Interest on Deposits — Part 329

Introduction

The procedures and guidance in this section apply to demand deposits and negotiable orders of withdrawal (NOW) accounts held at banks. Banks are prohibited from paying interest on demand deposits. However, NOW accounts are not considered "demand deposits" when the entire beneficial interest of the deposit is held by certain eligible depositors.

Regulation Overview

Part 329 of the FDIC regulations prohibits the payment of interest by banks on any demand deposit.

A demand deposit includes any deposit payable on demand; or any deposit with an original maturity or required notice period of less than seven days; or any deposit representing funds for which the bank does not reserve the right to require at least seven days' written notice of intended withdrawal; or any other deposit which the depositor is authorized to make more than six preauthorized or automatic transfers or makes more than three of these transfers by check, draft, debit card or similar order.

NOW accounts are interest bearing accounts from which depositors are permitted to make withdrawals by negotiable or transferable instruments for funds transfers to third parties. NOW accounts can be maintained by the following entities, and would not be considered demand deposits under the regulation:

- One or more individuals, including sole-proprietorships.
- A not-for-profit organization operated primarily for religious, philanthropic, charitable, educational, political, or other similar purpose.
- Officers, employees, or agents of public entities (public funds).
- Funds held in a fiduciary capacity (bank trust department, individual fiduciary, or trustee in bankruptcy), provided that all beneficiaries are natural persons.

The regulation also provides guidance on allowable transfers for nondemand deposits, interest and premiums, and interest and ten-day grace period for time and savings deposits.

Definitions

"Cash Management Arrangements" Cash management services provided by financial institutions sometimes include offering sweep accounts and repurchase agreements. Regulatory compliance for these activities is generally reviewed during risk management examinations and during nondeposit product reviews. However, examiners should be aware that Section 329.2 concerning the prohibition of paying interest on demand deposits could be violated based on the definitions of Money Market Deposit Accounts (MMDA) and savings accounts for excessive transactions.

"Money Market Deposit Account (MMDA)" An MMDA is a savings deposit that permits, under the terms of the deposit contract or by practice of the financial institution, the depositor to make no more than six transfers and withdrawals per calendar month or statement cycle of at least four weeks to another account of the depositor or to a third party.

No more than three of the six transfers can be made by check, draft, debit card, or similar order to a third party. The following transfers are not included in the six transfer limitation:

- Transfers to the financial institution for the purpose of repaying loans and associated expenses (as originator or servicer).

NOTE: This exemption "does not apply to transfers to the financial institution that are made for the purpose of repaying loans that are made by the financial institution to the depositor's demand deposit account for the purposes of covering overdrafts." (§329.1(b)(3))

- Transfers to another account of the depositor made by mail, messenger, automated teller machine (ATM), or in person.
- Withdrawals made by mail, messenger, telephone (via check mailed to the depositor), ATM, or in person.

Refer to §204.2(d) of Regulation D and the Interpretative Rule found in Section 329.101 for more guidance on MMDAs.

NOTE: Personal computer (PC) transfers should be treated just like telephone transactions and would be included in the "six" transfers and withdrawals if the PC transfer was preauthorized or automatic.

"NOW Account" NOW Accounts are deposit accounts which consist solely of funds in which the entire beneficial interest is held by:

- One or more individuals, including sole-proprietorships.
- A not-for-profit organization operated primarily for religious, philanthropic, charitable, educational, political, or other similar purpose.
- Officers, employees, or agents of public entities (public funds).
- Funds held in a fiduciary capacity (bank trust department, individual fiduciary, or trustee in bankruptcy), provided that all beneficiaries are natural persons.

The following types of entities **are not** eligible to maintain NOW accounts: