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CONSUMER FINANCIAL PROTECTION BUREAU

12 CFR Part 1026

Truth in Lending (Regulation Z); Consumer Protections for Home Sales Financed Under Contracts for Deed

AGENCY: Consumer Financial Protection Bureau.

ACTION: Advisory opinion.

SUMMARY: This advisory opinion affirms the current applicability of consumer protections and creditor obligations under the Truth in Lending Act (TILA) and its implementing Regulation Z to transactions in which a consumer purchases a home under a "contract for deed." When a creditor sells a home to a buyer under a contract for deed, that transaction will generally meet TILA and Regulation Z's definition of credit. Where the transaction is secured by the buyer's dwelling, the buyer will also generally be entitled to the protections associated with residential mortgage loans under TILA.

DATES: This advisory opinion is applicable as of [**INSERT DATE OF PUBLICATION IN THE *FEDERAL REGISTER***].

FOR FURTHER INFORMATION CONTACT: George Karithanom, Regulatory Implementation & Guidance Program Analyst, Office of Regulations, at 202–435–7700 or at: https://reginquiries.consumerfinance.gov/. If you require this document in an alternative electronic format, please contact *CFPB_Accessibility@cfpb.gov*.

SUPPLEMENTARY INFORMATION: The Consumer Financial Protection Bureau (CFPB) is issuing this advisory opinion through the procedures for its Advisory Opinions Policy.[1] Refer to those procedures for more information.

I. Advisory Opinion

A. Background

The CFPB is issuing this advisory opinion to affirm the applicability of certain consumer protections under the Truth in Lending Act (TILA) and its implementing Regulation Z to transactions in which a consumer purchases a home under a "contract for deed." Broadly speaking, TILA protects consumers engaged in credit transactions by requiring creditors to disclose information about the costs and terms of the credit, and, where the credit is secured by the consumer's dwelling, provides additional protections. The CFPB has previously identified certain contracts for deed as consumer credit under the Consumer Financial Protection Act (CFPA),[2] which uses a substantially similar definition of credit. Consistent with that earlier application of the CFPA, this advisory opinion clarifies how the CFPB understands the current application of TILA and Regulation Z to contracts for deed.

1. Contract for Deed Overview and History

A contract for deed is a type of home loan, alternatively called a "land contract," "land installment contract," "land sales contract," "bond for deed," "agreement for deed," or "buying on contract." Home loans commonly referred to as contracts for deed, which this advisory opinion refers to as "contracts for deed," tend to have a few key features. In a typical contract for deed, a homebuyer agrees to make periodic payments to the home seller, and the seller retains

[1] 85 FR 77987 (Dec. 3, 2020).
[2] Consent Order, *In re Harbour Portfolio Advisors et al.*, CFPB No. 2020-BCFP-0004 (June 23, 2020), ¶ 4.

the deed to the property until the loan is fully repaid.[3] Loan terms vary but often range from 5 to 30 years and may include balloon payments. Properties are often purchased "as is," without inspection or appraisal, and may have property condition issues that prevent them from being suitable for rental or qualifying for mainstream mortgage financing. Additionally, because the sales price of the home may not be tied to appraisal or other typical market measures, the sales price may be inflated. During the repayment period, the buyer has the exclusive right to occupy the home and often assumes many of the responsibilities of homeownership, including paying for taxes, insurance, home maintenance, and repairs.[4]

Another common feature is a forfeiture clause that can be triggered if the borrower fails to meet the terms of the contract. In these scenarios, the contract is canceled, the seller retakes possession of the property, and the buyer generally forfeits their entire investment—including their downpayment, principal payments, and any increase in home equity, including home equity that the buyer generated by making property improvements.[5] In some contracts, a single missed payment is enough to trigger these losses. Forfeiture clauses can also be triggered by breaches unrelated to payment status, such as when a borrower fails to pay taxes, is unable to obtain or maintain insurance, or does not make improvements to the property within a specified timeframe.[6] While some states restrict forfeiture and require foreclosure, others have allowed "virtually unrestricted use of forfeiture clauses."[7]

[3] More complex arrangements exist, such as those where the buyer pays the seller's agent.
[4] *See* Joint Center for Housing Studies of Harvard University, *The American Dream or Just an Illusion? Understanding Land Contract Trends in the Midwest Pre- and Post-Crisis* (Aug. 2019), https://www.jchs.harvard.edu/sites/default/files/media/imp/harvard_jchs_housing_tenure_symposium_carpenter_george_nelson.pdf.
[5] *Id.*
[6] *Id.*
[7] *See* The Pew Charitable Trusts, *Summary of State Land Contract Statutes* (Apr. 30, 2021), https://www.pewtrusts.org/-/media/assets/2022/02/summary-of-state-land-contract-statutes.pdf.

2. TILA Legislative History

Congress first enacted TILA, 15 U.S.C. 1601 *et seq.*, in 1968 intending "to assure a meaningful disclosure of credit terms" and "avoid the uninformed use of credit, and to protect the consumer against inaccurate and unfair credit billing and credit card practices."[8] As industry commenters noted at the time, TILA's disclosure regime could help "a prospective mortgage borrower [] consider the relative costs of credit offered by . . . various purchase arrangements, for example, contract for deed or an FHA-insured mortgage" when purchasing a home.[9]

In 1994, Congress amended TILA by enacting the Home Ownership and Equity Protection Act (HOEPA) to require special disclosures and restrictions for high-cost mortgage loans secured by the consumer's principal dwelling.[10] In the wake of the 2008 financial crisis, in which widespread mortgage loan defaults produced a wave of foreclosures and systemic economic instability, Congress passed the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) which added additional protections to TILA, as well as establishing the CFPB under the Consumer Financial Protection Act.[11]

New TILA sections added by the Dodd-Frank Act required creditors to make good-faith assessments of consumers' ability to repay loans secured by their dwellings, imposed new standards on mortgage disclosures, and prohibited certain practices, including mandatory arbitration clauses and waivers of Federal causes of action in consumer credit transactions secured by a dwelling.[12] The Dodd-Frank Act also expanded the scope of HOEPA coverage and

[8] 15 U.S.C. 1601.

[9] *Truth in Lending Act: Hearings Before the Subcomm. on Financial Institutions of the S. Comm. on Banking and Currency*, 90th Cong., 1st Sess. (Apr. 18, 1967) (testimony of Darrel M. Holt, Mortgage Bankers Association of America).

[10] 15 U.S.C. 1602(bb), 1639.

[11] Pub. L. 111-203, 124 Stat. 1376 (2010).

[12] Sections 1411, 1412, and 1414 of the Dodd-Frank Act, codified at 15 U.S.C. 1639c; sections 1418, 1420, 1463, and 1464 of the Dodd-Frank Act, codified at 12 U.S.C. 2605; 15 U.S.C. 1638, 1638a, 1639f, and 1639g. Other

protections. In the Senate Report accompanying the Dodd-Frank Act, Congress cited the "proliferation of poorly underwritten mortgages with abusive terms," made "with little or no regard for a borrower's understanding of the terms [], or their ability to repay," as precipitators of the financial crisis and motivation for the Act's financial reforms.[13] Congress explained that, because of failures in consumer protection, "millions of Americans have lost their homes,"[14] and quoted expert testimony that "a plague of abusive and unaffordable mortgages and exploitative credit cards … cost millions of responsible consumers their homes, their savings, and their dignity."[15]

B. *Legal Analysis*

1. Because contracts for deed allow buyers to acquire property and defer the payment, contracts for deed are generally "credit" under TILA and Regulation Z.

a. Credit under TILA

TILA's definition of "credit" includes the typical contract for deed. TILA and Regulation Z define credit as "the right granted [by a creditor to a debtor] to defer payment of debt or to incur debt and defer its payment."[16] TILA and Regulation Z do not define debt. Used infrequently in the statute and the regulation, "debt" for the most part appears only in the definition of "credit." As the CFPB has noted elsewhere,[17] in the ordinary usage, debt means

protections apply to servicing practices, such as prompt payment processing, no pyramiding of late fees, and loan originator qualification requirements. *See* 12 CFR 1026.36(c), (d), (f).

[13] S. Rept. No. 176, 111th Cong. (2010), at 11, 12.

[14] *Id.* at 9.

[15] *Id.*, n.19 (quoting Testimony of Michael Barr, Assistant Secretary of the Treasury for Financial Institutions, to the Senate Committee on Banking, Housing, and Urban Affairs, July 14, 2009).

[16] 15 U.S.C. 1602(f), 12 CFR 1026.2(a)(14). Whether a seller is a "creditor" under TILA and Regulation Z depends on several factors, discussed below, at section I.B.3.

[17] Proposed rule, *Truth in Lending (Regulation Z); Consumer Credit Offered to Borrowers in Advance of Expected Receipt of Compensation for Work*, 89 FR 61358 (July 31, 2024),

simply "something owed," without any obvious limitation.[18] Legal dictionaries, including those dating to the enactment of TILA, similarly describe debt as a "sum of money due by certain and express agreement" or "a financial liability or obligation owed by one person, the debtor, to another, the creditor."[19] This understanding of "debt," as any obligation by a consumer to pay another party, applies to contracts for deed in a straightforward manner.

In a typical contract-for-deed transaction, as discussed above, a debt is created by the buyer receiving exclusive possession of the property, along with certain ownership obligations, at the outset of the contract in exchange for the obligation to repay the agreed-upon value of that property over time.[20] Courts applying common law doctrines have broadly recognized these property-related rights and obligations under the contract for deed as constituting a grant of equitable title to the buyer.[21] In exchange for these rights granted in the property, the purchaser

https://files.consumerfinance.gov/f/documents/cfpb_paycheck-advance-marketplace_proposed-interpretive-rule_2024-07.pdf.

[18] *Debt*, Merriam-Webster, https://www.merriam-webster.com/dictionary/debt (last updated Jan. 30, 2024).

[19] *Debt*, Black's Law Dictionary (4th ed. 1968) (defining debt as "[a] sum of money due by certain and express agreement; as by bond for a determinate sum, a bill or note, a special bargain, or a rent reserved on a lease, where the amount is fixed and specific, and does not depend upon any subsequent valuation to settle it"); *Debt*, Wex, https://www.law.cornell.edu/wex/debt (last updated Sept. 2021).

[20] This is distinct from lease-based rental arrangements, even those involving an eventual right to purchase (often called "lease-to-own"), because the lessee's legal interest, privileges, and obligations in the property are more limited in scope, while the lessor retains both ownership obligations and title. Many lease-to-own products also require a separate agreement to effectuate a purchase option, allowing for complete performance of the original contract without necessarily transferring property ownership. In a typical contract for deed, complete performance includes the transfer of full legal ownership. Regardless of how the arrangement is styled, courts have generally looked to the function of the transaction and intent of the parties to determine its nature. *See, e.g.*, *Gilliland v. Port Auth. of City of St. Paul*, 270 N.W.2d 743, 747 (Minn. 1978) ("To break the transaction into two separate parts, a sale and a lease, would be to distort its real nature and to ignore the intent of the parties."); *In re Montgomery Ward, L.L.C.*, 469 B.R. 522, 529 (Bankr. D. Del. 2012) ("Courts must analyze the 'economic reality' of the agreement at issue to determine its true nature."). Depending on their terms, such leases, as well as contracts for deed, may be considered "credit sales" covered under TILA and Regulation Z. 15 U.S.C. 1602(h); 12 CFR 1026.2(a)(16).

[21] *In re Restivo Auto Body, Inc.*, 772 F.3d 168, 177 (4th Cir. 2014) ("upon contracting to buy land, 'in equity the vendee becomes the owner of the land, the vendor of the purchase money'") (internal citation omitted); *Hauben v. Harmon*, 605 F.2d 920, 925 (5th Cir. 1979) ("Under the doctrine of equitable conversion a purchaser of realty becomes seized of beneficial title to the property upon execution of the contract of sale."); *In re Blanchard*, 819 F.3d 981, 985 (7th Cir. 2016) ("Under Wisconsin's doctrine of equitable conversion, a land contract buyer obtains equitable title to the property, which includes 'all the incidents of a real ownership.'") (internal citation omitted); *Redevelopment Agency of City of Stockton v. BNSF Ry. Co.*, 643 F.3d 668, 678 (9th Cir. 2011) ("The doctrine of equitable conversion generally provides that when a valid executory land sales contract is entered into, the purchaser

agrees to complete payment on a deferred basis. The contractual obligation to repay the agreed-upon value of the property according to the terms of the contract, therefore, constitutes a debt under TILA. From the face of the typical contract for deed, it will be clear that the seller has granted to the purchaser "the right . . . to defer" payment of this debt.

b. Closed-end credit

Where the property acquired under a contract for deed is purchased by a consumer primarily for personal, family, or household purposes, as it generally is when a purchaser buys a home using a contract for deed, the transaction is "consumer credit" under Regulation Z.[22] Any consumer credit that is not open-end credit under Regulation Z is considered "closed-end credit."[23] Because the typical contract for deed is contemplated as a one-time transaction, it is not open-end credit.[24] Thus, when a buyer purchases a personal dwelling from a creditor under a contract for deed, that transaction typically meets the definition of closed-end credit under TILA and Regulation Z, and is subject to the applicable requirements of subpart C of Regulation Z.

c. Consistency with other laws

In 2020, the CFPB settled with an entity selling property under contracts for deed, requiring penalties for violations of the CFPA.[25] In doing so, the CFPB applied the CFPA's substantially similar definition of credit, which is "the right granted by a person to a consumer to defer payment of a debt, incur debt and defer its payment, or purchase property or services and

becomes the equitable owner of the land."); *In re Hodes*, 402 F.3d 1005, 1011 (10th Cir. 2005); *SMS Assocs. v. Clay*, 868 F. Supp. 337, 340 (D.D.C. 1994), *aff'd*, 70 F.3d 638 (D.C. Cir. 1995). Even where some courts have declined to view a contract for deed as transferring equitable title, they nonetheless acknowledge that the purchaser has received possession in exchange for the promise of payment. *See, e.g.*, *In re Wall Tire Distributors, Inc.*, 110 B.R. 614, 618 (Bankr. M.D. Ga. 1990).

