

A large, faint, circular watermark of the FDIC seal is centered in the background. The seal features the text "FEDERAL DEPOSIT INSURANCE CORPORATION" around the perimeter and "1933" in the center. It also includes a shield with scales of justice and two stars.

**Atlanta Region
Regulatory Conference Call**

August 20, 2015

***DON'T FORGET ABOUT
DEPOSIT REGULATIONS***



Introduction

Phyllis Patton, Deputy Regional Director

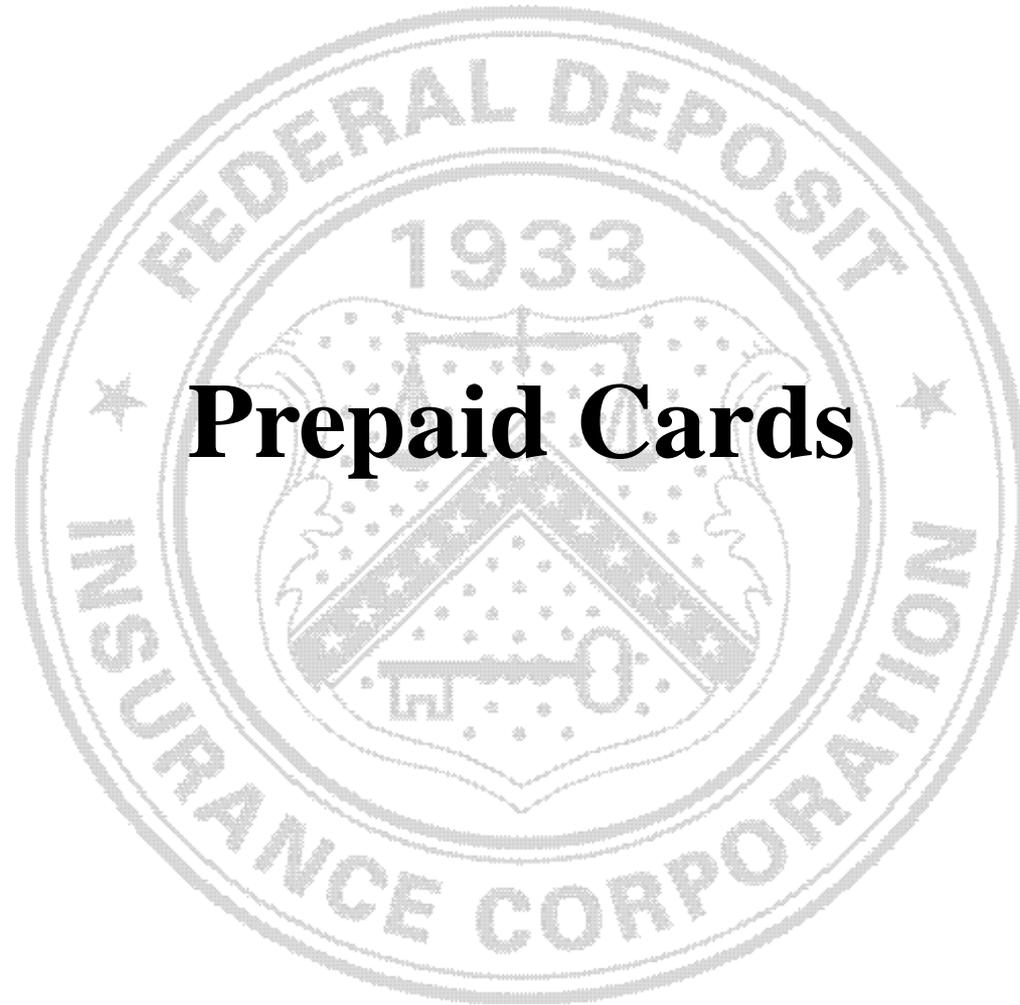
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Presenters:

- Jamal Mohammad, Examination Specialist
- Jimmy Nguyen, Senior Compliance Examiner
- Angela Sprinkle, Compliance Examiner

