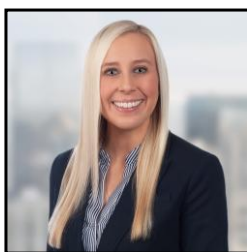


# Navigating the Future of Payments and Overdrafts: Trends, Compliance, and Strategic Partnerships

Carlin A. McCrory

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## Presenter



**Carlin McCrory**

Atlanta

404.885.2740

[Carlin.McCrory@troutman.com](mailto:Carlin.McCrory@troutman.com)

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# Overdrafts

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## Regulation E - Overdrafts



Applies to consumer transactions



The term "overdraft service" means a service under which a financial institution assesses a fee or charge on a consumer's account held by the institution for paying a transaction (including a check or other item) when the consumer has insufficient or unavailable funds in the account.

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## Regulation E – Overdraft Opt-In Requirement

- A financial institution holding a consumer's account shall not assess a fee or charge on a consumer's account for paying an **ATM or one-time debit card transaction** pursuant to the institution's overdraft service, unless the institution:
  - (i) Provides the consumer with a notice in writing, or if the consumer agrees, electronically, segregated from all other information, describing the institution's overdraft service;
  - (ii) Provides a reasonable opportunity for the consumer to affirmatively consent, or opt in, to the service for ATM and one-time debit card transactions;
  - (iii) Obtains the consumer's affirmative consent, or opt-in, to the institution's payment of ATM or one-time debit card transactions; and
  - (iv) Provides the consumer with confirmation of the consumer's consent in writing, or if the consumer agrees, electronically, which includes a statement informing the consumer of the right to revoke such consent.
- **Timing:** The financial institution must obtain the consumer's affirmative consent before the institution assesses any fee or charge on the consumer's account for paying an ATM or one-time debit card transaction pursuant to the institution's overdraft service.

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## Regulation E – Conditioning Payment of Other Overdrafts

- A financial institution shall not:
  - (i) Condition the payment of any overdrafts for checks, ACH transactions, and other types of transactions on the consumer affirmatively consenting to the institution's payment of ATM and one-time debit card transactions pursuant to the institution's overdraft service; or
  - (ii) Decline to pay checks, ACH transactions, and other types of transactions that overdraw the consumer's account because the consumer has not affirmatively consented to the institution's overdraft service for ATM and one-time debit card transactions.
- A financial institution shall provide to consumers who do not affirmatively consent to the institution's overdraft service for ATM and one-time debit card transactions the same account terms, conditions, and features that it provides to consumers who affirmatively consent, except for the overdraft service for ATM and one-time debit card transactions.

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## Regulation E – Overdraft Model Form A-9

- The notice must be substantially similar to Model Form A-9 set forth in appendix A of this part, include all applicable items in this paragraph, and **may not contain any information not specified in or otherwise permitted by this paragraph.**

### (1) Overdraft service.

- A brief description of the financial institution's overdraft service and the types of transactions for which a fee or charge for paying an overdraft may be imposed, including ATM and one-time debit card transactions.

### (2) Fees imposed.

- The dollar amount of any fees or charges assessed by the financial institution for paying an ATM or one-time debit card transaction pursuant to the institution's overdraft service, including any daily or other overdraft fees. If the amount of the fee is determined on the basis of the number of times the consumer has overdrawn the account, the amount of the overdraft, or other factors, the institution must disclose the maximum fee that may be imposed.

### (3) Limits on fees charged.

- The maximum number of overdraft fees or charges that may be assessed per day, or, if applicable, that there is no limit.

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## Regulation E – Overdraft Model Form A-9

### (4) Disclosure of opt-in right.

- An explanation of the consumer's right to affirmatively consent to the financial institution's payment of overdrafts for ATM and one-time debit card transactions pursuant to the institution's overdraft service, including the methods by which the consumer may consent to the service; and

### (5) Alternative plans for covering overdrafts.

- If the institution offers a line of credit subject to Regulation Z or a service that transfers funds from another account of the consumer held at the institution to cover overdrafts, the institution must state that fact. An institution may, but is not required to, list additional alternatives for the payment of overdrafts.

