

3. Obtain from or provide to an affiliate of the bank some additional credit, property or service; or

4. *Not* obtain some additional credit, property or service from a competitor of the bank or of an affiliate of the bank, *unless* the condition is reasonably imposed in a credit transaction to ensure the soundness of the credit.¹³

As this list illustrates, section 106 prohibits banks from imposing certain tying arrangements as well as certain reciprocity and exclusive dealing arrangements on their customers.¹⁴ Thus, for example, section 106 prohibits a bank from imposing a condition on a prospective borrower that requires the borrower to do any of the following in order to obtain a loan from the bank—

- Purchase an insurance product from the bank or an affiliate of the bank (a prohibited tie);
- Obtain corporate debt or equity underwriting services from an affiliate of the bank (a prohibited tie);
- Sell the bank or an affiliate of the bank a piece of real estate unrelated to the requested loan (a prohibited reciprocity arrangement); or
- Refrain from obtaining insurance products or securities underwriting services from a competitor of the bank or from a competitor of an affiliate of the bank (a prohibited exclusive dealing arrangement).

For ease of reference, this statement uses the phrase “tying arrangement” to refer to all types of tying, reciprocity and exclusive dealing arrangements described in section 106. In addition, although section 106 generally refers to “credit,” “property” or “service” in describing the items sought or required to be obtained from (or provided to) the bank or an affiliate, this statement uses the term “product” to refer to any type of credit, property or service.

There are several noteworthy points about the anti-tying prohibitions of section 106. First, section 106 does not require a bank to extend credit or provide any other product to any customer. That is, section 106 does not prohibit a bank from declining to provide credit or any other product to

a customer so long as the bank’s decision is not based on the customer’s failure to satisfy a condition or requirement prohibited by section 106. Thus, for example, section 106 does not prohibit a bank from denying credit to a customer on the basis of the customer’s financial condition, financial resources or credit history, or because the bank does not offer (or seeks to exit the market for) the type of credit requested by the customer.

Second, section 106 applies only to tying arrangements that are imposed by a bank. The statute does *not* apply to tying arrangements imposed by a nonbank affiliate of a bank.¹⁵ For example, section 106 prohibits a bank from requiring a person to purchase insurance from the bank’s insurance affiliate in order to obtain a reduced interest rate on a loan from the bank. Importantly, such an arrangement is prohibited by section 106 even if the customer is informed of the bank’s reduced-rate offer by the bank’s insurance affiliate (for example, when the customer applies to the insurance affiliate to obtain insurance). In either case, it is the bank that is varying the price of a bank product (the loan) based on a requirement that the customer obtain another product (insurance) from an affiliate. Such action by the bank violates section 106.

On the other hand, section 106 does not apply to the insurance agency affiliate of the bank.¹⁶ Thus, section 106 would *not* prohibit the insurance agency affiliate of a bank from offering a discount on the premiums the affiliate charges to customers that purchase more than one type of insurance (e.g., homeowners and automobile insurance) from the affiliate. In addition, section 106 would *not* prohibit the insurance agency affiliate from offering discounts on premiums to customers who also have a loan from, or deposit account with, the bank. In both of these cases, it is the affiliate (and not the bank) that has imposed the condition governing the sale of its products.¹⁷

Third, section 106 covers some activities that are not included in the

conventional notion of tying. Namely, section 106 prohibits banks from granting certain types of price discounts—that is, varying the price of a product on the condition that the customer purchase one or more other products from the bank or an affiliate. Thus, section 106 may restrict the ability of banks to provide price discounts (including rebates) on bundled products depending on what products are in the bundle and which ones are discounted. Section 106 does not, however, prohibit a bank from discounting the price of an individual product for reasons that are unrelated to another product. For example, a bank may offer a customer a discount on the purchase of an individual product in light of the amount of the individual product proposed to be purchased by the customer, the creditworthiness of the customer, or the unique features of the product or transaction.

Fourth, several important exceptions exist to the general prohibitions of section 106. For example, the statute itself expressly permits a bank to condition the availability or price of a product on a requirement that the customer also obtain a loan, discount, deposit or trust service from the bank. The statute also expressly permits a bank to condition the availability or price of a product on a requirement that the customer provide the bank some additional product that is related to and usually provided in connection with a loan, discount, deposit or trust service. The Board, acting pursuant to authority conferred by section 106, also has adopted by regulation several important exceptions to the statute’s anti-tying restrictions.¹⁸ The statutory and regulatory exceptions to section 106 are discussed in Part IV of this statement.

Because of the statute’s complexity and the importance of the actions, statements and policies of the bank in analyzing whether section 106 has been violated, the determination of whether a violation of section 106 has occurred often requires a careful review of the specific facts and circumstances associated with the relevant transaction (or proposed transaction) between the bank and the customer. Banks should establish and maintain policies, procedures and systems that, in light of the nature, scope and complexity of the bank’s activities, are reasonably designed to ensure that the bank’s employees and representatives are trained appropriately concerning the

¹³ For a discussion of the definition of the terms “bank” and “affiliate,” see Parts V and VI, respectively.

¹⁴ “Tying arrangements” are arrangements that require a customer to *obtain* a product from the bank or one of its affiliates as a condition of the bank providing another product to the customer. “Reciprocity arrangements” are arrangements that require a customer to *provide* a product to the bank or one of its affiliates as a condition of the bank providing another product to the customer. “Exclusive dealing arrangements” are arrangements that require a customer *not to obtain* a product from a competitor of the bank or of an affiliate as a condition of the bank providing another product to the customer.

¹⁵ Tying arrangements imposed by a nonbank affiliate of a bank are, however, subject to the anti-tying restrictions of the general antitrust laws.

¹⁶ There is one exception to the general rule that affiliates of a bank are not subject to section 106. This exception is discussed in Part V.

¹⁷ A bank, however, may not evade the prohibitions of section 106 by engaging jointly with an affiliate in a transaction in which the affiliate nominally imposes a condition on the customer that the bank is prohibited from imposing on the customer under section 106. Part VI of this statement provides some examples of situations when a tie that is nominally imposed by an affiliate of a bank will be viewed as a tie imposed by the bank for purposes of section 106.

¹⁸ 12 U.S.C. 1972(1). The exceptions to section 106 adopted by the Board by regulation are codified in section 225.7 of the Board’s Regulation Y (12 CFR 225.7).