



Compliance News...

The “Phases” of Currency Transaction Report (CTR) Exemptions

Banks may exempt qualifying businesses from the Currency Transaction Reporting requirements. There are two types of exemptions:

1. Phase I Exemptions – Cash transactions with banks, municipalities and businesses listed on the three stock exchanges need not be reported; and
2. Phase II Exemptions – Cash transactions into accounts of businesses (usually smaller businesses) that have a routine need for large amounts of currency need not be reported, provided they meet certain requirements.

[31 CFR 103.22(d): <http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=e2f9e09a993ac697940edb8043fe1cc8&rgn=div8&view=text&node=31:1.2.1.1.7.2.24.9&idno=31>]

Biennial Renewal

Phase II Currency Transaction Report (CTR) exemptions must be renewed on a biennial basis by filing a Designation of Exempt Person form (FinCEN Form 110) listing the same information as when the exemption was initially granted. The Designation of Exempt Person form must be filed with, and received by, FinCEN by March 15 of the second calendar year following the year in which the exemption was initially granted, and every other March 15 thereafter. For example, if the original exemption was filed on 1/1/2001, this is the date you use for the “effective date of the exemption” (Part I, Item 2), not the date you are renewing the exemption.

On the Designation of Exempt Person form, the bank must include a statement certifying that it has a system in place for suspicious activity monitoring and that it has been applied (at least annually) to the account of the customer that is exempt. If there has been a change in control in the customer’s business, that information must also be included on the renewal form. Retain a copy of the Designation of Exempt Person form used to exempt these entities as evidence of the exempted status.

Annual Monitoring

A bank must take steps to assure that a business is eligible for an exemption. At a minimum, a bank is required to review and verify the information supporting each designation of exempt person at least once each year. Additionally, a bank must take reasonable and prudent steps to identify suspicious transactions.

Therefore, banks are required to maintain a system of monitoring cash transactions of Phase I and Phase II exemptions for suspicious activity. The rules do not describe what an acceptable monitoring system would be, but FinCEN has stated that it believes that a monitoring system would be appropriate if *“it is reasonably designed to detect, for each exempt account, those transactions in currency that would require a bank to file a suspicious transaction report.”* A monitoring system should be able to identify unusual cash in or cash out patterns or would otherwise alert the bank that illegal or inappropriate activity may be occurring. The rules state that a bank should be looking for *“anomalous transaction trends or patterns”* (sharp increases from one year to the next in the total of currency transactions).

Exemption List

Although not required by regulation, Banker's Compliance Consulting suggests that you keep an exemption list. This way you clearly communicate to all employees what businesses have been exempt from CTR filings. The renewal date of the Phase II exemptions should be added to the list as a reminder to renew the entities.

FinCEN Form 110 can be downloaded from: http://www.fincen.gov/fin110_dep.pdf

Have You Updated Your Financial Disclosure Statement?

If your financial institution is regulated by the Federal Deposit Insurance Corporation (FDIC) or Office of the Comptroller of the Currency (OCC), it must have the annual disclosure statement (year end Call Report) completed for the year end and the preceding year (see applicable codified federal regulations below). The disclosure statement must be made available to the public by March 31st. The disclosure statement must be signed by an authorized officer of the institution and include the following disclaimer:

"This statement has not been reviewed or confirmed for accuracy or relevance by the Federal Deposit Insurance Corporation."

[OCC regulated banks indicate "Office of the Comptroller of the Currency" instead of the FDIC].

This is also a good time to make sure your lobby notice is in compliance. FDIC and OCC regulated banks need to display, in the lobby of its main office and at each branch, a notice that the annual disclosure statement may be obtained from the bank.