Topics

- Prepaid Cards
- Add-on Products
- Regulation DD Common Issues
- Regulation E Error Resolution Issues
- Garnishment of Accounts Containing Federal Benefit Payments



Prepaid Cards



Prepaid Cards

- Open-Loop (can be used almost anywhere and carry a network brand)
- Closed-Loop (used at a specific merchant or affiliated group of merchants)
- Types of Prepaid Cards
 - Gift Cards
 - Payroll Cards
 - General Purpose Reloadable Cards



Prepaid Cards

Gift Cards

- Generally used once or for a finite period of time
- Generally not reloadable
- Not issued to a specific person
- Can be either open- or closed-loop
- Limited, specific consumer protections under Reg E



Prepaid Cards

Gift Card Rules

- Prohibits dormancy, inactivity, service, or similar fees for one year from the date of last activity
- Limits the expiration date of the underlying gift card funds to no less than five years from the last “load” date
- Requires disclosure of fees prior to purchase and that the card contain a toll-free telephone number and, if one is maintained, a website to obtain fee information



Prepaid Cards

Payroll Cards

- Loaded with employment-related compensation
- May or may not be reloadable
- Reloadable only by employer
- Generally open-loop
- Regulation E protections apply, with some differences (Section 1005.18)



Prepaid Cards

Payroll Card: Periodic Statement Alternatives (1005.18)

A financial institution does not need to provide periodic statements related to the payroll cards of consumers if:

- Account balances are provided through a telephone line;
- An electronic history of account transactions covering the proceeding 60 days is available; and
- Written 60 day histories are provided in response to oral or written requests.



Prepaid Cards

General Purpose Reloadable Cards (GPRs)

- Carry a network brand (Visa, MC, AMEX)
- Open-loop
- Regulation E protections do not currently apply, though UDAP does apply
- Prepaid cards receiving federal benefits (and in some states, state benefits) must conform to payroll card requirements



Prepaid Cards

Deposit Insurance

Coverage may or may not apply. Where the card is offered by a nonbank party and funds are placed in a pooled account at a FDIC-insured institution, consumer cardholders will be covered by deposit insurance if requirements for FDIC pass-through insurance are met.





Prepaid Cards

Common Issues

- Failure to provide some or all pre-purchase disclosures.
- Disclosures detail error resolution rights that do not actually exist.
- Offering of add-on products with prepaid cards is becoming more common.



Add-On Products



Add-On Products

Types of Products Seen in Atlanta Region:

- Identity Theft Protection
- Credit Score Tracking and Credit Monitoring



Add-On Products

Unfair or Deceptive Acts or Practices Risks

- Marketing of Product
- Enrollment Without Affirmative Consent
- Billed for Services Not Performed or Activated



Add-On Products

Preventive Measures

- Third-Party Due Diligence and Oversight
 - FDIC FIL 44-2008: Managing Third-Party Risk
- Review of Marketing Materials
- Review of Telemarketing Scripts/Procedures
- Monitor Sales and Customer Service Calls
- Monitor Product Cancellation Rates
- Employee Incentives or Compensation



Add-On Products

Preventive Measures (cont.)

- Review and Tracking of Complaints
- Written Policies and Procedures
- Training of Applicable Staff
- Independent Audit/Review of the Add-on Product
(Internal or External)



Regulation DD Common Issues



Regulation DD

Common Issues

- Account disclosures that fail to reflect the legal obligation of the account agreement between the consumer and the depository institution.
- Account disclosures that do not adequately include the amount of any fee that may be imposed in connection with the account (or an explanation of how the fees will be determined) and the conditions under which the fee may be imposed.



Regulation DD Common Issues

Examples:

- Discrepancies between written disclosures, website content, advertisements, and system parameters.
- Labeling fees inconsistently between disclosure and periodic statements.
- Use of calendar days vs. business days.
- Charging overdraft fees on top of other fees, without proper disclosure.



Regulation DD

Common Issues

Examples (cont.):

- Charging daily overdraft fees even though items were returned for non-sufficient funds (NSF).
- Improper disclosure of how and when a daily overdraft fee will be assessed.
- Daily overdraft fees on non-processing days.
- Charged off overdraft balances to outstanding loans



Regulation DD

Common Issues

Preventive Measures:

- Review information available to consumers concerning fees (disclosures, marketing materials, website, etc.), and conduct transactional testing to ensure that the bank is charging fees as disclosed and advertised.
- Ask the question, “As a customer, would I know enough about how the fee is assessed to be able to prevent myself from incurring it?”



Regulation DD

Common Issues

Preventive Measures (cont.)

- Implement strong review procedures when changes are made.
- Provide employee training.
- Monitor complaints.
- Issue revised disclosures when necessary and consider making voluntary restitution to customers.



Regulation E Error Resolution Procedures



Regulation E

Error Resolution Procedures

After receiving a notice of error, the financial institution must:

- Promptly investigate the oral or written notice;
- Complete its investigation within 10 business days; and
- Report the results of its investigation within three business days.



Regulation E

Error Resolution Procedures

Concerns:

Some financial institutions are imposing greater requirements on consumers for reporting unauthorized electronic fund transfers than allowed by Regulation E.



Regulation E

Error Resolution Procedures

Examples:

- Requiring written notice prior to starting the investigation;
- Requiring consumer to file a police report prior to starting investigation;
- Requiring written notice to be notarized or filed at a specific branch or with a certain bank officer;
- Requiring consumer to physically come in to bank to complete paperwork;

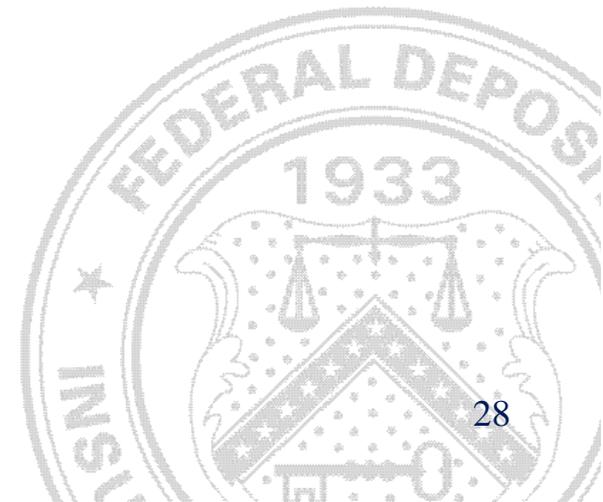


Regulation E

Error Resolution Procedures

Examples (cont.):

- Requiring consumer to attempt to resolve error with merchant first;
- Setting a minimum dollar amount to submit an error claim;
- Assessing fees for handling claims.



