As a result, state nonmember banks no longer will report HMDA data using their FDIC certificate number. LEIs are issued by utilities endorsed by the LEI Regulatory Oversight Committee or endorsed or otherwise governed by the Global LEI Foundation, also called Local Operating Units (LOUs). You can find a complete list of LOUs here: <https://www.gleif.org/en/about-lei/how-to-get-an-lei-find-lei-issuing-organizations>.

The FDIC is not recommending any particular issuer. An institution can select an LOU from which to obtain an LEI and need not obtain an LEI from a U.S. issuer. Please contact your FDIC Regional Office if you have any questions.

NOTICE REGARDING NEWSLETTER

The purpose of this periodic communication is to provide you with information on matters that affect your consumer protection program. This information is NOT official FDIC guidance or instruction, but should provide you a meaningful summary of items that may impact your institution.