### (6) Permitted modifications and additional content.

- If applicable, the institution may modify the content to indicate that the consumer has the right to opt into, 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; to provide a means for the consumer to exercise this choice; and to disclose the associated returned item fee and that additional merchant fees may apply. The institution may also disclose the consumer's right to revoke consent.

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# Regulation E – Overdraft Safe Harbor

- Model Form A-9 Safe Harbor

No provision of this section . . . of this title imposing any liability shall apply to

. . .

(2) any failure to make disclosure in proper form if a financial institution utilized an appropriate model clause issued by the Bureau or the Board

- Model form A-9 states: “An overdraft occurs when you do not have enough money in your account to cover a transaction, but we pay it anyway.”
- Courts across the country have held that using language identical to that in the A-9 does not necessarily provide safe harbor if the model clause used is not “appropriate” to the context of the overdraft service. Courts have reasoned that there cannot be safe harbor if the disclosure in question does not actually amount to a clear and readily understandable description of the overdraft service.

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## Authorized Positive, Settle Negative

- An APSN transaction happens when a debit card transaction is authorized while there are sufficient funds in the customer’s account, but then intervening transactions settle and decrease the amount of available funds, resulting in insufficient funds to cover the initial transaction. Because there are insufficient funds in the account when the initial transaction settles, the bank charges an overdraft fee.



### FDIC Guidance from 2023

- Compliance risks associated with charging an overdraft fee on a transaction that was authorized against a positive balance but settled against a negative balance, known as “authorized positive, settle negative” (APSN)
- Failure to take steps to avoid assessing overdraft-related fees when transactions are authorized on positive balances but settle on negative balances results in heightened risks of violations of the Dodd-Frank Wall Street Reform and Consumer Protection Act of 2010, which prohibits any covered person or service provider from engaging in any unfair, deceptive, or abusive acts or practices in connection with a consumer financial product or service (Dodd-Frank UDAP) and Section 5 of the Federal Trade Commission (FTC) Act, which prohibits unfair or deceptive acts or practices (FTC UDAP)
- Third parties often play significant roles in processing transactions, identifying and tracking balances at the time of authorization, and providing systems that determine when overdraft fees are assessed. Institutions are encouraged to review these third party arrangements, as institutions are expected to maintain adequate oversight of third-party activities and appropriate quality control over products and services provided through third-party arrangements.

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# FDIC Supervisory Guidance on APSN

- Third parties often play significant roles in processing transactions, identifying and tracking balances at the time of authorization, and providing systems that determine when overdraft fees are assessed. Institutions are encouraged to review these third party arrangements, as institutions are expected to maintain adequate oversight of third-party activities and appropriate quality control over products and services provided through third-party arrangements.
- Institutions are encouraged to review and understand the risks presented from third-party system settings for overdraft-related fees, as well as understand the capabilities of their core processing system(s), such as identifying and tracking transactions authorized on a positive balance but settled on a negative balance and maintaining data on such transactions.
- Some third parties offer data processing system enhancements aimed at preventing overdraft-related fees from being charged for a transaction when a debit hold authorizes against a positive balance.
- Institutions are generally encouraged to review disclosures and account agreements to ensure the financial institution's practices for charging any fees on deposit accounts are communicated accurately, clearly, and consistently. However, disclosures generally do not fully address Dodd-Frank UDAAP and FTC UDAP risks associated with APSN transactions and related overdraft fees.

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# Monroe v. Anderson Brothers Bank

- December 3, 2025: Court denied bank's Motion to Dismiss
- Class action lawsuit
- Allegations that bank charged overdraft fees on one-time debit card and ATM transactions without obtaining affirmative consent through a compliant overdraft opt-in disclosure
- Monroe alleges that the opt-in form fails to explain (1) how bank determines whether a customer has "enough money" to cover a transaction (actual vs. available balance) and (2) when bank determines whether a transaction results in an overdraft, whether at authorization or settlement
- Alleges that bank charged overdraft fees on transaction when her actual balance never fell below \$0
- Alleges that the Opt-In Form violates Reg. E because it incorporates by reference other account documents and disclosures such that it is not an independent, stand-alone document

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## Monroe v. Anderson Brothers Bank

- Reg. E prohibits a bank from assessing a fee on ATM and one-time debit card transactions unless the consumer first receives a segregated opt-in notice describing the institution's overdraft service and the customer affirmatively consents
- The notice must be substantially similar to Model Form A-9, but the safe harbor applies only where the notice accurately reflects the institution's overdraft practices
- Courts in SC have held that a form patterned on Model Form A-9 may be noncompliant if it obscures or fails to disclose material aspects of the bank's overdraft methodology, such as balance calculation method or the timing of overdraft determinations
- Bank argued that its use of the model form entitles it to the safe harbor. The court said that the safe harbor only applies when a model clause "accurately reflects" the institution's overdraft practices.

