

ODP and F/S programs and "Other Regulatory Applicability"

NO = Not applicable to the rule.

YES = Covered by the rule.

REGULATION	ODP (covering checks)	F/S REPAYMENT (of overdraft)
Reg E (cons) Electronic Funds Transfer	NO - Not an EFT, access device, credit, preauthorized EFT, covered account or automatic transfer. (see matrix)	NO - Not defined as an EFT - defined as an automatic transfer, but exempted under 205.3(c)(5) (see matrix)
Reg Z (cons) Truth-in-Lending	NO - Does not fill 4 tests at 226.1(c)(1) (see matrix)	YES - Fills all 4 tests; certain closed end disclosures apply. (see matrix)
FCRA (cons) Fair Credit Reporting Act	NO - No credit report is obtained specifically for service; Can close account without notice based on our own experiences. [<i>Sec 615(b)(2)(C)(ii)</i>]	NO - Requires AAN in those instances where we might close/revoke the ODP or F/S based on information received from an outside party - However, if all decisions are based on our experiences with accountholder - then N/A to either program portion. [<i>Sec 603(d)(1) and (2)</i>]- <i>But if ECOA defines action as AA - then FCRA will also. "Adverse Action" defined same as in ECOA per Sec 603(k)(1)</i>
Reg B (cons/bsn) Equal Credit Opportunity	<p>YES - <u>Credit</u>. While "credit" is defined as any deferral of payment of debt [<i>Comm 202.1(j)</i>]- even "<i>though it may not be covered by Reg Z</i>" [<i>202.1(a)#1</i>]</p> <p>Although definition of "account" at 202.1(a) applies only to open-ended credit - the Commentary to that section indicates that Reg is applicable to situations <u>not covered by Reg Z</u> ... [<i>Comm 202.1(a)#1</i>]</p> <p>YES - <u>Open-end credit</u>. May fall under definition of "open-end credit" "<i>where credit is extended from time to time ...indirectly by use of a ...check</i>". [<i>202.5(w)</i>]</p> <p><i>HOWEVER: Exempted from above...</i></p> <p>NO - N/A as <u>Incidental credit</u> : Initial O/D coverage is considered an "incidental credit" because it is not made: (i) pursuant to a credit card agreement (ii) advance is not subject to a finance charge (iii) the advance is due back to the bank as a deposit back into the checking account*. [<i>202.3(c)</i>] (*Until such time as the F/S program is offered)</p>	<p>NO - <u>Denials</u>. AA is defined as a refusal to grant credit in substantially the amount or on the terms <u>requested</u> in an application. <i>202.1(c)(1)(i)</i> which would mean an AAN would normally go out if F/S service is denied. However, the consumer does not "apply" and the F/S program is provided to any that want it - no denial. [<i>See ECOA.FCRA box below.</i>] So no AAN at front end.</p> <p>NO - <u>Termination</u>. AA "<i>does not include creditor's termination of an account when account holder is currently in default or delinquent on that account.</i>" [<i>Comm 202.2(c)(2)(ii)#2</i>] - However: "<i>Notification ...generally is required...if the creditors action [termination of account] is based on a past delinquency or default on the account.</i>"</p> <p>RECOMMEND WE PROVIDE SHORT-FORM AAN'S if we terminate due to non-adherence to F/S agmt. (AAN not required for closing the DDA account.)</p>
	□ □ □ □ □ CONCLUSION - ODP is <u>NOT</u> SUBJECT TO REG "B"	□ □ □ □ □ CONCLUSION - <i>Fresh Start Repayment Plan</i> APPEARS TO BE SUBJECT TO REG "B"

ECOA and FCRA:

Reg B - Equal Credit Opportunity (consumers and businesses):

ODP and FS: Applies to all lenders

- If reg refers to a "credit" - "Credit" means any "deferred payment of debt" *Comm 202.1(a)#1*
- If reg specifically refers to an "account" - "Account" means only open-end credit *202.1(a)*

NOTE: Reg says to provide the AAN if "amount requested in an application" is not approved...

> If there is no general knowledge by the consumer (e.g. no advertising or statements by employee) - or an application is available (providing general knowledge) - we may not fall under this rule since F/S is not available to general public.

>However, if depositor asks about a repayment plan and we admit we have one, or employee offers, and depositor accepts F/S, and we then decide not to provide FS program - AAN is required.

RECOMMEND WE PROVIDE SHORT-FORM AAN'S IF WE DENY F/S - whether or not there's an "application" - It is a credit under Reg Z, which doesn't require an application.

REGULATION	ODP (covering checks)	F/S REPAYMENT (of overdraft)
<p>Reg CC (cons)</p> <p>Expedited Funds</p>	<p>NO - Reg CC availability and hold rules are not applicable to the payment of a check that would normally overdraw the account.</p> <p>Applies only to "duty of bank to make funds available for withdrawal" subject to certain conditions. [229.1(b)(2)]</p>	<p>YES - <u>Next-Day Availability</u> of Funds and Holds. Customer's payroll direct deposits are ACH credit transfers that are to have next day availability [Comm . P. 229.2(p) #1]</p> <p>NO - <u>On "holds"</u>. While Comm E. 229.2(d) #2 (Availability of Funds) indicates that "Bank can place a hold on incoming funds to satisfy the customer's liability arising from certification of a check ...or a similar transaction to be debited from the customer's account"; In-house counsel's opinion is that "Liability" will only arise only on the day the payment is due - not prior to that date when a direct deposit may be made - so we cannot place a hold on funds, pending arrival of the due date. (D.Fricke)</p>
<p>Reg DD (cons)</p> <p>Truth-in-Savings</p>	<p>YES - In that all usual overdraft or NSF fees are to be disclosed.</p> <p>NOTE: Since we do not obtain a separate "Agreement" it is recommended (after we place the fees on the TISA) that we include on the TISA disclosure, a statement such as <i>"I/We acknowledge that in addition to the disclosures provided herein, I/We have received the Overdraft Privilege Brochure describing the benefits and limitations of the Overdraft Privilege service."</i> The brochure repeatedly refers to bank's right to cancel the service - this statement (and training) should ensure that we have provided that brochure.</p>	<p>N/A. Reg DD applicable to deposit accounts only.</p>
<p>Re AA (cons)</p> <p>Unfair or Deceptive Acts or Practices</p>	<p>NO - Applicable to credit extensions. Exempt as "credit" per ECOA discussion above. [227.11(b)]</p>	<p>YES. If co-signer or guarantor required - need Co-X notice delivered prior to Co-X signing the agreement. 227.14(b)</p>
<p>MISC - SSI deposits to pay overdrafts</p>	<p>Added to brochure by in-house counsel - under section titled OVERDRAFT ITEM AND FEE PAYMENTS: All overdraft items paid and fees assessed due to your use of Overdraft Privilege, shall be satisfied by your making a deposit into your account. Any deposit made into your account may be used to satisfy the items paid or fees assessed, including the deposit of benefit payments, including, but not limited to Social Security payments.</p>	<p>N/A</p>