

Interagency Guidance Regarding Deposit Reconciliation Practices

May 18, 2016

Introduction

The Board of Governors of the Federal Reserve System (Board), the Consumer Financial Protection Bureau (CFPB), the Federal Deposit Insurance Corporation (FDIC), the National Credit Union Administration (NCUA), and the Office of the Comptroller of the Currency (OCC) (collectively, the Agencies) are issuing this guidance to ensure that financial institutions are aware of the Agencies' supervisory expectations regarding customer account deposit reconciliation practices.¹

Background

When a customer makes a deposit to an account, the amount that the financial institution credits to that account may differ from the total of the items deposited. This kind of discrepancy arises in a variety of situations, including inaccuracies on the deposit slip, encoding errors, or poor image capture. For example, the customer may deposit \$110 to an account, but may indicate on the deposit slip that only \$100 has been tendered. In this case, the financial institution may credit \$100 to the customer's account as indicated on the deposit slip without reconciling the \$10 discrepancy. This discrepancy is referred to as a "credit discrepancy." It is a detriment to the customer and benefits the financial institution, if not appropriately reconciled.

Technological and other processes exist that allow financial institutions to fully reconcile discrepancies in deposit accounts. The Agencies acknowledge, however, that under limited circumstances, items cannot be reconciled, for example, when an item is damaged to the point that its true amount cannot be determined.²

The Agencies have observed that financial institutions use a variety of approaches to handle credit discrepancies. In some instances, financial institutions do not research or correct all variances between the dollar value of items deposited to the customer's account and the dollar amount that is credited to that account, resulting in the customer not receiving the full amount of the actual deposit.

¹ The Agencies will carry out their expectations consistent with their respective statutory authorities.

² See, e.g. *FFIEC Information Technology Handbook*, "Appendix C: Item Processing," available at <http://ithandbook.ffiec.gov/it-booklets/operations/appendix-c-item-processing.aspx>.

Applicable Laws

Various laws and regulations may be relevant to deposit reconciliation practices. Among them, the Expedited Funds Availability Act (EFAA), as implemented by Regulation CC, requires that financial institutions make funds deposited in a transaction account³ available for withdrawal within prescribed time limits. Financial institutions' policies or practices that do not appropriately reconcile credit discrepancies within the prescribed time frames may raise Regulation CC concerns if such discrepancies leave customers without timely access to the correct amount of funds.⁴ Failure to comply with the funds availability requirements in the EFAA and Regulation CC may subject the financial institution to civil liability⁵ and possible action by the appropriate Agency.

Further, Section 5 of the Federal Trade Commission Act (FTC Act) prohibits a financial institution from engaging in unfair or deceptive acts or practices. In addition, sections 1031 and 1036 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) prohibit unfair, deceptive, or abusive acts or practices.⁶ A financial institution's deposit reconciliation practices for transaction and non-transaction accounts may, depending on the facts and circumstances, violate the FTC Act or Dodd-Frank Act when practices result in credit discrepancies.

³ The EFAA applies to an account that is a "demand deposit account or other similar transaction account at a depository institution" (12 USC 4001(1)). The Board's Regulation CC defines "account" as a "deposit" that is a "transaction account," as those terms are defined in the Board's Regulation D (12 CFR 229.2(a)(1), 12 CFR 204.2(a)(1)(i) and 204.2(e)). Transaction accounts include accounts at a bank from which the account holder is permitted to make transfers or withdrawals by negotiable or transferable instrument, payment order of withdrawal (NOW), telephone transfer, electronic payment, or other similar means for the purpose of making payments or transfers to third persons or others. Transaction accounts also include accounts at a bank from which the account holder may make third-party payments at an ATM, remote service unit, or other electronic device, including by debit card, but the term does not include savings deposits as defined in Regulation D (12 CFR 204.2(d)), even though such accounts permit third-party transfers. For example, transaction accounts include demand deposit, NOW, share draft, and automatic transfer accounts. The EFAA applies to all transaction accounts, including non-consumer transaction accounts.

⁴ The EFAA also requires that a depository institution provide customers with (1) a disclosure describing its funds availability policy, reflecting the policy followed by the bank in most cases, and (2) a notice stating when funds will be available for withdrawal, if availability of funds from a particular deposit will be delayed in relation to the disclosed policy (12 USC 4003-4004).

⁵ See 12 USC 4009-4010. A depository institution is not liable for "bona fide errors" (12 USC 4010(c)). To avail itself of this liability protection, an institution must demonstrate by a preponderance of the evidence that a violation was not intentional and resulted from a bona fide error, notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.

⁶ For relevant statutory prohibitions, see 15 USC 45(a)(1) (unfair or deceptive acts or practices) and 12 USC 5531 and 5536 (unfair, deceptive, or abusive acts or practices). For the Agencies' relevant enforcement authorities, see 12 USC 1786(e), 1786(k)(2), 1818(b), 1818(i)(2), 5531, 5536, and 5561-5566. The CFPB's rulemaking authority with respect to unfair, deceptive, or abusive acts or practices is found at 12 USC 5531(b).

Supervisory Expectations

The Agencies expect financial institutions to adopt deposit reconciliation policies and practices that are designed to avoid or reconcile discrepancies, or designed to resolve discrepancies such that customers are not disadvantaged. Financial institutions are expected to effectively manage their deposit reconciliation practices to comply with Regulation CC and other applicable laws or regulations and to prevent potential harm to their customers. Information provided to customers about the financial institution's deposit reconciliation practices should be accurate. Financial institutions should implement effective compliance management systems that include appropriate policies, procedures, internal controls, training, and oversight and review processes to ensure compliance with applicable laws and regulations, and fair treatment of customers. These actions will help minimize exposure to potential financial loss and supervisory action.