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## Garcia et al. v. Midland States Bank

- \$3.125 million settlement over class action that alleged the bank improperly charged overdraft and non-sufficient funds (NSF) fees to customers
- The lawsuit alleged that Midland States Bank assessed multiple fees on the same transactions, as well as charged overdraft fees when accounts were not actually overdrawn — a violation of its account agreements
- Classes:
  - Authorized positive, settle negative claim
  - Some accountholders assessed an OD or NSF fee on a third-party merchant's attempt to collect its own fee
  - Accountholders assessed multiple NSF fees or one or more NDF fees followed by an OD fee related to a single check, ACH, wire, or other item

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# Best Practices and Litigation Trends



Institutions are increasingly receiving “financial record authorization” requests from attorneys representing bank customers as a first step before a formal demand letter or lawsuit. These attorneys are commonly using social media to search for potential new clients



When reviewing the produced records, plaintiffs’ attorneys are commonly investigating for claims based on: (1) assessing overdraft fees on APSN transactions without adequate disclosures and (2) assessing multiple NSF and overdraft fees on the same item, if the item is presented for payment more than one time (“retry” or “representation” fees), without adequate disclosures.



Two theories of increasing focus: (1) challenging the “content” of information contained in the institution’s model A9 Opt-In form for capturing consent to assess overdraft fees on ATM and one-time debit card transactions, and (2) challenging the assessment of fees on *de minimis* debit items (micro-transactions).



In accordance with the Nacha Rules, applications are using a verification process whereby micro credits are followed by micro debits to verify linked bank accounts. For example, applications may submit a micro credit of \$0.35 to the linked account followed by a micro debit of \$0.35 for verification purposes. Depending on the institution’s *de minimis* settings for the linked account, a customer could potentially be charged an overdraft fee for the micro debit even though plaintiffs’ attorneys argue that the micro credit was intended to cover the subsequent micro debit.

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# Best Practices and Litigation Trends



Maintain clear, auditable records of consumer opt-ins



Present disclosures separately from other account terms and clearly explain the nature and cost of the service



Systems must be configured to distinguish between one-time and recurring debit card transactions to apply the opt-in rule correctly



Frontline staff must be trained to follow compliance opt-in procedures, particularly in person and over the phone



Arbitration clause in account agreement that prevents mass arbitration



Reviewing and updating the institution’s overdraft and NSF related disclosures, including the account agreement, A9 Opt-In Form, fee schedule and overdraft program disclosures



confirm the institution’s core settings on retry fees, APSN fees and *de minimis* limits to provide that the core settings match the intended practices and updated disclosures.

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# Nacha Rule Updates

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## Upcoming Rule Implementation Dates

Dates	Rule Amendments
<b>March 20, 2026</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> New Company Entry Descriptions - PAYROLL and PURCHASE</li> <li><input type="checkbox"/> Fraud Monitoring - Phase 1                             <ul style="list-style-type: none"> <li>• ODFIs</li> <li>• Non-consumer Originators (and Third-Parties) with 2023 ACH origination volume of 6 million or greater</li> </ul> </li> <li><input type="checkbox"/> ACH Credit Monitoring - Phase 1                             <ul style="list-style-type: none"> <li>• RDFIs with 2023 ACH receipt volume of greater than 10 million</li> </ul> </li> </ul>
<b>June 22, 2026</b>	<ul style="list-style-type: none"> <li><input type="checkbox"/> Fraud Monitoring - Phase 2                             <ul style="list-style-type: none"> <li>• All other non-consumer Originators (and Third-Parties)</li> </ul> </li> <li><input type="checkbox"/> ACH Credit Monitoring - Phase 2                             <ul style="list-style-type: none"> <li>• All other RDFIs</li> </ul> </li> </ul>

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# Standard Company Entry Description – Implementation Considerations

## PAYROLL

- Requirement applies to Originators of all types of compensation payments, regardless of the status of the employment relationship (i.e., employment, contract employee, other).
- Use of the term “PAYROLL” is intended for descriptive purposes only, to help identify compensation payments. Originators and ODFIs transmitting entries with this entry description make no representation or warranty regarding the Receiver’s employment status.

