

# Deposit Compliance Basics – Part 1 and 2

Emily Dent, CPA, CRCM, CAMS  
Partner

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## About Us

- Mauldin & Jenkins has provided audit, accounting, consulting and tax services since 1918. Our culture, from the beginning, has been to provide top quality service to every client. Since the firm's inception, we now have 19 offices comprised of 750+ employees. We have grown into one of the Top 50 Accounting Firms in the nation.
- Our key objectives, which consist of offering quality work to our clients, providing opportunities for our people, and building a firm that will stand the test of time, remain at the center of why we do, what we do, every day!

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## Locations

- Albany, GA
- Athens, AL
- Atlanta, GA
- Baton Rouge, LA
- Birmingham, AL
- Bradenton, FL
- Chattanooga, TN
- Columbia, SC
- Covington, LA
- Greenville, SC
- Houma, LA
- Houston, TX
- Huntsville, AL
- Macon, GA
- Metairie, LA
- North Fulton, GA
- Raleigh, NC
- Sarasota, FL
- Savannah, GA



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## Industries

- Agribusiness
- Construction
- Educational Services
- Employee Benefit Plan Audits
- Entertainment
- **Financial Institutions**
- Governments
- Healthcare
- Insurance
- Manufacturing
- Nonprofit
- Private Client Services
- Professional Services
- Real Estate
- Tax & Estate Planning

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# Disclaimer

The information presented in this training is meant to be a summary of consumer deposit compliance regulations and requirements. This is not a catch-all for regulatory compliance guidance from your applicable regulatory agency or agencies. While we will discuss some specifics, this is not a replacement for reading and understanding the applicable regulations, official interpretations, and commentary.

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## Deposit Compliance

- General overview of the primary Deposit Compliance Regulations
- Common and/or significant violations/exceptions noted in recent Mauldin & Jenkins Compliance Review Reports

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# Deposit Compliance

- Reg CC
- Reg E
- Reg D
- Reg DD
- UDAP/UDAAP

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## Regulation CC Expedited Funds Availability Act

- Standardizes & regulates hold periods for **Transaction Accounts only, including business accounts** –it does not require that holds be used; it simply limits their maximum length based on the type of item deposited
- Bank's General Policy will typically be either:
  - Next Day Availability
  - or
  - Delayed Availability (2nd Business day)
- **NOTE: Reg CC includes a legal requirement to train applicable employees**

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# Regulation CC Expedited Funds Availability Act

## Next (Business) Day Availability:

1. Cash
  2. Electronic payments.
  3. On-us Checks
  4. US Treasury Checks
  5. US Postal Money Orders
  6. Federal Reserve Bank checks
  7. State & local government checks
  8. Cashiers, Certified, or Tellers checks with special deposit slips
- NOTE: Per Reg CC, #1 - #8 above must be available no later than the business day following the banking day of deposit (i.e., next business day), if there are no extenuating circumstances, such as the item was not payable to the account holder, or the deposit was not made in person, etc. However, the Bank can make deposits available sooner, such as on the day of deposit, if the Bank chooses to do so
  - If the Bank's General Availability Policy is Next (Business) Day, then all other checks, in addition to #1 - #8 above, must also be available no later than the next business day, following the day of deposit.

## Delayed Availability (also known as 2nd Business Day Availability)

- If the Bank's General Availability Policy is Delayed Availability (2nd Business Day Availability), then all other checks, other than #1 - #8 above, must be made available on the second business day following the banking day of deposit; however, **\$275** must be made available the next business day (increased from \$200 to \$225 in 2020 and from \$225 to \$275 in 2025)
- NOTE: #1 - #8 above must be available no later than the next business day (if there are no extenuating circumstances), even if the Bank's General Availability Policy is 2nd Business Day Availability

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# Regulation CC Expedited Funds Availability Act