FDIC Regulated Banks – 12 CFR 350 - http://www.access.gpo.gov/nara/cfr/waisidx_05/12cfr350_05.html

OCC Regulated Banks – 12 CFR 18 - http://www.access.gpo.gov/nara/cfr/waisidx_05/12cfr18_05.html

CRA Public Files to be updated by April 1

The main and branch Community Reinvestment Act (CRA) public files for your financial institution must be updated by April 1st each year. The following are some required file disclosures commonly overlooked:

- Any branches opened or closed by the financial institution in the current year and each of the prior two calendar years;
- Current services offered by the financial institution;
- Up to date transaction fees charged by the financial institution; and,
- For small and intermediate small financial institutions only, an up to date loan to deposit ratio for each quarter of the prior calendar year.

Remember, the branch file must include

- A copy of the public section of the bank's most recent CRA Performance Evaluation and a list of services provided by the branch; and,
- Within five calendar days of the request, all the information in the public files relating to the assessment area in which the branch is located.

<http://ecfr.gpoaccess.gov/cgi/t/text/text-idx?c=ecfr&sid=e2f9e09a993ac697940edb8043fe1cc8&rgn=div8&view=text&node=12:3.0.1.1.9.3.8.3&idno=12>

Banker's Compliance Consulting Q & A Forum...

The following Q & A's were generated by an Advertising Webinar presented by Banker's Online and taught by David Dickinson, President of Banker's Compliance Consulting. The following website has complete information regarding past and future Bankers Online webinars: <http://www.bollearningconnect.com>.

Note: In some of the answers below we refer you to look at a certain page in the manual. The manual we are referring to is Banker's Compliance Consulting's Advanced Deposit Operations Manual. If you do not have this manual and would like to purchase it, please contact our office.

Lending

Question 1. When is it necessary on loan ads to state "Flood insurance required where applicable"?

Question 2. Is it always necessary on loan ads to state, "Subject to credit application and approval"?

Answer: It is not a federal regulatory requirement to make either of these statements in an advertisement. You may want check your state laws.

Question 3. Is it always necessary on loan ads to state, "Property insurance required"?

Answer: It depends. If you are referring to a closed end loan, there is no requirement to make this statement. If you are referring to a HELOC, the commentary to §226.16(d)#2 states you need to give an estimate of the cost of insurance or state that property insurance is required.

Question 4. Is there ever an exception in Truth in Lending when you can have a "triggering" term but not have to disclose all the information that those terms require?

Answer: No, there are no exemptions in Truth in Lending for eliminating "triggering" term disclosures.

Question 5. On page 604, under 2(a), can you provide examples of fees that must be disclosed? Are fees such as prepayment penalties, fees for exceeding the credit line, advance for less than the minimum required, telephone advance/transfer fee, and any other fees that are contemplated by the transaction required to be disclosed?

Answer: Examples would include any origination or fee for opening the plan. Other fees not related to opening the plan would be required if any of the triggering terms included under D1 on pages 603 and 604 are included in the advertisement.

Question 6. We have a banner promoting our HELOC in front of the bank but outside. How much must we disclose? (We are promoting the rate.) Can we say 'restrictions may apply' or 'ask for details'?

Answer: There are no exemptions in Truth in Lending for banners, outdoor signs, etc.. You must give all the required disclosures (since you are promoting a rate). These can be found on pages 603 and 604 of the handouts.

Question 7. What issues should a bank consider before doing a joint advertising flier with a realtor?

Question 8. Our mortgage department wants to offer a \$250 coupon that goes toward a borrower's closing costs on a home loan. Does this trigger anything? I know this is not a RESPA webinar, but should this discount be listed on the HUD as well?

Question 9. When we advertise on a realtor's website what kind of documentation is needed to show we have paid our portion of the ad and we don't have a RESPA violation?

Question 10. If there is any guidance you could provide in your written questions concerning RESPA Section 8 issues in advertising with realtors it would be most appreciated.

Answer: All of these questions relate to RESPA Section 8 which is not covered in this webinar. BOL has a great webinar on this topic. You can find it here:

<http://calendar.bollearningconnect.com/main.php?view=event&eventid=1129920718902>

Equal Housing Lender logo

Question 11. Can you state "equal housing lender" in the ad without including the logo?