[22] 12 CFR 1026.2(a)(12).

[23] 12 CFR 1026.2(a)(10).

[24] 12 CFR 1026.2(a)(20).

[25] Consent Order, *In re Harbour Portfolio Advisors et al.*, CFPB No. 2020-BCFP-0004 (June 23, 2020), ¶ 4.

defer payment for such purchase."[26] This advisory opinion therefore affirms the consistency with which the CFPB views and applies these statutory definitions, when presented with similar contexts. Although this advisory opinion does not analyze the application of other laws, the CFPB expects that under other consumer financial laws with similar definitions of credit, the same considerations will apply.[27]

2. Contracts for deed secured by a dwelling, generally will be "residential mortgage loans" under TILA and Regulation Z.

Several provisions of TILA and Regulation Z apply specifically to credit transactions secured by the consumer's dwelling or by real property.[28] As discussed above, Congress amended TILA through the Dodd-Frank Act with the recognition that, when consumers commit to loans secured by possession of their homes, the stakes are particularly high.[29] It added to TILA specific protections that apply to "residential mortgage loans." Many States define "mortgages" separately from their definitions for contracts for deed, with distinct requirements for each. However, in TILA Congress defined "residential mortgage loan" to include "any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a[n open-end] consumer credit transaction . . . ."[30] Thus, the relevant consideration

[26] 12 U.S.C. 5481(7). A court validated the CFPB's authority to investigate the entity's contracts for deed as possible credit under the CFPA, noting that the transactions may be credit because they "obligate the purchaser to pay a principal sum plus interest through deferred monthly payments." *CFPB v. Harbour Portfolio Advisors,* No. 16-014183, 2017 WL 631914, at *3 (E.D. Mich. Feb. 16, 2017). The court further characterized an acceleration clause that "gives the seller the option to demand the full purchase price once the purchaser misses a payment" as "strongly suggest[ing] that Respondents are supplying 'credit' . . . ." *Id.*

[27] *See, e.g.*, 15 U.S.C. 1691a(d) (defining "credit" under the Equal Credit Opportunity Act); 12 CFR pt. 1002 supp. I para. 2(j)-1 ("Regulation B covers a wider range of credit transactions than Regulation Z.").

[28] The CFPA similarly has provisions specifically addressing loans secured by real estate. *See, e.g.*, 12 U.S.C. 5514(a)(1)(A) (providing supervisory authority over any covered person who originates consumer loans "secured by real estate"). This advisory opinion does not assess the applicability of such provisions beyond TILA, but the CFPB expects to apply such definitions consistently across Federal consumer financial laws to the extent appropriate.

[29] *See supra*, text accompanying notes 13–15.

[30] 15 U.S.C. 1602(dd)(5).

for determining whether contracts for deed are "residential mortgage loans" under TILA is not whether State law specifically regards contracts for deed as "mortgages," but only whether the contract for deed is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling. Additional protections under Regulation Z apply to "any consumer credit transaction secured" by "a dwelling,"[31] by "the consumer's principal dwelling,"[32] or by "real property."[33]

Regulation Z defines a "security interest" as "an interest in property that secures performance of a consumer credit obligation and that is recognized by State or Federal law."[34] While State and Federal law regarding secured transactions and contracts for deed will vary, the CFPB expects that this definition would be satisfied in many or most cases. As a matter of general usage, security is the "[c]ollateral given or pledged to guarantee the fulfillment of an obligation."[35] As described earlier, in a typical contract for deed, the seller retains legal title to the subject property, which generally allows the seller to retake possession of the property should the purchaser default on the payment agreement. In function, this retention of title serves to ensure that the purchaser, who already has exclusive possession of the property, fulfills the payment obligations.[36] The CFPB notes that this structure is functionally equivalent to common

[31] *E.g.*, 12 CFR 1026.43(a). Regulation Z defines a "dwelling" as "a residential structure that contains one to four units, whether or not that structure is attached to real property." 12 CFR 1026.2(a)(19).
[32] *E.g.*, 12 CFR 1026.32(a)(1).
[33] *E.g.*, 12 CFR 1026.19(e). Under Regulation Z, a "dwelling" does not need to be attached to real property. 12 CFR 1026.2(a)(19). Thus, there may be instances where, depending on the transaction, a contract for deed is secured by a dwelling, but not real property, or by real property without a dwelling.
[34] 12 CFR 1026.2(a)(25).
[35] *Security*, Black's Law Dictionary (11th ed. 2019).
[36] *See* Restatement (Third) of Property (Mortgages) sec. 3.4 (1997) ("A contract for deed is a contract for the purchase and sale of real estate under which the purchaser acquires the immediate right to possession of the real estate and the vendor defer delivery of a deed until a later time to secure all or part of the purchase price. A contract for deed creates a mortgage.").

definitions of "mortgage,"[37] and is aware of State laws that expressly consider such transactions to be mortgages.[38]

The CFPB is additionally aware of many instances nationwide in which a seller's retention of legal title to the property has been characterized as securing payment of the contract for deed, either by State statute[39] or by courts applying State law and equitable principles.[40] While this advisory opinion does not provide any specific interpretation or application of State law, the prevalence of similar language across State law and related jurisprudence informs the CFPB's expectation that contracts for deed will generally trigger Regulation Z's thresholds for mortgage transaction protections based on the security interest in the buyer's home. As noted above, this is the case whether or not the relevant State or Federal law regards a contract for deed generally as a "mortgage," or its equivalent, including for the purpose of forfeiture. Similarly, this advisory opinion's recognition that contracts for deed are often "residential mortgage loans" under TILA and Regulation Z does not constitute a determination that they are mortgages under State or other Federal laws.

[37] *Id. See also Mortgage*, Black's Law Dictionary (11th ed. 2019) ("A conveyance of title to property that is given as security for the payment of a debt or the performance of a duty and that will become void upon payment or performance according to the stipulated terms."); Restatement (Third) of Property (Mortgages) sec. 1.1 (1997) ("The function of a mortgage is to employ an interest in real estate as security for the performance of some obligation.").
[38] *See, e.g.*, Florida (Fla. Stat. Ann. sec. 697.01); Indiana (Ind. Code Ann. sec. 24-4.4-1-301(14)); Oklahoma (Okla. Stat. Ann. tit. 16 sec. 11A).
[39] *See, e.g.*, Maine (33 M.R.S. sec. 481); Maryland (Md. Real Property Code sec. 10-101); Ohio (Ohio Rev. Code Ann. sec. 5313.01).
[40] *See, e.g.*, California (*Petersen v. Hartell*, 40 Cal. 3d 102, 112, 707 P.2d 232, 239 (1985)); Indiana (*Vic's Antiques & Uniques, Inc. v. J. Elra Holdingz, LLC*, 143 N.E.3d 300, 305 (Ind. Ct. App. 2020)); Kentucky (*Sebastian v. Floyd*, 585 S.W.2d 381 (Ky. 1979)); Michigan (*Barker v. Klingler*, 302 Mich. 282, 288, 4 N.W.2d 596, 599 (1942)); Minnesota (*Gagne v. Hoban*, 280 Minn. 475, 479, 159 N.W.2d 896, 899 (1968)); Nebraska (*Mackiewicz v. J.J. & Assocs.*, 245 Neb. 568, 573, 514 N.W.2d 613, 618 (1994)); Oregon (*Bedortha v. Sunridge Land Co.*, 312 Or. 307, 311, 822 P.2d 694, 696 (1991)); Pennsylvania (*Anderson Contracting Co. v. Daugherty*, 274 Pa. Super. 13, 21, 417 A.2d 1227, 1231 (1979)); Washington (*Lanzce G. Douglass, Inc. v. Dep't of Revenue*, 25 Wash. App. 2d 893, 908, 525 P.3d 999, 1007 (2023)); Wisconsin *(Larchmont Holdings, LLC v. N. Shore Servs.*, LLC, 292 F. Supp. 3d 833, 848–49 (W.D. Wis. 2017)).

3. <u>Creditors selling homes using contracts for deed must comply with applicable requirements under TILA and Regulation Z.</u>

a. TILA creditors

Contract for deed sellers have important obligations under TILA and Regulation Z depending on the nature of the contract for deed and whether they are "creditors."[41] For a transaction to be credit covered under TILA, the seller must be a creditor, and whether a seller of a contract for deed is a creditor under TILA turns not only on whether the seller extends credit, but on the characteristics of the credit and frequency with which the seller engages in such transactions. First, the credit extended must be either subject to a finance charge (such as interest or implied interest) or be payable by a written agreement in more than four installments, not including a downpayment.[42] Second, the obligation must be initially payable to the person, either on the face of the note or contract, or by agreement when there is no note or contract, in order for that person to be considered a creditor.[43] These first two prongs will typically be satisfied in a contract-for-deed transaction. Contracts for deed are generally set up to require periodic payments during the term of the contract—often monthly over the span of years—and thus, require repayment of more than four installments.[44] Contracts for deed also generally are established by a written agreement that lists the title holder as the payee.

Third, a creditor is a person that regularly extends credit.[45] For purposes of this requirement, a "person" is a natural person or an organization, including a corporation, partnership, proprietorship, association, cooperative, estate, trust, or government unit.[46] It may

[41] 12 CFR 1026.2(a)(17).
[42] 12 CFR 1026.2(a)(17)(i), 1026.4(b).
[43] 12 CFR 1026.2(a)(17)(i).
[44] Further, even if the contract for deed required less than four installments, often the sales price is inflated such that the additional profits earned by the seller meet the requirement for finance charge under Regulation Z.
[45] 12 CFR 1026.2(a)(17).
[46] 12 CFR 1026.2(a)(22).

include, for example, business arrangements where multiple related subsidiaries of a single organization each conduct contract-for-deed sales.[47] Whether a person *regularly* extends credit will depend on the frequency with which the person extends credit, as well as the specific nature of those credit transactions. As described below, Regulation Z may require as many as 25 transactions or as few as one to be deemed a person who regularly extends credit, depending on the type of credit.[48] This will, in turn, determine the seller's legal obligations under TILA and Regulation Z.

b. TILA obligations with contracts for deed

In general, when a person extends consumer credit more than 25 times, or more than 5 times for transactions secured by a dwelling, in the preceding calendar year, that person is a creditor under TILA.[49] Thus, in contract-for-deed sales that are not considered secured by a dwelling in the relevant jurisdiction, a seller that extends credit more than 25 times in the preceding or current calendar year will qualify as a TILA creditor, assuming all other elements of the "creditor" definition are met.[50] In such a case, the contract-for-deed sale is closed-end credit, subject to TILA and Regulation Z's general disclosure requirements regarding the key terms of the loan, including the amount financed, any finance charge, and the annual percentage rate.[51]

If the contract for deed is considered to be secured by a dwelling by the applicable law in the relevant jurisdiction but is not a high-cost mortgage loan, the seller will qualify as a creditor

[47] *See Ward v. Shad*, No. 18-CV-01933 (NEB/ECW), 2019 WL 1084219, at *3 (D. Minn. Mar. 7, 2019).
[48] 12 CFR 1026.2(a)(17)(v). The CFPB is aware that some contract-for-deed transactions may involve one-time sellers. Where such transactions are conducted without a broker and/or do not qualify as "high-cost" mortgages, such one-time sellers will not be creditors under Regulation Z.
[49] *Id.*
[50] *Id.* ("A person regularly extends consumer credit only if it extended credit … more than 25 times … in the preceding calendar year. If a person did not meet these numerical standards in the preceding calendar year, the numerical standards shall be applied to the current calendar year.").
[51] What specific protections and requirement apply will depend on the particular loan. *See* 15 U.S.C. 1631, 1632; *see also* 12 CFR 1026.17–.18.

if the seller has extended credit secured by a dwelling more than five times in the preceding or current calendar year and all other elements of the "creditor" definition are met.[52] In such a case, the seller is subject to TILA and Regulation Z's general disclosure requirements, as well as additional mortgage disclosure requirements.[53] The transaction would generally also qualify as a residential mortgage loan.[54] These transactions are subject to important additional requirements, including the requirement that a creditor make a reasonable, good faith determination of the consumer's ability to repay the loan as well as the prohibition on mandatory arbitration clauses.[55] These transactions may also be subject to rules regarding servicing, origination, and fees under TILA.[56]

If the contract for deed is secured by a dwelling and qualifies as a high-cost mortgage,[57] a seller who extends credit more than once in any 12-month period can qualify as a creditor.[58] A seller who originates one or more such credit extensions through a mortgage broker can also qualify as a creditor.[59]

High-cost mortgage transactions will also trigger HOEPA requirements and protections, including required disclosures.[60] Specific prohibitions also apply to high-cost mortgages, including a prohibition on extending high-cost mortgages without written certification that a

[52] 12 CFR 1026.2(a)(17)(v) (the person must regularly extend credit "more than 5 times for transactions secured by a dwelling").
[53] 15 U.S.C. 1631, 1632; 12 CFR 1026.17–.18; *see also* 15 U.S.C. 1638; 12 CFR 1026.19(e), 1026.37, 1026.38. Specific disclosure requirements will depend on whether the dwelling-secured credit is also secured by real property.
[54] 15 U.S.C. 1602(dd)(5).
[55] 12 CFR 1026.43(c); 12 CFR 1026.36(h)(1).
[56] *See generally* 12 CFR 1026.36; 15 U.S.C. 1639a, 1639b, 1639e, 1639c(a)–(h). Some provisions only apply if the loan is secured by the consumers' principal dwelling. *See, e.g.*, 12 CFR 1026.23.
[57] A high-cost mortgage is any consumer credit transaction secured by a principal dwelling and which meets certain conditions as described in 12 CFR 1026.32. 15 U.S.C. 1602(bb), 1639; *see also* 12 CFR 1026.31, 1026.32, 1026.34.
[58] 12 CFR 1026.2(a)(17)(v).
[59] *Id.*
[60] 12 CFR 1026.32, 1026.34.

consumer has obtained counseling, a prohibition on opening a plan without regarding a consumer's ability to repay, and prohibitions on certain fees, among others.[61]

Regulatory Matters

This advisory opinion is an interpretive rule issued under the CFPB's authority to interpret TILA and Regulation Z, including under section 1022(b)(1) of the Consumer Financial Protection Act of 2010, which authorizes guidance as may be necessary or appropriate to enable the CFPB to administer and carry out the purposes and objectives of Federal consumer financial laws.[62]

By operation of TILA section 130(f), no provision of TILA sections 130, 108(b), 108(c), 108(e), or section 112 imposing any liability applies to any act done or omitted in good faith in conformity with this interpretive rule, notwithstanding that after such act or omission has occurred, the interpretive rule is amended, rescinded, or determined by judicial or other authority to be invalid for any reason.[63]

Pursuant to the Congressional Review Act,[64] the CFPB will submit a report containing this advisory opinion and other required information to the United States Senate, the United States House of Representatives, and the Comptroller General of the United States prior to the rule's published effective date. The Office of Information and Regulatory Affairs has designated this interpretive rule as not a "major rule" as defined by 5 U.S.C. 804(2).