## Exception Holds – Available no later than the 7th business day after day of deposit

- Large Deposit (over \$6,725 in checks) (increased from \$5,000 to \$5,525 in 2020 and from \$5,525 to \$6,725 in 2025)
- Reasonable cause to doubt collectability
- Re-deposited checks
- Repeated overdrafts (account balance was negative or would have been negative if checks or other charges had been paid on six (6) or more banking days during the last six (6) months)
- Emergency conditions
- New accounts (first 30 calendar days after account is opened; if customer had other accounts opened longer than 30 days, account is not considered new account) – Note: can be held longer than 7 business days (9 Business Days seems to be the most common & is widely accepted, but is not required and can be longer)

## Case by Case Holds – Available on the 2nd business day after day of deposit

- Use in cases when an Exception Hold is not warranted, and when Bank's general policy is Next Day Availability
- N/A if Bank's general policy is Delayed Availability (i.e., 2nd Business Day Availability)

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## Regulation CC Expedited Funds Availability Act

Disclosures - Clear, Conspicuous and in Writing (Electronic disclosures are OK if customer agrees to them and they are in compliance with E-Sign requirements)

- At account opening – Define Bank’s basic availability policy – “Next Day” or “Delayed Availability” (2nd business day) - and describe types/timeframes for holds – Model language is available in the reg (although not required)
- Wherever deposits are accepted (lobby, ATM, night depository) - Must be given before the customer has made the deposit
- Deposit slips - Notice that deposits may not be available for immediate withdrawal
- Change in policy – notice sent at least 30 days prior to implementing a change to policy, except a change that expedites the availability of funds may be disclosed not later than 30 days after implementation

Hold Notices – Model language is available in the reg, although not required

- Exception Hold Notice – Include the reason why the hold is being placed
- Case by Case Hold Notice – No reason for hold is included

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## Regulation CC Expedited Funds Availability Act

### **Timing Requirements for Hold Notices**

- Exception Hold Notice – Notice is given at the time of deposit, unless the deposit is not made in person or the facts upon which an exception hold is based only become known to the depository bank after the time of the deposit. Then, notice is to be given to the depositor as soon as practicable, but no later than the first business day following the day the facts become known to the depository bank or the deposit is made, whichever is later.
- Case by Case Hold Notice – Notice is to be given at the time of deposit, unless the deposit is not made in person or the decision to delay availability is made after the time of the deposit. Then, the bank shall mail or deliver the notice to the depositor by the first business day following the banking day of deposit.

**NOTE:** If the notice is not given at the time the deposit is made, the Bank cannot assess overdraft or return check charges if:

- the overdraft or return of the check would not have occurred except for the delay in the deposited funds availability, and
- the deposited check was paid by the paying Bank.

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## Regulation CC Expedited Funds Availability Act

Substitute Checks – Legal equivalent of an original check if the substitute check:

- Accurately represents all of the information on the front & back of the original check
- Bears the legend, "This is a legal copy of your check. You can use it the same way you would use the original check."
- Bank must have a Substitute Check Disclosure; however, it only needs to provide it if consumer customers receive paid (vs. imaged) checks with statements, or if the Bank provides a substitute check to a consumer in response to a request for a check, or if the Bank returns a substitute check to a consumer depositor.

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## Regulation CC Expedited Funds Availability Act Common Exceptions/ Violations

- Exception and Case by Case Holds were not placed appropriately (e.g., reason for hold was not valid)
- Holds were placed for incorrect periods of time
- Duration of holds on Notices did not match holds on system
- Hold notices were not completed in their entirety or were completed incorrectly
- Reg CC Disclosure did not contain all required information

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## Regulation E

### Electronic Fund Transfers Act

- Establishes the basic rights, liabilities, and responsibilities of consumers who use electronic fund transfer services and of financial institutions that offer these services
- Definition of Electronic Fund Transfer: Any transfer of funds that is initiated through an electronic terminal, telephone, computer, or magnetic tape for the purpose of ordering, instructing, or authorizing a financial institution to debit or credit a consumer's account
- The term includes, but is not limited to—
  - Point-of-sale transfers
  - Automated teller machine transfers
  - Direct deposits or withdrawals of funds
  - Transfers initiated by telephone or online (P2P – e.g., Zelle)
  - Transfers resulting from debit card transactions, whether or not initiated through an electronic terminal