Answer: If it is a home loan advertisement that is visual, you must include both the "dog house" and the wording. The two together make the logo. If it is a radio advertisement, then you can just state "equal housing lender" (EHL) or "equal opportunity lender". Technically, there is no equal housing requirement for OCC regulated institutions.

Question 12. Do you have to include EHL language in all advertisements or just when advertising mortgage/loan products?

Answer: You must include the logo on "home loan" advertisements. It is o.k. to "overkill" and have the equal housing lender logo on all advertisements, but you must have it in all advertisements relating to home loans.

Question 13. Have the sizing requirements for the equal housing logo been entirely eliminated? Can we use the "clear and legible" rule where sizing is not an issue (but should be relative to the disclaimer) as long as the logo and EHL verbiage underneath is clearly legible?

Answer: There are no sizing requirements. The only requirement is that the logo is "clearly visible".

Question 14. Does the fair housing 'doghouse' have to be on coupon booklets?

Answer: If it is a home loan promotion, then yes it needs the EHL logo. If it is a loan payment coupon book, then it is not a "commercial advertisement", so the EHL requirement would not pertain.

Question 15. Is it required to have the EHL logo on ads for home loans for OCC banks?

Answer: No, the OCC dropped this requirement effective May 1, 1996. Rescission of Part 109 was published in the Federal Register on April 1, 1996.

Deposits

Question 16. How do we properly advertise a "teaser rate"-- for example, if a special N.O.W. account rate is going to be offered for six months, how should that rate be advertised?

Answer: The commentary to §230.8(b)#2 addresses "teaser rates" as stepped rate accounts. You must disclose that it is an introductory rate, how long that rate will be in effect and all interest rates that could pertain. The APY is disclosed as a blended APY (weighted yield over the year).

Question 17. Should the 'FDIC logo' be included on ATM receipts that bear the bank's name and logo? We have it printed on our teller receipts because we generally include a statement message to promote another product or service.

Answer: Banks don't need to have FDIC on the ATM or on the receipt. However, if you start promoting other products on the receipt, then I would say this is an advertisement that triggers further disclosures.

Question 18. My bank is in the process of installing digital imaging/media that advertises our products and services at each new accounts station. Is this media covered like any other type of promotional material?

Digital Imaging/Signage Follow-up question:

David is correct; the signage is a series of scrolling ads on a monitor featuring our products and services. At this time, it will only include deposit products. Can it be exempted?

Answer: If this is in the lobby of the bank, it would qualify for the "Indoor Signs" exemptions in §230.8(e)(2). If the signage states "See an employee for further information" then very little information is required ("Member FDIC" and "APY"). Otherwise, it still meets the electronic media exemption in §230.8(e)(1). The advertisement would still need to state "Member FDIC", provide the minimum balance to obtain the APY, spell out Annual Percentage Yield and provide the term of time accounts. If you promote loan products, full disclosures will be required as there are no exemptions for indoor or electronic signs in the Fair Housing Act or Truth in Lending Act.

Question 19. We offer a savings product whereby customer deposits a set amount over a fixed schedule. Customer may pick from a range of terms (12 months to 60 months) and minimum monthly deposit requirements (\$100 to \$500). The deposits in the account earn a certain APY. Provided that the customer makes all the monthly required deposits, the bank will award a cash bonus at the end of the term, to be credited to the savings account. We want to advertise the cash bonus for this product, to be obtained at the end of the term. As the cash bonus will only be credited to the savings account after all the terms and conditions are met, we disclose only the APY associated with the savings account so as to not mislead the customer. All disclosures i.e., minimum deposit requirements, etc., and associated bonus monies for each term are displayed in a table. We clearly outlined the terms and conditions in obtaining the cash bonus in the advertisements fine print. Our question is "must we disclose an APY which factors in the bonus that may be earned when the terms and conditions are met", or could we stick to our current approach to disclose an APY that is earned on the deposits of the account?