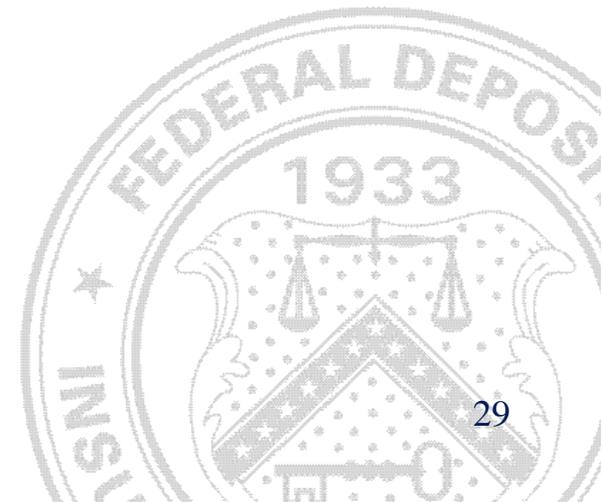


Regulation E

Error Resolution Procedures

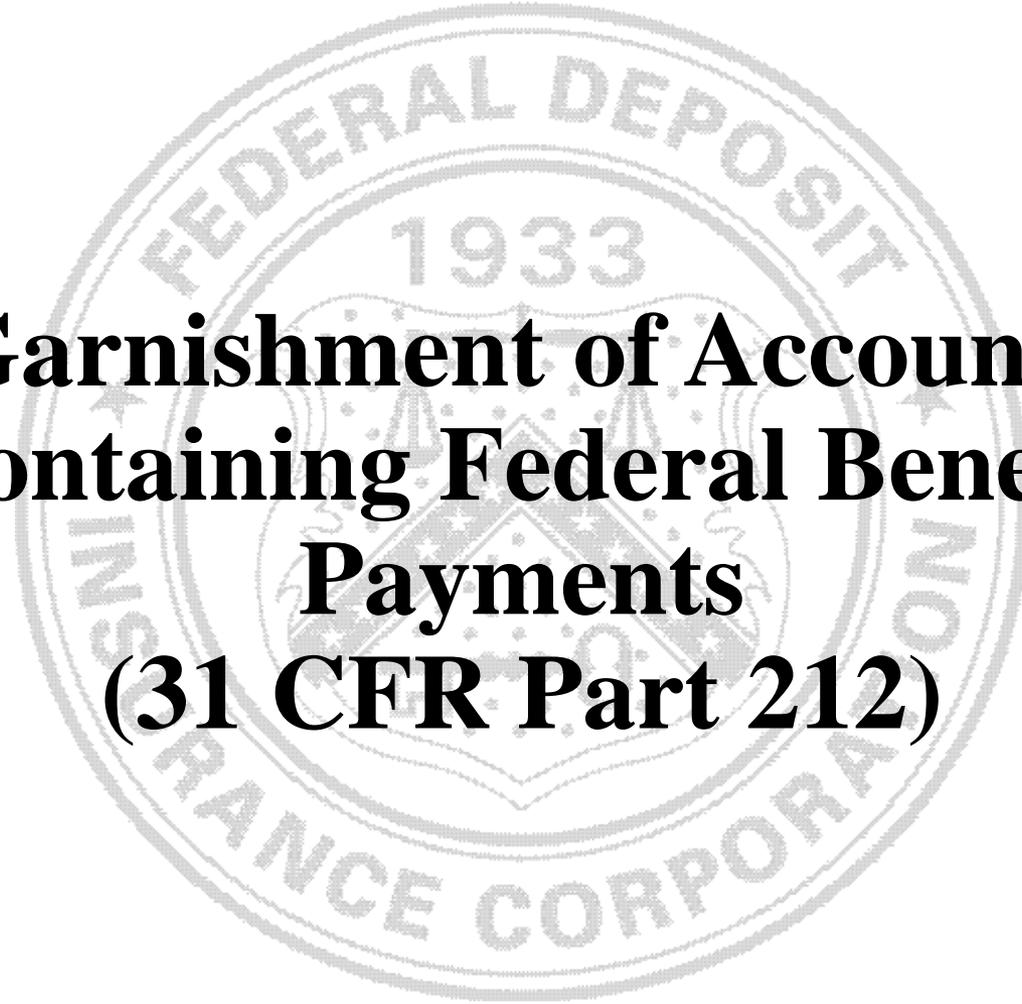
Ensure Compliance Management System (CMS) addresses Regulation E error resolution procedures:

- Policies and Procedures
- Involvement of Compliance Personnel
- Monitoring
- Training
- Disclosures
- Third-party oversight