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## Regulation E

### Electronic Fund Transfers Act

Disclosures – Bank must provide initial disclosure (clear, conspicuous and in writing, although electronic disclosures are OK if in compliance with E-Sign requirements) when consumer contracts for an EFT service or before the first EFT is made, and must indicate the following:

- Liability of consumer
- Telephone number and address of the bank
- The bank's business days
- Types of transfers and limitations
- Fees
- A summary of the consumer's right to receipts and periodic statements
- Stop payment procedures
- Liability of the bank
- The circumstances under which the financial institution may provide information concerning the consumer's account to third parties
- Error resolution procedures
- ATM fees

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# Regulation E

## Electronic Fund Transfers Act

Change in Terms Notice: Provided at least 21 days prior to effective date of change (e.g., increased fees, increased liability, fewer types of EFT available, stricter limitations on frequency or dollar amounts of transfers)

- Note: No advance notice is required for changes made to maintain or restore the security of an account or EFT system. If the Bank makes the change permanent & disclosure would not jeopardize the security of the account or system, then the consumer is to receive written notice within 30 days of the change being made permanent

What is an error?

- Unauthorized EFT
- Incorrect EFT to or from a consumer's account
- Omission of an EFT from a consumer's statement
- Bank error in computation relating to EFT
- Consumer receiving an incorrect amount of money from an ATM
- EFT not properly identified
- Consumer request for documentation, additional information or clarification regarding an EFT transaction

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# Regulation E

## Electronic Fund Transfers Act

"Unauthorized electronic fund transfer" means an electronic fund transfer from a consumer's account initiated by a person other than the consumer without actual authority to initiate the transfer **AND** from which the consumer receives no benefit. The term does not include an electronic fund transfer initiated:

- By a person who was furnished the access device to the consumer's account by the consumer, unless the consumer has notified the financial institution that transfers by that person are no longer authorized;
- With fraudulent intent by the consumer or any person acting in concert with the consumer; or
- By the financial institution or its employee

NOTE: Negligence by the consumer cannot be used as the basis for imposing greater liability than is permissible under Reg E.

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# Regulation E - Electronic Fund Transfers Act

## Consumer Liability for Unauthorized Transfers

Event	Timing of Consumer Notice to Financial Institution	Maximum Liability
Loss or theft of access device <sup>20</sup>	Within two business days after learning of loss or theft	Lesser of \$50 OR total amount of unauthorized transfers that occur before notice to the financial institution.
Loss or theft of access device	More than two business days after learning of loss or theft up to 60 days after transmittal of statement showing first unauthorized transfer made with access device.	Lesser of \$500, OR the sum of: (a) \$50 or the total amount of unauthorized transfers occurring in the first two business days, whichever is less; AND (b) The amount of unauthorized transfers occurring after two business days and before notice to the financial institution. <sup>21</sup>
Loss or theft of access device	More than 60 days after transmittal of statement showing first unauthorized transfer made with access device.	For transfers occurring within the 60-day period, the lesser of \$500, OR the sum of (a) Lesser of \$50 or the amount of unauthorized transfers in the first two business days; AND (b) The amount of unauthorized transfers occurring after two business days.  For transfers occurring after the 60-day period, unlimited liability (until the financial institution is notified) <sup>22</sup>
Unauthorized transfer(s) not involving loss or theft of an access device	Within 60 days after transmittal of the periodic statement on which the unauthorized transfer first appears.	No liability.
Unauthorized transfer(s) not involving loss or theft of an access device	More than 60 days after transmittal of the periodic statement on which the unauthorized transfer first appears.	Unlimited liability for unauthorized transfers occurring 60 days after the periodic statement and before notice to the financial institution.

<sup>20</sup>. Includes a personal identification number (PIN) if used without a card in a telephone transaction, for example.  
<sup>21</sup>. Provided the financial institution demonstrates that these transfers would not have occurred had notice been given within the two-business-day period.  
<sup>22</sup>. Provided the financial institution demonstrates that these transfers would not have occurred had notice been given within the 60-day period.