Answer: Yes, because you are providing several bonuses you are triggering the requirements of 230.8(d) for each bonus. Several of these factors will be different depending on the term and dollar amount. However, if some of the factors are the same you may be able to indicate that by providing them once. This could be a difficult task to make all of the requirements and maintain compliance with 230.8(a)(1) which indicates the advertisement must not be misleading.

Question 19. Can you use APY's instead of APR's?

Answer: You can use APY in deposit advertisements as long as you spell out Annual Percentage Yield at least once somewhere in the ad. Use APR for loan ads. The two are not interchangeable.

Question 20. We have a color LCD sign outside of the bank. We offer 5.12% APY on a 5 month CD. Does 'ask for details inside' comply? We require an additional account/relationship to receive the rate.

Answer: No. Since you are mentioning an APY, you must still

- 1) spell out APY at least once;
- 2) give the minimum balance required to earn the APY;
- 3) the term of the account; and,
- 4) "Member FDIC".

Question 21. If we have a banner ad advertising a CD rate and term on our website's home page, do we have to include the required disclosures in the banner ad, or is it okay to just put them on the page you are brought to when you click on the link?

Answer: Regulation DD (Truth in Savings Act) allows what I call "1 click away" disclosures [refer to the Commentary to section 230.8(a)#9] which states:

9. Electronic advertising. If an advertisement using electronic communication displays a triggering term (such as a bonus or Annual Percentage Yield) the advertisement must clearly refer the consumer to the location where the additional required information begins. For example, an advertisement that includes a bonus or Annual Percentage Yield may be accompanied by a link that directly takes the consumer to the additional information.

Also, the Commentary to 230.8(b)#4 states:

4. Electronic communication. An interest rate may be stated only if it is provided in conjunction with, but not more conspicuously than, the Annual Percentage Yield to which it relates. In an advertisement using electronic communication, the consumer must be able to view both rates simultaneously. This requirement is not satisfied if the consumer can view the Annual Percentage Yield only by use of a link that connects the consumer to information appearing at another location.

Further, the Commentary to 230.8(e)(1)(i) states:

1. Internet advertisements. The exemption for advertisements made through broadcast or electronic media does not extend to advertisements made by electronic communication, such as advertisements posted on the Internet or sent by e-mail.

This last comment clarifies you must still provide full disclosure for internet advertisement; however, the other sections indicate they can be located on a sub-page.

Question 22. If there is a minimum balance requirement or other dollar amount stated, does it have to include cents - \$100.00 or can it be simply \$100?

Answer: Technically, there is no guidance on this. We feel these two figures are the same.

Question 23. We get a lot of questions on 6 month CDs regarding why we say APY when it is a term shorter than a year? What should be the correct response?

Answer: The APY takes into effect the compounding and true earnings on an annualized basis. Regulation DD requires all interest bearing products (no matter the term) be expressed as an annual return. This way the Annual Percentage Yield is an “apple to apple” comparison.

Question 24. In regards to the effective date for an APY on a website, can we just state 'Rates Effective Feb. 1' or does it have to be updated frequently?

Answer: The APY has to be recent in relationship to the publication. It is best to update the website frequently.

Question 25. Our FDIC examiners cited our bank for not categorizing transactions that can create an over-draft and we do not have a formal overdraft program that we promote. Have you heard any other feedback like this?

Answer: §230.4(b)(4)#5 states that all financial institutions must disclose the categories of transactions for which an overdraft fee may be imposed. It is sufficient to state, as applicable “*An overdraft fee applies to overdrafts created by check, in person withdrawal or other electronic means*”.

Question 26. If we have internal material that lists lending or savings products for the benefit of new employees or employee training, are the materials subject to triggering terms if our name and logo appear? If no, does that change if the material could find its way into the hands of customers?

Answer: If these materials are for training or internal use only, then the official logo and “Member FDIC” are not required. These are not commercial messages. However, it would be an internal control issue if these get out to customers.

FDIC signage

Question 27. How do I get a copy of the new FDIC logo?

Answer: You can find the new FDIC sign and logo at <http://www.fdic.gov/regulations/resources/signage/index.html>

Question 29. Is FDIC signage required at the new accounts desk?

