FEDERAL RESERVE BANK OF DALLAS

DALLAS, TEXAS 75222

Circular No. 82-159
December 6, 1982

DEPOSITORY INSTITUTIONS DEREGULATION COMMITTEE

MONEY MARKET DEPOSIT ACCOUNT

(Final Rule)

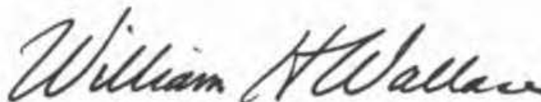
TO ALL MEMBER BANKS
AND OTHERS CONCERNED IN THE
ELEVENTH FEDERAL RESERVE DISTRICT:

The Depository Institutions Deregulation Committee (DIDC) has released final regulations on the new money market deposit account. This account is authorized by the recently enacted Garn-St. Germain Depository Institutions Act of 1982.

Attached are copies of the DIDC's press release and the material as submitted for publication in the Federal Register. Questions regarding the material contained in this circular should be directed to this Bank's Legal Department, Extension 6171.

Additional copies of this circular will be furnished upon request to the Department of Communications, Financial and Community Affairs, Extension 6289.

Sincerely yours,



William H. Wallace
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.

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DEPOSITORY INSTITUTIONS DEREGULATION COMMITTEE
Washington, D.C. 20220

PRESS RELEASE November 24, 1982

Regulations for the
Money Market Deposit Account

The DIDC released today the final regulations on the new money market deposit account mandated by the Garn-St Germain Depository Institutions Act of 1982. The new account can be offered by Federally insured commercial banks, savings and loan associations and mutual savings banks beginning December 14, 1982.

The regulation and explanatory information are attached.

Attachment

DEPOSITORY INSTITUTIONS DEREGULATION COMMITTEE

12 C.F.R. Part 1204

(Docket No. D-0026)

Money Market Deposit Account

AGENCY: Depository Institutions Deregulation Committee.

ACTION: Final Rule.

SUMMARY: The Depository Institutions Deregulation Committee ("Committee") has established a new deposit account as required by the Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97-320 ("Garn-St Germain Act" or "Act"). This new account will be an insured deposit account under 12 U.S.C. §§ 1726 and 1813. The new deposit account has the following principal characteristics: (1) an initial deposit of no less than $2,500; (2) an average balance requirement of no less than $2,500 where the average balance may be computed over any period up to one month at a depository institution's discretion; (3) no minimum maturity requirement; (4) a requirement that depository institutions reserve the right to require at least seven days notice prior to withdrawal or transfer of funds; (5) no interest rate ceiling on deposits which satisfy the initial and average balance requirements; (6) a ceiling equal to the NOW account rate ceiling for deposits which do not meet the average balance requirement; (7) no more than six preauthorized, automatic or other third party transfers per month, of which no more than three can be checks; and (8) availability to all depositors.

EFFECTIVE DATE: December 14, 1982.

FOR FURTHER INFORMATION CONTACT: Alan Priest, Attorney, Office of the Comptroller of the Currency (202/447-1880); F. Douglas Birdzell, Counsel, and Joseph A. DiNuzzo, Attorney, Federal Deposit Insurance Corporation (202/389-4147); Rebecca Laird, Senior Associate General Counsel, Federal Home Loan Bank Board (202/377-6446); Paul S. Pilecki, Senior Attorney, Board of Governors of the Federal Reserve System (202/452-3281); or Elaine Boutilier, Attorney-Adviser, Treasury Department (202/566-8737).

LIST OF SUBJECTS IN 12 CFR Part 1204: Banks, banking.

SUPPLEMENTARY INFORMATION: The Depository Institutions Deregulation Act of 1980 (Title II of P.L. No. 96-221; 12 U.S.C. §§ 3501 *et seq.*) ("DIDA") was enacted to provide for the orderly phase out and ultimate elimination of the limitations on the maximum rates of interest and dividends that may be paid on

deposit accounts by depository institutions as rapidly as economic conditions warrant. Under DIDA, the Committee is authorized to phase out interest rate ceilings by any one of a number of methods including the creation of new account categories not subject to interest rate limitations or with interest rate ceilings set at market rates of interest.