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## Regulation E

## Electronic Fund Transfers Act

Error Resolution Procedures:

- Bank can require written notification (if written notice is not received within 10 business days of oral notice, provisional credit is not required; however, investigation must still start)
- Bank must investigate and close case within 10 business days (20 business days for New accounts) - Account is considered New during first 30 days
- If matter cannot be resolved within 10 business days, Bank must provisionally credit customer's account for amount of error
- Bank can then take up to 45 days to complete investigation
- Bank can take up to 90 days for POS transactions, foreign transactions (outside U.S.), or New accounts
- Customer must be notified of result in writing within 3 business days of completing investigation
- Specific requirements for Revocation of Provisional Credit
- NOTE: VISA and MasterCard have their own rules & liability limits (e.g., zero liability) – Legal agreement issues as opposed to regulatory requirements

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## Regulation E Electronic Fund Transfers Act

- ATMs – Fees for initiating an EFT or a balance inquiry must be shown on the screen or posted on the ATM before the consumer is committed to pay the fee
- ATM/Debit Card Overdrafts – The Bank must obtain consumer's affirmative consent before assessing any fee for paying an ATM or one-time debit card transaction overdraft

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## Regulation E Electronic Fund Transfers Act Common Exceptions/ Violations

- Reg E Disclosure did not contain all required information
- Bank required customer to complete a notarized statement before beginning investigation – not allowed
- Timing of Provisional/Final Credit Letters was not in compliance with regulatory requirements
- Provisional/Final Credit Letters contained incorrect information
- Documentation was lacking, making it difficult to determine compliance with timing requirements of Provisional/Final letters
- \$50 liability was assessed to customers on cases when it should not have been
- Notice of Provisional credit which was subsequently revoked did not include all required information
- Permanent credit was subsequently revoked

NOTE: Reg E allows timeframes to be extended due to illness or travel – something to keep in mind related to Elderly Abuse – e.g., if consumer did not realize/did not report an unauthorized transaction in the prescribed timeframe (i.e., 60 days) due to an extended stay in the hospital, the Bank would still need to comply with requirements

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# Regulation D

## Reserve Requirements/ Excessive Transactions

Reg D changed significantly in April 2020

- The primary changes included the following:
  - Removed the transfer limitation requirements for Savings/Money Market accounts; however, Banks can still choose to keep the limits, or they can establish new limits as far as number and types of transfers
  - Eliminated the reserve requirements for transaction accounts \*
  - Changed the definitions of the different types of accounts
- Savings Accounts (including Money Market Accounts) Transaction Limitations (**PRIOR TO 2020**):
  - **Prior to 2020**, there were restrictions of no more than 6 transfers/withdrawals per calendar month or statement cycle
  - **Prior to 2020**, if the customer continued to exceed limitations, the Bank had to close the account or change it to an eligible account (transaction account)
  - **Prior to 2020**, the Bank had to adopt procedures/systems to monitor transfers & contact customers who exceeded the established limits on more than an occasional basis.

\*Important to note – the regulation still exists, but with a 0% ratio for reserves. Banks are still required to manage their liquidity and many still hold balances in FRB accounts, earning interest on those balances.

**Subsequent to 2020, Banks are no longer required to monitor/enforce these prior limitations, although many have continued to do so**

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# Regulation D

## Reserve Requirements/ Excessive Transactions

### Transaction Accounts

- Demand Deposit Accounts – (primarily checking accounts) – May or may not earn interest – May require 6 days or less of advance notice prior to withdrawals (very rare)
- NOW Accounts – Interest-bearing accounts on which unlimited number of checks can be written BUT eligibility is limited – Banks have the right to require 7 days notice prior to withdrawals
- ATS Accounts – Automatic Transfer Accounts
- Deposits or accounts on which the bank has reserved the right to require at least 7 days' written notice prior to withdrawal or transfer of any funds in the account and under the terms of which, or by practice of the bank, the depositor is permitted or authorized to make withdrawals for the purposes of transferring funds to another account of the depositors at the same bank or for making payment to a third party, regardless of the number of such transfers and withdrawals and regardless of the manner in which such transfers and withdrawals are made (this means that a Savings Account without transfer & withdrawal limitations would be a transaction account).

