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Deposit Accounts Electronic Book 2024.1

Welcome to Wolters Kluwer Deposit Accounts Electronic Book. This electronic resource is designed to give you a working understanding of federal laws that affect the opening and operation of deposit and share accounts.

Wolters Kluwer is committed to keeping you informed on all of the latest regulatory changes. Wolters Kluwer distributes updates to this manual on an annual basis.

Summary of Changes

Last year we addressed two significant compliance changes and made several notable revisions to select chapters. This year we addressed three significant compliance changes and made several notable revisions to certain chapters based on recent Federal agency guidances. We also made some general, non-substantive revisions, such as deleting text we considered to be obsolete or of limited usefulness. This summary will describe the most significant changes we have made that deserve special attention.

Significant Compliance Changes

CFPB Final Rule Amending Regulation CC

As required by the Expedited Funds Availability Act, on May 13, 2024, the CFPB and the Federal Reserve Board jointly announced a final rule that makes cost-of-living (COLA) adjustments to the Regulation CC funds availability rules for the next five (5) year period. These adjustments impact several dollar amounts incorporated into Subpart B of Regulation CC.

The COLA adjusted amounts are: the \$225 rule (formerly known as the \$100 rule) under Sec. 229.10(c) – changing to \$275; the \$450 cash-withdrawal rule under Sec. 229.12(d) – changing to \$550; the \$5,525 new-account threshold under Sec. 229.13(a) – changing to \$6,725; the \$5,525 large-deposit threshold under Sec. 229.13(b) – changing to \$6,725; and the \$5,525 threshold for determining a repeat overdraft under Sec. 229.13(d)(2) – changing to \$6,725. In addition, the civil liability amounts in Sec. 229.21(a) of \$1,100 and \$552,500 – changing to \$1,350 and \$672,950, respectively.

These announced COLA adjustments are **effective July 1, 2025**, however, early compliance is permitted.

The details of the Final Rule have been incorporated into *The Initial Disclosure – What Must It Contain* section in the **Regulation CC – Funds Availability Disclosures** chapter in the Account-Opening Responsibilities section of the Manual. The details of the Final Rule have also been incorporated into the *Introduction, Availability Time Limitations, Section 13 Safeguard Exceptions, Case-By-Case Exceptions, and Regulation CC Exercises* sections in the **Ongoing Responsibilities Toward The Account Holder Under Regulation CC (Funds Availability)** chapter in the Ongoing Responsibilities section of the Manual.

FinCEN's Second of Three Corporate Transparency Act (CTA) Rulemakings, the Final Access Rule

On December 22, 2023, FinCEN issued the second CTA rulemaking, the Beneficial Ownership Information Access and Safeguards final rule (the Final Access Rule). The Final Access Rule provides the rules surrounding which certain persons, agencies, and institutions -- including covered financial institutions -- may have access to the Beneficial Ownership Information (BOI) reported to FinCEN, and the security protocols FinCEN and the

authorized recipients must exercise with the BOI information they are given. While this rule was effective on February 20, 2024, the actual access to the FinCEN BOI database is being phased-in depending on the category of BOI recipient. Financial institutions and their federal regulators are in the final group. It is anticipated that financial institutions subject to Customer Due Diligence (CDD) obligations will receive access in Spring 2025.

We still await the third rulemaking which is intended to circle back and revise FinCEN's existing CDD Rule in light of the Final Reporting Rule. The CTA requires FinCEN to revise portions of the CDD Rule within one year after the effective date of the Final Reporting Rule (which was January 1, 2024). According to the 2024 Semiannual Unified Agenda, the notice of this proposed rulemaking will be issued late in 2024 and the final rule not issued until 2025.

Information about the request requirements, including the certificate financial institutions will be required to submit, the safety protocols, and the potentially significantly broadened purpose for which financial institutions may use the information (as per language contained in the Final Access Rule) has been added to the *FinCEN Customer Due Diligence Beneficial Owner Rule* section of **The Bank Secrecy and Related Requirements** chapter in the Ongoing Responsibilities section of the Manual.

FDIC Final Rule on Advertising

On December 20, 2023, the FDIC issued a Final Rule on FDIC Official Signs and Advertising Requirements, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo. The **effective date was April 1, 2024, with mandatory compliance by January 1, 2025.**

Among the provisions, the Final Rule includes a new official FDIC digital sign, and certain provisions for digital channels, such as insured depository institutions' websites, web-based or mobile applications, and ATMs that offer the ability to make deposits electronically and provide access to deposits at the institution.

In addition to these requirements, the Final Rule also requires the use of signs to distinguish between insured deposits and uninsured non-deposit products, including new provisions for digital deposit-taking channels that offer access to both deposits and to non-deposit products.

Information about the new sign and signage requirements, and a link to the Final Rule have been added to the *FDIC- and NCUA-Required References to Deposit Insurance* section of the **Advertising Deposit Accounts** chapter.

Notable Topics—Section Revisions

FDIC Guidance on Third-Party Relationships

The March 2024 *FDIC Consumer Compliance Supervisory Highlights* featured an example where an institution was found in violation of Regulation E when it outsourced its EFT error resolution process to a third-party service provider. The violations occurred because the third-party failed to distinguish between the EFT dispute rights of the consumer and the institution's chargeback rights. Consumer rights provided under Regulation E cannot be restricted by private network rules or other agreements, and the FDIC referred institutions to the June 6, 2023 *Interagency Guidance on Third-Party Relationships*. More information about the example situation and a link to the 2023 *Guidance* was added to the *Billing-Error Procedures* section in the **Electronic Fund Transfer Act and Regulation E: Responsibilities After Account Opening** chapter.

