

Text Message Scam:

Scammers Target Bank Customers with Bogus Texts

At least one bank was recently hit with a text messaging scam.

T-Mobile customers were sent texts claiming to be from their bank. The texts stated that the customers' accounts were closed due to unusual activity. A toll-free call back number was provided—calls placed to that number reached an automated answering system purporting to be the bank's security line. Customers were then asked for their credit card numbers, PIN numbers and expiration dates.

Some customers reported being asked for their Social Security numbers and account numbers. The perpetrators soon used this information to conduct ATM transactions.

The FDIC has been notified.

The first wave of this scam affected T-Mobile customers, but it is likely that similar scams may follow.

Warn your customers against providing confidential information or responding to such text messages, or any phone, mail or e-mail solicitations that ask for personal information.

NOW ACCESS PROPERTY & CASUALTY (P&C) COVERAGE THROUGH PROGRESSIVE/HARTFORD ALLIANCE

Banks and their agents can now access The Hartford's P&C coverage¹ through their Progressive underwriter. The new alliance between two of the best known names in the insurance industry provides the convenience of one-stop shopping.

The Hartford, rated A+ by A.M. Best, offers industry-tailored P&C insurance that includes bank-specific coverages such as Mortgage Protection Insurance (MPI), foreclosed properties, and standard-lines coverages like workers' compensation, property and general liability. *P&C not available in AK, FL, IN, HI, LA. MPI not yet available in CA, MA, NH, NY, VA.*

To obtain a P&C quote, contact your agent or Progressive underwriter.

EXCESS DEPOSIT BONDS ADDRESS CUSTOMER CONCERN

Banks no longer need to worry about losing customers who are concerned about their high-value deposits: Excess Deposit Bond (EDB)² coverage is now available from Progressive everywhere in the continental United States.

The idea behind EDBs is simple: a cost-effective insurance policy protects depositors for amounts above what is insured by the FDIC in the event of bank insolvency. The bonds, purchased by banks on behalf of their customers, clearly enumerate the depositors' names, accounts and values to be insured. In this way, each depositor—whether a high-net-worth individual or a sizable not-for-profit organization—receives a certificate that proves the existence of insurance beyond what is provided by the FDIC.

EDBs offer flexibility to banks in that they may be used in isolation or in tandem with other solutions (e.g., pledging securities or swapping CDs in a network). The insurance is competitively priced, requires little administrative oversight and has no impact on the bank's liquidity position.

Contact your agent or Progressive underwriter to learn more about this important product.

TWO OUT OF THREE BANKS PURCHASE INTERNET BANKING LIABILITY COVERAGE

Make sure your bank is protected against suits involving electronic communications. Progressive's Internet banking insurance program is designed specifically for banks and covers Internet banking, PC/home banking and other electronic banking activities.

Contact your agent or Progressive underwriter for more information.



Lender Liability: Is Your Coverage Sufficient?
see insert >>

For more loss control information or to view this SafeTalk® newsletter online, visit banks.progressive.com.



We know community banks.

Coverages are provided by Progressive Casualty Insurance Company, Mayfield Village, Ohio and may not be available in all states. Coverage descriptions were prepared for educational purposes only and are not a guarantee of coverage. Please consult the respective policies for complete descriptions of coverage. ¹All Hartford coverages described in this document may be offered by one or more of the property and casualty insurance company subsidiaries of The Hartford Financial Services Group, Inc. Hartford, CT.

²EDB is a product offered by Progressive and is not part of the ABA-Sponsored Insurance Program.

New ESOP Bonding Requirements

The **Pension Protection Act of 2006** changed the bonding requirements for ESOPs and other qualified plans holding employer securities, effective for plan years beginning on or after January 1, 2008.

Persons handling plan assets are required to be covered by a fidelity bond equal to at least 10% of the prior year plan assets; prior to 2008, the maximum bond required was \$500,000. Effective in 2008, the bond maximum was increased from \$500,000 to \$1 million for plans holding employer securities. No deductible is allowed in the bond and the plan must be an insured. The general bond deductible doesn't apply to claims for loss sustained by the plan until the plan receives the minimum statutory recovery.

Progressive's Fidelity Bond automatically provides ERISA coverage with no deductible up to the maximum required limit. Previously this limit was \$500,000; this has been modified to now provide coverage at no deductible up to \$1 million if the insured plan holds employer securities.

If you have any questions, contact your agent or underwriter.