## PURCHASE

- Requirement applies to Originators of online (including text) individual purchases. Includes, as an example, Buy Now Pay Later purchases that result in multiple payments.
- Does not include payment for ongoing services such as monthly recurring utility or rent payment set up online.
- Segments higher-risk WEB Entries since WEB debits are largest transaction type by volume.

### Effective date; March 20, 2026 for both amendments

These are “no later than” dates, Originators may begin using the descriptions as soon as practical.

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## False Pretenses

Several of the new rules also include references to a newly defined term, False Pretenses.

### New Language

- False Pretenses - “the inducement of a payment by a Person misrepresenting (a) that Person’s identity, (b) that Person’s association with or authority to act on behalf of another Person, or (c) the ownership of an account to be credited.”
  - This definition covers common fraud scenarios such as Business Email Compromise (BEC), vendor impersonation, payroll impersonation, and other payee impersonations, and complements language on “authorized credits” (account takeover scenario).
  - It does not cover scams involving fake, non-existent or poor-quality goods or services.



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# Fraud Monitoring by Originators, TPSPs, and ODFIs – Rules Language

## New Language:

- “Each Non-Consumer Originator, ODFI, and Third-Party Service Provide or Third-Party Sender acting on behalf of an Originator, Third-Party Sender or ODFI, must:
  - a) Establish and implement **risk-based processes and procedures** relevant to the role it plays in the authorization or Transmission of Entries that are reasonably intended to identify Entries that are suspected of being unauthorized or authorized under False Pretenses; and
  - b) At least annually review such processes and procedures and make appropriate updates to address evolving risks.

These processes and procedures do not require the screening of every ACH Entry individually, and do not need to be performed prior to the processing of Entries. An ODFI’s processes and procedures may take into account the processes and procedures implemented by other participants in the origination of Entries.”

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# Fraud Monitoring by Originators, TPSPs, and ODFIs

- This rule amendment will require all ODFI, and each non-Consumer Originator, Third-Party Service Provider, and Third-Party Sender to establish and implement risk-based processes and procedures reasonably intended to identify ACH Entries initiated due to fraud.
- The amendment is intended to reduce the incidence of successful fraud attempts.
- Regular fraud detection monitoring can establish baselines of typical activity, making atypical activity easier to identify.
- The Nacha Rules currently require Originators to use a commercially reasonable fraudulent transaction detection system to screen WEB debits and they may use Micro-Entries.
- These rules are intended to reduce the incidence of unauthorized debits resulting from transactions initiated online, which can experience increased volume and velocity.
- These current requirements do not encompass any other transaction types, and do not currently apply to other types of debits or to any credits other than Micro-Entries.

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# ACH Fraud Monitoring



- A risk-based approach cannot be used to conclude that no monitoring is necessary at all; at a minimum, an entity should conduct a risk assessment to identify and differentiate higher-risk from lower-risk transactions.
- Monitoring transactions prior to processing provides the greatest opportunity for detecting and preventing potential fraud, but is not required.
- For transactions in which monitoring identifies a high potential for fraud, consideration should be given for some action based on the monitoring results. Actions may include, but are not limited to:
  - stopping further processing of a flagged transaction;
  - contacting the Originator for additional information;
  - consulting with other internal monitoring teams or systems to determine if the transaction raises other flags;
  - and contacting the FI(s) to determine if characteristics of the Receiver's account raise additional red flags or request the freeze or the return of funds.

