

APRIL 2016

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ARE YOU BANKING PRIVATELY OWNED ATMS?

More businesses are beginning to have privately owned Automated Teller Machines. Do you know if any of your business customers have one? If so, have you stepped up your customer due diligence on them? You may be asking yourself, “Why would I need to worry about an ATM the bank does not own?” However, there are risks that come with privately owned ATMs, and some banks will need to make enhancements to address these increased areas of risk.

Risks of Privately Owned ATMs

Privately owned ATMs are typically found in restaurants, bars, gas stations and grocery stores. These ATMs link to an ATM transaction network that debits the customer’s account and credits the ATM owner’s account, or the Independent Sales Organization’s (ISO) account, which can be located anywhere. The ATM transaction network provider and sponsoring bank of the ATM should be completing adequate customer due diligence.

The reason privately owned ATMs have been deemed higher risk is that many of these ATMs have been involved in fraudulent activity, money laundering, theft and identity theft. A few examples of money laundering would be when an individual is replenishing an ATM with currency obtained from illegal activity that is later withdrawn through a legitimate consumer transaction. This would make the deposit to the ATM owner’s account appear like a legitimate transaction. Money launderers may also have agreements with merchants to fill their ATMs with illegal money at a discounted price.



Enhancements Needed

Enhancements should be made to the bank’s systems and customer identification program (CIP) to manage the risks associated with privately owned ATMs and Independent Sales Organization relationships. The bank’s customer due diligence (CDD) of privately owned ATMs should include verification of the owner’s/ISO’s background, location of privately owned ATMs, source of funds to replenish the ATM, anticipated activity, and also include regular monitoring of the account to make sure the identified risks remain consistent with the conclusions of your customer due diligence. As addressed in the FFIEC Examination Manual, banks should implement appropriate policies,

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COMPLIANCE HELPLINE Q&A

COMPLIANCE HELPLINE AVAILABLE TO CLIENTS

Clients appreciate our Compliance Helpline, which is staffed by compliance professionals who have an average of 18 years industry experience. These professionals respond to questions immediately, or within 24 hours if research is needed.

The Compliance Helpline can be reached Monday through Friday 8 a.m. – 5 p.m. at:

855.239.8676
compliancehelp@eidebailly.com

A customer is refinancing three real estate mortgages to consolidate into one real estate mortgage. They are planning to sell the house within the next 12 months, so we did a short term interest-only loan for 12 months. Would this loan be considered temporary financing and exempt from Ability to Repay (ATR), High Priced Mortgage Loan (HPML) rules, and HMDA?

No, based on these facts, this loan would not fit the definition of temporary financing nor qualify for exemption from ATR, HPML, and HMDA rules. Although you followed the rules by having a term less than two years and interest-only payments, the intent of this loan is not truly a “temporary” loan that will be refinanced in the future by a permanent loan. As stated in section 1026.43(a)(3)(ii)-(iii), the following would qualify for exemption: “A temporary or ‘bridge’ loan with a term of 12 months or less, such as a loan to finance the purchase of a new dwelling where the consumer plans to sell a current dwelling within 12 months or a loan to finance the initial construction of a dwelling. A construction phase of 12 months or less of a construction-to-permanent loan.” Since the loan is less than five years according to ATR standards, the balloon payment at the end of the first year would need to be considered in the underwriting calculations for the borrower’s ability to repay the loan. Just because a loan has a short term does not mean it qualifies as temporary financing under the definition.

Does a non-borrowing owner need to receive and sign the closing disclosure?

The borrower(s)’ signature on both the Loan Estimate (LE) and Closing Disclosure (CD) is optional; that being said, a non-borrowing owner would not need to sign the closing disclosure. According to Sections 1026.38(s) and 1026.37(n)(1), the creditor, at its option,

may include a line for the signatures of the consumers to confirm receipt. Even though signatures are not required on the LE and CD, if the transaction is rescindable, a non-borrowing owner must receive a copy of the closing disclosure, but a signature is still optional.

What is the two-part test that allows us not to have to notify customers of the availability of our privacy policy that was passed as part of the Fixing America’s Surface Transportation Act (FAST ACT)?

The amendment eliminates the annual privacy notice requirement for financial institutions if they meet the following two tests:

- You do not disclose non-public personal information that triggers the need to provide an “opt-out” notice to prevent sharing.
- You have not changed your privacy policy/information sharing practices.

