



## QUESTIONS AND ANSWERS FROM THE April 29th COVID-19 ROUNDTABLE

Note: The questions below were raised during the roundtable and the answers represent Compliance Anchor's interpretations and are not to be considered a legal opinion. An interpretation does not bind Compliance Anchor to any legal liability. If you need a legal opinion, please contact your bank's legal counsel.

### REG. D QUESTIONS

**Question: Is the elimination of the six-transfer limit permanent or can we expect it to be restored?**

Answer: Currently the elimination appears to be permanent. There is nothing in the Federal Reserve issuance that indicates that there is an expiration date on the elimination of the transfer limit. No one can predict if the Federal Reserve will change its mind in the future, but as of this moment the change is permanent.

### QUESTIONS RE: NOTICE TO CUSTOMERS

We received numerous questions on the need for and the manner of notice to customers on the lifting of the transfer limitations. They are listed below:

- Are we required to give notice of temporary waiver to ALL MMA and savings customers?
- We are waiving excess debit fees and eliminating the limits until 12/31 due to COVID. We posted this on our website, is that enough notice or do we need to send something to all customers to explain this?
- Should Banks consider sending a Constant Contact type email blast to MM accounts?
- We posted on a statement message and our website
- Does this apply to existing and new customers? How about if they already received a notice, or this is 1st time?
- Can we do case by case for this alternatively?

### Answer:

There are several items to consider here.

There is no requirement that Financial institutions (FI's) lift the transaction limits. In this case no notice would be required since there is no change in the FI's practices.

If the FI does choose to lift the limits either temporarily or permanently, there is no notice **required** by the regulation. No notice is required under Reg. DD, either, since this change does not reduce the annual percentage yield or adversely affect the consumer.

We do strongly recommend, however, that if an FI does decide to ease the restrictions, either on a temporary basis or permanently that this change be communicated to its MMA and saving depositors in order to avoid any UDAP/UDAAP claims that the bank unfairly restricted them from making additional transfers due to a lack of notice. The notice should be structured to be able to reasonably reach the vast majority of the FI's savings and MMA customers. The regulation provides no guidance on the type of notice or the delivery method.

The decision on the best method to provide notice rests with each institution and should be tailored to the banking habits of your institution. If your customers are largely mobile customers, then a posting on the website and/or an e-

mail blast may be sufficient. If you have a large number of customers that don't use the website or e-mail, then a statement notice, or a separate mailing may be enough. The best practice would be to provide notice to all customers utilizing all of the above. Keep in mind that anywhere that the limit or the excessive transaction fee is stated would need to be corrected. This does apply to all savings and MMA customers, not just new ones.

Finally, if you decide to waive the fees and then you later decide to reinstate some type of limits or fees for excess transfers, a Reg. DD notice would be required. Likewise, if you decide to lift the restrictions, but impose a fee for transactions over a certain limit a Reg. DD notice would be required. This Reg DD notice must be in writing and is required to be provided at least 30 days before the new or changed fee is effective and can only be emailed if E-Sign is in place.

Waiving the excessive transaction fees on a case-by-case basis raises the risk of inconsistency, UDAAP, and other unfair treatment issues. Waiving the fees without notification could bring other assessed fees into question. The best practice is to be transparent and to abide by the written policy, fee schedule, and notifications provided.

For example: If a decision has been made to waive the excessive transaction fees for money market and savings accounts through December 31, 2020, provide a notice to those accountholders of this. If a per debit item fee will be instituted as of January 1, 2021, include that in the notice. Change all brochures, web site references, Reg DD Disclosures and fee schedules, policies, etc. If a change is made to this decision prior to January 1, 2021 another notice will need to be provided - and the written notice will have to be provided at least 30 days prior to the effective date of the change if it is not to the customer's benefit. The Reg DD Notice can only be provided via email if E-Sign is in place.

#### **OTHER REG. D QUESTIONS**

**Question: Is there a timeframe in which Banks should stop the "counters"?**

You can stop immediately if you are going to provide unlimited transactions. If there is no change or you are going to impose any excessive transaction fees or transaction limits, then the counters would still be needed.

**Question: What type of timeframe - do this for 60 days 90 days etc.?**

There is no regulatory restriction on how long you can temporarily lift the limits. This is up to your institution. An example of 6 months was stated. There is no requirement that the removal of the limit be temporary - it can be a permanent change that would just have to be re-addressed if the reserve limits are reinstated or upon a related regulatory change.

#### **STIMULUS CHECKS**

**Question: How do we handle stimulus checks to deceased customers? What about situations where one spouse is deceased?**

**Answer:** This is still an unanswered question. According to the Federal Reserve, the IRS is to be providing guidance regarding this for the beneficiaries to follow.

We believe that FI's should treat checks to deceased individuals the same as they would treat any other check to a deceased customer. Make sure they are endorsed properly and deposited to the proper account, which would require the Executor of the Estate to handle payments to a deceased person through an estate account. Each payee scenario involving a deceased person should be reviewed separately on its own merits. Generally, a check payable to husband and wife where one of the spouses is deceased should require half of the check to be deposited into the estate account and the other half deposited to the living spouse's account. If there are extenuating circumstances that are considered

and other handling results, the explanation should be clearly documented and retained. Each institution needs to address how these will be handled and who will make the determination of how they are handled.

**Question: Should we be monitoring DD of stimulus checks?**

**Answer:** Based on the response to the above question, we do not believe that FI's are required to monitor direct deposit of stimulus checks. **The Federal Reserve has stressed that it is not known whether these deposits are the stimulus checks or other government payments. If the account is open, the deposit should post.**

#### **OTHER QUESTIONS**

**Question: What are your thoughts on adding the COVID Policy as an agenda item for the Compliance Committee? We have lengthier discussions in Committee and then push a summary to the BOD.**

**Answer:** If this is the manner that your institution presents policies to the Board then this should be an acceptable method for a COVID policy. Make sure to specifically list policy changes in the summary to the BOD so that they approve them (i.e. Beneficial Ownership requirements for PPP loans for existing customers, loan policy underwriting changes, appraisal policy changes, etc.).

**Question: What about the use of DocuSign for signing PPL documents?**

**Answer:** Nothing in the legislation prohibits the use of e-sign applications (like DocuSign) for signing PPL loan documents. Just make sure that your institution follows the requirements of the Federal E-sign Act.

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