

## VI. Deposits — Interest on Deposits

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*Comments and Conclusions page, or Supervisory Comments, depending upon the extent of non-compliance with Part 329.*

11. For customers who continue to violate the MMDA transfer limits after they have been contacted by the financial institution, the financial institution should either:

- Eliminate the transfer and draft capabilities of the account, or
- Close the account(s) and place the funds in another account for which the depositor is eligible

12. Ensure that no more than the permitted number of transfers or withdrawals are made. A financial institution should either:

- Prevent withdrawals or transfers of funds from the MMDA in excess of the regulatory limits, or
- Adopt procedures to monitor transfers on an ex post basis and contact customers who exceed established limits on more than an occasional basis

Refer to footnote 5 of Section 204.2(d)(2) of Regulation D for further guidance on the procedures an institution should follow to ensure that MMDAs are properly maintained.

13. Violations of Section 329.2, Payment of Interest on Demand Deposit Accounts, could have reserve requirement ramifications. Additionally, accounts not cited as violations which are incorrectly accounted for by the institution (MMDA accounts that should be classified as NOW accounts) also could have reserve requirement ramifications. If the reclassification of accounts would have a substantial impact on reserve requirements, examiners should follow the procedures below:

- Prepare a memorandum and forward it to the appropriate Division of Supervision and Consumer Protection (DSC) Regional Director to serve as notification of the issue.
- Submit a copy of the memorandum to the appropriate DSC Compliance Deputy Regional Director with the Compliance Report of Examination.

The memorandum should detail the following items:

- The nature of the apparent violation(s) of Section 329.2
- The potential impact on reserve requirements

*NOTE: Regulation D requires financial institutions to maintain different levels of reserves against transaction accounts versus other account types, such as time or savings. If, for example, a financial institution is reporting an account as a savings account, when the activity within the account defines it as a transaction account, the financial institution's reserve requirement may be understated.*

### Savings Accounts

14. Determine if the institution allows the types of transactions from savings deposits which are subject to the six transfer limitation.

Savings deposits, including passbook savings accounts and statement savings accounts, are subject to the same transaction limitations as MMDA accounts and when excess activity is detected, these accounts become demand deposits. Be aware of:

- Commercial demand deposit accounts linked to savings accounts, where overdrafts in the demand account are covered by transfers from the savings accounts in excess of prescribed limits.
- ACH (automated clearing house) transfers from passbook savings accounts to third parties to pay, for example, recurring insurance premiums.

*NOTE: Also, like MMDAs, no savings accounts will be deemed a demand deposit account or cited as a violation of Part 329 if the depositor is eligible to maintain a NOW account.*

15. If such transactions are permitted, determine, as noted above for MMDAs, if the institution has developed a system to monitor such transactions, and what action is taken against account holders who exceed the limitation.

### Cash Management Services

16. Determine if the financial institution offers cash management services.

If so, determine if the financial institution's procedures regarding cash management services prohibit the payment of interest on demand deposit accounts.

### Premiums

17. Determine if the financial institution has provided premiums to depositors in compliance with Section 329.103. Premiums can be in the form of merchandise, credit, or cash.

- Verify that the premium is not considered "interest" (as defined in Section 329.1(c)), by determining:
  - It was only given to the depositor at the time of a new account opening or an addition to an existing account;
  - No more than two premiums per deposit were given in a twelve-month interval; and
  - The premium's values did not exceed \$10 for a deposit of less than \$5,000 or \$20 for a deposit of \$5,000 or more.

*NOTE: In the case of merchandise, the total cost to the bank includes any shipping, warehousing, packaging, and handling costs.*

- Verify that the costs of the premiums were not averaged by the bank (so to avoid the \$10/ \$20 dollar limitations).
- Verify that the bank did not solicit deposit funds on the premise that they would divide the money into several accounts so that they could pay the depositor more than two premiums within a twelve-month interval (so to avoid the no more than two premiums per deposit in a twelve-month interval limitation).

18. Determine if the bank retained sufficient information to determine that the requirements of Section 329.103 are satisfied.

### References

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*Federal Deposit Insurance Act*

<http://www.fdic.gov/regulations/laws/rules/1000-2000.html#1000sec.18g>

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*NOW Accounts (An Act)*

<http://www.fdic.gov/regulations/laws/rules/6500-2530.html#6500now2>

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*Part 329: Interest on Deposits*

<http://www.fdic.gov/regulations/laws/rules/2000-5300.html#2000part329>

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*Advisory Opinion 95-29: Bank Award of Bonus Points and/or Gift Certificates for Use of a Credit Card Does Not Violate §329 as Long as Credit Card is Not Linked to a Demand Deposit Account*

<http://www.fdic.gov/regulations/laws/rules/4000-9590.html#400095-29>

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*Advisory Opinion 91-86: Deposits of Real Estate Trust Accounts (“RETA”) Program Established by State Statute May, Like IOLTA Deposits, be Held in NOW Accounts*

<http://www.fdic.gov/regulations/laws/rules/4000-6850.html#400091-86>

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*Advisory Opinion 91-79: An Electronic Cooperative is Eligible to Hold a NOW Account Under Revised Federal Reserve Board Regulations (12 CFR §204.130)*

<http://www.fdic.gov/regulations/laws/rules/4000-6780.html#400091-79>

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*Advisory Opinion 91-19: Whether ATM Promotion Constitutes Payment of Interest on Demand Deposits in Violation of 12 CFR §329*

<http://www.fdic.gov/regulations/laws/rules/4000-6180.html#400091-19>

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*Advisory Opinion 91-3: FDIC Defers to Federal Reserve Board’s Interpretation of NOW Accounts (12 CFR §204.130)*

<http://www.fdic.gov/regulations/laws/rules/4000-6020.html#400091-3>

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*Advisory Opinion 87-43: Eligibility of Rural Electric Association Cooperative to Hold Funds in NOW Account*

<http://www.fdic.gov/regulations/laws/rules/4000-2730.html#400087-43>

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*Advisory Opinion 87-19: Business Partnership and NOW Accounts*

<http://www.fdic.gov/regulations/laws/rules/4000-2500.html#400087-19>

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*FIL 18-98: Prohibition Against Payment of Interest on Demand Deposits*

<http://www.fdic.gov/news/news/financial/1998/fil9818.html>

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*FIL 110-97: Prohibition Against Payment of Interest on Demand Deposits*

<http://www.fdic.gov/news/news/financial/1997/fil97110.html>

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*FIL 78-97: Prohibition Against Payment of Interest on Demand Deposits*

<http://www.fdic.gov/news/news/financial/1997/fil9778.html>