The CFPB has determined that this advisory opinion does not impose any new or revise any existing recordkeeping, reporting, or disclosure requirements on covered entities or members

[61] 12 CFR 1026.34(a)(4) (open-end, high-cost mortgage repayment prohibitions), 1026.34(a)(5) (pre-loan counseling requirements), 1026.34(a)(7)–(8), 1026.34(a)(10) (requirements and prohibitions related to fees).
[62] 12 U.S.C. 5512(b)(1).
[63] 15 U.S.C. 1640(f).
[64] 5 U.S.C. 801 *et seq.*

of the public that would be collections of information requiring approval by the Office of Management and Budget under the Paperwork Reduction Act.[65]

Rohit Chopra,

Director, Consumer Financial Protection Bureau.

[65] 44 U.S.C. 3501 through 3521.

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Consumer Financial Protection Circular 2024-04

Whistleblower protections under CFPA section 1057

July 24, 2024

Question presented

Can requiring employees to sign broad confidentiality agreements violate Section 1057 of the Consumer Financial Protection Act (CFPA), the provision protecting the rights of whistleblower employees, and undermine the CFPB's ability to enforce the law?

Response

Yes. Although confidentiality agreements can be entered into for legitimate purposes, such as to ensure the protection of confidential trade secrets, such agreements, depending on how they are worded and the context in which they are employed, could lead an employee to reasonably believe that they would be sued or subject to other adverse actions if they disclosed information related to suspected violations of federal consumer financial law to government investigators. Threats of this nature can lead to violations of Section 1057 and impede investigations into potential wrongdoing, including the CFPB's efforts to uncover violations of the consumer financial protection laws it enforces.

Background

Public policy in the United States long has recognized the important role that whistleblowing plays in preventing and stopping illegal and unethical misconduct. One of the first federal laws to provide protections to employees who reported fraud against the government was the False Claims Act, originally passed in 1863 and since amended. A majority of states since have passed their own such statutes. As Congress passed more legislation providing protections for employees against retaliation from their employers for engaging in protected whistleblowing activity, it empowered the Occupational Safety and Health Administration (OSHA), a regulatory agency of the U.S. Department of Labor (DOL), to adjudicate employees' retaliation claims.

Consumer Financial Protection Circulars are policy statements advising parties with authority to enforce federal consumer financial law.

Currently, OSHA's Whistleblower Protection Program enforces the anti-retaliation provisions of more than 20 federal laws, including the CFPA as discussed below.[1]

Many entities, including covered persons and service providers under the CFPA,[2] require their employees to sign nondisclosure agreements (NDAs) or other types of agreements containing confidentiality requirements. Such agreements may indicate that employees who violate the agreement's terms may be subject to lawsuits, including the possibility of damages or other costs, as well as other punishment, such as termination. These types of agreements can be entered into for legitimate purposes—for example, to ensure the protection of confidential trade secrets or to safeguard the sensitive personal information of employees or consumers. However, depending on how they are worded and the context in which they are employed, confidentiality agreements hold the potential to frustrate the efforts of government enforcement agencies—including the CFPB—to investigate violations of law. In particular, confidentiality agreements entered into in certain circumstances may impede such efforts when they are so broadly worded as to forbid or otherwise dissuade employees from reporting suspected violations of law to the government or cooperating with a government investigation.

CFPA Section 1057

Section 1057 of the CFPA applies to covered persons. It provides anti-retaliation protections for covered employees[3] and their representatives who provide information to the CFPB or any other federal, state, or local law enforcement agency regarding potential violations of laws and rules that are subject to the CFPB's jurisdiction. Specifically, Section 1057(a) provides that "[n]o covered person or service provider shall terminate or in any other way discriminate against, or cause to be terminated or discriminated against, any covered employee or any authorized representative of covered employees" for: (1) providing or being about to provide information to the employer, the CFPB, or any other state, local, or federal government authority or law enforcement agency relating to a violation of, or any act or omission that the employee reasonably believes to be a violation of, a law subject to the CFPB's jurisdiction or prescribed by the CFPB; (2) testifying or intending to testify about such a potential violation; (3) objecting to or refusing to participate in any activity, policy, practice, or assigned task that the employee

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[1] *See* Occupational Safety and Health Administration: *Whistleblower Protection*, https://www.whistleblowers.gov/about-us.

[2] Covered persons and service providers must comply with the whistleblower protection requirements of the CFPA. 12 U.S.C. §§ 5481(6), (26); 12 U.S.C. § 5567. For simplicity, the remainder of this Circular refers to covered persons and service providers as "covered persons."

[3] A "covered employee" is defined as "any individual performing tasks related to the offering or provision of a consumer financial product or service." 12 U.S.C. § 5567(b).

reasonably believes to be such a violation; or (4) filing any lawsuit or instituting any other proceeding under any federal consumer financial law.[4]

Section 1057(c) provides procedures by which a person who believes they have been discharged or otherwise discriminated against in violation of Section 1057(a) may file a complaint with DOL, and a process by which DOL shall investigate and adjudicate such complaints.[5] It further specifies the procedures for appealing DOL's decisions in federal court. The CFPB also has independent authority to enforce Section 1057.[6] Section 1057(d) provides that, outside of limited circumstances, contractual provisions that purport to waive the rights and remedies granted by Section 1057 are unenforceable.[7]

Accordingly, Section 1057 makes it unlawful for a covered person to discriminate against an employee for whistleblowing with respect to suspected violations of federal consumer financial law. As explained below, discrimination in this sense may include suing or threatening to sue or otherwise taking or threatening to take adverse action against employees for engaging in whistleblowing activity. And, in certain circumstances, requiring employees to sign confidentiality agreements that are so broad as to forbid or otherwise dissuade employees from sharing information about potential law violations with the government or cooperating with a government investigation can amount to a threat to punish.

Analysis

The CFPB is issuing this Circular to remind regulators and the public that covered persons who in certain circumstances require their employees to enter into broad confidentiality agreements that do not clearly permit communications with government enforcement agencies or cooperation with law enforcement investigations risk violating the CFPA's prohibition on discrimination against whistleblowers and undermining the government's ability to enforce the law.

As noted above, Section 1057(a) prohibits covered persons from terminating or otherwise discriminating against covered employees for engaging in whistleblowing activity. The term "discriminate against" is broad and encompasses a variety of adverse actions that a covered

[4] 12 U.S.C. § 5567(a).

[5] 12 U.S.C. § 5567(c).

[6] 12 U.S.C. §§ 5563(a)(1), 5564(a).

[7] 12 U.S.C. § 5567(d). This provision applies to pre-dispute arbitration agreements, which it states are not valid or enforceable to the extent they require arbitration of disputes arising under Section 1057. 12 U.S.C. § 5567(d)(2).

person may take against covered employees.[8] The use of the term in multiple whistleblower protection statutes passed by Congress reflects this understanding.

For example, Section 23 of the Commodity Exchange Act (CEA), which Congress passed as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act (DFA, of which the CFPA is a part), created a whistleblower awards program and protection for whistleblowers.[9] Section 23, which is administered by the Commodity Futures Trading Commission (CFTC), states "[n]o employer may discharge, demote, suspend, threaten, harass, directly or indirectly, *or in any other manner discriminate against*, a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower" in providing information to the CFTC.[10] Likewise, Congress created a whistleblower awards program and related protections when it passed Section 21F of the Securities Exchange Act of 1934, also part of the DFA. Section 21F, which is administered by the Securities and Exchange Commission (SEC), identically provides that "[n]o employer may discharge, demote, suspend, threaten, harass, directly or indirectly, *or in any other manner discriminate against*, a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower" in providing information to the SEC.[11] Congress thus made clear that the term "discriminate against" encompasses a variety of adverse actions—including threatening employees—listed in these statutes, in addition to other actions that employers may take to prevent or dissuade employees from whistleblowing or to punish them for whistleblowing.[12]

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[8] At its essence, to "discriminate" means "to make a distinction" or "to make a difference in treatment or favor on a basis other than individual merit." "Discriminate," Merriam-Webster.com, https://www.merriam-webster.com/dictionary/discriminate (last visited July 17, 2024); *see also Murray v. UBS Securities, LLC*, 601 U.S. 23, 34 (2024) (explaining meaning of "discriminate" under analogous anti-retaliation provision in the Sarbanes-Oxley Act, 18 U.S.C. § 1514A, and holding that while the employee had to prove his protected activity was a contributing factor in the unfavorable personnel action, he did not also have to prove his employer acted with retaliatory intent).

[9] 7 U.S.C. § 26. *See* Commodity Futures Trading Commission: *Whistleblower Protections*, https://www.whistleblower.gov/protections.

[10] 7 U.S.C. § 26(h)(1)(A) (emphasis added).

[11] 15 U.S.C. § 78u-6(h)(1)(A) (emphasis added).

[12] In addition to these examples, the Financial Institutions Anti-Fraud Enforcement Act of 1990 (FIAFEA) allows whistleblowers to bring claims related to suspected violations of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA)—passed in the wake of the savings and loan crisis—by submitting confidential declarations setting forth facts about alleged fraud. 12 U.S.C. § 4201 *et seq.* As enacted, in addition to providing for discretionary monetary awards from the Attorney General, the FIAFEA granted certain protections to whistleblowers against employer retaliation for lawfully reporting such information to the government. 12 U.S.C. § 4212 (providing that such declarants shall enjoy the protections afforded under 18 U.S.C. § 3059A(e)). Specifically, it provided that a person who "is discharged, demoted, suspended, threatened, harassed, *or in any other manner discriminated against* in the terms or conditions of employment by an employer because of lawful acts done by the person … in furtherance of a prosecution under [applicable provisions] may, in a civil action, obtain

In addition to enforcing the anti-retaliation provision of Section 21F, the SEC promulgated Rule 21F-17, which provides that "[n]o person may take any action to impede an individual from communicating directly with the Commission staff about a possible securities law violation, including enforcing, or threatening to enforce, a confidentiality agreement … with respect to such communications."[13] As the SEC explained in its proposal, "the Congressional purpose underlying Section 21F of the Exchange Act is to encourage whistleblowers to report potential violations of the securities laws by providing financial incentives, prohibiting employment-related retaliation, and providing various confidentiality guarantees. Efforts to impede a whistleblower's direct communications with Commission staff about a potential securities law violation, however, would appear to conflict with this purpose."[14] The SEC since has pursued enforcement actions against companies that it alleged violated Rule 21F-17 by requiring their employees or clients to sign confidentiality agreements that would impede the ability of such individuals to share freely information about suspected wrongdoing with the SEC.[15]

The SEC is not alone in observing that employer confidentiality agreements may undermine the rights of whistleblowers and impede government enforcement efforts. In 2017, the CFTC promulgated a rule that similarly bars impeding an individual from communicating with CFTC staff, including by enforcing or threatening to enforce confidentiality agreements.[16] The CFTC

all relief necessary to make the person whole." 18 U.S.C. § 3059A(e)(1), *repealed by* Pub. L. No. 107-273, 116 Stat. 1781 (Nov. 2, 2002) (emphasis added). Congress repealed 18 U.S.C. § 3059A in 2002 as it considered it to be one of several "redundant authorizations of payments for rewards." Pub. L. No. 107-273, 116 Stat. 1781 (Nov. 2, 2002). Functionally equivalent award and anti-retaliation provisions apply to employees of insured depository institutions and credit unions pursuant to the Federal Deposit Insurance Corporation Act and Federal Credit Union Act, although those provisions do not contain the same list of examples of forms of employer discrimination that appeared in the FIAFEA. *See* 12 U.S.C. §§ 1831j & 1831k; 12 U.S.C. §§ 1790b & 1790c. These provisions predated the FIAFEA, however, and the fact that Congress labeled the FIAFEA protections "redundant" supports the notion that it viewed the less descriptive anti-discrimination provisions in these acts as encompassing the broad definition of discrimination articulated in the FIAFEA.

[13] 17 CFR 240.21F-17(a).

[14] 75 FR 70488, 70510 (Nov. 17, 2010). *See also* 76 FR 34300, 34351-52 (June 13, 2011) (final rule preamble reiterating congressional purpose).

[15] *See, e.g.*, Press Release, SEC, *SEC: Companies Cannot Stifle Whistleblowers in Confidentiality Agreements* (Apr. 1, 2015), https://www.sec.gov/news/press-release/2015-54 (describing administrative settlement in enforcement action wherein SEC alleged that KBR Inc.'s practice requiring employees to sign confidentiality agreements in internal investigations created a "chilling effect" to discourage whistleblowing in violation of Rule 21F-17); Press Release, SEC, *Company Paying Penalty for Violating Key Whistleblower Protection Rule* (Aug. 10, 2016), https://www.sec.gov/news/press-release/2016-157 (describing SEC's issuance of cease-and-desist order and imposition of remedial sanctions against publicly traded company BlueLinx Holdings, Inc. for including language in its employee severance agreements that required departing employees to notify the company's legal department prior to disclosing any financial or business information to any third parties); Press Release, SEC, *J.P. Morgan to Pay $18 Million for Violating Whistleblower Protection Rule* (Jan. 16, 2024), https://www.sec.gov/news/press-release/2024-7 (announcing settled charges against J.P. Morgan Securities LLC for violations of Rule 21F-17(a) stemming from the company's regularly asking retail clients to sign confidential release agreements that allowed them to respond to SEC inquiries but did not permit them to voluntarily contact the SEC).