The DIDA was amended by section 327 of the Garn-St Germain Act. That Act requires the Committee to "issue a regulation authorizing a new deposit account, effective no later than [December 14, 1982]." The Act also provides that the new account "shall be directly equivalent to and competitive with money market mutual funds registered with the Securities and Exchange Commission under the Investment Company Act of 1940." The Act further provides that "[n]o limitation on the maximum rate or rates of interest payable on deposit accounts shall apply to the [new] account." Finally, the Act provides that the new account "shall not be subject to transaction account reserves, even though no minimum maturity is required, and even though up to three preauthorized or automatic transfers and three transfers to third parties are permitted monthly."

The Committee requested comments on the new account required by the Garn-St Germain Act. 47 Fed. Reg. 46530 (October 19, 1982). The comments are summarized below.

Comments

On October 19, 1982, the Committee published in the Federal Register a request for comments on the new account. The Act requires the Committee to issue a regulation that authorizes the new account effective no later than December 14, 1982. Thus, in order to permit the Committee to analyze the comments, and to permit adequate time for depository institutions to be able to offer the new account by December 14, 1982, the request for comments stated that comments must be received by November 3, 1982. The request for comments listed a number of specific issues upon which comments were solicited. It also solicited comment on any other aspect of the account which the public wished to address, particularly with respect to characteristics that would make the account "directly equivalent to and competitive with" money market funds.

The Committee received 1,227 comment letters by November 3, 1982. An additional 233 letters were received after that date and considered by the Committee at its public meeting on November 15, 1982. The commenters included 904 commercial banks and bank holding companies, 347 savings and loan associations, 67 mutual savings banks, 4 credit unions, 18 state and federal regulators, 5 money market mutual funds and related institutions, 39 depository institution trade associations and 76 individuals or other businesses.

A great majority of the commenters expressed strong support for the creation of the new account under the Garn-St Germain Act that would allow depository institutions to compete more effectively with money market funds. A significant number of commenters urged the Committee not to limit the account's competitiveness and marketability through excessive regulation of its features. Although support for the general concept of the new competitive account was very strong, some commenters did express serious concerns. For example, a number of commenters felt that federal deposit insurance on the new account might give depository institutions a competitive advantage over money market funds. Similarly, at least one commenter felt that depository institutions would have a competitive advantage over money market funds if no restrictions were imposed on the interest payable on the new account. Other commenters expressed concern that the cost to depository institutions of shifts of funds from lower yielding deposit accounts to the new account might weaken some depository institutions. Most commenters who expressed the above concerns urged the Committee to meet those concerns through appropriate structuring of the new account.

In addition to giving their general appraisals of the new account, most commenters addressed the specific issues upon which the Committee solicited comments. The first of these issues is the appropriate minimum initial deposit requirement (if any) regarding the new account. There was no general consensus on this issue. Approximately 60 percent of the commercial bank commenters felt that the required initial deposit should be under $5,000. Banks expressing this preference were divided as to whether the account minimum should be left to each institution's discretion or established (generally in the amount of $2,500) by the Committee. Approximately 22 percent of the thrift institution commenters supported institutional discretion, over half supported a minimum less than or equal to $3,000 (generally at the $2,500 level), and 26 percent supported an account minimum over $3,000 (with $5,000 the most common preference of this group). There was no consensus regarding the initial minimum balance among individuals and businesses, trade association or money market fund related commenters. However, individuals and businesses most frequently cited a preference for institutional discretion on this issue.

The most common concern cited in justifying a high minimum balance was the cost impact of funds internally shifting out of low yielding savings accounts into the new higher yielding account. Those advocating a lower minimum denomination often mentioned the need for the account to be competitive with money market funds because those funds typically have low minimums.

The Committee also solicited comments on a minimum maintenance balance. Often citing a desire for account simplicity, a majority of all commenters (including 62 percent of the depository institutions and 70 percent of the trade associations) indicated that the minimum maintenance balance should be the same as the minimum amount required to open the account. However, regulators, money market funds, and individuals and other businesses tended to support institutional discretion regarding maintenance balances. Those commenters that supported a maintenance balance different from any minimum initial balance often noted that money market funds generally allow investors' balances to decline below their initial required investment without penalty.

Comment was also specifically solicited on whether institutions should be required to pay a lower rate on deposits which fall below any minimum maintenance balance the Committee may impose. Sixty five percent of the depository institution commenters and a majority of individuals supported a mandatory lower rate on balances below any required maintenance balance. Many of these commenters indicated that the cost of maintaining small accounts with transaction features would warrant a lower interest rate. In contrast, a majority of regulators favored leaving the rate payable on balances under any maintenance balance to the discretion of depository institutions. Those favoring this approach often noted that money market funds do not pay a lower rate on small accounts.