Overview of ERISA Fidelity Bond Requirements

by **Terry Cawley**, Senior Claims Attorney

ERISA requires every fiduciary and every person who handles ERISA plan funds to be bonded.

Among its other purposes, the terms of Progressive's Financial Institution Bond are written to afford your bank, and any bank employees that act as fiduciaries of your own plan covered by ERISA, with the fidelity bond protection that you and they are required to obtain by federal law. When a bank employee is acting as a fiduciary of another employer's ERISA plan, Bond coverage needs to be extended by rider to cover those plans for loss caused by bank employees.

The bonding requirements are mandatory; in fact, "[i]t shall be unlawful for any plan official" covered by ERISA "to receive, handle, disburse, or otherwise exercise custody or control of any of the funds or other property of any employee benefit plan, without being bonded" in conformity with the requirements of ERISA's Section 412(a), codified at 29 U.S.C. Section 1112(a). Moreover, "it shall be unlawful for any plan official of such plan, or any other person having authority to direct the performance of such functions, to permit such functions, or any of them, to be performed by any plan official," unless these requirements have been met with respect to these officials and persons. *Id.*

Progressive's Financial Institution Bond contains a provision which pertains to the ERISA bonding requirements, and is intended to establish the coverage required in ERISA for your own plans covered by ERISA. The provision in question accomplishes a number of things for our insureds:

- ▶ Progressive's bond clarifies that a health, welfare or pension plan of yours that is subject to ERISA shall be deemed an Insured under the bond, solely for purposes of the fidelity part, if any employee of the Insured is required to obtain a bond under ERISA's requirements.
- ▶ For purposes of the ERISA fidelity coverage only, coverage is extended to directors of the Insured.

- ▶ The deductible applicable under the bond for general purposes will not be applied until after Progressive has paid the lesser of \$500,000 (\$1 million for plans holding employer securities) or 10 percent of the assets of the Plan at the beginning of the fiscal year of the Plan in which the loss is discovered.
- ▶ Certain notice requirements that apply for all other bond purposes are modified, such that loss suffered by the Plan is covered if discovered during the term of this bond or within one year thereafter, but if the loss is discovered during such one-year period, the loss payable under this bond shall be reduced by the amount recoverable from any other bond or insurance protecting the assets of the plan against loss through fraud or dishonesty.
- ▶ If more than one plan subject to ERISA is deemed to be an Insured under Progressive's bond, the Insured must purchase limits sufficient to provide the minimum amount of coverage required by ERISA for each Plan and shall distribute any payment made under the bond to said Plans so that each Plan receives the amount it would have received if insured separately for the statutory minimum coverage.

Only Insuring Agreement (A), which is the fidelity part, affords coverage to the ERISA plans. Progressive's fidelity insuring agreement, with some variations possible (and subject to all of the other language, terms, conditions and exclusions contained in the Bond), will generally provide indemnity for "[l]oss resulting directly from dishonest or fraudulent acts committed by an Employee acting alone or in collusion with others, with the manifest intent: (a) to cause the Insured to sustain such loss, and (b) to obtain an improper financial benefit for the Employee or another person or entity."

Some courts have held that when a fiduciary fails to obtain fidelity coverage in the manner required under ERISA, this failure itself is a breach of fiduciary duty to the plan participants.

ERISA FIDELITY BOND REQUIREMENTS continued

A final note. Some of our banks procure insurance through an insurance agency or broker that is a corporate affiliate of the bank. In such circumstances, take some care, as ERISA makes it “unlawful for any person to procure any bond required by subsection (a) from any surety or other company or through any agent or broker in whose business operations such plan or any party in interest in such plan has any control or significant financial interest, direct or indirect.”

Bonding requirements for fiduciaries are mandatory. In some court cases, it has been considered a breach of duty if a fiduciary fails to secure ERISA-required coverage. Progressive’s Financial Institution Bond includes a provision pertaining to ERISA bonding requirements, and is intended to establish coverage required in ERISA for your own plans covered by ERISA.

Credit Freezes Now Offer Consumers ID Theft Protection in all States

Consumers in all states now have two tools for protecting their credit rating from identity thieves—credit fraud alerts and credit freezes.

A credit fraud alert is a message posted to a consumer’s credit report advising (though not requiring) potential creditors to contact the consumer at a particular phone number prior to extending credit.

