RULES and REGULATIONS

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 329

RIN 3064-AD46

Interest on Deposits

________, ________ __, 2009

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Final rule.

SUMMARY: The Federal Deposit Insurance Corporation (FDIC) is amending Part 329 of its regulations to eliminate restrictions on certain kinds of transfers from savings deposits for state chartered banks that are not members of the Federal Reserve System and insured branches of foreign banks. The Board of Governors of the Federal Reserve System (the FRB) has already amended its regulations to eliminate these restrictions for member banks. Because this change is ministerial, the FDIC has determined for good cause that public notice and comment is unnecessary and impracticable under the Administrative Procedure Act (the APA) and is implementing this change by means of a final rule without notice and comment.

DATES: This rule is effective on ______ __, 2009. [Date of publication in Federal Register]

FOR FURTHER INFORMATION CONTACT: Mark Mellon, Counsel, Legal Division, (202) 898-3884 or Samuel Frumkin, Senior Policy Analyst (Compliance), Compliance Policy Section, Division of Supervision and Consumer Protection, (202) 898-6602, 550 17th Street, NW., Washington, DC 20429.

SUPPLEMENTARY INFORMATION

I. Background

A. FRB Amendments to Regulation D

On May 20, 2009, the FRB announced the approval of final amendments to 12 C.F.R. Part 204, Reserve Requirements of Depository Institutions (Regulation D). Among other changes, the amendments will eliminate restrictions on certain types of transfers that consumers can make from savings deposits. See 74 Federal Register 25629 (May 29, 2009). The changes were effective 30 days from the date of publication in the Federal Register, that is, July 2, 2009.

Prior to the FRB amendments, Regulation D limited the number of “convenient” transfers and withdrawals from savings deposits to not more than six per month. Within this overall limit of six, not more than three transfers or withdrawals could be made by check, debit card, or similar order made by the depositor and payable to third parties (the three transfer sublimit). Under the FRB final amendments, the permissible monthly number of transfers or withdrawals from savings deposits by check, debit card, or similar order payable to third parties has been increased from three to six. In other words, while the FRB has decided to retain the overall six-transfer limit for savings deposits, it has eliminated the three-transfer sublimit within the overall limit that applied to transfers or withdrawals from savings deposits by check, debit card, or similar order payable to third parties. The FRB decided to eliminate the three transfer sublimit because distinctions between such transfers and other types of pre-authorized or automatic transfers subject to the six-per-month limit were no longer logical in light of technological advances. See 74 FR at 25631.

B. FDIC Responsibilities under Section 18(g) of the Federal Deposit Insurance (FDI) Act.

Section 18(g) of the FDI Act (12 U.S.C. 1828(g)) provides that the Board of Directors of the FDIC shall by regulation prohibit the payment of interest or dividends on demand deposits in insured nonmember banks and in insured branches of foreign banks. Accordingly, the FDIC promulgated regulations prohibiting the payment of interest or dividends on demand deposits at 12 CFR part 329. See 51 FR at 10808 (Mar. 31, 1986).

Section 18(g) of the FDI Act also provides that the FDIC shall make such exceptions to this prohibition as are prescribed with respect to demand deposits in member banks by section 19 of the Federal Reserve Act, as amended, or by regulation of the FRB.

Generally, member banks, state nonmember banks and insured branches of foreign banks are subject to the statutory prohibition and exceptions to that prohibition, although under different statutes and regulations. From time to time the FRB issues or authorizes a new exception to the prohibition applicable to member banks, and the FDIC later issues or authorizes a similar exception affecting state nonmember banks and insured branches of foreign banks, as is the case in this particular rulemaking. Note, however, that under section 329.3 of part 329, state nonmember banks and insured branches of foreign banks are already subject to the same exceptions to the prohibition that member banks are subject to, regardless of whether the FDIC has issued or authorized the specific exception. See 63 FR at 8341 (Feb. 19, 1998).

C. Amendments to Sections 329.1(b)(3) and 329.102 of Part 329.

Therefore, in accord with the FRB amendments to Regulation D, the FDIC is amending the part 329 definition of "demand deposit" to eliminate the three transfer sublimit. This will be done by eliminating the first proviso of subsection 329.1(b)(3).   A minor change is also made to the interpretive rule set forth in section 329.102 to make it conform to section 329.1(b)(3) as amended by this rule.

II. Exemption From Public Notice and Comment

The FDIC is required by law to promulgate the same exception to the prohibition against the payment of interest on demand deposits that has been prescribed with respect to demand deposits in member banks by the FRB by regulation. Given this statutory requirement, the FDIC has no discretion in this matter, but must instead eliminate the three transfer sublimit for state nonmember banks and insured branches of foreign banks in the same way that the FRB has done for member banks. Moreover, under section 329.3 of FDIC Rules and Regulations, state nonmember banks and insured branches of foreign banks are already covered by the FRB elimination of the three transfer sublimit when that regulatory change becomes effective on July 2, 2009. As a result, amending Part 329 to eliminate reference to the three transfer sublimit would essentially only be an official recognition by the FDIC of an already established requirement.