In response to the Committee's request for comment on a minimum draft denomination requirement, a majority of commercial banks and savings and loan associations stated that this was a matter that should be left to a depository institution's discretion. This view was also shared by over 40 percent of the mutual savings banks and large majorities of regulators, trade associations and individuals. In contrast, money market mutual funds were in favor of a minimum draft denomination requirement. Those opposed to such a requirement asserted that it would be difficult to enforce, would be unnecessary given expected numerical limitations on transactions, and would be noncompetitive with money market funds because those funds are free to set any minimum denomination. Those favoring the requirement often cited their perception that a $500 minimum check denomination is generally required by money market mutual funds.

Regarding the desirability of a requirement that institutions reserve the right to require seven days (or some other time period) notice prior to withdrawal from the account, 58 percent of all depository institution commenters were opposed to such a

requirement. A substantial majority of all other classes of commenters, with the exception of money market funds and individuals, also opposed the requirement. However, some of these commenters appear to have mistakenly believed that the issue was whether depository institutions must require prior notice for withdrawals. Those who understood that the issue involved only reserving the right to require notice most often indicated that the requirement would be perceived by depositors as restricting the liquidity of the account. Some of those commenters favoring the requirement noted that it would provide depository institutions with a mechanism which may be needed in extraordinary circumstances. They noted that, given the remote possibility of such circumstances, the right to require notice would probably never be exercised.

Commenters were divided on the issue of whether loans to a depositor should be permitted for the purpose of allowing the depositor to meet any initial deposit requirement. Regulators, trade associations and a slight majority of commercial banks thought such loans should be permitted, while money market funds and 75 percent of the thrifts thought such loans should not be permitted. Those favoring the loans noted that money market funds are subject to no loan restrictions and further stated that any prohibition on loans would be difficult to enforce. Those opposed to the loans felt they would undermine any minimum initial deposit requirement the Committee may adopt.

Regarding the issue of additional deposits into the account, including sweeps from other accounts, substantial majorities of all categories of commenters stated that no such restrictions should be imposed.

The Committee also requested comments on the establishment of a maximum maturity requirement on the account and on the imposition of restrictions on the maximum time period a depository institution could guarantee an interest rate. Commenters as a whole were strongly opposed to a required maximum maturity. However, results were mixed regarding the issue of a maximum period for which a rate of interest could be guaranteed. Money market funds and mutual savings bank trade groups unanimously favored such a restriction and a majority of mutual savings banks shared this view. In contrast, a majority of commercial banks, regulators, thrifts, trade associations and individuals preferred no restriction. Those favoring the restriction most frequently mentioned a maximum rate guarantee period of seven days, but many favoring the restriction suggested either from 7 to 30 days or 30 days or more. Those favoring the restriction felt that, if it were not imposed, all interest rate regulated accounts would be effectively deregulated. Those opposing the restriction stated that its absence would assist asset/liability management, provide flexibility and enhance the competitiveness of the new account.

The request for comments also included the issue of appropriate enforcement requirements regarding any monthly numerical limits the Committee may establish concerning transactions on the account. The Committee specifically requested comments on the desirability of monitoring accounts on an ex post basis, the appropriate definition of month, and whether the date on which a draft is written or the date on which it is paid by an institution should control for purposes of any monthly limit on the number of drafts. A large majority of commenters favored enforcement through ex post monitoring. However, there was also significant support for leaving the enforcement method to an institution's discretion. Finally, 12 percent of the commenters favored a requirement that all drafts over a numerical limit be dishonored. Often citing the processing difficulties involved in reading the date of a draft, two thirds of the commenters indicated a preference for using the date of payment, rather than the date a draft is written, for monitoring compliance. However, some commenters noted that use of the date of payment might cause inadvertent violations of a numerical limit where payees held checks for substantial periods prior to obtaining payment. Roughly one fourth of the commenters indicated that the institution should be able to choose either the date on which a draft is written or the date upon which it is paid. With regard to the definition of month for compliance purposes, no consensus was reached. A slight plurality of commenters favored a statement cycle, but institutional discretion and the calendar month were also strongly supported.

The Committee also requested comments on whether any restrictions should be established regarding overdraft credit arrangements offered in connection with the new account. Often citing the need for flexibility and competitiveness, a majority of depository institutions, regulators, trade associations and individuals opposed any restriction on overdraft arrangements. However, money market funds took the opposite position. Those commenters favoring a restriction indicated that the new account is not a transaction account and, therefore, the accommodation of overdrafts would be inappropriate.

The request for comment asked whether the Committee should allow unlimited withdrawals by mail, telephone, messenger, or in person. The request for comments noted in this regard that it was the opinion of the Committee's staff that telephone transfers should be regarded as preauthorized transfers if the transfer is to a third person or to another deposit account of the same depositor. Over 70 percent of the commenters favored unlimited withdrawals of the type specified in the request for comments. In addition, many commenters disagreed with the staff's opinion that telephone transfers from the new account to another account of the same depositor should be considered as preauthorized transfers.

Regarding whether 30 days (or some other period) would be sufficient lead time for institutions to implement operational changes for the new account, commenters were almost evenly divided. Many commenters noted that the time needed would be directly related to the degree of complexity of the Committee's implementing regulations.

Discussion of Account Features

After carefully considering the public's comments and giving particular attention to the Act's requirement that the new account be directly equivalent to and competitive with money market funds, the Committee determined the characteristics of the new account. These characteristics are discussed below.

Interest Rate Ceiling

Section 327 of the Act provides that "[n]o limitation on the maximum rate or rates of interest on deposit accounts shall apply to the account. . . ." Based on this clear and explicit legislative guidance, and additional corroborative legislative history, the Committee determined to impose no limitation on the maximum rate of interest that can be paid on deposits in the new account which meet the minimum balance requirements discussed below.

Notably, despite the clear guidance in the Act and its legislative history regarding interest rate ceilings, at least one commenter suggested that the Committee should impose limits on the amount of interest that can be paid on the new account. The commenter noted that a money market fund must pay a yield which reflects the return on its portfolio minus appropriate fees. The commenter suggested that, given this fact, a ceilingless account would be inconsistent with the Act's requirement that the new account be "directly equivalent to and competitive with money market mutual funds." This commenter suggested that a ceiling should be imposed whether or not the account was insured.

Whether or not the Committee has discretion to impose an interest rate ceiling on the new account, it is clear from the language of the Act and its legislative history that Congress plainly envisioned that no ceiling would apply to the new account. The Committee finds no inconsistency or conflict between the determination not to impose a ceiling and the requirement of the Act that the account be directly equivalent to and competitive with money market funds. Therefore, the Committee's decision to impose no limit on the rate of interest that can be paid on the new account is clearly appropriate under, and consistent with, the Act.

Minimum Balance Requirements

Although the Act does not specify a required minimum denomination, the Conference Report (S. Rep. No. 641, 97th Cong., 2d Sess. (1982)) and other legislative history indicate a Congressional intent that the minimum not exceed $5,000. As noted earlier, the public's comments on the account did not indicate a consensus on the question of a required initial balance. However, there was considerable support for $5,000, $2,500 and no required minimum balance. Notably, information available to the Committee indicates that, although not legally required to do so, 59 percent of money market funds have minimum balance requirements of $1,000 or less and 85 percent have minimum balance requirements of $3,000 or less.

The Committee determined to impose an initial balance requirement on the new account of $2,500. Depository institutions are free to establish higher minimums if they wish. In reaching this determination, the Committee took into consideration, among other things, the public comments, the above noted practices of money market funds and the potential earnings impact on depository institutions posed by internal shifts in their deposits from lower yielding accounts to the higher yielding Money Market Deposit Account. The Committee believes that a minimum initial deposit requirement of $2,500 will allow depository institutions to compete effectively with money market funds without unduly affecting their costs.

For much the same reasons as those which led to the decision to set a minimum initial balance requirement, the Committee has established a minimum balance requirement of $2,500 for funds maintained in the new account. As with the minimum initial balance requirement, depository institutions are free to set higher balance requirements if they wish. In considering what minimum balance requirement is appropriate for the new account, the Committee considered, among other things, the fact that money market funds typically permit shareholders to maintain balances well below their required minimum initial balance and still earn a market rate of interest. However, the Committee also considered the fact that two thirds of the commenters, often citing the need for operational simplicity, favored a required minimum balance that was the same as any required minimum initial deposit. There was not a substantial number of commenters supporting a minimum balance lower than any initial deposit requirement. Given this fact, and its belief that a $2,500 minimum balance requirement will still allow depository institutions to compete with money market funds, the Committee determined that the account will have a required minimum balance of $2,500.