Consumers in all states can place a 90-day fraud alert for free by calling any one of the big three bureaus; that bureau is then required to alert the other two to take similar measures. Consumers can renew the 90-day fraud alert as many times as they want. By submitting a police report documenting evidence of potential identity theft, victims can place a free, seven-year extended fraud alert. An extended military fraud alert is also available to all members of the military who are on active duty to prevent thieves from opening accounts in their names while they’re deployed.

Effective November 2007, consumers in all states can now request a credit freeze, or security freeze, from all three credit bureaus. A credit freeze allows consumers to freeze access to their credit file, preventing fraudsters from opening a new account or getting credit in their name. When a credit freeze is in place at all three major credit bureaus, an identity thief cannot open a new account because the potential creditor can not check the credit file (note that state laws exempt

certain situations and organizations from the credit freeze, such as business with existing relationships and government agencies). When the consumer is legitimately applying for credit, he or she can lift the freeze temporarily using a PIN so that legitimate applications for credit or services can be processed. The cost for placing a credit freeze—and for temporarily lifting it—is typically \$10 for each credit agency, but varies based on state regulations.

Credit freezes and fraud alerts are mainly effective against new credit accounts being opened in your name, but will likely not stop thieves from using existing accounts.

Consumers need to be aware that a credit freeze may delay, interfere with or prohibit timely approval of future requests or applications that involve access to a credit report. This may include, but is not limited to, new loans, credit, mortgages, insurance, rental housing, employment, investments, licenses, cellular phone service, utility service, digital signature service, Internet credit card transactions, and extension of credit at point of sale. Additionally, while a report is frozen, companies that provide consumer data to the credit agencies will not be allowed to update name, address, Social Security number and date of birth information on the credit report.

A little inconvenience, however, may go a long way to preventing greater headaches. For more information, visit www.ftc.gov.

Blocking International Transactions Curbs Debit Card Fraud

Many community banks are fighting debit card fraud by placing a block on international transactions. A recent industry study reported that blocking international transactions is one of the most effective means of deterring card fraud, second only to the use of CVV/CVC validation measures.

At a recent meeting of community bankers, CEO Howard Boyle of Home Savings Bank in Kent, Ohio told us:

“Shortly after I returned from a trip to New York, one of my staff asked if I had been in Santiago, Chile—a number of transactions had come through on my debit card

from abroad. I quickly made the decision to block all international transactions for our customers’ debit cards. Our customers appreciate that we are protecting them, and if they are going abroad they can simply call us to have the block lifted.”

While neural networks can mitigate the bank’s losses once fraud has begun, blocking international transactions can prevent the fraud before it happens. Simply communicate to customers the reason for the change and remind them to notify the bank if they are traveling abroad so that the block can be lifted on their card. This small inconvenience can save them a much larger inconvenience down the road.

Meet Progressive's Sales Team

With an average tenure of 17 years with Progressive, our sales team does more than just sell insurance. From board presentations to one-on-one insurance reviews, they work with you to ensure that you understand coverages and your bank's insurance needs are met.



Robert Splawn

Business Leader/Team Manager
21 years
Bob earned his MBA/JD from Texas Tech University. He enjoys traveling, and is an avid skier and golfer.



Holly Leuchtag

Regional Sales Manager, East
11 years
With a BA from Ursuline College, Holly was in the banking industry for 11 years. She enjoys attending fundraisers supporting local charities.



Richard Flenner

Regional Sales Manager, Midwest
18 years
Richard earned his MBA from Cleveland State University. He is an avid classical music collector and enjoys swimming and walking.



Julie Paul

Regional Sales Manager, Southeast
13 years
Julie earned her BA from Cleveland State University. She enjoys spending time at the beach and running.



John Francioso


Regional Sales Manager, Midwest
19 years
John earned his BA from Baldwin-Wallace College and has worked in underwriting, training and sales. He enjoys running, biking, and skiing.



Susan Petrillo

Regional Sales Manager, West
24 years
Our most tenured team member, Susan has been with Progressive since 1984. She enjoys sports, the beach and time with family.

They know community banks.



Take Advantage of Free Access to the Employment Practices Helpline.

Available to customers who purchase Employment Practices Liability Insurance.

The ABA-sponsored insurance program teamed up with the national law firm of Jackson Lewis to provide customers with an Employment Practices Helpline, a valuable loss control program that helps you address workplace issues while minimizing the bank's exposure to employment-related lawsuits. Attorneys from Jackson Lewis are available to:

- » guide you through the proper steps with respect to personnel actions
- » answer employment-related legal questions
- » identify best ways for investigating, documenting and resolving workplace issues or disputes

And, it's free to all program participants that purchase EPLI.

