

# Electronic Contact from a Customer is Now Sufficient to Avoid Reporting Deposit Accounts as Abandoned Property in New York

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As the June 30<sup>th</sup> cutoff date approaches for financial institutions to determine the dormancy of certain deposit accounts for abandoned property reporting, please note that the New York State Comptroller (the “Comptroller”) has determined that certain types of electronic contact from a customer are sufficient to reset the dormancy period for such accounts.

## **Background**

Financial institutions are required to report a deposit account as abandoned property if there has been no activity in the account or written contact from the customer evidencing that the customer is aware of the account for a period of three years. Published guidance from the Comptroller never specifically addressed whether receipt of an email from a customer or other electronic activity constituted sufficient written contact from the customer to reset the dormancy period. However, the Comptroller had informally taken the position that such activity was not sufficient contact.

## **New Regulation**

The Comptroller issued a new regulation last year<sup>[1]</sup> formally stating that certain electronic activity does constitute sufficient contact to reset the dormancy period. The electronic activity cited in the regulation is the following:

- (1) the receipt of electronic mail (email) communication from the entitled account holder of the property that matches the registered email address on record; or
- (2) evidence that the entitled account holder has accessed their personal account through the electronic method made available by the holder of the property, including but not limited to, a website, mobile application, or any other reasonable electronic method.

The Comptroller has recently updated its [Reference Sheet for Unclaimed Property Relating to Banking Institutions](#) to reflect this new regulation.

Accordingly, where a financial institution customer has had no activity in his or her account for three years and has not sent any letter of other written communication acknowledging the existence of the account but has sent the institution an email from the email address on record or accessed his or her account electronically, then the account should not be reported as abandoned. A record evidencing such an electronic communication (or online access to an account) by a customer will need to be preserved for compliance and audit purposes.

### **Further Information**

This advisory is a general overview of the Comptroller's new regulation and is not intended as legal advice. If you have any questions about overdraft programs, please feel free to contact Joseph D. Simon at (516) 357-3710 or via email at [jsimon@cullenllp.com](mailto:jsimon@cullenllp.com), Kevin Patterson at (516) 296-9196 or via email at [kpatterson@cullenllp.com](mailto:kpatterson@cullenllp.com), Elizabeth A. Murphy at (516) 296-9154, or via email at [emurphy@cullenllp.com](mailto:emurphy@cullenllp.com), or Gabriela Morales at (516) 357-3850 or via email at [gmorales@cullenllp.com](mailto:gmorales@cullenllp.com).

## Footnotes

[1] 2 NYCRR 125.1.

## Practices

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