

FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

**Circular No. 80-209
November 5, 1980**

CATEGORIES OF DEPOSITORS ELIGIBLE TO MAINTAIN NOW ACCOUNTS

**TO ALL MEMBER BANKS
AND OTHERS CONCERNED IN THE
ELEVENTH FEDERAL RESERVE DISTRICT:**

The Board of Governors of the Federal Reserve System is making available information summarizing the categories of depositors eligible to maintain NOW accounts at member banks beginning December 31, 1980. This information is included in the Board's press release, information summary, and attachment printed on the following pages.

Information regarding advertising of NOW accounts and automatic transfer of funds was included in our Circulars Nos. 80-189, dated October 2, 1980 and 78-143, dated October 12, 1978, respectively.

Questions regarding categories of eligible depositors should be directed to the Consumer Affairs Section of our Bank Supervision and Regulations Department, Ext. 6169.

Sincerely yours,

Robert H. Boykin

First Vice President

Banks and others are encouraged to use the following incoming WATS numbers in contacting this Bank: 1-800-442-7140 (intrastate) and 1-800-527-9200 (interstate). For calls placed locally, please use 651 plus the extension referred to above.

FEDERAL RESERVE press release



For immediate release

October 20, 1980

In view of the fact that Negotiable Orders of Withdrawal (NOW) accounts may be offered by financial institutions in all parts of the nation beginning December 31, 1980, the staff of the Federal Reserve Board is making available the attached information summarizing the categories of depositors eligible to maintain NOW accounts at member banks.

In connection with this, there are also attached previous announcements concerning the advertising of NOW accounts and advertising of plans for the automatic transfer of funds from savings to checking accounts (ATS accounts).

The following categories of depositors are eligible to hold NOW accounts at member banks:

- individuals
- sole proprietors
- husband and wife operating unincorporated businesses
- local housing authority
- residential tenants' security deposits
- independent school districts
- redevelopment authority
- escrow funds (provided entire beneficial interest is held by individuals or qualifying organizations)
- labor unions
- trust and other fiduciary accounts (provided entire beneficial interest is held by individuals or qualifying organizations)
- pension funds
- trade associations

Summary of Depositors Eligible to Hold
NOW Accounts at Member Banks

Title III of the Depository Institutions Deregulation and Monetary Control Act of 1980 (P.L. 96-221) ("Act") authorizes depository institutions (except credit unions) nationwide effective December 31, 1980,

. . . to permit the owner of a deposit or account on which interest or dividends are paid to make withdrawals by negotiable or transferable instruments for the purpose of making transfers to third parties (section 303 of Title III of P.L. 96-221; 12 U.S.C. § 1832(a)(1)) ("NOW accounts") 1/.

Section 303 of the Act also provides that a NOW account must 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, or other similar purposes and which is not operated for profit. (Section 303(b) of Title III of P.L. 96-221; 12 U.S.C. § 1832(a)(2)).

Under Title II of the Act, the Depository Institutions Deregulation Committee ("DIDC") is authorized to establish an interest rate ceiling on NOW accounts that is applicable to all depository institutions authorized to offer such accounts. The DIDC has adopted a ceiling of 5-1/4 per cent on NOW accounts at all depository institutions effective December 31, 1980.^{2/} Since the definitional authority of the Board under section 19 of the Federal Reserve Act was not transferred to the DIDC, the Board retains the authority to rule on questions concerning the types of depositors eligible to maintain NOW accounts at member banks. The Federal Deposit Insurance Corporation and Federal Home Loan Bank Board retain similar authority for institutions subject to their jurisdiction.

Under the statute, NOW accounts are available only to individuals and to qualifying organizations. Qualifying organizations must meet two separate tests of eligibility. First, they must be operated primarily for "religious, philanthropic, charitable, educational, or other similar

1/ NOW accounts are currently permitted to be offered by depository institutions located in New England, New York, and New Jersey only.

2/ 12 C.F.R. § 1204.108. The current ceiling of 5 per cent applicable to NOW accounts offered by member banks in New England, New York, and New Jersey will remain in effect until December 31, 1980.

purposes;" second, they must not be operated for profit. This test is almost identical to the class of entities currently eligible under Regulation Q to maintain a NOW account in New England, New York and New Jersey. Regulation Q permits fraternal organizations to maintain NOW accounts; however, the statute omits fraternal organizations from the list of eligible NOW depositors. Since the statutory provisions were based on Regulation Q, it is believed that the omission of the term fraternal was unintentional and without significance. Accordingly, nonprofit organizations operated primarily for fraternal purposes, such as social and recreational clubs, will be regarded as within the scope of the statute consistent with the intent of Congress as to the type of entities eligible to maintain NOW accounts. Governmental units, even though not operated for profit, generally do not qualify to hold NOW accounts since they are not organizations operated primarily for a qualifying purpose. However, independent governmental entities that are separately constituted, such as school districts, most State university systems, and local housing and redevelopment authorities, are eligible to hold NOW accounts since they are operated primarily for a qualifying purpose. In addition, funds held in a fiduciary capacity may be classified as a NOW account so long as an individual (or individuals) or a qualifying organization has the entire beneficial interest in the funds. Thus, a profit-making organization could hold a NOW account as a trustee or other fiduciary for an entity that is qualified to hold a NOW account in its own capacity.

With reference to NOW account eligibility, the Federal Reserve has advised member banks in states where NOW accounts are already available that the class of depositors eligible to hold NOW accounts under the Act is virtually identical to the class of depositors eligible to hold savings deposits without limit (with the exception of governmental units). In this connection, the interpretations and opinions issued with respect to the class of depositors eligible to hold savings accounts without limit are illustrative of the classes of depositors eligible to hold NOW accounts under the Act and Regulation Q. A Board interpretation (§ 3105 of the Published Interpretations) regarding specific types of depositors eligible or ineligible to hold savings accounts, and thus NOW accounts, is attached for reference (Attachment A). In addition, Federal Reserve staff has made the following determinations specifically regarding NOW account eligibility or ineligibility.

Those generally found eligible to maintain NOW accounts at member banks include:

- individuals
- sole proprietors
- husband and wife operating unincorporated businesses
- local housing authority
- residential tenants' security deposits

- independent school districts
- redevelopment authority
- escrow funds (provided entire beneficial interest is held by individuals or qualifying organizations)
- labor unions
- trust and other fiduciary accounts (provided entire beneficial interest is held by individuals or qualifying organizations)
- pension funds
- trade associations

Those generally found ineligible to maintain NOW accounts at member banks include:

- realty or real estate investment trusts
- credit unions
- Blue Cross/Blue Shield and similar plans
- military exchanges and purchasing cooperatives
- hospital districts
- State and local governmental units (except those qualifying above)
- partnerships operated for profit
- professional corporations
- business corporations
- trustees in bankruptcy (unless entire beneficial interest in the bankrupt's funds is held by individuals or qualifying organizations)
- political parties or campaign committees

(Staff intends to present to the Board in the near future the issue of whether nonprofit hospitals should be permitted to maintain NOW accounts.)

On September 25, 1980, the Board announced the adoption of a policy statement concerning advertising by member banks of NOW accounts. The policy statement reminds member banks that are currently offering or preparing to offer NOW accounts that all NOW advertisements or solicitations are subject to the advertising requirements contained in section 217.6 of Regulation Q. The policy statement is attached for reference (Attachment B). It should be noted that the Federal Reserve does permit member banks to advertise NOW accounts as interest-bearing checking accounts.

Member banks that are offering automatic transfers of funds from savings to checking (ATS accounts) are reminded that such accounts under section 217.5(c) (2) of Regulation Q and section 302(a) of Title III of the Act, are available only to individuals (including sole proprietors) or to accounts in which the entire beneficial interest is held by an individual or individuals. Unlike NOW accounts, ATS accounts are not

available to non-profit organizations operated primarily for religious, philanthropic, charitable, educational or fraternal purposes. Member banks also are reminded that the advertising guidelines announced for ATS accounts on October 5, 1978, remain in force and should be adhered to in all advertising and promotional materials for ATS accounts. The guidelines generally provide that advertisements should indicate that ATS consists of two separate accounts and that ATS may not be advertised as an interest-bearing checking account (Attachment C). Staff believes that it is important to continue to distinguish between ATS and NOWs because reserve requirements on ATS balances are subject to the phase-in provisions of the Monetary Control Act, while NOW account balances outside New England, New York, and New Jersey are immediately subject to full reserve requirements.