For more information about the EPL Helpline, call or have your agent call Progressive at 800-274-5222.

Lender Liability: Is Your Coverage Sufficient?

The old saying is true—you really don't know how good your insurance coverage is until you actually need it. The economic downturn and resulting rise in foreclosure rates has prompted many bankers to analyze their Lender Liability coverage to ensure they have adequate protection. Lender Liability—that's primarily what the bankers' errors and omissions policy covers, right? Well, theoretically yes, but you may not have the coverage you think you do. There are actually vast coverage differences from one insurance carrier to another, and you don't want to learn about "the fine print" when you put your carrier on notice of a claim. Here are a few tips for assessing whether your Lender Liability coverage makes the grade:

Lending Discrimination. While it is against public policy to insure against intentional acts of discrimination, it is important to remember that many Lender Liability claims allege discrimination in some way, shape, or form even if there was no biased intent on the part of the bank. When comparing policies:

- Review the Bodily Injury Exclusion to ensure that "discrimination" is not listed;
- Look for direct exclusionary language in the form of a "Lending Discrimination Exclusion;" and
- Request a positive affirmation that defense costs will be covered for allegations of discrimination.

Progressive's policy does not contain any type of Lending Discrimination Exclusion and defense costs are expressly covered.

Lending Law Violations. Virtually all Lender Liability claims allege that the bank violated federal or state lending laws. While all policies exclude intentional or willful violations of law, some policies further restrict coverage by adding a "Lending Law Violation Exclusion."

The Lending Law Violation Exclusion can be particularly problematic as the policy would exclude claims (including defense costs) "arising out of or attributable to *any violation* of federal or state lending laws or regulations" (e.g., Truth-in-Lending Act, Equal Credit Opportunity Act, Fair Credit Reporting Act, Fair Debt Collection Practices Act, The Homeowners Equity Protection Act, etc.). Exclusions pertaining to specific lending laws can be onerous given that there is no intent or willful act required for the exclusion to be implicated. For example, this type of exclusion would bar class action lawsuits alleging lending discrimination, improper disclosure of information, etc.

Progressive has no additional exclusionary language pertaining to specific lending law violations, making our Lender Liability coverage one of the broadest available at this time.

Insider Loans. Following the savings and loan crisis, insurance carriers promptly began adding Insider Loan Exclusions to their policies. This type of exclusion can be troublesome from the community bank perspective for two reasons:

- First, the definition of "insider" can vary drastically between carriers. Some limit "insiders" to directors and officers, while others expand the definition to include employees, and still others take it even *further* by excluding loans to shareholders. Look for direct exclusionary language, but also be sure to review the definition of "Insider," "Lending Customer," or "Borrower." Don't forget that exclusions are often hidden in policy definitions. One of the most restrictive definitions defines borrower as "any person or entity that is not directly or indirectly affiliated with the Company *in any respect*."
- Second, community banks in general, and de novo banks in particular, often rely heavily on board members, officers, employees and other "insiders" to help promote the bank and generate loans within the community.

Progressive understands the needs of community banks and, as one of the top writers of de novo banks in the industry, our policy does not have an Insider Loan Exclusion.

Loan Participations and Loan Servicing. If your institution buys or sells loan participations or services loans for others, be sure to confirm that these activities are covered.

- Some policies only cover "loans made by the Company;" if you are sued because of negligence in your capacity as a loan servicer (either by the borrower, the originating bank, or another third party), you may not be protected.
- In addition, some carriers only cover loans if the bank has an ownership interest. Again, review not only the exclusions, but also key definitions which may contain exclusionary language.

Progressive's policy includes protection for loan participations, first-party loan servicing, and third-party loan servicing.

Other Considerations. Many carriers significantly restrict Lender Liability coverage by only covering "suits brought by or on behalf of a borrower." We call this "Lender Liability-Lite." Be sure your Lender Liability coverage will respond to suits brought by third parties such as, contractors, guarantors, other financial institutions, etc. (*approximately one-third of Progressive's paid Lender Liability claims are brought by individuals or entities other than the borrower*).

Progressive's Broad Form Company Liability and Broad Form Lender Liability coverages include the most comprehensive lender protection in today's market. We Know Community Banks—do not hesitate to call us so we can help you structure your coverage appropriately.