Question 30. Does the FDIC insurance sign need to be on each CSR desk or just at teller line where deposits are taken?

Answer: The FDIC insurance sign is required everywhere a deposit is taken. Therefore, if the CSR's takes deposits at their desk, they must have the FDIC sign. The same would be true for a loan officer.

Question 31. Can the FDIC logo be displayed on the inside 'wall' of each teller station or must it be displayed on the front, facing the lobby?

Answer: Without seeing your teller stations, it is difficult to give an opinion. The signs need to be clearly and conspicuously displayed.

Question 32. Where can you get camera ready artwork of the equal housing lender logo & FDIC logo?

Answer: Bankers Online has these logos (as well as others) available at their Tools page: <http://www.bankersonline.com/tools/compliance/logos.html>

You can also find the HUD logo ("Equal Housing Opportunity") in various formats at: www.hud.gov/library/bookshelf15/hudgraphics/fheologo.cfm

Question 33. Would the new FDIC sign be required at each drive thru machine? I have 4 lanes with the vacuum tubes and a very small space to apply any signage.

Answer: No, the signage is required at the drive-up window.

Question 34. We lost audio during part of the presentation. When is it mandatory to use the official FDIC sign and is the color regulated?

Answer: The general rule is when you mention the bank's name; use the official "Member FDIC" logo. The official color is black lettering and symbol with a gold background. You may change the colors to compliment your décor; however, the lettering and symbol must be the same color (i.e. all black, or all white etc.).

Member FDIC

Question 35. Please detail again the exception about radio commercial of :30 seconds or less does not need "Member FDIC"?

Answer: If you have a radio or television advertisement that is less than 30 seconds in length, "Member FDIC" is not required.

Question 36. Does a 'Merry Christmas' Ad with the bank's name require 'Member FDIC'?

Answer: Yes, you do need the official statement.

Question 37. If a bank advertises its merchant credit card services - the acceptance of credit cards - which ultimately flow to an insured account, does this trigger 'Member FDIC'?

Merchant Credit Card Follow-up: Our commercial customers sign up to accept credit cards in their businesses with the bank. This is a service that most banks provide. When we advertise, must we include the FDIC logo?

Answer: No, the final rule effective, November 13, 2007, does not require you to include "Member FDIC" for advertising credit cards. The final rule does not expand the advertisement of "Member FDIC" to cover more than insured deposit product advertising or non-specific banking advertisements.

Question 38. On page 613 of the handout, it indicates that Advertising disclosures are not required for broadcast or electronic media. Is this for all broadcast/electronic media or just for media under 30 seconds? We are getting confused with page 607 Section B #8.

Answer: First, page 613 refers to overdraft broadcast or electronic media advertisements (Regulation DD); therefore, the length of the advertisement does not matter. Page 607 refers to the deposit insurance requirements (i.e. "Member FDIC"). Therefore, if a financial institution has a "covered" overdraft program and issues a broadcast or electronic media advertisement promoting the overdraft program the disclosures on page 612 must be included in the advertisement.

Question 39. Under the new FDIC rules, will marketing materials (which also includes the bank's name) for credit cards need to include the language 'Member FDIC'?

Answer: No, the final rule does not expand the coverage of the "Member FDIC" requirements to cover credit card (or any other type of credit) marketing materials.

Question 40. On an advertisement piece that is handed out and is stuffed in statements, does the FDIC logo have to be on the front side where our name is mentioned or can it be on the back?

Answer: The only guidance provided is that the FDIC logo must be clear and conspicuous.

Question 41. FDIC - Under the FDIC regulatory changes, if I advertise deposit products and non-deposit products (NDP) on the same webpage, how must I separate the NDPs and the deposit products, including the NDP and the FDIC disclosures? May I use the statement, 'Deposit Products offered by BANK, Member FDIC,' and the NDP disclosure at the bottom of the page; or must I advertise the deposit product - Bank - Member FDIC. And separate by a 'line' and advertise the NDP and provide the NDP disclosure?