Attachments

¶ 3105. **Deposits of certain organizations.**—The definition of savings deposits in Regulation Q, which relates to payment of interest on deposits, and in Regulation D, which relates to reserves of member banks, reads in part as follows:

"The term 'savings deposit' means a deposit, evidenced by a pass book, consisting of funds (i) deposited to the credit of one or more individuals, or of a corporation, association or other organization operated primarily for religious, philanthropic, charitable, educational, fraternal or other similar purposes and not operated for profit, or (ii) in which the entire beneficial interest is held by one or more individuals or by such a corporation, association or other organization, * * *

It will be noted that under this definition member banks may classify deposits of one or more individuals as savings deposits if the deposits comply in other respects with the regulation; but they may not classify deposits of any corporation, association or other organization as savings deposits unless (1) such organization is operated primarily for religious, philanthropic, charitable, educational, fraternal or other similar purposes; (2) such organization is not operated for profit; and (3) such deposits comply in other respects with the requirements of the regulation.

With respect to many organizations such as churches, charity hospital associations, fraternal orders and endowed educational institutions which are not operated for profit, no questions have arisen since such organizations are obviously operated for religious, philanthropic, charitable, educational, fraternal or other similar purposes. However, numerous questions have arisen as to whether deposits of certain other types of organizations which are near the border-line of the definition may be classified by member banks as savings deposits. The Board has given careful study to these questions and has reached the conclusion that the types of organizations set forth below may be considered to be operated primarily for religious, philanthropic, charitable, educational, fraternal or other similar purposes and, therefore, that deposits of such organizations may be classified by member banks as savings deposits if the organizations are not operated for profit and if the deposits otherwise comply with the requirements of the definition.

Professional associations, such as bar, medical, and dentists' associations.

Trade associations, including manufacturers' associations, retailers' associations, and chambers of commerce.

Business men's clubs, such as Rotary Clubs and Kiwanis Clubs.

Recreational clubs, such as golf and tennis clubs.

Social clubs, such as luncheon clubs and college fraternities.

Labor unions of the usual type.

Volunteer fire companies and ladies' auxiliaries thereof.

Cemetery associations.

School districts.

Police or firemen's pension or relief associations (including a special fund held by a political subdivision to provide pensions for police or firemen).

American Automobile Association, Retired Officers Association, and other similar organizations.

The Board has also reached the conclusion that deposits of the organizations listed below may not be classified by member banks as savings deposits either because the organizations are not operated primarily for religious, philanthropic, charitable, educational, fraternal or other similar purposes or because they are operated for profit.

Building and loan associations.

Mutual or cooperative fire or life insurance associations.

Reciprocal or inter-insurance associations.

Cooperative marketing associations, such as citrus growers or dairymen's cooperative marketing associations.

Credit unions, Federal or State.

States and municipalities and other political subdivisions thereof (except school districts) including departments, boards, and commissions of such political subdivisions.

Although deposits of the types of organizations listed immediately above may not be classified by member banks as savings deposits for the purpose of payment of interest or of computation of reserves, attention is invited to the fact that any of such organizations may maintain time deposits with member banks. With respect to such deposits, which may be either in the form of time certificates of deposit or time deposits open account, member banks may pay interest in accordance with the provisions of Regulation Q and maintain reserves in accordance with the provisions of Regulation D relating to time deposits.

The above lists of organizations which may or may not maintain savings deposits in member banks are not intended to be complete but merely contain examples compiled from various cases which have been submitted to the Board. Any necessary inquiry as to the proper classification of other organizations for this purpose should be submitted directly to the Federal Reserve Bank of the district in which the inquiry arises rather than to the Board. The Federal Reserve Banks will, in so far as possible, answer such questions in the light of the illustrative cases stated above. 1937 BULLETIN 1073.