



Give Aways and Drawings

by Andy Zavoina, BOL Guru

[Guru BIOS](#)

Question: Our bank is going to be observing our 30 year anniversary soon and we are planning on having drawings for gifts (meals, DVD players, weekend trips). We are not limiting this to customers only; this will be for anyone who registers.

We will also present gifts of appreciation to 100 customers who opened an account with us 30 years ago. The drawings and gifts are not connected to any bank product. Will this be an issue in the advertising regulations?

Answer: Because your gifts are not connected to the opening of a new account and are not tied to any particular product, there are no Truth in Savings disclosures to worry about or Reg. Q prohibitions of paying interest on a checking account.

Because the drawing is open to anyone, customers and non customers, you are avoiding what federal laws define as a "lottery". Restricting this to customers only could cause problems. You may want to verify your state laws allow the drawing, however.

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Limits on Customer Referral Programs

Answer by Andy Zavonia, BOL Guru

[Guru BIOS](#)

Question: We are considering implementing a customer referral program whereby we would give an existing customer \$20 in gift certificates if they refer a person to our bank and they open an account. Is this a problem, and is there a limit to what we can give them?

Answer: The issue you will face is one of privacy. The fact that someone banks with you is confidential. By paying the referral fee you have disclosed they now do this. Counsel may be able to provide adequate waivers for the new customer, allowing you to pay the fee.

At \$600 a 1099MISC reporting form is due the IRS on those earning that much or more.

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Raffle Compliance

Answer by Andy Zavoina, BOL Guru

[BIO AND CONTACT INFO](#)

Question: We are planning to offer a promotion in the form of a raffle. (This is mostly for customers with an existing checking account.) What are the considerations we should make in order to stay in compliance?

Answer: As an OCC bank I focus on 12 USC 25a. If your regulator is different, expect a different cite but similar text. By restricting the raffle to customers, you may in fact have a lottery. Banks are prohibited from participating in lotteries.

Read the rules in effect from your regulator and consider having a good set of rules and opening the drawing to customers and noncustomers alike. This removes you from that lottery definition and may make this a doable deal.

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Referral Programs & Lotteries

Answer by Andy Zavoina, BOL Guru

[BIO AND CONTACT INFO](#)

Question: We currently have a referral program whereby if an existing customer refers a friend to open a new account, the existing customer receives \$5 gift certificate for groceries for their referral. We want to expand the program to include a monthly drawing where the existing customer who referred their friend has a chance to win a \$250 grocery gift certificate in addition to the \$5 gift certificate. Is it legal? What regulations apply?

Answer: What you are describing is loosely a lottery and the bank may not participate in this activity.

Review 12 USC 25a. You may consider consulting counsel as some opinions would define the referral of the account as consideration to you, while others may not.

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Get A Loan, Get a chance to Win

Answer by Rick Wemmers, BOL Guru

[BIO AND CONTACT INFO](#)

Question: We are a financial institution that is planning to offer a promotion for home improvement loans. Along with the promotion we would like to have a drawing for some tools that will be displayed in our lobby. Customers who receive one of these loans will have their name in the drawing. Any laws or compliance issues that we should be concerned with?

Answer: If you limit the drawing to only those who open a loan, you could be guilty of having a lottery....prize, chance, consideration. One possible way around this is to say anyone can enter, if they fill out the entry blank. If you are using the "give away" as an enticement to open a home loan, there are other, better ways to spend this money.

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Can we have a free drawing for a trip?

Answer by Andy Zavoina, BOL Guru

[BIO AND CONTACT INFO](#)

Question: We are starting an "over 50" club and offering that anyone who signs up for the trip is eligible to win a free trip through a drawing - I believe this is ok, because it is tied to "deposits" rather than a lending product? Do you see any problem?

Answer: The problem is not tied to a loan or deposit product, but a lottery, which is universally prohibited. If these are customers only who may enter, they pay you a fee for the relationship you have with them. This fee is interpreted as a payment and a key in being able to enter to win.

When three or more enter, but not all participants can win, you are in lottery territory. Banks are forbidden from participating in lotteries. Look at 12 USC 25a.

Opening the drawing to anyone removes the payment of a fee qualification and makes this no longer a lottery. As usual, also check your state laws as they may vary.

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Bank Promotional Giveaways And The "Toaster Rule"

by: Andy Zavoina, BOL Guru

[BIO AND CONTACT INFO](#)

Question: I'd like to offer a product to banks that they may like to use for new and existing account promotions. I was informed of a "Toaster Rule" that goes into affect if a gift exceeds \$10 or \$20, depending on account size. Then, the bank would be subject to additional taxes. Is this part of Regulation DD, 12 CFR 230.2(f)? Where can I obtain the complete compliance and regulation info?

Answer: Reg. Q is a key.

§217.3 Interest on demand deposits.

No member bank of the Federal Reserve System shall, directly or indirectly, by any device whatsoever, pay any interest on any demand deposit.

What qualifies and what is exempted?

§217.2 Definitions.

(d) Interest means any payment to or for the account of any depositor as compensation for the use of funds constituting a deposit. A member bank's absorption of expenses incident to providing a normal banking function or its forbearance from charging a fee in connection with such a service is not considered a payment of interest.

And the premium or "toaster" rule is summed up below. Note the exception in (b).

§217.101 Premiums on deposits.

(a) Section 19(i) of the Federal Reserve Act and section 217.3 of Regulation Q prohibits a member bank from paying interest on a demand deposit. Premiums, whether in the form of merchandise, credit, or cash, given by a member bank to a depositor will be regarded as an advertising or promotional expense rather than a payment of interest if:

- (1) the premium is given to a depositor only at the time of the opening of a new account or an addition to an existing account;
- (2) no more than two premiums per account are given within a 12-month period; and
- (3) the value of the premium or, in the case of articles of merchandise, the total cost (including taxes, shipping warehousing, packaging, and handling costs) does not exceed \$10 for deposits of less than \$5,000 or \$20 for deposits of \$5,000 or more.

The costs of premiums may not be averaged. The member bank should retain sufficient supporting documentation showing that the total cost of a premium, including shipping, warehousing, packaging, and handling costs, does not exceed the applicable \$10/\$20 limitations and that no portion of the total cost of any premium has been attributed to development, advertising, promotional, or other expenses. A member bank is not permitted directly or indirectly to solicit or promote deposits from customers on the basis that the funds will be divided into more

than one account by the institution for the purpose of providing more than two premiums per deposit within a 12-month period.

(b) Notwithstanding paragraph (a) of this section, any premium that is not, directly or indirectly, related to or dependent on the balance in a demand deposit account and the duration of the account balance shall not be considered the payment of interest on a demand deposit account and shall not be subject to the limitations in paragraph (a) of this section.

Reg. DD, TISA, addresses bonus and disclosure rules.

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Vacation Giveaway Rules

by Andy Zavoina, BOL Guru

[BIO AND CONTACT INFO](#)

Question: We are opening a new branch. Plans are to have a vacation trip giveaway as part of the opening. Any laws or compliance issues that we should be concerned about.

Answer: There will be tax reporting requirements so you'll need information on the winner.

It also depends on how the winner will be determined. If there will be a drawing and only your customers can enter, you may well have a lottery under 12 U.S.C. Sec. 25a. And be sure to check your state laws for similar prohibitions. Opening the drawing to everyone (except your employees) can get you out of this definition.

You would be advised to adopt a set of rules pertaining to the drawing.

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