For these reasons, the FDIC has thus determined for good cause that public notice and comment is unnecessary and impracticable under the APA (5 U.S.C. 553(b)(3)(B)), and that the rule should be published in the Federal Register as a final rule.

III. Effective Date

For the same reasons that the FDIC has determined that public notice and comment is unnecessary and impractical for good cause, the FDIC also finds that it has good cause to adopt an effective date that would be less than 30 days after the date of publication in the

Federal Register pursuant to the APA (5 U.S.C. 553(d)). The amendment to Part 329 will be effective as of the date of its publication in the Federal Register.

IV. Regulatory Flexibility Act

An initial regulatory flexibility analysis under the Regulatory Flexibility Act (RFA) (5 U.S.C. 603) is required only when an agency must publish a general notice of proposed rulemaking. As already noted, the FDIC has determined that publication of a notice of proposed rulemaking is not necessary for this final rule. Accordingly, the RFA does not require an initial regulatory flexibility analysis. Nevertheless, the FDIC has considered the likely impact of the rule on small entities and believes that the rule will not have a significant impact on a substantial number of small entities.

V. Small Business Regulatory Enforcement Fairness Act

The Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA) (Public Law 104-121, 110 Stat. 857) provides generally for agencies to report rules to Congress and for Congress to review such rules. The reporting requirement is triggered in instances where the FDIC issues a final rule as defined by the APA (5 U.S.C. 551 et seq.). Because the FDIC is issuing a final rule as defined by the APA, the FDIC will file the reports required by the SBREFA.

VI. The Treasury and General Government Appropriations Act, 1999 Assessment of Federal Regulations and Policies on Families

The FDIC has determined that this final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, 1999 (Public Law No. 105-277, 112 Stat. 2681 (1998)).

VII. Paperwork Reduction Act

No collection of information pursuant to section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.) is contained in this rule. Consequently, no information has been submitted to the Office of Management and Budget for review.

VIII. Riegle Community Development and Regulatory Improvement Act

The final rule does not impose any new reporting or disclosure requirements on insured depository institutions under the Riegle Community Development and Regulatory Improvement Act.

IX. Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106-102, 113 Stat. 1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The final rule makes part 329 plainer by eliminating unnecessary language.

X. Authority for the Regulation

This regulation is authorized by the FDIC's general rulemaking authority. Specifically, 12 U.S.C. 1819(a)(Tenth) provides the FDIC with general authority to issue such rules and regulations as it deems necessary to carry out the statutory mandates of the FDI Act and other laws that the FDIC is charged with administering or enforcing. Moreover, as previously noted, section 18(g) of the FDI Act provides that the FDIC shall make such exceptions to the statutory prohibition against the payment of interest on demand deposits as are prescribed with respect to demand deposits in member banks by section 19 of the Federal Reserve Act, as amended, or by regulation of the FRB (12 U.S.C. 1828(g)).

List of Subjects in 12 CFR Part 329

Banks, banking, interest rates.

For the reasons set out in the preamble, the Board of Directors of the FDIC hereby amends part 329 of title 12 of the Code of Federal Regulations as follows:

PART 329—INTEREST ON DEPOSITS

1. The authority for part 329 continues to read as follows:

Authority: 12 U.S.C. 1819, 1828(g), 1832(a).

2. § 329.1 is amended by revising paragraph (b) to read as follows:

§ 329.1 Definitions

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(b)***

(b)(3) Any other deposit from which, under the terms of the deposit contract, the depositor is authorized to make, during any month or statement cycle of at least four weeks, more than six transfers by means of a preauthorized or automatic transfer or telephonic (including data transmission) agreement, order or instruction, which transfers are made to another account of the depositor at the same bank, to the bank itself, or to a third party, *provided* that no deposit specified in this paragraph (3) will be deemed to be a demand deposit if the entire beneficial interest of the deposit is held by a depositor identified in paragraph (2) of section 2(a) of Pub. L. 93-100 (12 U.S.C. 1832(a)(2)).[1]

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[1] Paragraph (1) of 12 U.S.C. 1832(a) authorizes banks to let certain depositors make withdrawals from interest-bearing deposits by negotiable or transferable instruments for the purpose of making transfers to third parties--i.e., to hold deposits commonly called NOW accounts.

Paragraph (2) of 12 U.S.C. 1832(a) provides: "Paragraph (1) shall apply only with respect to deposits or accounts which consist solely of funds in which the entire beneficial interest is held by one or more individuals or by an organization which is operated primarily for religious, philanthropic, charitable, educational, political, or other similar purposes and which is not operated for profit, and with respect to deposits of public funds by an officer, employee, or agent of the United States, any State, county, municipality, or political subdivision thereof, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, Guam, any territory or possession of the United States, or any political subdivision thereof."

3. Section 329.102 is amended by revising the first sentence to read as follows:

§ 329.102 Deposits described in § 329.1(b)(3).

This interpretive rule explains the proviso of § 329.1(b)(3).

Dated this __th day of _______, 2009.

By order of the Board of Directors.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.

[FR Doc. __-_______ Filed __-__-__; am]

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