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## Regulation D

### Reserve Requirements/ Excessive Transactions

#### NOW Account Eligibility:

- Individuals
- Sole proprietorships
- Government entities
- Non-profit organizations

#### NOT Eligible to have NOW Accounts:

- Partnerships
- For-profit corporations
- Limited liability companies

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## Regulation D

### Reserve Requirements/ Excessive Transactions

#### Savings Accounts:

- An account for which the depositor is not required by the deposit contract but **may at any time be required by the Bank to give written notice of an intended withdrawal not less than 7 days before the withdrawal is made**, and that is not payable on a specified date or at the expiration of a specified time after the date of deposit.

#### Includes:

- Passbook Savings
- Statement Savings
- Money Market Deposit Accounts

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## Regulation D

### Reserve Requirements/ Excessive Transactions

#### Time Deposits (e.g., CDs):

- Must be payable upon a specified date, no less than 7 days after the date of deposit
- Must provide for early withdrawal penalty equal to at least 7 days interest on amounts withdrawn within the first 6 days after the date of deposit
- Establishes minimum, not maximum, early withdrawal penalties – Banks are free to impose greater penalties by contract with the depositor
- Recognizes a number of situations where the Bank is allowed to waive early withdrawal penalties (e.g., depositor's death, legal incompetence, funds withdrawn within 10 days after maturity of automatically renewable time deposit, or other reasons)

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## Regulation D

### Reserve Requirements/ Excessive Transactions

- It is critical that the Banks' disclosures agree to their actual practices, especially in light of the changes that were made to the regulatory requirements
- For example, if the Bank did not change its practices and it is still monitoring and enforcing the transaction limitations, then the disclosures should still reflect the transaction limitations
- **NOTE: If the Bank chooses to continue to enforce the limits, the disclosures must describe the limits but must NOT state that the limits are being imposed 'in accordance with Regulation D requirements' since Reg D is no longer requiring the limits**
- If, for example, the Bank removed all transfer restrictions from savings and money market accounts, then the disclosures should reflect that, and would no longer make any reference to the limitations
- The Bank can modify the number of withdrawals, the types of withdrawals, and can charge a fee if the customer exceeds the limits – but the disclosure must specify all the restrictions & associated fees

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## Regulation D

### Reserve Requirements/ Excessive Transactions

### Common Exceptions/ Violations

- The Bank's Disclosures were not in agreement with the Bank's actual practices regarding the monitoring/enforcement of transaction limitations, including the imposition of excess transaction fees
- The Bank's advertisements indicated that the transaction limitations were being imposed in accordance with Regulation D requirements
- Excessive transaction letters did not provide pertinent information (# of times limits were exceeded, specific account #, etc.) – not requirement, but best practice

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## Regulation DD

### Truth in Savings Act

- Purpose: To enable consumers to comparison-shop and make informed decisions for deposit accounts by requiring disclosures
- General Requirements - Disclosures for each account must be provided before the account is opened, as follows:
  - clear and conspicuous
  - in writing (although may be electronic, subject to compliance with E-Sign)
  - in a form the consumer can keep
  - reflective of the account agreement
- CONSISTENT TERMINOLOGY – Bank must use consistent terminology to describe terms or features required to be disclosed (Disclosures; Statements; Change-in-terms Notices; Website; Ads; Brochures, etc.)

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# Regulation DD

## Truth in Savings Act

Oral Inquiries – APY (Annual Percentage Yield) must be stated

### Disclosures:

- Made to any one of multiple consumers holding single account
- APY must be rounded to not more than 2 decimal places (e.g., 5.25%)
- Rate Information:
  - Terms “Annual Percentage Yield” and “Interest Rate” must be disclosed
  - The fact that interest rate and APY may change (for Variable-rate accounts)
  - How the interest rate is determined (Variable-rate)
  - The frequency with which the interest rate may change (Variable-rate)
  - Any limitation on the amount the interest rate may change (Variable-rate)
- Compounding & Crediting: Frequency with which interest is compounded and credited (not synonyms – two different disclosures – e.g., interest is compounded daily and credited quarterly)

Note: If accrued interest is forfeited when an account is closed, the disclosure must contain a statement to that effect.