If you meet these two criteria, you would be able to take advantage of this change in the regulation and not provide annual privacy notices to your customers or advise them of its availability on your website. This applies to all customers, even those who are not receiving regular statements. ■

We recommend you refer to your specific state’s statutes for requirements required in your state.

EIDE BAILLY EVENTS

From seminars and conferences to your favorite golf hole, Eide Bailly professionals will be out and about at many events this year, as well as hosting our own. To stay up-to-date on where we will be, visit www.eidebailly.com/FI.

A few upcoming events:

April 13 – Principal Linda Albrecht will be speaking about UDAAP and Regulation E at the Upper Midwest Clearing House Association Compliance Symposium in Maple Grove, Minn.

April 14 - Principal Ann Rockswold will be speaking about UDAAP and Regulation E at the Upper Midwest Clearing House Association Compliance Symposium in Fargo, N.D.

April 19-20 – Compliance Senior Manager Phil Traxler will speak at the Independent Community Bankers Association of New Mexico Commercial Credit Conference in Albuquerque, N.M.

April 21-22 – Principal Eric Pulse will speak at the Independent Community Bankers Association of New Mexico Strategic Technologies & Operations Conference in Albuquerque, N.M.

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procedures and processes, including appropriate due diligence and suspicious activity monitoring, to address risks with ISO customers. At a minimum, these policies, procedures, and processes should include:

- Appropriate risk-based due diligence on the ISO through a review of corporate documentation, licenses, permits, contracts, or references.
- Review of public databases to identify potential problems or concerns with the ISO or principal owners.
- Understanding the ISO's controls for currency servicing arrangements for privately owned ATMs, including source of replenishment currency.
- Documentation of the locations of privately owned ATMs and determination of the ISO's target geographic market.
- Expected account activity, including currency withdrawals.

- Have you completed a policy, procedures, and risk assessment for privately owned ATMs?
- Has any monitoring been completed since your bank has recognized any privately owned ATMs?

Bank Secrecy Act violations continue to reach the headlines, and penalties are harsh, especially if previously identified weaknesses have not been addressed. As businesses change, it is critical that you stay informed of their activities and the impact they have on your banking relationship. Even long-time customers deserve your attention; just because they have been a loyal customer, does not mean they can't put you at risk for potential BSA violations. Ongoing monitoring is critical in identifying suspect activity in any part of the banking relationship, whether it is on the loan or deposit side. All customers should be considered when evaluating BSA risk, even those who may not have a deposit relationship.

Understand Your Own Role

Here are a few questions to ask yourself before you start completing your review.

- Do you know if any of your customers have privately owned ATMs? Consider adding a question to your new account applications to help you in identifying customers with ATMs.
- Do you know how your customer's privately owned ATM is being replenished?



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MEET ANGIE MARBLE

Angie recently joined Eide Bailly's financial institution team as a compliance associate. Her experience with the banking industry began in high school when she worked after school as a bank teller in Mankato, Minnesota. She continued to work in the banking industry throughout her college years as both a teller and in the IT department dealing with their in-house check processing and eStatement systems.

At Eide Bailly, Angie assists financial institutions with reviewing and auditing their compliance management programs. She helps examine areas such as lending, deposits, general compliance, the Bank Secrecy Act, and ACH, and offers recommendations or suggestions to help improve operations and compliance.



Angie Marble
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"I really look forward to meeting the staff at the different banks we visit. Compliance is an ever-changing area of banking, and I enjoy the challenge of learning and comprehending the different regulations as they change so I can bring staff information that helps them do their jobs better." ■

COMPLIANCE REMINDERS/DUE DATES

	Regulation	Description
March 18, 2016	NACHA Disclosure Requirements for POS Entries	This rule establishes an originator/third-party service provider obligation to provide consumer receivers with certain disclosures when providing those consumers with cards used to initiate ACH Point of Sale (POS) entries.
April 1, 2016	Regulation Z Small Creditor and Rural and Underserved Areas	The temporary exemption under which small creditors are allowed to make balloon-payment qualified mortgages and balloon-payment high-cost mortgages that no longer operate predominantly in rural or underserved areas during the preceding calendar year is set to expire on April 1, 2016.