[16] 17 CFR 165.19(b).

explained when it proposed the rule that it was doing so to complement the prohibition on employer retaliation against whistleblowers found in CEA section 23(h)(1)(A) and to achieve consistency with the SEC's whistleblower rules.[17] In June 2024, the CFTC issued a settlement order with Trafigura Trading LLC that addressed, among other issues, the company's NDAs with employees that impeded their ability to communicate voluntarily with the CFTC.[18] And last year, the Federal Trade Commission's (FTC's) Bureau of Competition issued guidance explaining that certain types of contractual provisions, including confidentiality agreements, NDAs, and notice-of-agency-contact provisions, are "contrary to public policy and therefore void and unenforceable insofar as they purport to (1) prevent, limit, or otherwise hinder a contract party from speaking freely with the FTC; or (2) require a contract party to disclose anything to an investigation target about the FTC's outreach or communications."[19]

The same dynamic is true for the CFPB. Confidentiality agreements that limit the ability of employees to communicate with government enforcement agencies or speak freely with investigators undermine the CFPB's ability to enforce the law. Among the functions that Congress laid out for the CFPB is "taking appropriate enforcement action to address violations of Federal consumer financial law."[20] Subtitle E of the CFPA specifies the CFPB's enforcement powers, including the authority to conduct investigations of potential violations of law.[21] In addition to other actions, the CFPB may issue demands for written or oral testimony in pursuing such investigations.[22] If, due to a confidentiality agreement, an employee perceives that they could suffer adverse consequences for cooperating in such circumstances, then the CFPB's ability to carry out its statutory functions to protect consumers is compromised.

Consistent with these observations, covered persons that require employees in certain circumstances to sign broadly worded confidentiality agreements risk violating Section 1057 of the CFPA. Confidentiality agreements sometimes specify that the employer may file a lawsuit or reserves the right to take adverse employment action upon the employee's violation of the agreement. Depending on the circumstances, an employee may interpret such conditions as threats to retaliate for engaging in whistleblowing activity. The risk of a violation of Section 1057 is heightened when covered persons impose such agreements in situations that are

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[17] 81 FR 55951, 55955 (Aug. 30, 2016).

[18] *In re Trafigura Trading LLC*, CFTC No. 24-08, 2024 WL 3225331 (June 17, 2024), available at https://www.cftc.gov/media/10791/enftrafiguratradingorder061724/download.

[19] Bureau of Competition, FTC, *Re: Contracts That Impede Bureau of Competition Investigations* (June 15, 2023), available at https://www.ftc.gov/system/files/ftc_gov/pdf/Formal-Analysis.pdf.

[20] 12 U.S.C. § 5511(c)(4).

[21] *See* 12 U.S.C. § 5562.

[22] *See* 12 U.S.C. § 5562(c)(1).

particularly likely to lead a reasonable employee to perceive the required entry into the agreement as a threat, such as in the context of an internal investigation or other scenario involving potential violations of law—for example, after the uncovering of suspected or confirmed wrongdoing, or in the aftermath of a potentially embarrassing episode for a company. When an employee participates in an investigation or otherwise is made aware of possible wrongdoing and simultaneously is required to sign such an agreement, there is a heightened risk that the employee reasonably would view the requirement to sign as a threat by the employer to take adverse action if the employee were to engage in whistleblowing activity. Indeed, the employee reasonably may not fathom any other reason for why they are being made to sign the agreement beyond that the employer is threatening to sue or otherwise punish the employee for engaging in whistleblowing. In line with the analysis above, such threats may constitute discrimination within the meaning of Section 1057 and thus be prohibited, regardless of whether or not the employer acts upon them or a court actually would enforce a confidentiality agreement with respect to whistleblowing.[23]

For example, in 2015, the SEC found that Houston-based global technology and engineering firm KBR Inc. violated Rule 21F-17 by requiring witnesses in certain internal investigations to sign confidentiality agreements containing language warning they could face discipline, including possible termination, if they discussed the matters with outside parties without the prior approval of the company's legal department.[24] The SEC's order stated that, although there were no apparent instances in which the company specifically prevented employees from communicating with the SEC about securities law violations, the company's blanket prohibition against witnesses discussing the substance of their interviews without prior approval under penalty of disciplinary action had a chilling effect that undermined the purpose of Section 21F and Rule 21F-17, which is to encourage whistleblowers to report illegal conduct to the SEC. The company agreed as part of the settlement to amend its confidentiality statement to add language making clear that employees are free to report possible violations to the SEC and other federal agencies without KBR approval or fear of retaliation.

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[23] As noted above, Section 1057(d) of the CFPA renders unenforceable "any agreement, policy, form, or condition of employment" that purports to waive the rights and remedies provided for in Section 1057. 12 U.S.C. § 5567(d)(1). And, the CFPB has explained that including unenforceable terms in a consumer contract may constitute a deceptive act or practice in violation of the CFPA's prohibition on unfair, deceptive, or abusive acts or practices. *See* CFPB, Consumer Financial Protection Circular 2024-03: *Unlawful and unenforceable contract terms and conditions* (June 4, 2024), https://www.consumerfinance.gov/compliance/circulars/consumer-financial-protection-circular-2024-03/. Similarly, requiring employees to enter into overly broad confidentiality agreements that restrict or waive the employees' whistleblower rights could constitute a deceptive act or practice in appropriate circumstances. Although the CFPB typically has found deceptive acts or practices with respect to misrepresentations made to a consumer, deceptive acts or practices targeting other parties – such as a covered person's employees – may also violate the CFPA if the deception is in connection with the offering or provision of consumer financial products or services. *See* 12 U.S.C. §§ 5531, 5536.

[24] *Supra* n.15.

Confidentiality agreements that risk leading to violations of whistleblower protection statutes—including Section 1057 of the CFPA—can be formulated in different ways. Certainly, employers can draft them in an express manner that purports to forbid the sharing of information with outside parties with no acknowledgment of and exception for the exercise of whistleblower rights. The risk of a reasonable employee interpreting their required entry into such an agreement in circumstances involving potential wrongdoing as a threat against reporting information to the government is relatively high. But other confidentiality agreements that undermine whistleblower protections may reasonably be perceived by employees as threats against them for exercising their rights in such circumstances. For example, an agreement that forbids sharing information with third parties "to the extent permitted by law" may technically permit whistleblowing. However, an employee, who may not know that the law forbids restrictions on whistleblowing but understands that the consequence of violating the agreement is suffering adverse employment action, may reasonably interpret the agreement to bar providing information to a law enforcement agency or voluntarily cooperating in a government investigation depending on the circumstances in which the employer asks the employee to enter into the agreement. An employee reasonably may feel threatened by such language in certain circumstances, such as those described above, and decline to report suspected violations of law to the government.[25] An employer can significantly reduce the risk of this kind of perception—and thus of violating Section 1057—by ensuring that its agreements expressly permit employees to communicate freely with government enforcement agencies and to cooperate in government investigations.

As explained above, suing or threatening to sue or otherwise punish employees for engaging in whistleblowing activity may constitute discrimination against whistleblowers. Accordingly, when covered persons require employees to sign broadly worded confidentiality agreements that do not clearly permit communicating with government enforcement agencies or cooperating with law enforcement, especially when circumstances bear indicia of potential or suspected wrongdoing, they may be threatening to take adverse action against those employees for reporting suspected violations of federal consumer financial law to the CFPB or other regulators. Thus, covered persons who impose these types of agreements on their employees risk violating the prohibition on discrimination against whistleblowers contained in Section 1057 of the CFPA.

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[25] In a recently filed complaint, DOL explained how confidentiality provisions in employment agreements that require employees not to share the terms of the agreement except with the employee's immediate family or attorney or "as required by law" could cause employees to "reasonably believe that they cannot disclose the terms of the agreements to [DOL] absent a subpoena or court order," and that these provisions, along with broad non-disparagement and non-disclosure provisions coupled with the threat of termination and monetary damages, dissuade employees from speaking freely with DOL investigators in violation of Section 15(a)(3) of the Fair Labor Standards Act, 29 U.S.C. § 215(a)(3). Complaint, ¶¶ 95-106, 129-38, 160-65, *Su v. Smoothstack, Inc.*, No. 1:24-cv-04789 (E.D.N.Y. July 10, 2024), available at https://www.dol.gov/sites/dolgov/files/OPA/newsreleases/2024/07/SmoothstackInc-Complaint-24-1337-NAT.pdf.

CONSUMER FINANCIAL PROTECTION BUREAU | AUGUST 2024

Financial Literacy Annual Report

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1. Introduction

The Consumer Financial Protection Act of 2010 mandates that the Director of the Consumer Financial Protection Bureau (CFPB) submit to Congress an annual report on the CFPB's financial literacy activities and strategy to improve the financial literacy of consumers.[1]

The CFPB strives to be a source for objective information and encourages neutral and unbiased financial education programs that do not promote any product or service. Financial education should never be used to shame people or to shift responsibility from corporate wrongdoers to individual consumers. Instead, financial education should empower consumers to assert their rights and seek help when something goes wrong.

The CFPB develops programs and resources to address incomplete and often asymmetric information about financial services, products, and practices provided to consumers by consumer financial service providers. Ensuring that consumers know where to turn when they need help is central to the CFPB's financial education strategy. The CFPB engages directly with consumers to learn about their experiences with financial products and services and then uses that information to inform financial education efforts. A deeper understanding of consumers' experiences helps the CFPB identify areas of focus and tailor its financial education efforts. Consumer insights can also contribute beyond consumer education, helping the CFPB's supervision, enforcement, and rulemaking work to better achieve its goals.

The CFPB also continues to highlight efforts to increase financial well-being in individuals that reflect a diversity of circumstances, opportunities, and aspirations. This report highlights examples of effective financial education using the CFPB's research-based approach.

[1] 12 U.S.C. § 5493(d)(4).

2. The CFPB's approach to financial education

The CFPB makes every effort to be a source of unbiased, objective information consumers can trust, and develops guides and resources for educators and consumers in multiple languages. The CFPB also strives to disseminate evidence-based approaches for practitioners to increase the effectiveness of financial education. For example, Ask CFPB is the agency's flagship education tool that provides clear, impartial answers to hundreds of consumer-oriented questions about financial services and products. In fiscal year 2023 (FY23), Ask CFPB was the most widely used financial education resource on consumerfinance.gov, serving 10.95 million visitors with 16.3 million pageviews. Ask CFPB accounted for 42% of the top 100 webpages on consumerfinance.gov.

To build on the success of Ask CFPB, and to reach consumers where they are looking, the CFPB prioritized efforts to improve the performance of Ask CFPB content. The CFPB implemented search engine schema[2] and search engine optimization (SEO) for the most viewed Ask CFPB pages. Additionally, the CFPB worked to improve the usability and navigation of Ask CFPB content by reducing the amount of duplicative or under-utilized content. As a result, the total number of Ask CFPB questions was reduced from 1,158 questions in fiscal year 2022 (FY22) to 733 questions in FY23 (a 37% reduction), while the total number of visitors across Ask CFPB increased by 29.8% from 8.4 million to 10.9 million. The CFPB is continuing this work across all consumer-facing education digital products in 2024.

To reach consumers with Limited English Proficiency (LEP), the CFPB updated its Language Access Plan,[3] highlighting the commitment to language access activities across its operations, including financial education. More than 67 million people, or about 22% of the U.S. population over the age of five, speak a language other than English at home. Of these, more than 26 million people in the United States have limited proficiency in English.[4] The Language Access Plan highlights the CFPB's Office of Financial Education's role in co-chairing the Bureau's Language

[2] Search Engine Schema is a webpage code standard used to help search engines understand and categorize webpage content so that the search engine can display richer and more informative search results for users.

[3] *See* Consumer Fin. Prot. Bureau, *CFPB Language Access Plan*, https://www.consumerfinance.gov/data-research/research-reports/the-cfpb-language-access-plan-for-consumers-with-limited-english-proficiency/

[4] *See* U.S. Census Bureau's 2018-2022 American Community Survey 5-year estimate, https://data.census.gov/table?q=DP02. Spanish is the most widely spoken non-English language with approximately 40 million speakers, and it constitutes the largest share of the LEP population, followed by Chinese, Vietnamese, Korean, and Tagalog speakers. These five languages are spoken by more than 78% of LEP individuals. Studies have shown that information in consumers' native languages is critical to improved financial well-being.

Access Task Force that is responsible for creating and supporting an effective infrastructure to ensure consumers with LEP have access to financial education resources. In addition, the Language Access Task Force oversees an internal translation process and has developed style guides and glossaries.[5]

As part of its efforts to effectively reach LEP consumers, the CFPB conducted in-language focus groups and user testing of in-language webpages on the CFPB website. Through these pages, the CFPB offers information directly to LEP consumers through Arabic, Chinese, Haitian Creole, Korean, Russian, Spanish, Tagalog, and Vietnamese translated content. The CFPB has also promoted its availability to consumers with LEP through community service channels. Traffic to the CFPB's in-language web pages has increased by 86% in FY23 compared to FY22.

The CFPB's financial education print publications provide straightforward information about money management and other financial issues like credit products, debt collection, reading credit reports and building credit, buying a home and how to avoid foreclosure, remittances, and many other topics. The CFPB makes many of these resources available in English, Spanish, and the seven other languages for download or free bulk ordering at consumerfinance.gov/order.

[5] *See* Consumer Fin. Prot. Bureau, *Translated Financial Terms,* https://www.consumerfinance.gov/consumer-tools/educator-tools/adult-financial-education/tools-and-resources/#translated-financial-terms

AUGUST 12, 2024

FACT SHEET: Biden-Harris Administration Launches New Effort to Crack Down on Everyday Headaches and Hassles That Waste Americans' Time and Money

New actions will take on corporate tricks and scams like excessive paperwork, long wait times, and more that pad the profits of big business at the expense of everyday Americans' time and money.