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# Regulation DD

## Truth in Savings Act

- Balance Information: Any minimum balance requirements to
  - Open the account,
  - Avoid the imposition of a fee, or
  - Obtain the APY disclosed
  - Must be disclosed, along with the method of calculation (daily balance or average daily balance - N/A for the balance to open the account)
- When interest begins to accrue on noncash deposits (e.g., Interest begins to accrue on the business day you deposit noncash items (e.g., checks) OR Interest begins to accrue no later than the business day we receive credit for the deposit of noncash items)
- Transaction Limitations: Any limitations on the number or dollar amount of withdrawals or deposits

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## Regulation DD Truth in Savings Act

- Fees: The amount of any fee that will be imposed “in connection with the account” must be disclosed, as well as the conditions under which it will be imposed
- Examples of Fees in connection with the account:
  - Fees to open or close an account
  - Monthly service fees
  - ATM fees
  - Stop payment fees
  - Overdrawing an account – must specify the categories of transactions for which an overdraft fee may be imposed. An exhaustive list is not required – sufficient to state that fee applies to overdrafts “created by check, in-person withdrawal, ATM withdrawal, or other electronic means”, as applicable. Fee “for overdraft items” would not be sufficient. (This language related to fees might be in Account Agreement rather than Fee Schedule – OK)
  - Examples of fees NOT in connection with the account include, for example, wire transfers; safe deposit boxes; money orders – these types of fees DO NOT need to be disclosed on the account disclosure
- NOTE: Any fees quoted must be referred to consistently (e.g., service charge vs. monthly fee vs. maintenance fee, etc.)

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## Regulation DD Truth in Savings Act

- Time Deposits – Additional Disclosures
  - Maturity Date
  - Statement that an early withdrawal penalty will or may be imposed, how it is calculated, and conditions for assessment
  - If compounding occurs during the term and withdrawals of interest are allowed, a statement that the APY assumes interest remains on deposit until maturity and a withdrawal will reduce earnings
  - Statement that the account is automatically renewable, whether there is a grace period, the length of any grace period, and whether interest is paid after maturity if the account is not renewed
- Bonuses – Amount or type of bonus, when bonus will be provided, and any minimum balance and time requirements to obtain bonus – defined as premium or gift worth more than \$10
- Change in Terms Notice Timing – Must give notice at least 30 days in advance of a change in a term if the change may reduce the APY or adversely affect the consumer (not required for increase in check printing fees) – must highlight change and effective date

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## Regulation DD Truth in Savings Act

### Maturity Notices for Time Accounts:

- < 1 month – No advance notice required
- > 1 month but < 1 year – Disclosures mailed/delivered at least 30 calendar days before maturity OR mailed/delivered at least 20 calendar days before the end of the grace period (if a grace period of at least 5 calendar days is provided)
  - Content: Interest rate and APY for new account (or the fact that rates have not been determined, when they will be determined, and a phone # for consumer to call for rates), and either (a) date of maturity of existing and new account, and any change in terms OR (b) full disclosure for account & date of maturity for existing account
- > 1 year (Automatically renewable) – Timing is the same as for accounts greater than 1 month and not more than 1 year
  - Content: Full disclosures for account and date of maturity for existing account
- > 1 year (Non automatically renewable) – Timing is 10 calendar days before maturity (no notice required on shorter terms)
  - Content: Maturity date and whether interest will be paid after maturity

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## Regulation DD Truth in Savings Act

Periodic Statement Disclosures: If periodic statements are sent, they must include:

- Annual percentage yield earned (using that term) during statement period
- Dollar amount of interest earned during statement period
- Fees debited to account during statement period
- Total # of days in statement period or beginning and ending dates
- If applicable, total overdraft fees and returned item fees for statement period and calendar year-to-date (specific format/terminology required)
- Interest is calculated on full amount of principal in account for each day by using either the “daily balance method” or the “average daily balance method”
- Bank must use same method to calculate the minimum balance required to earn interest as it does to calculate the balance on which interest is paid
- Interest must begin to accrue no later than the business day specified for interest bearing accounts under Reg CC