**Garnishment of Accounts
Containing Federal Benefit
Payments
(31 CFR Part 212)**





Garnishment of Accounts Containing Federal Benefit Payments

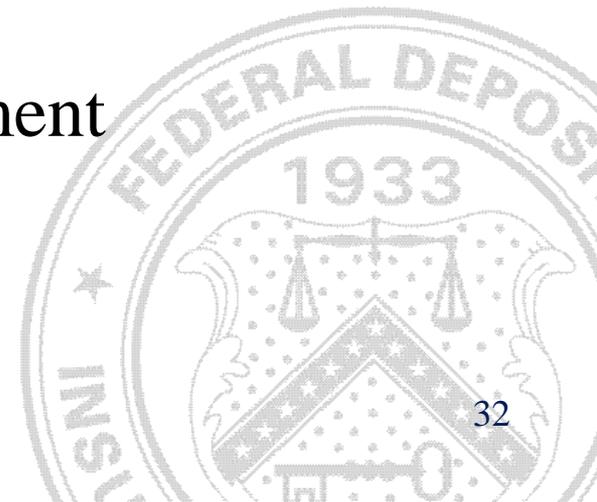
- What is a Garnishment?
 - Execution, levy, attachment, garnishment, or other legal process
- Garnishment Order - a writ, order, notice, summons, judgment, levy or other similar written instruction issued by a court, a State or State agency, a municipality, or municipal corporation, or a State child support enforcement agency, including a lien arising by operation of law for overdue child support or an order to freeze the assets in an account, to effect a garnishment against a debtor.



Garnishment of Accounts Containing Federal Benefit Payments

Federal Benefit Payment – a payment paid by direct deposit from one of the following entities:

- Social Security Administration
- Veterans Benefits
- Railroad Retirement Board
- Office of Personnel Management





Garnishment of Accounts Containing Federal Benefit Payments

- Lookback Period
 - two month period that begins on the date preceding the date of the account review and ends on the corresponding date of the month two months earlier, or on the last day of the month two months earlier if the corresponding date does not exist.
- Protected Amount
 - lesser of the sum of all benefit payments posted to an account between the close of business on the beginning date of the lookback period and the open of business on the ending date of the lookback period, OR the balance in the account when the account review is performed.



Garnishment of Accounts Containing Federal Benefit Payments

Example –

- Garnishment order for \$2,000 received on 5/20
- Account review performed same day, 5/20
- Account balance is \$1,000 when the account review is performed
- Lookback period begins on 5/19, and ends on 3/19, the corresponding date 2 months earlier
- Account review shows that 2 Federal benefit payments were deposited to the account during the lookback period totaling \$2,500, one for \$1,250 on 4/30 and another for \$1,250 on 3/31
- The protected amount equals \$1,000. The financial institution is not required to send a notice to the account holder.



Garnishment of Accounts Containing Federal Benefit Payments

After receiving a garnishment order the financial institution shall:

- Examine Garnishment Order
- Conduct Account Review
- Calculate the Protected amount for each account
- Send a notice to the consumer

Additional Provisions:

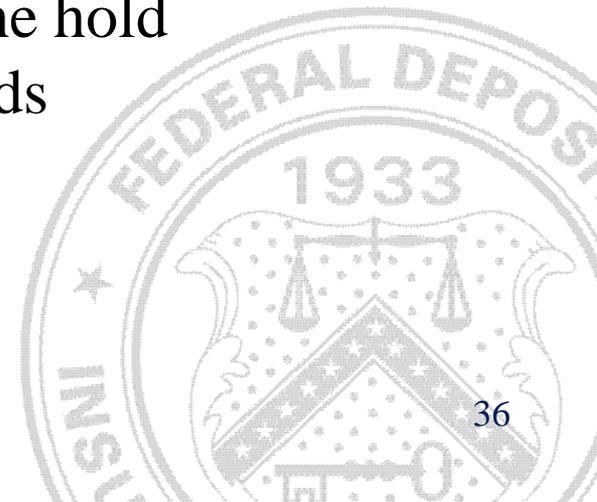
- One-time account review
- No responsibility for continued payments
- Garnishment fees
- Two year record retention



Garnishment of Accounts Containing Federal Benefit Payments

Common Garnishment Issues

- Failure to conduct an account review
- Erroneous calculations of protected amount
- Garnishment of protected funds
- Charging a garnishment fee
- Not providing full access to protected amount
- Failure to notify the customer of the hold
- Failure to maintain adequate records

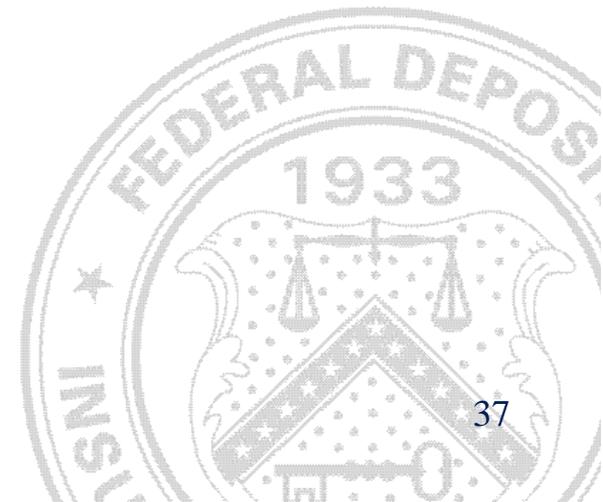




Garnishment of Accounts Containing Federal Benefit Payments

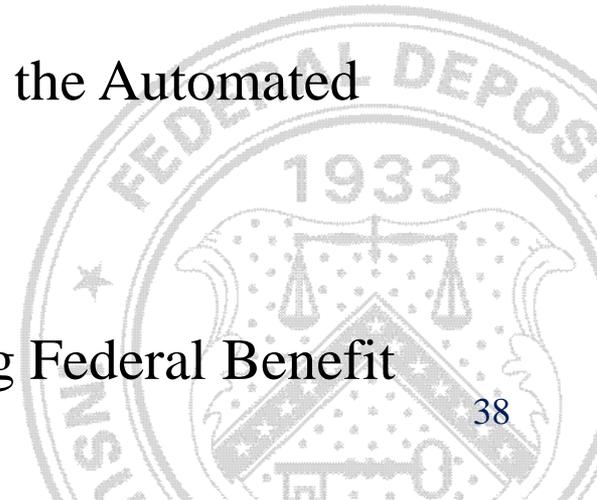
CMS Recommendations

- Establish clear policies and procedures
- Enhance monitoring
- Train applicable personnel
- Include Garnishment review in Audit scope



Resources

- CFPB Bulletin 2012-06, Marketing of Credit Card Add-on Products
- FIL-44-2008, Guidance For Managing Third-Party Risk
- FIL-129-2008, Stored Value Cards and Other Nontraditional Access Mechanisms
- FDIC Quarterly Newsletter, Volume II, Issue 1, March 31, 2014, “Fees Associated with Extended Overdrafts,” and “Add-On Products – Observations from the Field.”
- Section 5 of Federal Trade Commission Act – 15 USC 45(a)
- Federal Government Participation in the Automated Clearing House – 31 CFR Part 210
- Regulation E – 12 CFR Part 1005
- Regulation DD – 12 CFR Part 1030
- Garnishment of Accounts Containing Federal Benefit Payments – 31 CFR Part 212



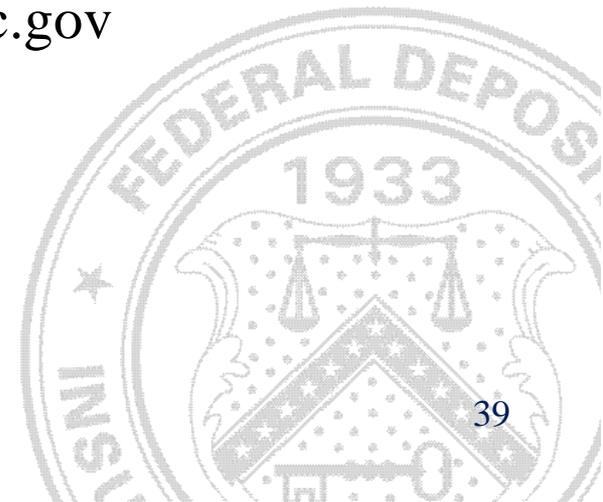
Contacts

For any questions related to the material presented in this Regulatory Conference Call, you may contact via email:

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Questions?

Thank you!