Today, President Biden and Vice President Harris are launching "Time Is Money," a new governmentwide effort to crack down on all the ways that corporations—through excessive paperwork, hold times, and general aggravation—add unnecessary headaches and hassles to people's days and degrade their quality of life.

Americans are tired of being played for suckers, and President Biden and Vice President Harris are committed to addressing the pain points they face in their everyday lives. The Administration is already cracking down on junk fees—those hidden costs and surcharges in everything from travel to banking services—that hit people in their pocketbooks. Now the Biden-Harris Administration is taking on the corporate practice of giving people the run around, wasting their precious time and money.

Americans know these practices well: it's being forced to wait on hold just to get the refund we're owed; the hoops and hurdles to cancel a gym membership or subscription; the unnecessary complications of dealing with health insurance companies; the requirements to do in-person or by mail what could easily be done with a couple of clicks online; and confusing, lengthy, or manipulative forms that take unnecessary time and effort.

These hassles don't just happen by accident. Companies often deliberately design their business processes to be time-consuming or otherwise burdensome for consumers, in order to deter them from getting a rebate or

refund they are due or canceling a subscription or membership they no longer want—all with the goal of maximizing profits.

In addition to robbing hardworking families of their valuable time and adding frustration to our daily lives, these hassles cost us money. When, after endless hours on hold or piles of incomprehensible paperwork, we give up pursuing a service, rebate or refund we're due, we take a hit to our pocketbooks, and companies profit

Today and in the coming months, the Biden-Harris Administration will take wide-ranging action to crack down on these unfair practices and save Americans time and money. Key actions include:

- **Making it easier to cancel subscriptions and memberships.** Businesses often trick consumers into paying for subscriptions—on everything from gym memberships to newspapers to cosmetics—that they no longer want or didn't sign up for in the first place. Consumers shouldn't have to navigate a maze just to cancel unwanted subscriptions and recurring payments. The Federal Trade Commission (FTC) has proposed a rule that, if finalized as proposed, would require companies to make it as easy to cancel a subscription or service as it was to sign up for one. The agency is currently reviewing public comments about its proposal. And today, the Federal Communications Commission (FCC) is initiating an inquiry into whether to extend similar requirements to companies in the communications industry.

- **Ending airline runarounds by requiring automatic cash refunds.** The Department of Transportation's (DOT) new automatic refunds rule requires airlines to pay you back the airfare when your flight is canceled or significantly changed for any reason, and you are not offered, or choose not to accept, alternatives such as rebooking. This rule prevents airlines from switching up their policies to make it hard to get your money back when they don't deliver and requires them to tell you when you're owed a refund. DOT's rule also puts an end to airline runarounds by requiring refunds to be automatic, prompt, in the original form of payment, and for the full amount paid. No more jumping through hoops or getting stuck with expiring flight credits.

- **Allowing you to submit health claims online.** Health coverage can be full of headaches and hassles, as many plans and insurance companies make it unnecessarily difficult to access information or send in claims. For example, many of the largest plans still require some customers to print out and either scan or physically mail health claims forms, and people seeking help can encounter inaccurate or confusing websites, extended wait times, or narrow call center hours that force them to step away from work to talk to an agent. Today, Department of Health and Human Services (HHS) Secretary Becerra and Department of Labor (DOL) Acting Secretary Su are calling on health insurance companies and group health plans to take concrete actions to save people time and money when interacting with their health coverage, and in the coming months will identify additional opportunities to improve consumers' interactions with the health care system. In addition, the Office of Personnel Management plans to require Federal Employees Health Benefits and Postal Service Health Benefits plans, covering eight million Americans, to make it easier to submit out of network claims online, provide clear information about what health plan providers are in-network, and make it easier to find information on how to appeal claim denials.

- **Cracking down on customer service "doom loops."** Too often customers seeking assistance from a real person are instead sent through a maze of menu options and automated recordings, wasting their time and failing to get the support they need. In a recent survey, respondents said that being forced to listen to long messages before being permitted to speak to a live representative was their top customer service complaint. To tackle these "doom loops," the Consumer Financial Protection Bureau (CFPB) will initiate a rulemaking process that would require companies under its jurisdiction to let customers talk to a human by pressing a single button. The FCC will launch an inquiry into considering similar requirements for phone, broadband, and cable companies. HHS and DOL will similarly call on health plan providers to make it easier to talk to a customer service agent.

- **Ensuring accountability for companies that provide bad service.** People shopping for products or services should be able to rely on customer reviews to assess which companies will provide streamlined

service and not waste their time. The FTC has proposed a rule that, if finalized as proposed, would stop marketers from using illicit review and endorsement practices such as using fake reviews, suppressing honest negative reviews, and paying for positive reviews, which deceive consumers looking for real feedback on a product or service and undercut honest businesses.

- **Taking on the limitations and shortcomings of customer service chatbots.** While chatbots can be useful for answering basic questions, they often have limited ability to solve more complex problems and disputes. Instead, chatbots frequently provide inaccurate information and give the run-around to customers seeking a real person. The CFPB is planning to issue rules or guidance to crack down on ineffective and time-wasting chatbots used by banks and other financial institutions in lieu of customer service. The CFPB will identify when the use of automated chatbots or automated artificial intelligence voice recordings is unlawful, including in situations in which customers believe they are speaking with a human being.

- **Helping streamline parent communication with schools.** Between communicating with teachers, viewing school policies, completing forms and permission slips, and more, school processes, platforms, and paperwork can sometimes be a hassle for families that already have a lot on their plates. The Department of Education will issue new guidance to schools on how they can help make these processes less time-consuming for parents to handle, and to build effective family engagement through two-way communications. This will include new resources for schools to address time-wasting technology and offer more streamlined processes for engaging and communicating with parents.

What else should we take on? The White House is calling for Americans to share their ideas for how federal action can give them their time back. Interested parties can submit their ideas and comments at this portal, and may consider the following principles:

- Companies should make it as easy to do things that you want to do as it is to do things they want to do.

- It should be as easy cancel a subscription or membership as it is to enroll.
- It should be as easy to obtain rebates and refunds as it was to purchase, with no needlessly cumbersome paperwork.
- Refunds and rebates should be paid as quickly as companies take funds from your credit card or bank account.

- Americans should be able receive customer service on their terms and their own time without significant hassle or hardship.
    - If you want to talk to a human, you should be able to talk to a human at convenient times and without interminable waits.
    - If you prefer to interact electronically – such as by text, email, or online portal – there should be simple and easily identified ways to do so securely.
    - Technology – such as chatbots – should be used to enhance customer service with speedy response times, not used to shirk on basic responsibilities, such as receiving a refund.
- Americans should not be subject to confusing, manipulative, or deceptive practices online.
    - If you want to understand what you must do to obtain a good or service, the requirements should be clear and transparent.
    - You should not be subject to hidden fees or to requirements that are obscured through confusing language and small print.

Time Is Money builds on landmark efforts by the Biden-Harris Administration to improve customer service for people accessing government programs and services. In December 2021 the President signed an Executive Order, *Transforming Federal Customer Experience and Service Delivery to Rebuild Trust in Government*, directing federal agencies to streamline services and simplify customer experiences.

Already, agencies are making progress: the State Department launched a public beta to renew your passport online; all 50 states have been invited to

offer the Internal Revenue Service's Direct File tool, an easy, secure, and—most importantly—free way for Americans to file their federal taxes; HHS has taken steps to allow more than 5 million Americans to automatically renew their health coverage without filling out paperwork, saving over 2 million hours in estimated processing time; and the Department of Homeland Security (DHS) announced that it has reduced the amount of time the public spends accessing DHS services per year by 21 million hours in fiscal year 2023, and is targeting reduction of 10 million more hours per year in fiscal year 2024. For more examples of progress and to learn more information about how agencies across the federal government are improving customer experience and reducing burden, visit performance.gov/cx and the Burden Reduction Initiative website.

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Deposit Insurance

Questions and Answers Related to the FDIC's Part 328 Final Rule

Below are answers to a collection of questions about the FDIC Official Signs and Advertising Requirements, False Advertising, Misrepresentation of Insured Status, and Misuse of the FDIC's Name or Logo Final Rule ("final rule"), 12 CFR part 328 ("part 328"). This collection of questions and answers will be periodically updated on the FDIC's website.

I. Physical Premises

A. FDIC Official Sign

1. With respect to the display of the physical FDIC official sign, does the rule require the FDIC official sign to be posted at a new accounts desk?

Answer: If a banker at a new accounts desk "usually and normally" receives and processes deposits (e.g., processes a check deposit at the new accounts desk), then the official sign must be posted at the new accounts desk. In a scenario where the banker at the new accounts desk always walks the initial deposit over to the teller line, then the teller is "receiving" the deposit and the official sign posted at the teller window is sufficient; therefore, in that situation, an official sign would not be required at the new accounts desk.

2. Are insured depository institutions (IDIs) required to provide any initial disclosures about FDIC insurance coverage, either orally or in writing, before opening an account?

Answer: No. Part 328 does not require IDIs to provide "initial disclosures" about

FDIC coverage before account opening

3. Is the FDIC official sign required at night drop facilities?

Answer: No. The official sign is required wherever deposits are usually and normally received. FDIC staff does not view that deposits are usually and normally received by the IDI when placed in a night depository.

4. The new FDIC official digital sign is generally required to be displayed in the colors navy blue and black. Does the final rule modify the physical FDIC official sign color requirements?

Answer: No. The final rule does not modify color requirements for the physical FDIC official sign. The rule continues to require use of the standard, in-branch official FDIC sign, which is 7x3 inches in size with black lettering and gold background. Upon request, the FDIC will continue to provide the official sign at no cost to IDIs. As has been the case traditionally, IDIs may, at their expense, procure from commercial suppliers signs that vary from the official sign in size, color, or material. An IDI may display signs that vary from the official sign in size, color, or material at any location where display of the official sign is required or permitted. However, any such varied sign that is displayed in locations where display of the official sign is required must not be smaller in size than the official sign, must have the same color for the text and graphics, and include the same content. 12 CFR § 328.3(b)(4).

B. Non-Deposit Signs

1. Is the non-deposit sign required to be displayed in the individual offices within IDIs where non-deposit products are offered?

Answer: Yes. Under 12 CFR § 328.3(c)(2), an IDI must continuously, clearly, and conspicuously display the required non-deposit signage at each location within the premises where non-deposit products are offered. If non-deposit products are offered in individual offices, the non-deposit sign should be visible in those offices.

II. Digital Channels (e.g., Websites or Apps)

A. Placement and Display of Official Digital Sign

1. Are IDIs' websites considered deposit taking channels for purposes of the digital signage requirements?

Answer: Under part 328, the FDIC official digital sign must be displayed on "digital deposit taking channels," which includes IDIs' "websites and web-based or mobile applications that offer the ability to make deposits electronically and provide access to deposits at insured depository institutions." 12 CFR § 328.5(a). If an IDI's website is purely informational, with no ability to make deposits or access deposits, it would not be a digital deposit-taking channel.

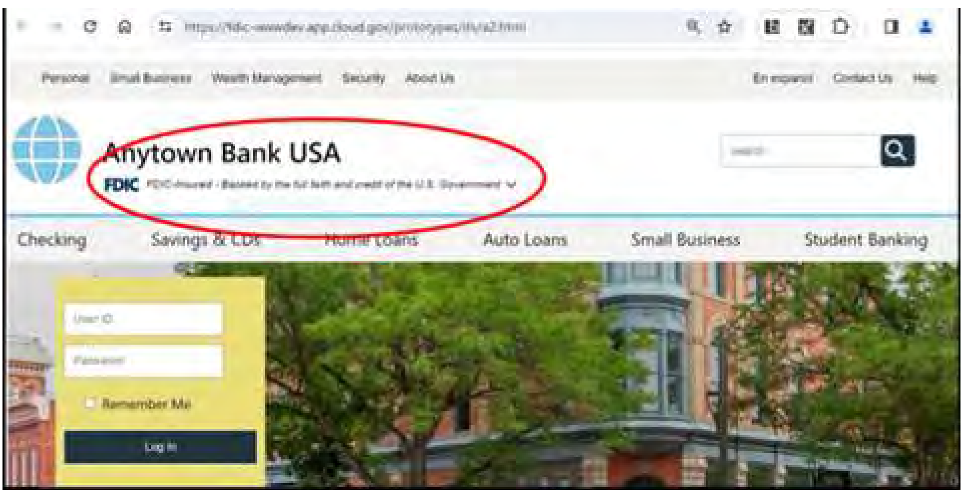
2. Can the official digital sign appear only on the IDI's "home page" and not on the other web pages that make up the website?

Answer: No. Under part 328, the FDIC official digital sign must be displayed on the (1) initial or homepage of the IDI's website or application, (2) landing or login pages, and (3) pages where a customer may transact with deposits. For example, the FDIC official digital sign should be displayed where a mobile application allows customers to deposit checks remotely, because this electronic space is in effect a digital teller window. 12 CFR § 328.5(d).

3. Where are we required to place the official digital sign on a bank webpage or app to ensure compliance with the "clear," "continuous," and "conspicuous" placement of the digital sign?

Answer: The final rule requires IDIs to display the official digital sign in a clear, continuous, and conspicuous manner. In general, the FDIC would expect to see official digital signs displayed on the applicable pages (see answer II. A. 2.above for the applicable pages) in a manner that is clearly legible to all consumers to ensure they can read it easily. The official digital sign could be displayed above the IDI's name, to the right of the IDI's name or below the IDI's name, but under all circumstances, the official digital sign continuously displayed near the top of the relevant page or screen and in close proximity to the IDI's name would meet the clear and conspicuous standard under the rule.