Averaging the Balance

In order to permit flexibility to depository institutions, the Committee determined to allow each institution to determine compliance with the minimum balance requirement (but not the minimum initial balance requirement) by using an average daily balance calculated over any computation period it chooses, such as one day, one week or one month, provided that such a computation period is no longer than one month. Thus, for example, an institution could choose to determine compliance with the minimum balance requirement through the use of a one week computation period. A depositor will have met the requirement if the average daily balance in the account during the one week computation period is equal to or above $2,500.

In order to make the minimum balance requirement effective, the Committee has determined that a ceiling rate of interest no higher than the institution's NOW account ceiling rate (currently 5 1/4 percent) will be imposed on accounts which fail to meet the $2,500 minimum balance requirement. Institutions may pay a lower rate if they choose. A majority of commenters favored such a penalty rate. The NOW account ceiling rate will apply for the entire computation period in which the average balance in the account is less than $2,500. For example, an institution which uses an average balance computed over a seven day period must pay a depositor a rate not in excess of the NOW account ceiling rate for the entire seven day period if the depositor's average daily balance during that seven day period was less than $2,500. Depending on the computation period chosen and the interest crediting practices of the institution, the lower rate may have to be imposed on an *ex post* basis.

A few commenters expressed concern that the requirement of a penalty rate of interest might be in violation of the statutory mandate that the account be ceilingless. The Committee does not believe this to be the case. It notes that Congress left it within the Committee's discretion to establish an account with a minimum balance, which could be as high as $5,000. The Committee believes that Congress mandated only that no interest rate ceiling should apply to accounts that meet any such requirement, if established. Therefore, the Committee believes that it has acted within its authority, and has provided additional flexibility to institutions, by providing for the account to pay a penalty rate of interest on balances below the $2,500 required balance chosen by the Committee.

Maturity

Section 327 of the Garn-St Germain Act provides that the account will not be subject to transaction account reserve requirements "even though no minimum maturity is required." The creation of

this exception to the transaction account reserve requirements strongly suggests that Congress intended that the Committee establish the new account without imposing a minimum maturity. This intent is also indicated by the requirement of section 327 that the account be "directly equivalent to and competitive with money market mutual funds." Money market funds generally do not establish a minimum maturity and are not required to do so by law or regulation. Finally, that Congress intended the account to have no minimum maturity is supported by the Senate Report, which states that the account "should have no minimum maturity." S. Rep. No. 536, 97th Cong., 2d Sess. 19 (1982).

The Committee carefully considered the above legislative language and history regarding Congressional intent on the issue of minimum maturity. The Committee determined that the establishment of a minimum maturity would be inconsistent with Congressional intent and would not result in an account directly equivalent to and competitive with money market funds. Therefore, the Committee determined to impose no minimum maturity on the account.

The Committee did determine, however, to prevent depository institutions from effectively offering the account as a long-term deposit. The Committee determined to impose a maximum limitation of one month on the length of time a depository institution may commit itself to pay any rate of interest or commit itself to employ any method of calculation of the rate of interest on the new account. The Committee also determined to prohibit an institution from conditioning the rate of interest paid or the method of calculation of the rate of interest paid on the new account on the length of time a deposit is maintained, if that length of time is longer than one month. Accordingly, a depository institution may not obligate itself to pay the 91-day Treasury bill rate for a period of six months. Nor may a depository institution, in effect, guarantee a specified or indexed rate of interest for over one month by agreeing to pay a rate (e.g., 30%) for one month on the condition that the deposit will be maintained for over one month (e.g., 90 days). In establishing these limitations, the Committee recognized that an institution does have the latitude to establish a maturity of one month or less on the account.

In establishing the above described limitations, the Committee noted that approximately three fifths of the commenters did not favor a limitation on the guarantee of a rate, and over 90 percent of the commenters preferred no limitation on the maturity of the account. However, the Committee also noted that money market funds are not empowered to guarantee a rate of return on investments. For this reason, and the fact that allowing depository institutions to guarantee a rate for over one month could effectively deregulate virtually all deposit accounts now subject to interest rate ceilings, the Committee established the above described limitations.