Also in the March 2024 *Supervisory Highlights*, the FDIC discussed findings supporting concerns about false statements or misrepresentations of FDIC coverage being made by third-party providers, improper due diligence being conducted by financial institutions over their third-party providers for compliance with applicable laws and regulations, and the number of related consumer complaints. The FDIC reported that, in addition to several cease and desist orders, several complaints resulted in further actions, including investigative referrals to other law enforcement and regulatory agencies. More information about these findings and a link to the March 2024 *Supervisory Highlights* was added to *The FDIC and NCUA Regulations* section in the **Advertising Deposit Accounts** chapter.

NCUA's 2024 Supervisory Priorities

In January 2024, the NCUA issued a Letter to Credit Unions outlining their supervisory priorities and other updates to their 2024 examination program. The priorities expressed in this Letter were areas the NCUA considered to be of the highest risks to credit union members, to the credit union industry, and to the National Credit Union Share Insurance Fund. These risks included identified trends in violations related to overdraft programs, and examiners' focus on credit union overdraft programs were to include website advertising, balance calculation methods, settlement processes, and potential harm from "unexpected overdraft fees". In these regards, the 2024 supervisory priorities were a continuation of their 2023 supervisory priorities. This Letter also aligned with recent prior statements made by the NCUA Chairman in regards to overdraft and insufficient funds fees, in which he described "problematic overdraft programs". More information on the Letter and the Chairman's comments, and links to both sources, have been added to the *Agency Guidance* section of the **Postdated Checks and Overdraft Protection** chapter.

FinCEN Suspicious Activity Reports (SARs) Advisories

FinCEN continues to encourage SARs reporting of activities indicating that transactions may be related to drug trafficking and/or elder financial exploitation (EFE). Information about the importance of addressing these topics and providing red flag indicators of such activities is the emphasis of several FinCEN Advisories.

Specifically in regards to drug trafficking, in 2019, FinCEN issued Advisory FIN-2019-A006 to alert financial institutions about the illicit financial schemes and mechanisms related to the trafficking of fentanyl and other synthetic opioids. In relation to the methods employed by the traffickers, this Advisory noted several red flags for depository institutions. Then on June 20, 2024, FinCEN issued a Supplemental Advisory, FIN-2024-A002, to highlight new trends in the illicit fentanyl supply chain since the 2019 Advisory. Previously, fentanyl trafficking generally was conducted by the direct purchase of fentanyl from China by U.S.-based individuals for personal consumption or domestic distribution, or by cross-border trafficking from Mexico by transnational criminal

organizations (TCOs) or smaller criminal networks. Since 2019, direct purchases from China have declined and Mexican cartels have become the predominant traffickers. While the red flags noted in the 2019 Advisory remain valid, the Supplemental Advisory highlighted how Mexican TCOs purchase fentanyl chemicals and manufacturing equipment to synthesize the fentanyl in Mexico before the substance enters the illicit drug market in the U.S. The Supplemental Advisory also included additional red flags to assist financial institutions in identifying financial typologies associated with Mexico-based TCOs.

In regards to EFE and drug trafficking, on July 16, 2024, FinCEN issued a joint Notice with the U.S. Treasury's Office of Foreign Assets Control (OFAC) and the Federal Bureau of Investigation (FBI) urging financial institutions to be vigilant in detecting, identifying, and reporting timeshare fraud perpetrated by Mexico-based TCOs (FIN-2024-NTC2). According to the FBI, certain Mexican cartels and other Mexico-based TCOs have been increasingly targeting U.S. owners of timeshare properties in Mexico and older adults, including retirees, are frequent victims in these schemes. The TCOs use proceeds from timeshare fraud to finance other criminal activities, including the manufacturing and trafficking of fentanyl and other synthetic drugs into the U.S.

Details regarding these suspicious activities and specific red flags that financial institutions should be on the lookout for have been added to the *Other circumstances under which a SAR may be required or otherwise should be filed* topic in the *Reporting "Suspicious Activities"* section of **The Bank Secrecy Act and Related Requirements** chapter.

CFPB and Deceptive Remittance Transfer Marketing Practices

The CFPB has identified certain misleading marketing practices associated with the Remittance Rule that can cause providers to be in violation of the prohibition of unfair, deceptive, or abusive acts or practices in the Consumer Financial Protection Act (CFPA). On March 27, 2024, the CFPB published *Consumer Financial Protection Circular 2024-02*. The Circular states that remittance transfer providers may be liable under the CFPA for deceptive marketing practices regardless of whether the provider is in compliance with the Remittance Rule's disclosure requirements, and provided several examples of deceptive marketing. The Circular's examples and a link to the *Circular* were added to the *Remittance Transfers Under Regulation E* section in the **Electronic Fund Transfer Act and Regulation E: Responsibilities After Account Opening** chapter.

CFPB Fair Credit Reporting Act (FCRA) Advisory Opinions

On January 11, 2024, the CFPB issued two Advisory Opinions related to requirements in the FCRA. The first relates to a consumer reporting agency's file disclosure requirement, and highlights that a consumer does not need to use specific language when requesting their file disclosure and affirms that agencies must disclose both the original source and any intermediary sources of the information provided to the agency. The second relates to background screening practices and that agencies must have procedures in place that prevent duplicative or outdated information and that ensure any updated disposition information is included in a report.

While most financial institutions do not fit the FCRA description of a "consumer reporting agency", they are, however, users of reports from these agencies and may also be providers of information to these agencies. Therefore, financial institutions should be familiar with various provisions of the FCRA. Information about and links to these Advisory Opinions have been added to the **Fair Credit Report Act** chapter in the Account-Opening Responsibilities section of the Manual.

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