Below is an example of the FDIC official digital sign near the top of the page and in close proximity to the IDI's name:



4. Can the official digital sign be dismissed once a customer logs in?

Answer: No. The final rule requires that the official digital sign be displayed "in a continuous manner," which means it must remain visible on the (1) initial page or homepage of the website or application, (2) landing or login pages, and (3)

pages where the customer may transact with deposits. 12 CFR § 328.5(d). The final rule, however, does not require the official digital sign to continue to follow the user as they scroll up or down the screen.

5. Does the official digital sign need to be linked to the FDIC's website?

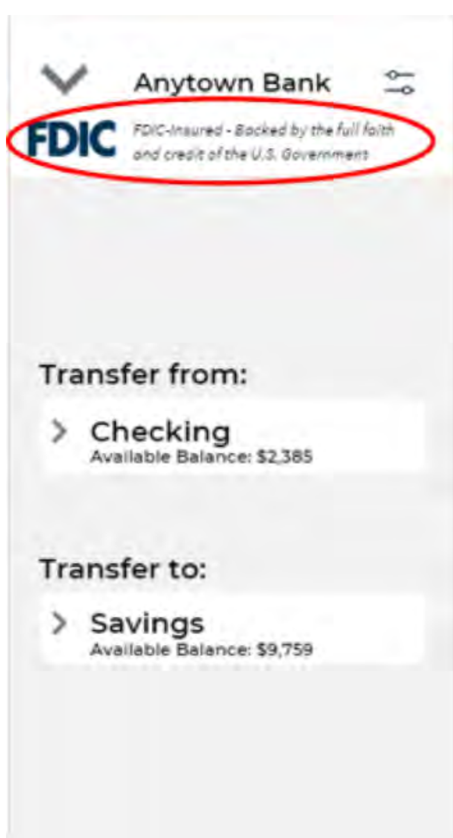
Answer: No. Part 328 does not require the official digital sign to be linked to the FDIC's website. However, it may be helpful to consumers if IDIs link the official digital sign to the FDIC's optional online BankFind tool, so that consumers can more easily confirm that the bank is FDIC-insured. This would help consumers better differentiate IDIs from non-banks. Optional, downloadable versions of the FDIC official digital sign are accessible to, and available for, bankers on FDIConnect (https://www.fdicconnect.gov/index.asp), a secure website operated by the FDIC that FDIC-insured institutions can use to exchange information with the FDIC.

6. How should IDIs display the FDIC official digital sign on mobile devices with screen resolutions that do not support the ability to display the entirety of the digital sign on one line?

Answer: Generally, the FDIC official digital sign should be displayed as presented (shown below) in the final rule at 12 CFR § 328.5(b), with no alteration to the text except for color variation as noted in the regulation text.

FDIC *FDIC-Insured - Backed by the full faith and credit of the U.S. Government*

However, if the image does not fit a particular device or screen, the official digital sign can be scaled, "wrapped," or "stacked" to fit the relevant screen and may satisfy the "clear and conspicuous" requirement.



7. If an IDI's name appears at the top of its website, and it also appears in the website's footer, does the new FDIC official digital sign need to be displayed at the top of the page and also in the footer?

Answer: Under the final rule, IDIs are required to display the FDIC official digital sign "clearly and conspicuously" in a continuous manner; the official digital sign continuously displayed near the top of the relevant page or screen and in close proximity to the IDI's name would meet the clear and conspicuous standard under the rule. 12 CFR § 328.5(f). IDIs are not required to display the FDIC official digital sign every time the IDI's name appears, such as in the footer of the website.

8. To satisfy the final rule's official digital sign requirements, can the official digital sign be placed in the footer of the webpage?

Answer: No. For purposes of satisfying the final rule, IDIs are required to display the official digital sign in a clear, continuous, and conspicuous manner. The official digital sign continuously displayed near the top of the relevant page or screen and in close proximity to the IDI's name would meet the clear and conspicuous standard under the rule. 12 CFR § 328.5(f). Therefore, placing the official digital sign in a footer of an IDI's webpage would not meet the clear, conspicuous, and continuous display requirement.

9. If an IDI displays the FDIC official digital sign on its mobile app's homepage and alongside the IDI's logo within the app, is it also necessary to include this signage on the transaction portal before a customer completes a transaction?

Answer: It depends in part on what type of transaction is being completed. The FDIC official digital sign must be displayed on the (1) initial or homepage of the bank's website or application, (2) landing or login pages, and (3) pages where a customer may transact with deposits. 12 CFR § 328.5(d). For example, the FDIC official digital sign should be displayed where an IDI's mobile application allows customers to deposit checks remotely, because this is an electronic space where a customer is transacting with deposits.

However, if a consumer is completing a transaction by using an embedded third-party payment platform that consumers: (a) access after logging into their IDI's website; and (b) utilize to initiate payments/move funds out of the IDI, then the official digital sign should not be posted on those pages.

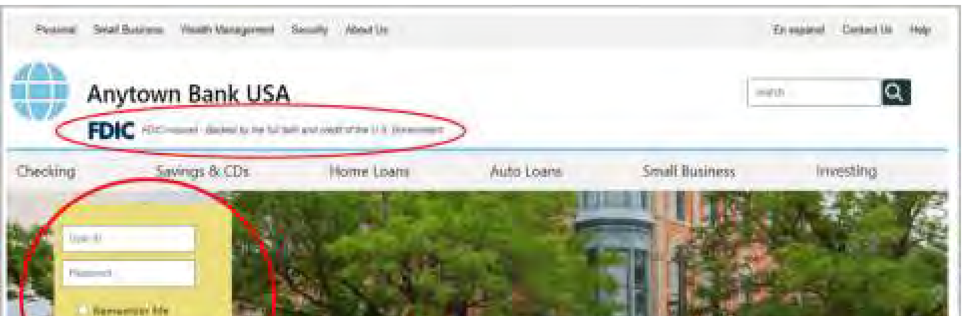
10. What are examples of "pages where the customer may transact with deposits" that require the display of the FDIC official digital sign?

Answer: Examples of "pages where the customer may transact with deposits" that require the display of the FDIC official digital sign include, but are not limited to: mobile application pages that allow customers to deposit checks remotely; and, pages where customers may transfer deposits between deposit accounts held within the same IDI (e.g., checking to savings or vice versa). On the other hand, the FDIC would not expect an IDI to display the FDIC official digital sign on pages where a customer is transferring money from a deposit account to a non-deposit account.

11. What is the definition of "landing or login page"?

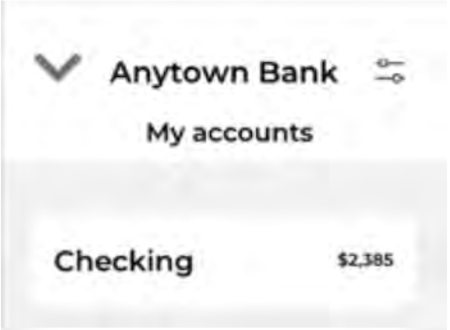
For purposes of the final rule, a "landing or login page" generally refers to an insured depository institution's (IDI's) webpage or screen from which a customer is able to log into the IDI's digital deposit taking channel. Specifically, the terms include pages where customers enter their credentials (e.g., username and password) or use other authentication methods (e.g., face identification) to access an IDI's website or banking application. The terms are intended to cover various types of logins, whether with usernames and passwords, face IDs, thumbprints, etc.

Below is an example of a "landing or login page" of an IDI's webpage where a customer is able to log in, and where the FDIC official digital sign is near the top of the page and in close proximity to the IDI's name.



12. Is an IDI required to display the official FDIC digital sign on a dashboard or portal of an IDI's website or app after the customer logs into the account?

Answer: No. In general, a "dashboard" or "portal" is an account summary webpage or screen on an app that typically displays a customer's financial information regarding various products after logging in but where a customer does not transact with deposits. For example, a dashboard may provide an overview of an IDI customer's checking, savings, mortgage, investment, and retirement account balances. For the purposes of part 328, a dashboard or portal as described here is not an initial or homepage, landing or login page, or a page where a customer may transact with deposits. Accordingly, an IDI is not required to display the official FDIC digital sign on such a dashboard or portal. As shown in the example below, the official FDIC digital sign is not displayed in this app version of a dashboard:



13. Where should the official digital sign be placed if the IDI's app or website does not currently display the IDI's full name; it only displays the IDI's logo or a partial name?

Answer: The final rule provides that an official digital sign be continuously displayed near the top of the relevant page or screen and in close proximity to the IDI's name would be considered clear and conspicuous. 12 CFR § 328.5(f)

If an IDI displays its full name, a partial name of the IDI, or the logo of the IDI (or any similar symbol used to identify the IDI) near the top of the page or screen, and continuously displays the official digital sign in close proximity to it, this approach would be considered clear and conspicuous.

14. How should IDIs incorporate the digital sign on mobile devices in accordance with part 328's requirements while also remaining ADA compliant?

Answer: The final rule does not supersede or alter the requirements of IDIs to comply with ADA's digital accessibility rules. As IDIs implement the final rule's requirements, IDIs should take steps ensure that their web content is fully compliant with other laws and regulations.

15. Do the FDIC official digital sign requirements apply to downloadable content such as terms and conditions or other digital collateral available via an IDI's online channels?

Answer: Part 328 requires IDIs to display the official digital sign on their digital deposit-taking channels on the following pages or screens: initial or homepage of the website or application, landing or login pages, and pages where the customer may transact with deposits. Downloadable content that is available from an IDI's website would not likely be viewed as a page or screen where the official digital sign would be required.

16. Is an IDI required to display the FDIC official digital sign in the app store where the IDI's app is available for download?

Answer: No. An IDI is not required to post the official digital sign in the app store where its app is available for download.

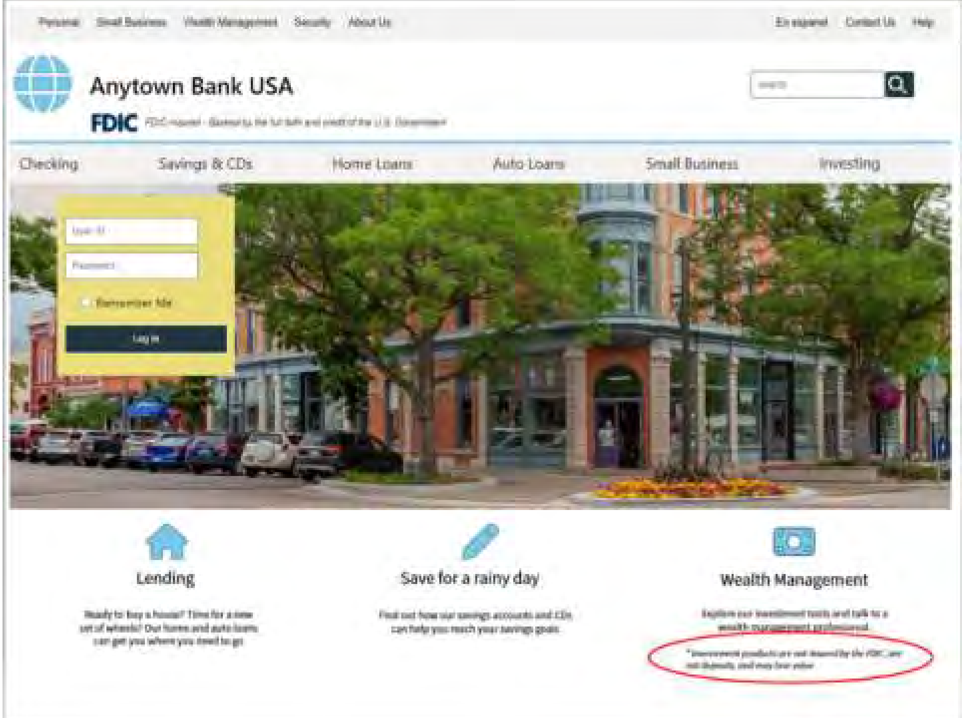
B. Non-Deposit Signs

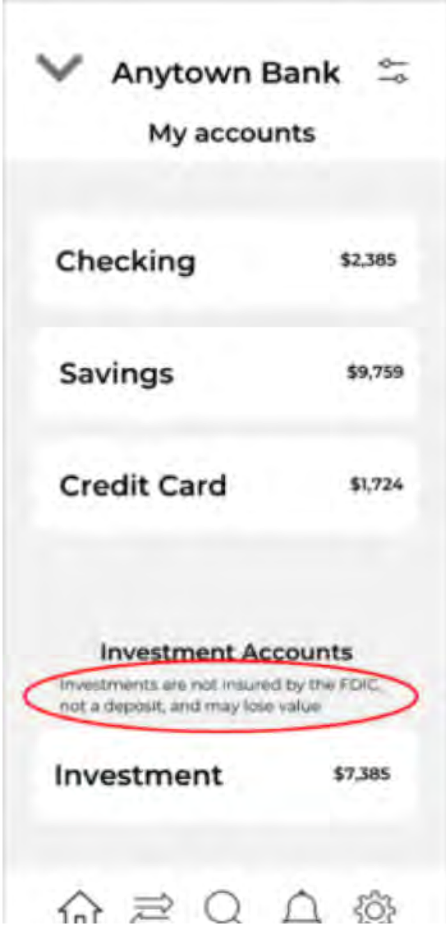
1. On IDIs' webpages or apps where IDIs are required to display the non-deposit sign, where should the non-deposit sign be displayed?

Answer: An IDI must clearly and conspicuously display a non-deposit sign on each page relating to non-deposit products if the IDI offers both access to deposits and non-deposit products. This signage must be displayed continuously on each page relating to non-deposit products.

Regarding placement of the sign, an example of clear and conspicuous placement of the non-deposit sign is to place it in close proximity to where access to a non-deposit product is provided on each page relating to non-

deposit products.





2. Would you explain the requirement for a "one-time notification" before a customer accesses a third-party website?

Answer: If an IDI's digital deposit-taking channel, such as a website, offers access to non-deposit products from a non-bank third party's online platform, and a logged-in IDI customer attempts to access such non-deposit products, an IDI must provide a one-time per web-session notification on the IDI's deposit-taking channel before the customer leaves the IDI's digital deposit-taking channel. The one-time notification could include, for example, an IDI using a "pop-up", "speedbump", or "overlay" that must be dismissed by an action of the IDI's customer before initially accessing the third party's online platform.

