

This document and any attachments are superseded by Comptroller's Handbook - Consumer Compliance - Other Consumer Protection Laws and Regulations.

Electronic Banking

Savings associations, along with other types of financial institutions, are developing and employing new electronic technologies for delivering financial products to improve customer service and lower costs. The new technologies being offered include on-line financial services, stored value card systems, and electronic cash. Services and products can be accessed through personal computers connecting to participating institutions via proprietary software, commercial on-line services, and the Internet, or through other access devices including, for example, video kiosks and interactive television. The most significant growth involves the establishment of Internet web sites by institutions that are used to advertise products and services, accept electronic mail, and provide consumers with the capability to conduct transactions through an on-line system.

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The regulatory environment continues to evolve in response to the introduction and implementation of new electronic banking technologies. However, it is important to keep in mind that the new technologies merely offer an alternative means for delivering traditional products and services; they do not represent new or different banking products standing alone. Existing consumer laws and regulations generally apply to transactions, advertisements and other services conducted electronically. This Section is intended to describe how existing compliance rules are applied to the emerging electronic banking technologies. Additionally, this Section highlights new developments in compliance intended to address some of the unique aspects of the new electronic services. References to applicable consumer affairs, compliance, and fair lending laws and regulations are made in the various policy statements, guidance, proposed rule changes, and reports discussed or included herein.

REGULATORY GUIDANCE

Some recent guidance has been issued to address consumer compliance concerns arising from use of the new technologies:

Interagency Guidance on Electronic Financial Services and Consumer Compliance, issued by the FFIEC in July 1998 (soon to be reissued with updated information).

Policy Statement on Privacy and Accuracy of Personal Customer Information and Interagency Pretext Phone Calling Memorandum, both issued by OTS in November 1998.

The interagency guidance is intended to assess the implications of some of the emerging electronic technologies for the consumer regulatory environment, to provide institutions with an overview of pertinent regulatory issues, and to offer suggestions on how to apply existing consumer laws and regulations to new electronic financial services. It also seeks to promote compliance with relevant laws and regulations. The guidance contains two sections, one on the compliance regulatory environment and the other on the role of consumer compliance in developing and implementing electronic services. The text of the document is included in full within this section.

The policy statement and pretext phone calling memorandum are intended to enhance awareness of customer privacy. They reflect the OTS' understanding of certain "best practices" that may help to adequately protect personal information. Please note, however, that Sections 501(b) and 502 of GLBA supersede the policy statement to a significant degree, although some of the best practice elements remain relevant and worthy of consideration. Both the policy statement and the memorandum are included in this section following the interagency guidance.

ELECTRONIC DELIVERY OF CONSUMER DISCLOSURES: RECENT DEVELOPMENTS

The Federal Reserve Board of Governors (the Board) issued two "Interim Final" Rules, in early 2001, on the electronic delivery of consumer disclosures required under Regulations B, D, E, M and Z. With the Rules, the Board sought to establish uniform standards for institutions offering financial products and services to its customers in an electronic environment. The Board established October 1, 2001 as the mandatory compliance date, but continued to seek additional public comment in the period following the issuance of the Interim Final Rules.

The Interim Final Rules provide guidance on the timing and delivery of electronic disclosures. Disclosures can be provided by e-mail or can be made available at another location such as an institution's web site. If a disclosure - such as an account statement or a notice of change in account terms - is provided at a web site, an institution must notify the consumer of the disclosure's availability by e-mail. In addition, the disclosure must remain available on the web site for 90 days.

A number of commenters noted various discordant issues posed by the Interim Final rules and the Electronic Signatures in Global and National Commerce Act (the E-Sign Act), enacted in June 2000 and effective October 1, 2000. Section 101 of the E-Sign Act provides that information required by law to be in writing can be made available electronically to a consumer only if he or she affirmatively consents to receive the information electronically and the business clearly and conspicuously discloses specified information to the consumer before obtaining his or her consent. Although both the Interim Final Rules and the E-Sign Act address appropriate disclosure measures, the standards for compliance are not the same.

Other commenters to the Board's Rules requested more time to address technology modifications and to review existing policies and practices in light of the proposed regulatory requirements. Thus, on August 3, 2001, the Board announced that it is considering adjustments to the rules to provide

additional flexibility, based on the commenters' concerns. The Board also lifted the mandatory compliance date of October 1, 2001 and directed institutions to follow their existing procedures¹ or, alternatively, to comply with the Interim Final Rules until permanent rules are issued. Once permanent final rules are issued, the Board expects to afford institutions a reasonable period of time to comply with those rules.

The complete text of the Interim Final Rules can be found at:

66 FR 17779 (Regulation B, Equal Credit Opportunity)

66 FR 17786 (Regulation E, Electronic Fund Transfers)

66 FR 17322 (Regulation M, Consumer Leasing)

66 FR 17329 (Regulation Z, Truth in Lending)

66 FR 17795 (Regulation DD, Truth in Savings)

The complete text of section 101(c) of the E-Sign Act can be found at:

http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?dbname=106_cong_public_laws&docid=f:publ229.106.pdf

For further information, consult the Federal Reserve Board's website at:

<http://www.bog.frb.fed.us>

CONSUMER ELECTRONIC PAYMENTS TASK FORCE

The Consumer Electronic Payments Task Force was comprised of the four bank regulatory agencies together with the Financial Management Service, the Federal Reserve Bank of Atlanta, and the Federal Trade Commission. The Task Force, with the participation of the industry and the public, attempted to: (1) identify the primary consumer issues arising from electronic money products, (2) evaluate the extent to which the issues are addressed by state and federal laws and regulations and voluntary industry guidelines, and (3) identify nonregulatory responses to address the remaining issues. The final report is divided into four areas of consumer concern: Access, Privacy, Financial Condition of Issuers, and Consumer Disclosures and Protections.

¹ Presumably, existing procedures of the institution are compliant with earlier Federal Reserve interim rules issued in 1998 and 1999 in addressing Regulations E and DD, respectively; or compliant with the E-Sign Act (effective as of October 1, 2000) in addressing Regulations B, M and Z.

The Task Force report did not recommend any governmental regulatory responses at time of its issuance (April 1998), but did recommend that the industry develop effective self-regulatory techniques to address consumer concerns. The final report did include recommendations on the role of government in providing consumer financial education, monitor industry developments, and encourage appropriate industry action. It also contains specific recommended actions on each of the four areas that should be taken by the industry.

The final report and other related information can be found at the web site of the Office of the Comptroller of the Currency located at www.occ.treas.gov.

Examination Procedures

Currently, the only examination procedures specific to electronic banking are included in this section as [Appendix D](#), (and duplicated in the Examination Program), which addresses the Children's Online Privacy Protection Act. Over time, the four bank regulatory agencies intend to insert pertinent revisions into existing examination procedures that take into account use of the new electronic technologies by financial institutions. Rather than developing a single set of examination procedures relating to all aspects of electronic banking, the agencies intend to respond to new statutes and regulations while making changes to existing examination procedures for consumer affairs and compliance laws and regulations as they are identified.

Interagency Guidance on Electronic Financial Services and Consumer Compliance
[See Appendix A.](#)

Policy Statement on Privacy and Accuracy of Personal Customer
[See Appendix B.](#)

Interagency Pretext Phone Calling Memorandum
[See Appendix C.](#)

Children's Online Privacy Protection Act
[See Appendix D.](#)