Reservation of Notice

The Committee imposed a requirement that institutions reserve the right to require seven days prior notice of withdrawals or transfers from the new account. The Committee believes that this is not inconsistent with the previously discussed Congressional intent that the account have no minimum maturity. This is because the Committee did not provide that institutions must require prior notice for transactions or withdrawals. Rather, the Committee merely provided that institutions must reserve the right to require such prior notice. The Committee determined that if an institution chooses to exercise its right to require notice, it must apply that requirement equally to all depositors that maintain the new account.

In establishing a reservation of notice requirement, the Committee noted that a majority of respondents to the Committee's request for comments did not believe that a required reservation of notice was needed and, therefore, did not favor such a requirement. However, under the Investment Company Act of 1940, money market funds may delay redemptions of shares for up to seven days. This is similar to the current regulatory requirement that depository institutions reserve the right to require notice of withdrawals from savings deposits and NOW accounts. Such a reservation requirement distinguishes the new account from demand deposit accounts upon which (under current law) interest may not be paid. For these reasons, and to give institutions a degree of flexibility in unusual circumstances, the Committee established the above described reservation of notice requirement. Based on experience with savings deposits, it is likely that such a notice requirement will be exercised only under extreme circumstances.

Transaction Features

Section 327 of the Act provides that the new account will not be subject to transaction account reserve requirements "even though up to three preauthorized or automatic transfers and three transfers to third parties are permitted monthly." The creation of this exception to the Federal Reserve Board's transaction account reserve requirements strongly suggests that Congress intended the Committee to establish the account with at least such transaction features.

Under current industry practice, and under the rules of relevant regulatory agencies, preauthorized and automatic transfers include transfers of funds to a third party as well as transfers of funds to another account of the depositor if such transfers are effected pursuant to an agreement made in advance or an

arrangement to pay a third party or transfer funds to another account at a predetermined time or on a fixed schedule. For example, a transfer made pursuant to an agreement between a depository institution and its customer that funds would be transferred from one account to another at a specified interval (*e.g.*, the 10th, 20th and 30th of each month) or used to pay specific or recurrent charges (*e.g.*, a mortgage or insurance payment) would be a preauthorized or automatic transfer. However, the Committee has determined that telephone transfers made to another account of the depositor in the same institution will not be considered under this regulation as preauthorized or automatic transfers.

The Act provides no guidance as to the meaning of the phrase "transfers to third parties." However, the Act's legislative history clearly indicates that the language was intended to include checks. The Committee determined that, under the new account, third party transfers can be checks or any transfer that could be effected by means of an automatic or preauthorized transfer.

For the present time, the Committee decided to authorize an account with transaction features limited to those suggested by the Act's reference to three preauthorized or automatic transfers and three third party transfers per month. Given the previously discussed definition of those terms, depository institutions must restrict preauthorized or automatic transfers from the new account to other accounts of the depositor or to third parties to a maximum of six transfers per month, of which no more than three can be checks. However, this regulation imposes no limit on the number of telephone transfers from the new account to another account of the same depositor at the same depository institution. It is noted, however, that the question of such unlimited telephone transfers will be reconsidered at the Committee's next meeting. Depository institutions are, therefore, advised that, in the future, unlimited telephone transfers from the new account to other accounts of the same customer may not be permitted.

In establishing the monthly numerical limits on permissible transactions, the Committee recognized that money market funds do not impose numerical restrictions on transactions. However, the Committee believes that it is appropriate to authorize the new account at this time with the above described limited transaction features and to consider at its next meeting whether to offer an account with more extensive third party payment capabilities. The Committee notes that institutions are free to offer the new account with more limited (or no) transaction features if they so desire.

Although the Committee limited the number of checks under the new account, it imposed no minimum denomination concerning those checks. It notes that, although money market funds commonly impose such requirements, they are not required to do so, but rather do so as a matter of choice. The Committee determined to give depository institutions this same flexibility. A majority of the responses to the Committee's request for comments on this issue favored giving institutions this flexibility.

For reasons similar to those outlined above concerning checks, the Committee also imposed no minimum denomination requirement concerning preauthorized or automatic transfers. As with the minimum denomination of checks, institutions are free to use their discretion as to what minimum denomination requirements (if any) they wish to impose concerning preauthorized or automatic transfers.

Although, as discussed above, the Committee established limitations on automatic and preauthorized transfers of funds in the new account, the Committee imposed no limitations on the size or frequency of withdrawals from the account, or transfers from the account to other accounts of the same depositor where such withdrawals or transfers are effected by mail, telephone, messenger, automated teller machine or in person. For purposes of this regulation, a withdrawal means the receipt by a depositor of direct payment from a depository institution of funds he has deposited in that institution.