The notification must clearly and conspicuously indicate that the third party's non-deposit products: are not insured by the FDIC; are not deposits; and may lose value. 12 CFR § 328.5(g)(2). The IDI may include additional disclosures in the notification that may help prevent consumer confusion, including, for example, that the IDI customer is leaving the IDI's website.

3. Does the requirement for a non-deposit "one-time notification" before a customer accesses a third-party website need to appear twice in the same session, if the customer clicks on the same link twice?

Answer: No. If an IDI customer who is logged into an IDI's digital deposit-taking channel (such as an IDI's website and app) clicks on a hyperlink that takes them to a third-party's website and then the customer clicks on the same hyperlink again in the same session, the IDI would only be required to provide the one-time notification the first time the customer clicks the link, and not each subsequent time that the customer clicks on the same link in the same session.

On the other hand, the notification should be given twice during the same session if a consumer clicks on a link to access a third-party website and then in the same session clicks on a different link that takes them to a different third

party's website.

4. Would displaying a shortened version of the Interagency Statement on Retail Non-Deposit Investments disclosure as a footer on a webpage satisfy the requirements of the FDIC non-deposit sign?

Answer: A shortened version of the Retail Non-Deposit Investments disclosure ("not FDIC insured; no bank guarantee; may lose value") can be substituted for the non-deposit sign ("are not insured by the FDIC; are not deposits; and may lose value"), as long as the language is displayed clearly, conspicuously, and continuously on each webpage relating to non-deposit products and other applicable requirements of the rule are adhered to.

For example, this signage may not be displayed in close proximity to the official FDIC digital sign. In addition, placing the sign in a footer of an IDI's webpage would not meet the clear, conspicuous, and continuous display requirement.

5. If an IDI identifies instances on its website where a consumer could be confused about a product offering or other issues, does the IDI have flexibility to provide additional clarifying information to consumers?

Answer: Yes. If an IDI has satisfied the final rule's requirements, it may provide additional or supplemental clarifying disclosures to consumers on its digital channels.

6. On which webpages should IDIs include non-deposit signs and are we in compliance if we place the non-deposit signs in the footer of the webpage?

Answer: With respect to which specific webpages the non-deposit signs must be displayed, when an IDI offers both access to deposits and non-deposit products on its digital deposit-taking channels, it must display a non-deposit sign indicating that non-deposit products: are not insured by the FDIC; are not deposits; and may lose value. This non-deposit sign must be displayed clearly, conspicuously, and continuously on *each page* relating to non-deposit products.

With respect to whether the non-deposit signs can be placed in the footer, although there is no requirement for the non-deposit sign to be displayed near the top of the relevant page or screen, placing the non-deposit sign in a footer of an IDI's webpage would generally not meet the clear, conspicuous, and continuous display requirement. In addition, the non-deposit products sign may not be displayed in close proximity to the FDIC official digital sign. 12 CFR § 328.5(g)(1).

C. Use of Advertising Statement on Digital Channels

1. Should IDIs include the "Member FDIC," "Member of FDIC," or "FDIC-Insured" advertising statement on every page of their digital platforms?

Answer: The advertising statement (e.g., "Member FDIC") must be displayed on advertisements, consistent with 12 CFR § 328.6. It is not intended to overlap with the official digital sign, and the advertising statement is not required on web pages where an IDI displays the official digital sign, such as the bank's homepage. However, an IDI is not prohibited from displaying the advertising statement on a page that also includes the official digital sign, so long as the use of the advertising statement on that page is otherwise consistent with the official advertising statement requirements in 12 CFR § 328.6.

2. If a customer clicks on a hyperlink on an IDI's webpage to get marketing information about specific deposit products, would such a marketing page that a customer subsequently views require the FDIC official digital sign?

Answer: Advertising pages (i.e., commercial messages, in any medium, that is designed to attract public attention or patronage to a product or business) must adhere to the requirements of 12 CFR § 328.6, which requires the inclusion of an official advertising statement, either "Member of the Federal Deposit Insurance Corporation", or a short title of "Member of FDIC", "Member FDIC", "FDIC-insured", or a reproduction of the FDIC's symbol. IDIs are not required to display the official FDIC digital sign on advertising pages.

D. Automated Teller Machines or Like Devices

1. When implementing new official digital signage on ATMs, are IDIs required to remove existing physical signs, or can both types of signage be displayed simultaneously?

Answer: IDIs are not required to take down physical FDIC official signs attached to ATMs. For an IDI's ATM or like device that receives deposits but does not offer access to non-deposit products, except as described below, the final rule provides flexibility to meet the signage requirement by either (1) displaying the FDIC official digital sign electronically on ATM screens (consistent with the image as described in 12 CFR § 328.5), or (2) displaying the physical official sign by attaching or posting it to the ATM.

However, IDIs' ATMs or like devices that accept deposits and are put into service after January 1, 2025, must display the official digital sign electronically (with no option to satisfy the requirement through display of the physical official sign). 12 CFR § 328.4(e).

2. If an IDI's ATM accepts deposits but does not accept non-deposit products, on what pages or screens are IDIs required to post or display official FDIC signs?

Answer: For ATMs currently in service, or that will be put into service on or before January 1, 2025, under 12 CFR § 328.4 (b), "an insured depository institution's automated teller machine or like device that receives deposits" but "does not offer access to non-deposit products" may comply with the official sign requirement in one of two ways.

The first option is to post or attach the physical official FDIC sign (as described in 12 CFR § 328.2) on the ATMs. For IDIs that select this option, it is worth noting that a "degraded or defaced physical official sign" would not satisfy the "clearly, continuously, and conspicuously" requirement for purposes of 12 CFR § 328.4(b)(1). See 12 CFR § 328.4(f).

The second option is to display the FDIC official digital sign as described in § 328.5 on its ATMs home pages or screens and on each transaction page or screen relating to deposits.

The regulation does not provide an exhaustive list of what constitutes "each transaction page or screen relating to deposits." However, to provide an example, if an IDI's customer is depositing funds at the IDI's ATMs, then the final rule requires display of the FDIC official digital sign on pages related to that transaction. Similarly, if an IDI's customer is transferring funds between deposit accounts at their IDI's ATM, then the digital official sign is required on those transaction pages or screens.

In contrast, if an IDI customer is only checking their balance, those pages/screens are not "transaction" pages for purposes of Part 328; therefore, a digital official sign is not required on those non-transaction pages.

3. For an IDI's deposit taking ATM, is the IDI required to post the FDIC official digital sign or the non-deposit sign when an ATM or debit card from another institution is used to log into an ATM?

Answer: In general, an IDI's ATM or like device that receives deposits and offers access to non-deposit products must clearly, continuously, and conspicuously display the official FDIC digital sign (as described in 328.5) on its home page or screen and on each transaction page or screen relating to deposits. An insured depository institution's ATM or like device that receives deposits and does not offer access to non-deposit products may comply with the official sign requirement by either: (1) displaying the physical official sign on the ATM; or (2) displaying the FDIC official digital sign.

However, in some cases an IDI's ATM may allow a non-customer to use a debit card or credit card from another financial institution (including other IDIs, credit unions, or other financial entities), which allows the non-customer to check their balance, withdraw funds or add funds to their accounts. For such circumstances, the IDI's ATM may be unable to identify or verify non-customer information, including whether the non-customer is accessing FDIC-insured deposit accounts, or non-deposit products. In this scenario, if the IDI is unable to identify or verify the non-customer information, the IDI's ATM is not required to display the official FDIC digital sign or the non-deposit sign after the non-customer uses their card and PIN (or similar credential) to access the ATM (i.e., status as a non-customer is determined).

4. Is the FDIC official digital sign required at the top of all ATM screens?

Answer: In general, under 12 CFR § 328.4(c), an IDI's ATM or like device that receives deposits for an IDI and offers access to non-deposit products must clearly, continuously, and conspicuously display the FDIC official digital sign as described in § 328.5 on its homepage or screen and on each transaction page or screen relating to deposits. As noted in 12 CFR § 328.5(f), an official digital sign "continuously displayed near the top of the relevant page or screen and in close proximity to the IDI's name would be considered clear and conspicuous."

If the ATM does not offer access to non-deposit products, the final rule provides flexibility to meet the signage requirement, allowing the IDI to display the physical FDIC official sign by physically attaching it to the ATM instead of using the electronic sign on its homepage or screen. This is only an option for deposit taking ATMs or like devices, which do not offer access to non-deposit products, and that were put into service before January 1, 2025

E. Social Media

1. Are IDIs required to post the new official digital sign on its social media advertisements?

Answer: No. IDIs are not required to display the FDIC official digital sign on its social media advertisements. IDIs should ensure that social media advertisements are compliant with the official advertising statement requirements contained in 12 CFR § 328.6.

III. Technical Assistance

1. Where can IDI's obtain additional information about the final rule to support compliance efforts?

Answer: The FDIC posted the slides from the FDIC's banker webinar on Part 328 on its **website (https://www.fdic.gov/resources/deposit-insurance/banker-webinar)**.

The FDIC issued a **Financial Institutions Letter (https://www.fdic.gov/news/financial-institution-letters/2023/fil23065.html)** and **press release (https://www.fdic.gov/news/press-releases/2023/pr23110.html)** addressing the issuance of the final rule.

2. Where can IDIs obtain downloadable versions of the digital official sign?

Answer: The FDIC has made optional versions of the official digital sign available for IDIs on FDICconnect (https://www.fdicconnect.gov/index.asp), a secure website operated by the FDIC that FDIC-insured institutions can use to exchange information with the FDIC. The requirement to display the new FDIC official digital sign only applies to IDIs. Display of the FDIC official digital sign by any non-bank third party would improperly imply that the non-bank is FDIC-insured and would constitute a misrepresentation under part 328 subpart B.

3. Where can an IDI obtain the FDIC's consent to use non-English translations for the advertising statement?

Answer: The non-English equivalent of the FDIC's official advertising statement (Member of FDIC, Member FDIC, FDIC-Insured) may be used in an advertisement only if the translation has received the prior written approval of the FDIC. 12 C.F.R. 328.6(f).

IDIs can send an email requesting prior written approval to translate the FDIC's advertising statement to DepositInsuranceBank@FDIC.gov (mailto:DepositInsuranceBank@FDIC.gov).

IV. Compliance and Effective Dates

1. Are there any changes that had to have been implemented by the final rule's April 1, 2024 effective date, or do IDIs have until January 1, 2025, to comply with all requirements?

The compliance date for the amendments made to the final rule is January 1, 2025. No changes had to be implemented by April 1, 2024, but IDIs can begin posting the official digital sign and implementing other aspects of the regulation prior to January 1, 2025. For example, some IDIs have already posted the new official digital sign on their websites. Similarly, some non-bank entities have updated their disclosures consistent with the amendments to part 328 subpart B.

V. Advertising for Non-Deposit Products

1. In marketing materials that feature safe deposit boxes or credit products alongside insured products like checking accounts, should IDIs include a disclosure stating that these products are not FDIC-insured?

Answer: For the purposes of part 328, safe deposit boxes and credit products are excluded from the definition of "non-deposit product." Therefore, there is no requirement under part 328 for an IDI to include such a disclosure in marketing material for these products.

Resources

FDIC Official Signs and Advertising Requirements, False Advertising, Misrepresentations of Insured Status, and Misuse of the FDIC's Name or Logo (https://www.fdic.gov/news/financial-institution-letters/2023/fil23065.html)

For Release

Federal Trade Commission Announces Proposed Rule Banning Fake Reviews and Testimonials

June 30, 2023

Tags: Consumer Protection | Bureau of Consumer Protection | Advertising and Marketing | Endorsements, Influencers, and Reviews | Online Advertising and Marketing

The Federal Trade Commission proposed a new rule to stop marketers from using illicit review and endorsement practices such as using fake reviews, suppressing honest negative reviews, and paying for positive reviews, which deceive consumers looking for real feedback on a product or service and undercut honest businesses.

"Our proposed rule on fake reviews shows that we're using all available means to attack deceptive advertising in the digital age," said Samuel Levine, Director of the FTC's Bureau of Consumer Protection. "The rule would trigger civil penalties for violators and should help level the playing fie for honest companies."

Give Feedback

In its notice of proposed rulemaking, the Commission cited examples of clearly deceptive practices involving consumer reviews and testimonials from its past cases, and noted the widespread emergence of generative AI, which is likely to make it easier for bad actors to write fake reviews.

The Commission is seeking comments on proposed measures that would fight these clearly deceptive practices. For example, the proposed rule would prohibit:

- **Selling or Obtaining Fake Consumer Reviews and Testimonials:** The proposed rule would prohibit businesses from writing or selling consumer reviews or testimonials by someone who does not exist, who did not have experience with the product or

service, or who misrepresented their experiences. It also would prohibit businesses from procuring such reviews or disseminating such testimonials if the businesses knew or should have known that they were fake or false.

- **Review Hijacking:** Businesses would be prohibited from using or repurposing a consumer review written for one product so that it appears to have been written for a substantially different product. The FTC recently brought its first review hijacking enforcement action.
- **Buying Positive or Negative Reviews:** Businesses would be prohibited from providing compensation or other incentives conditioned on the writing of consumer reviews expressing a particular sentiment, either positive or negative.
- **Insider Reviews and Consumer Testimonials:** The proposed rule would prohibit a company's officers and managers from writing reviews or testimonials of its products or services, without clearly disclosing their relationships. It also would prohibit businesses from disseminating testimonials by insiders without clear disclosures of their relationships, and it would prohibit certain solicitations by officers or managers of reviews from company employees or their relatives, depending on whether the businesses knew or should have known of these relationships.
- **Company Controlled Review Websites:** Businesses would be prohibited from creating or controlling a website that claims to provide independent opinions about a category of products or services that includes its own products or services.
- **Illegal Review Suppression:** Businesses would be prohibited from using unjustified legal threats, other intimidation, or false accusations to prevent or remove a negative consumer review. The proposed rule also would bar a business from misrepresenting that the reviews on its website represent all reviews submitted when negative reviews have been suppressed.
- **Selling Fake Social Media Indicators:** Businesses would be prohibited from selling false indicators of social media influence, like fake followers or views. The proposed rule also would bar anyone from buying such indicators to misrepresent their importance for a commercial purpose.