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## Regulation DD Truth in Savings Act

### Advertising:

- Prohibits misleading or inaccurate advertising
- Cannot use the words “free” or “no cost” if any maintenance or activity fee may be imposed
- Cannot use the word “profit”
- If rate of return is included, must state rate as an “annual percentage yield” using that term (APY can be used if fully spelled term appears at least once)

### Advertising Triggering Term – If APY is mentioned, then the ad must also include:

- For variable rate accounts, statement that rate may change after account is opened
- Time APY is offered
- Minimum balance required to earn APY
- Minimum deposit required to open account (if it is greater than minimum to obtain APY)
- Statement that fees could affect earnings on the account
- For Time accounts: the term of the account; early withdrawal penalty may be imposed; and interest cannot remain on deposit

Advertising Exemptions – Partial exemptions for broadcast or electronic media (TV or radio), outdoor media (billboards), or telephone response machines

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## Regulation DD Truth in Savings Act Common Exceptions/ Violations

- Inconsistent terminology noted with fees and/or names of accounts between TIS Disclosures, Periodic Statements, Fee Schedule, Website, etc.
- Account terms did not agree with system parameters
- Advertisements did not include all required disclosures when triggering terms were used
- Overdraft Matrix in periodic statements did not use the proper terminology (e.g., Total Overdraft Fees)
- Overdraft Fees disclosed on fee schedule without indicating the conditions under which a fee may be imposed (however, if the conditions were included in the Account Agreement, it is OK)
- CD Maturity Notices for CDs > 1 year did not contain all required disclosures

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## UDAP/UDAAP

Unfair or Deceptive Acts or Practices/Unfair, Deceptive, or Abusive Acts or Practices

- UDAAP (Unfair, Deceptive, or Abusive Acts or Practices) is an expansion of FTC's UDAP (Unfair or Deceptive Acts or Practices) provisions, under the Dodd-Frank Act, & defines/contains requirements prescribed for the purpose of **preventing unfair, deceptive, or abusive acts or practices of banks**
- UDAAP can be Subjective – the Bank can be in technical compliance with a reg, but have UDAAP concerns due to misleading or confusing information
- An act or practice is considered to be unfair if it meets all 3:
  - Must cause or is likely to cause substantial consumer injury
  - The injury cannot be reasonably avoided
  - The injury is not outweighed by other benefits to consumer or competition
- An act or practice is considered to be deceptive if it meets all 3:
  - The representation, omission or practice misleads or is likely to mislead the consumer
  - Must be considered from the perspective of a reasonable consumer
  - Must be material

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## UDAP/UDAAP

Unfair or Deceptive Acts or Practices/Unfair, Deceptive, or Abusive Acts or Practices

An act or practice is considered to be abusive if it:

- Materially interferes with the ability of a consumer to understand a term or condition of a consumer financial product or service OR
- Takes unreasonable advantage of:
  - A lack of understanding on the part of the consumer of the material risks, costs, or conditions of the product or service; OR
  - The inability of the consumer to protect its interests in selecting or using a consumer financial product or service; OR
  - The reasonable reliance by the consumer on a covered person to act in the interests of the consumer

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# UDAP/UDAAP

Unfair or Deceptive Acts or Practices/Unfair, Deceptive, or Abusive Acts or Practices

## The Four Ps of UDAAP

- Is the statement prominent enough for the consumer to notice?
- Is the information presented in an easy-to-understand format that does not contradict other information in the material and at a time when the consumer's attention is not distracted elsewhere?
- Is the placement of the information in a location where consumers can be expected to look or hear?
- Is the information in close proximity to the claim it qualifies?

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# UDAP/UDAAP

## Common Exceptions/ Concerns

- No program was in place
- No complaint log had been established
- No UDAAP/UDAP training had been performed
- Advertisements/Disclosures were unclear or misleading
  - Deposit descriptions used unclear language – “no charge for the first 200 items”
  - Deposit account descriptions indicated a minimum balance, rather than minimum daily or minimum average balance
  - Descriptions of products/services did not provide all pertinent information
  - The word “Free” was used when there could be associated charges, such as “Free ATM card”

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