Additions to the Account

The Committee determined to impose no restrictions on the size or frequency of additions to the new account, including additions effected by sweeps from other accounts into the new account. A substantial majority of all commenters were opposed to such restrictions.

Availability to All Depositors

The Act does not specify which persons or entities are eligible for the new account. However, the Senate Report indicates that the account shall be available to all depository institution customers. S. Rep. No. 536, 97th Cong., 2d Sess. 19 (1982). Other legislative history provides an equally clear indication that this was the Congressional intent. See 128 Cong. Rec. H8436 (daily ed. Oct. 1, 1982)(remarks of Reps. Stanton and St Germain). Furthermore, money market mutual funds are not restricted as to the types of entities from whom they may accept funds and the Act states that the new account "shall be directly equivalent to and competitive with" such funds. Given these facts, the Committee determined that the institutions can make the account available to all persons and entities.

Compliance Related Provisions

The Committee adopted a number of compliance related provisions regarding the new account. In order to ensure compliance with the account's minimum initial deposit and balance requirements, the Committee prohibited loans for the purpose of meeting those requirements. A slight majority of commenters on this issue favored such a prohibition. Similarly, in order to preserve the efficacy of the previously described numerical limits on preauthorized or automatic transfers and checks, the Committee provided that the rate of interest, or other fees, on an overdraft credit arrangement on an account to which withdrawals from the new account can be paid must not be less than those imposed on overdraft arrangements of customers who do not have deposits in the new account. The Committee noted that almost two thirds of the commenters on this issue did not favor such a provision. However, the Committee believes that the provision is necessary in order to discourage account arrangements which would circumvent the numerical limit on the new account's transactional capacities. The Committee notes that the provision relates only to fees or other charges on an account to which withdrawals from the new account can be paid. It does not govern the fees that a depository institution may wish to impose regarding overdrafts on the new account.

The previously discussed rules adopted by the Committee regarding the new account contain several requirements expressed in monthly terms (*e.g.*, the monthly numerical restrictions on transactions, the monthly limit on agreements to pay any interest rate, and the permissible use of an average monthly balance for maintenance balance purposes.) To provide institutions with a maximum degree of flexibility, the Committee provided that, for purposes of compliance with its rules for the new account which are expressed in monthly terms, an institution may use either the calendar month or a statement cycle of at least four weeks, but not longer than 31 days. However, it is noted that an institution must consistently utilize either the calender month or a particular statement cycle.

Similarly, the Committee decided to give institutions the option of using either the date written on a check or the date on which a check is paid for purposes of determining compliance with the limit of three checks per month. It is noted, however, that an institution must consistently adhere to the use of one date or the other. For example, an institution which has chosen to utilize the date of payment method may not count one check as of the day it was written in order to circumvent the three checks per month limit.

Finally, the Committee adopted a requirement which provides that institutions must either prevent transactions in excess of the numerical limitations adopted by the Committee or adopt procedures to monitor accounts on an ex post basis and contact depositors who exceed those limits on more than an occasional basis. For depositors who continue to violate the limits on transactions after being contacted, institutions will be required to either close the account or take away the account's transfer and draft capacity. A large majority of commenters favored enforcement through ex post monitoring. The Committee notes in this regard that the above described enforcement requirement establishes only the minimum a depository institution must do to avoid permitting transactions in excess of those allowed on the new account. An institution is free to impose additional measures, such as a service charge for checks over the three per month limit.

Effective Date

The Garn-St Germain Act requires that this regulation authorizing the new account be effective no later than December 14, 1982. At its public meeting held November 15, 1982 (29 days prior to December 14), the Committee voted to authorize the account. Later the same day, the Committee issued a press release which announced and described the new account.

Notably, approximately one half of the comment letters received by the Committee indicated that 30 days would be sufficient lead time for institutions to implement the account; the other half felt that more lead time would be required. Given the requirements of the Act and the commenters' opinions regarding the account's effective date, the Committee determined to make this regulation effective, and thus the account available, on December 14, 1982.