Give Feedback

The proposed rule follows an advance notice of proposed rulemaking the Commission announced last November. The FTC received comments from individual consumers, trade associations, review platform operators, small businesses, consumer advocacy organizations, entities dedicated to fighting fake reviews, and academic researchers.

Although the FTC has taken strong enforcement action in this area recently, case-by-case enforcement without civil penalty authority might not be enough to deter clearly deceptive review and testimonial practices. The Supreme Court's decision in *AMG Capital Management LLC v. FTC* has hindered the FTC's ability to seek monetary relief for consumers under the FTC Act. A rule clearly spelling out prohibited practices and allowing for the judicial imposition of civil penalties could strengthen deterrence and FTC enforcement actions.

The notice includes questions for public comment to inform the Commission's decision-making on the proposal. These questions focus on provisions in the proposed rule and whether other provisions should or should not be included in the rule. After the Commission reviews the comments received, it will decide whether to take the necessary next steps toward issuing a final rule.

The Commission vote to approve the NPRM was 3-0. Instructions for filing comments appear in the Federal Register notice. Comments must be received by September 29, 2023.

The primary staff member on these matters is Michael Ostheimer in the FTC's Bureau of Consumer Protection.

The Federal Trade Commission works to promote competition and protect and educate consumers. The FTC will never demand money, make threats, tell you to transfer money, or promise you a prize. Learn more about consumer topics at consumer.ftc.gov, or report fraud, scams, and bad business practices at ReportFraud.ftc.gov. Follow the FTC on social media, read consumer alerts and the business blog, and sign up to get the latest FTC news and alerts.

Give Feedback

Press Release Reference

FTC Sues Walmart for Facilitating Money Transfer Fraud That Fleeced Customers Out of Hundreds of Millions

Contact Information

Media Contact

Office of Public Affairs
Office of Public Affairs
202-326-2180

Consumer Protection Data Spotlight
FTC reporting back to you

Data Spotlight

Bitcoin ATMs: A payment portal for scammers

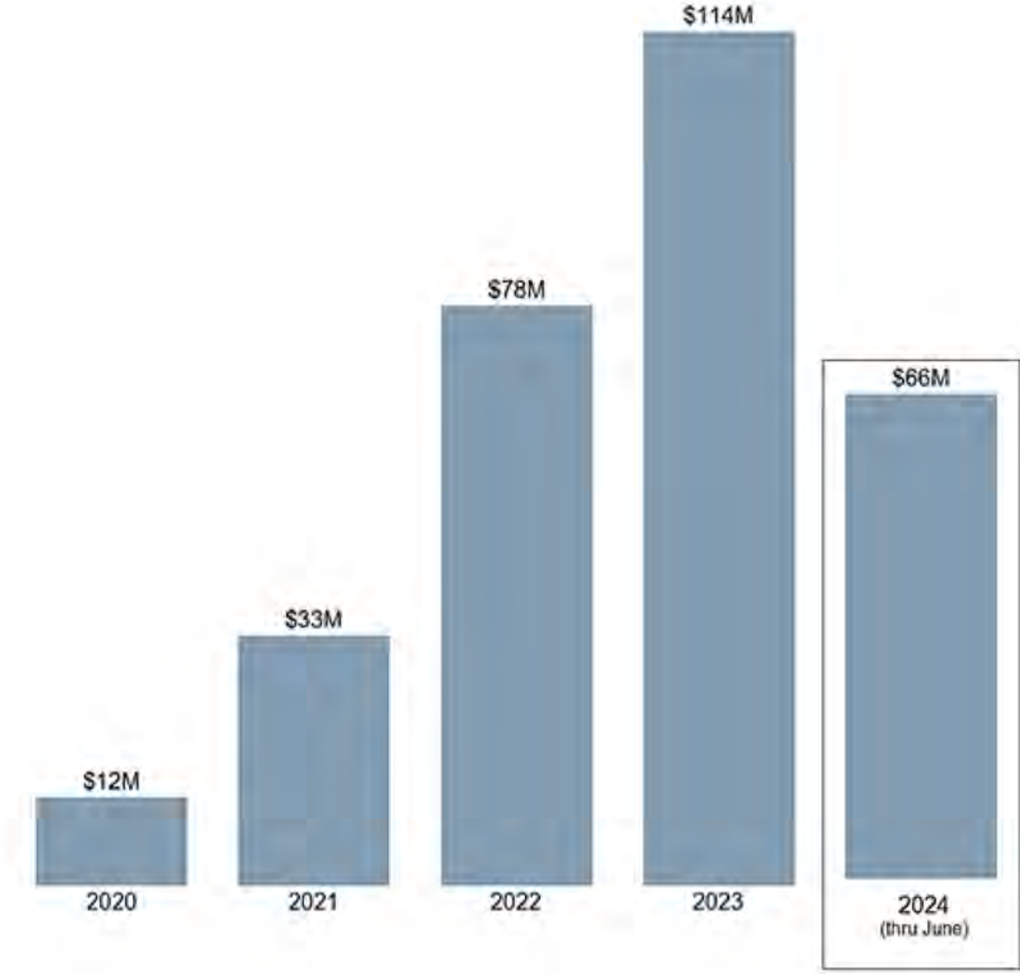
By: Emma Fletcher | September 3, 2024

Bitcoin ATMs (or BTMs)[1] have been popping up at convenience stores, gas stations, and other high-traffic areas for years.[2] For some, they're a convenient way to buy or send crypto, but for scammers they've become an easy way to steal. FTC Consumer Sentinel Network data show that fraud losses at BTMs are skyrocketing, increasing nearly tenfold from 2020 to 2023, and topping $65 million in just the first half of 2024.[3] Since the vast majority of frauds are not reported, this likely reflects only a fraction of the actual harm.[4]

Give Feedback

Cryptocurrency surged as a major payment method for scams in recent years, along with the massi growth in crypto payments on fake investment opportunities.[5] But now crypto is a top payment method for many other scams, too.[6] Widespread access to BTMs has helped make this possible. Reports of losses using BTMs are overwhelmingly about government impersonation, business impersonation, and tech support scams.[7] And when people used BTMs, their reported losses are exceptionally high. In the first six months of 2024, the median loss people reported was $10,000.[8]

In the first half of the year, people 60 and over were more than three times as likely as younger adults to report a loss using a BTM.[9]In fact, more than two of every three dollars reported lost to fraud using these machines was lost by an older adult.[10]



Scams that use BTMs work in lots of different ways. Many start with a call or message about supposed suspicious activity or unauthorized charges on an account. [11] Others get your attention with a fake security warning on your computer, often impersonatir a company like Microsoft or Apple. These things are hard to ignore, and that's the point. From there, the story quickly escalates. They might say all your money is at risk, or your information has been linked to money laundering or even drug smuggling. The scammer may get a fake government agent on the line – maybe even claiming to be from the "FTC" – to up the ante.

Give Feedback

So where do BTMs fit into the story? Scammers claim that depositing cash into these machines will protect your money or fix the fake problem they've concocted. They've even called BTMs "safety

lockers." They direct you to go to your bank to take out cash. Next, they send you to a nearby BTM location – often a specific one – to deposit the cash you just took out of your bank account.[12] They text you a QR code to scan at the machine, and once you do, the cash you deposit goes right into the scammer's wallet.

So how can you spot and steer clear of these scams?

- Never click on links or respond directly to unexpected calls, messages, or computer pop-ups. If you think it could be legit, contact the company or agency, but look up their number or website yourself. Don't use the one the caller or message gave you.
- Slow down. Scammers want to rush you, so stop and check it out. Before you do anything else, talk with someone you trust.
- Never withdraw cash in response to an unexpected call or message. Only scammers will tell you to do that.
- Don't believe anyone who says you need to use a Bitcoin ATM, buy gift cards, or move money to protect it or fix a problem. Real businesses and government agencies will never do that – and anyone who asks is a scammer.

To spot and avoid scams visit ftc.gov/scams. Report scams to the FTC at ReportFraud.ftc.gov.

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[1] While machines that allow consumers to buy cryptocurrency are commonly referred to as Bitcoin ATMs or BTMs, these machines often handle – and scams can take place in – other cryptocurrencies in addition to Bitcoin.

[2] BTM installations self-reported by operators to an industry website increased from about 4,250 in January 2020 to about 32,000 in June 2024. See trend chart available at https://coinatmradar.com/charts/growth/united-states/

[3] These and other figures throughout this Spotlight are estimates based on keyword analysis of the narratives provided in reports that identified cryptocurrency as the payment method. Not all reports identify a payment method or include sufficient details in the report narrative to determine whether a BTM was used.

[4] See Anderson, K. B., To Whom Do Victims of Mass-Market Consumer Fraud Complain? at 1 (May 2021), available at https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3852323(study showed only 4.8% of people who experienced mass-market consumer fraud complained to a Better Business Bureau or a government entity).

[5] See FTC Consumer Protection Data Spotlight, Reports Show Scammers Cashing in on Crypto Craze (June 3, 2022), available at https://www.ftc.gov/news-events/data-visualizations/data-spotlight/2022/06/reports-show-scammerscashing-crypto-craze.

[6] In the first half of 2024, cryptocurrency was the top payment method in terms of aggregate reported losses on tech support scams and job scams, and the second most costly method after bank transfers on business impersonation scams, government

Give Feedback

impersonation scams, romance scams, and family and friend impersonation scams.

[7] In the first half of 2024, about 86% of people who reported a fraud loss using a BTM indicated that it was on a government impersonation, business impersonation, and/or tech support scam. This excludes reports categorized as unspecified.

[8] In the first half of 2024, the median individual reported fraud loss when cryptocurrency was the reported payment method (including reports with and without BTM use) was $5,400; the median individual reported loss to fraud generally was $447.

[9] This comparison of older and younger consumers' reporting rates is normalized based on the population size of each age group using the Census Bureau's 2018-2022 American Community Survey 5-Year Estimates. This excludes reports that did not include consumer age information.

[10] In the first half of 2024, people 60 and over reported losing $46 million using BTMs, or about 71% of the reported losses using these machines. During the same period, when a reported cryptocurrency fraud loss did not involve the use of a BTM, about 72% of the losses were reported by people 18 to 59. Most of these losses were to fake cryptocurrency investment opportunities. Percentage calculations exclude reports that did not include consumer age information.

[11] Phone calls were the initial contact method in about 47% of these reports, followed by online ads or pop-ups (16%), and e-mails (9%). Reports indicating online ad or pop-up as the contact method typically described fake computer security alerts. People reported that security pop-ups and email messages included a phone number to call for help.

[12] Reports show that scammers direct people to specific BTM locations and many consumers name the BTM operator in their reports. These details show a pattern that suggests scammers prefer some operators over others and that these preferences have changed over time. While the reports do not tell us why this might be, differences in fraud prevention measures taken by various operators likely play a role.

Tags: Consumer Protection | Bureau of Consumer Protection | Imposter | Money Transfers | Consumer Sentinel Network | deceptive/misleading conduct | Finance | Credit and Finance | Privacy and Security | Tech | FinTech

Bitcoin ATMs: A payment portal for scammers (317.55 KB)

Give Feedback

More from the Data Spotlight

Data Spotlight

Who's who in scams: a spring roundup

Emma Fletcher | May 24, 2024

Data Spotlight

Impersonation scams: not what they used to be

April 1, 2024

Financial Institution Letter

Classification of Interactive Teller Machines as Domestic Branches or Remote Service Units

August 9, 2024

Summary:

Statutory Background

Section 18(d) of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. § 1828(d)) requires a state nonmember bank to obtain the FDIC's consent before establishing a domestic branch. Section 3(o) of the FDI Act (12 U.S.C. § 1813(o)) specifically excludes automated teller machines (ATMs) and remote service units (RSUs) from the definition of domestic branch.

Recent Developments Regarding Interactive Teller Machines

Interactive Teller Machine (ITM) technology has become increasingly sophisticated in recent years. State nonmember banks have sought guidance from the FDIC regarding whether the proposed use of an ITM at a location other than an established branch facility would require the filing of a domestic branch application, or would qualify for the RSU exclusion to the definition of domestic branch (meaning no branch application would be necessary). ITMs generally resemble automated teller machines but allow customers to interact with live tellers to complete a variety of banking transactions.

Statement of Applicability: The contents of, and material referenced in, this FIL apply to all FDIC-supervised state nonmember banks.

Highlights:

- The FDIC would not consider an ITM established by a state nonmember bank to be a "domestic branch" subject to FDIC approval under section 18(d) of the FDI Act under the following circumstances:
  - The ITM is an automated, unstaffed banking facility owned or operated by, or operated exclusively for, the bank, which is equipped to enable existing customers[1] to initiate an interactive session with remotely located bank personnel; and,
  - To the extent that bank personnel have the ability to remotely assist the customer with the operation of the ITM to perform core banking functions, customers must also be able to perform such transactions without the involvement of bank personnel and must have the sole discretion to initiate and terminate interactive sessions with bank personnel.
  - ITMs that operate outside of these parameters may require a branch application.

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[1] State nonmember banks may also provide access to ITM facilities to non-customers as long as the ITM services available to non-customers are limited to the same functionality typically provided by an Automated Teller Machine (ATM) to non-customers (e.g., withdrawal of cash) and such users are unable to engage a live remote teller to remotely perform core banking functions for the customer.

FIL-53-2024

Attachment(s)

Section 18(d) of the FDI Act (/regulations/laws/rules/1000-2000.html)

Section 3(o) of the FDI Act (/regulations/laws/rules/1000-400.html)

Classification of Interactive Teller Machines as Domestic Branches or Remote Service Units (PDF) (/system/files/2024-08/interactive-teller-machines-attachment.pdf)

Related Topics

Applications and Notices

Last Updated: August 9, 2024