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Sent: Sunday, March 3, 2024 14:48

To: Morelli, Mark (CFPB) <Mark.Morelli@cfpb.gov>; Boadwee, Anna (CFPB)(she/her) <Anna.Boadwee@cfpb.gov>; Baressi, Joseph (CFPB) <Joseph.Baressi@cfpb.gov>

Subject: Re: Closing the Notice Loophole in Regulation DD

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Dear CFPB Senior Counsels,

I am writing to make you aware that bad actors are taking advantage of a loophole in Regulation DD which implements the Truth in Savings Act of 1991 ("Act"). The Act authorizes the CFPB to enact regulations so that there is clear disclosure of the rates of interest which are payable on deposit accounts. *See* 12 USC § 4301(b)(1). The Act also requires that for any advertised Annual Percentage Yield ("APY") offered, that each advertisement disclose in a clear and conspicuous manner the period during which such annual percentage yield is in effect. *See* 12 USC § 4302(a)(2).

However, Regulation DD has created a (perhaps unintended) loophole, wherein the above requirements have only been made applicable to fixed-rate accounts and not to variable-rate accounts. For variable-rate accounts the regulation only requires the disclosures under 12 CFR § 1030.4(b)(1)(ii) and ***no disclosure*** when the interest rate or APY changes, *see* 12 CFR § 1030.5(a)(2)(i). Further, the Advertising section of the regulation allows depository institutions to simply inform consumers that the rate may change, and instead of specifying a period of time the APY will be offered, only state that the APY is accurate as of a specified date. *See* 12 CFR § 1030.8(c)(1-2).

This loophole has had the effect of allowing bad actors to use bait-and-switch tactics to lure consumers into opening accounts by offering high APYs and then lowering the APY without any notice, leaving such consumers unaware that their deposits are no longer earning the interest rates they believed they were. A recent class action filed against a particularly egregious bad actor, Axos Bank d/b/a UFB Direct, illustrates the issue. Please *see* case number 3:23-cv-02266 filed in the Southern District of California. The loophole may not have had much effect in the past when interest rates on deposit accounts were abysmal, but now that rates are high, such bait and switch schemes cost consumers thousands of dollars.

Please consider amending Regulation DD as soon as possible to close this loophole. The CFPB should require depository institutions to provide notice to consumers of interest rate and the corresponding APY changes at least 10 days before the changes take effect.

Thank you very much for your time.

Sincerely,

Kelly Subbaiah
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