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# ACH Fraud Monitoring

- Originators are best situated to implement procedures to protect against account takeover or other vectors for initiating unauthorized transactions, such as change controls regarding payment information and instructions for vendor and payroll payments.
- Third-Party Senders and Third-Party Service Providers involved in the origination of ACH Entries may have processes and procedures to review the volume, velocity, dollar amounts and SEC Codes of their originated ACH Entries
- The basis for relying on another originating entity should be reasonable and clear (e.g., allocated by contract and verified by appropriate oversight). Any processes and procedures implemented by the receiving said ACH participants do not affect the obligations of originating participants.



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# Fraud Monitoring – Implementation Considerations

## Originators, Third-Parties, ODFIs

All ACH payments – All SEC codes included in monitoring requirements.

### Risk assessment/identification as first step.

- Identify risks and size.

### Consider expanding existing monitoring:

- Volume and value anomalies
- Velocity
  - Account number
  - Name on account
- Return monitoring/analysis
- Overpayments
- Account Validation

### Contract/ACH Origination Agreement review/update:

- Dependencies/Roles should be defined, agreed upon and included in vendor/customer oversight.

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# RDFI ACH Credit Monitoring – Rules Language

## New Rule language:

“Each RDFI must:

- a) establish and implement risk-based processes and procedures relevant to the role the RDFI plays in connection with the receipt of credit Entries that are reasonably intended to identify credit Entries that are suspected of being unauthorized or authorized under False Pretenses, including processes and procedures for responding when credit Entries are identified as potentially unauthorized or authorized under False Pretenses; and
- b) at least annually review such processes and procedures and make appropriate updates to address evolving risks.

These processes and procedures do not require the screening of every ACH Entry individually, and do not need to be performed prior to the processing of Entries.”

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# RDFI ACH Credit Monitoring - Guidance Examples

- An RDFI might take extra measures to detect fraud in transactions in which it has determined risks to be elevated; take basic precautions where it was determined that risks are lower, and exempt transactions or activities that it determines involve very low risk. A risk-based approach cannot be used to conclude that no monitoring is necessary at all; at a minimum, a risk-based approach should include a risk assessment to identify and differentiate higher-risk from lower-risk transactions.
- The risk-based processes and procedures do not require the screening of every ACH Entry individually, and they do not need be performed prior to processing Entries.
- The requirement to establish processes and procedures reasonably intended to identify Entries suspected of being unauthorized or authorized under False Pretenses should not be interpreted to impose an obligation on RDFIs to prevent wrongful activity.

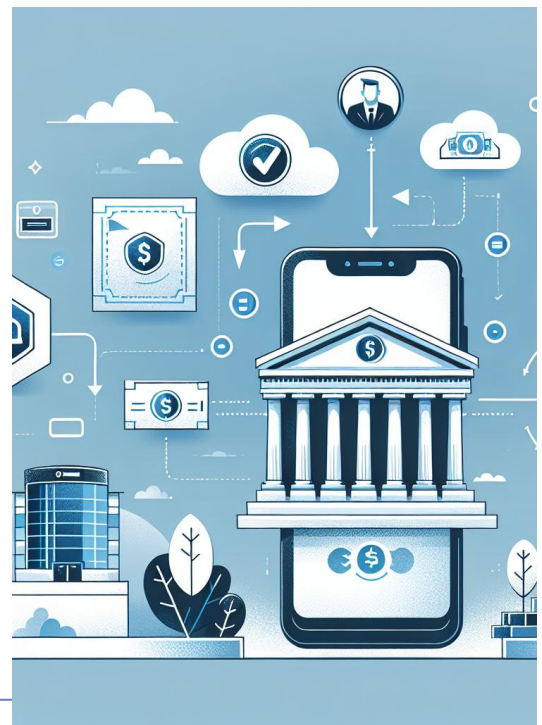
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## Guidance Examples

- While an RDFI will not likely know the circumstances under which a credit Entry was originated, Entries that are unauthorized or authorized under False Pretenses potentially may be identified based on characteristics of the Entry and the receiving account, such as:
  - A Standard Entry Class Code that does not align with the type of receiving account, such as a corporate CCD entry to a consumer account.
  - Behavioral Tolerance and Pattern Recognition
    - A high-dollar transaction that is atypical for the receiving account.
    - A series of similar credit Entries received within a short period of time, such as multiple payroll or benefit payments
  - Name Matching
  - Dollar Tolerances