Question 42. Is there any difference if a specific security (for example, XXX Mutual Fund) is promoted in the ad?

Follow-up: Earlier, I asked a question about advertising for specific non-deposit products. I wanted to clarify that somewhat. We have 'dual employees' who are paid by our bank, but are registered brokers with a local securities firm. We typically advertise generic product, utilizing the standard non-deposit product disclosure. We now are considering advertising for a specific mutual fund (or potentially, another non-deposit security.) Are there any additional restrictions to consider for that?

Answer: Without seeing a specific advertisement, we are not able to give an opinion. However, Section 328.3(e)(ii)(4) discusses mixed advertisements by stating:

"In advertisements containing information about both insured deposit products and non-deposit products or hybrid products, an insured depository institution shall clearly segregate the official advertising statement or any similar statement from that portion of the advertisement that relates to the non-deposit products."

The following link is the Federal Register notice for the new regulation:

<http://www.fdic.gov/regulations/laws/federal/2006/06notice1113.html>

<http://www.fdic.gov/regulations/laws/federal/2006/06notice1113.pdf>

Question 43. What about logo items given to customers?

Answer: It may depend upon the size of the item (see page 607, #9). Is it practical to put "Member FDIC" on the item? This is a judgmental issue, if you have room on the promotional item, why not put it on and not have to worry about it.

Question 44. In regards to the exception #2 for bank supplies, what is meant by 'circular letters'?

Answer: A Circular letter is when you use your bank letterhead for an advertisement versus business correspondence

Question 45. Would "Member FDIC" need to be placed on a bank shirt worn by employees at the bank? The shirt has the bank name and logo.

Question 46. Do shirts with the bank's name/logo have to include "Member FDIC"?

Answer: The answer is yes, unless it meets an exception of being impractical to put "Member FDIC" on the item. Again, this is a judgment call.

Question 47. When designing the bank logo and name on a bank courier vehicle, is the doghouse or "Member FDIC" required?

Answer: The EHL logo is only required if you are advertising home loans. If the logo is large enough to practically fit "Member FDIC" on it then I would suggest you add it because you are mentioning the bank's name.

Question 48. What about the CIP notice in the loan office section of the bank which is on a different level than teller and CSRs?

Answer: The notice must be provided prior to opening of an account, including loan accounts. It can be provided orally or posted in the lobby of this level where it is likely customers will see it.

Miscellaneous

Question 49. What was the statutory/regulatory citation you gave regarding the ad with the chance to win tickets?

Answer: Section 20 of the Federal Deposit Insurance Act.

Question 50. Where can I find the materials that have these ads on them? I would like to have these ads so I can look back at them as a reference.

Question 51. Where can I find these ads so that I can print them off to refer back to?

Answer: The ads I reviewed in my webinar should have printed out at the Bankers Online website where you obtained the outline and logged into the webinar. Additionally, the Federal Trade Commission has an additional resource with sample advertisements with errors you can review. The publication is titled "How to Advertise Consumer Credit & Lease Terms" and is located at <http://www.ftc.gov/bcp/conline/pubs/buspubs/creditad.htm>

Question 52. What is the most common compliance violation in advertising?

Answer: I don't know that I have an answer for that. On the lending side it is a common violation to see a term without full disclosure (30 year, 5 year, etc) or APY instead of APR. On the deposit side, we see APY not spelled out. Most of the advertising regulations don't make the top ten regulatory violations. The biggest thing is to try to stay away from deceptive ads.

Question 53. As far as the penalties, is there really any of consequence unless UDAP applies?

Answer: No, there are no major penalties that apply to advertising errors.

Question 54. Any chance we could get a reference sheet for the other Regs (TISA< Reg D, etc) like the one on page 613?

Answer: The reference on page 613 refers only to advertisements of overdrafts made by those financial institutions with a covered overdraft program. We don't have any other reference materials to provide for other regulations. You may want to review the materials available at the Bankers Tools page at Bankers Online: <http://www.bankersonline.com/tools/tools.html>