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## RDFI ACH Credit Monitoring — Implementation Considerations

- **Assessment of activity to determine various risk levels.**
  - Account Type
  - Seasoned Accounts
  - Limited Activity
  - Consider offering early funds availability to consumer. and only after an account history has been established or on the second or third receipt of a regular recurring transaction.
  - Types of Credits that are Accepted - Payroll and Social Security transactions are easily identified and are the largest transactions most consumers receive on a regular basis. Determine when to perform monitoring
  - Follow up actions for flagged entries based upon FI policies, account agreement, rule allowances and regulatory obligations
  - The rule aligns with an institution's regulatory obligation to monitor for suspicious transactions.
  - The rule does not require pre-posting monitoring of credit entries.
- **If the RDFI holds accounts for third-party receivers (wallets, prepaid programs, etc.), determine needs for compliance.**
  - How to view and assess Receiver activity.

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## Bank-Fintech Partnerships

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## Key Risks By Product Type

- **All programs:**

- Gramm Leach Bliley and other state, federal and international privacy and data security laws.
- UDAAAP – federal and state laws prohibiting unfair, deceptive, or abusive acts or practices. This includes Unfair or Deceptive Acts or Practices (UDAP) under Section 5 of the Federal Trade Commission Act (FTC Act), as well as Unfair, Deceptive, or Abusive Acts or Practices (UDAAP) pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).
- Federal and state banking laws that, for example, limit the ability of non-banks to engage in banking activities – lending, holding deposits and transmitting funds – without a license.
- Money transmission laws are also applicable if a non-bank is holding and transmitting funds and is regulated similarly but separately by 49 states + D.C.
  - There are also federal money transmitter definitions.
  - Applies generally any time a company is in the flow of funds.

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## Prepaid and Other Deposit Accounts

- **Prepaid and debit card and other deposit programs.**

- Bank Secrecy Act - imposes anti-money laundering obligations on U.S. financial institutions, including the requirements to (i) maintain transaction records of cash transactions exceeding \$10,000, (ii) file currency transaction reports, and (iii) file suspicious activity reports.
  - BSA is also the basis for customer identification issues frequently called KYC or know your customer.
- Electronic Funds Transfers Act and Regulation E - establishes the rights, liabilities, and responsibilities of parties in electronic funds transfers.
- FDIC laws and regulations regarding disclosures related to the insured nature of deposits and whether the provider is an insured institution.
- State laws prohibiting non-banks holding themselves out as banks.

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## Prepaid and Other Deposit Accounts

- **Prepaid and debit card and other deposit programs.**

- Card programs have to comply with applicable card network rules and other network rules – like NACHA – may also apply to both card and non-card programs.
- Federal law impacts interchange fees collected and frequently split as a part of these programs.
- Deposits placed by third parties or in which a third party facilitates the placement of deposits at a bank are subject to restrictions on “brokered deposits.”
- Escheatment and unclaimed property laws require abandoned property to be paid to a state after “dormancy period.”

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## What is a FBO Account?

- **An FBO account is a not an account type.**

- While it has become common to call every account established within a bank-fintech relationship an “FBO account,” appending FBO or “for the benefit of” to the account title is merely a naming convention.
- There are demand accounts, escrow accounts, trust accounts, custody accounts, and savings accounts, among others.
- Adding “FBO” to the name on the account indicates that there is a split between legal title and beneficial title for the funds in the account – the legal owner is holding funds “for the benefit” of one or more beneficial owners, but it does not change the nature of the account itself.
- What we are talking about when we say an FBO account is more accurately referred to as a third party-ledgered account, which is any account where a party other than the bank is responsible for maintaining the account ledger.

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## What is a FBO Account?

- **You see these types of accounts used in a number of programs, both of which involve a third party maintaining the ledger:**
  - Pooled accounts where a bank's customer relationship is managed by a program manager that are frequently used in prepaid and debit card programs.
  - Custodial accounts that don't result in the beneficial owners becoming customers of a bank that enable ACH and other types of payments.
- **In our space, usually we are referring to one of these structures when we talk about FBO accounts.**
- **The biggest difference between these two account types is that in the first one the end users are customers of the bank and in the second one they are not.**

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## FBO Accounts

- **FBO Accounts**
  - Many of the same issues applicable to other deposit programs
  - FDIC laws and regulations regarding disclosures related to the insured nature of deposits and whether the provider is an insured institution
  - State laws prohibiting non-banks from holding themselves out as banks
  - Escheatment and unclaimed property laws require abandoned property to be paid to a state after "dormancy period"
  - Potential BSA/MTL issues

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## Regulatory Scrutiny of Bank Partnerships

- Regulatory scrutiny of bank/non-bank partnerships has lessened.
- This scrutiny followed a number of pronouncements in the preceding years emphasizing the need for banks that enter into partnerships with third parties to ensure they conduct the programs safely, soundly, and in compliance with applicable law.
- June 2023 guidance said that “[t]he use of third parties can offer banking organizations significant benefits, such as quicker and more efficient access to technologies, human capital, delivery channels, products, services, and markets,” but the federal bank agencies also cautioned that the use of third parties “does not remove the need for sound risk management.”
- The guidance says that business relationships with third parties engaged in lending, payment, or deposit activities for the benefit of the bank or through the bank should be evaluated by banks using both the third-party risk management guidance and the various risk management processes and rules that apply to traditional lending, payments and deposit relationships.
- The focus is on managing risks associated with these third-party relationships.
- The regulatory scrutiny that is meaningful to us has been focused on banking as a service partnerships.

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## Recent Regulatory Guidance

- Regulators have made it clear that the use of third parties does not diminish or remove a bank’s responsibility to perform all activities in a safe and sound manner and in compliance with applicable laws and regulations, including those related to consumer protection and security of customer information.
- Similarly, to the extent a bank uses third parties, the bank cannot outsource its responsibility for compliance.
- **Banks should therefore engage in rigorous oversight of third-party relationships that support “critical activities,” such as those that:**
  - Cause significant risk;
  - Have significant customer impact; or
  - Have a significant impact on the organization’s finances or operations.

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## Recent Regulatory Guidance

- **Important factors to consider when structuring third-party risk management processes:**
  - Oversight and accountability.
  - Periodic independent reviews.
  - Effective documentation and reporting.
- **Recent guidance also emphasizes the importance of due diligence.**
- **Due diligence should be conducted in the following areas:**
  - Business experience and qualifications.
  - Financial condition.
  - Legal and regulatory compliance.
  - Risk management and control processes.
  - Information security.
  - Operational resilience.

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## Summary of Enforcement Actions

- **Most of the public enforcement actions except for a few of the most recent are based on:**
  - BSA issues, or
  - Failure to comply with specific consumer protection laws.
- Many involve the engagement of an intermediary BAAS provider between the bank and the ultimate non-bank third party.
- Some are troubling because they are based primarily on the general failure of the bank to properly conduct these programs and wasn't tied to specific BSA or compliance failures.
- There are also numerous informal enforcement actions – board resolutions and MOUs – and other scrutiny being applied.
- All of these actions and this guidance should impact how banks in this space are setting up and operating their programs.
- Lessons from orders have to be applied to risk management process and contracts.
- It is also critical to keep in mind that all of the orders emphasize that third-party relationships and risk and compliance management are corporate governance issues.

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## Key Takeaways from Recent Enforcement Actions

- **The formal and informal scrutiny emphasizes the following additional guidance to banks working with third parties:**
  - Conduct appropriate due diligence on partners.
  - Strengthen board oversight of programs and third-party relationships.
  - Ensure management knowledge and expertise can implement and manage these programs and execute bank's compliance management systems.
  - Update policies and procedures to contemplate third-party involvement in banking activities.
  - Monitor ongoing compliance with agreements and applicable law through transactional testing and compliance assessments.
  - Ensure program changes are appropriately reviewed and approved.
  - Ensure access to all account-level information during program and on an ongoing basis.
  - Ensure that partners respond to information requests thoroughly and promptly with consequences for failures to properly respond.

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**Carlin McCrory**

Atlanta

404.885.2740

[Carlin.McCrory@troutman.com](mailto:Carlin.McCrory@troutman.com)

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Thank You

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