In deciding to make this regulation effective on December 14, 1982, the Committee was aware that the Administrative Procedure Act (5 U.S.C. § 553(d)) generally requires a regulation to be published in the Federal Register at least 30 days prior to its effective date unless the regulation is excepted from this requirement. The Committee determined that two exceptions in the Administrative Procedure Act apply to this regulation. First, the Administrative Procedure Act excepts from the 30-day delayed effectiveness requirement a substantive rule which "relieves a restriction." 5 U.S.C. § 553(d)(1). The Committee is of the opinion that this regulation is such a rule since it will remove numerous restrictions on depository institutions with respect to the deposit services they may offer their customers. The Senate Report is replete with references to the way interest rate ceilings and other regulatory limitations have disadvantaged depository institutions in their ability to compete for consumer savings with less regulated entities. By authorizing the new account, this regulation clearly relieves many of those restrictions.

The Administrative Procedure Act also excepts from the 30-day delayed effectiveness requirement a rule where an agency finds "for good cause" that the rule should be published with less than a 30-day delayed effectiveness. The Committee determined for good cause that this regulation should be effective on December 14, 1982. The Committee relied on several factors in making this determination. First, the Garn-St Germain Act specifically states that the regulation is to be effective no later than 60 days after enactment, i.e., no later than December 14, 1982. Second, that Act's legislative history makes it clear, not only that the regulation is to be effective no later than December 14, 1982, but that the account is to be available to customers no later than that date. Third, the legislative history also indicates that the new account is to be available no later than that date so that depository institutions can begin to stem the outflows of their deposits. Finally, depository institutions have had advance notice, including the notice supplied by the Committee's October 19, 1982, request for comments and the Committee's November 15, 1982, press release, that the regulation would be effective no later than December 14, 1982.

The Committee considered the potential effect on small entities of its establishment of the new deposit account, as required by the Regulatory Flexibility Act (5 U.S.C. § 601 et seq.). In this regard, the Committee's action, in and of itself, imposes no new reporting or recordkeeping requirements. Consistent with the Committee's statutory mandate to eliminate deposit interest rate ceilings, its establishment of the new account enables all depository institutions to compete more effectively in the marketplace for short-term funds. Depositors generally should benefit from the Committee's action since the new instrument provides them with another investment alternative that pays a market rate of return. If low-yielding deposits shift into the new account, depository institutions may experience increased costs as a result of this action. However, their competitive position vis-a-vis nondepository competitors is enhanced by their ability to offer a competitive short-term instrument at market rates. The new funds attracted by the new instrument (as well as the funds in existing accounts that might otherwise have left the institution) can be invested at a positive spread and may, therefore, at least partially offset the higher costs associated with the shifting of low-yielding accounts.

Pursuant to its authority under Title II of Pub. L. No. 96-221 (94 Stat. 142; 12 U.S.C. § 3501 et seq.) to prescribe rules governing the payment of interest and dividends on deposits and accounts of federally insured commercial banks, savings and loan associations, and mutual savings banks, and pursuant to the authority granted by section 327 of the Garn-St Germain Depository Institutions Act of 1982, Pub. L. No. 97-320 (to be

codified at 12 U.S.C. § 3503), the Committee amends Part 1204 (Interest on Deposits) by adding a new § 1204.122, effective December 14, 1982, to read as follows:

1204.122 Money Market Deposit Account

(a) Commercial banks, mutual savings banks, and savings and loan associations ("depository institutions") may pay interest at any rate on a deposit account as described in this section with an initial balance of no less than $2,500 and an average deposit balance (as computed in paragraph (b) of this section) of no less than $2,500. However, for an account with an average balance of less than $2,500, a depository institution shall not pay interest in excess of the ceiling rate for NOW accounts (12 C.F.R. § 1204.108) for the entire computation period, as described in paragraph (b) of this section.

(b) The average balance for this account may be calculated on the basis of the average daily balance over any computation period selected by an institution, which is not longer than one month. (For purposes of this paragraph and paragraphs (c) and (e) of this section, a "month" shall mean, at a depository institution's option, either a calendar month or a statement cycle of at least four weeks but no longer than 31 days.)

(c) A depository institution is not required to establish a maturity on this account. However, it may do so provided that the maturity is no longer than one month. Furthermore, a depository institution may not obligate itself to pay any interest rate or obligate itself to employ any method of calculation of an interest rate on this account for a period longer than one month. A depository institution may not condition the interest rate paid or the method of calculation of the interest rate paid upon the period of time funds remain on deposit in this account, if that period is longer than one month.

(d) Depository institutions must reserve the right to require at least seven days notice prior to withdrawal or transfer of any funds in this account. If such a requirement for a notice period is imposed by a depository institution on one depositor, it must be applied equally to all other depositors holding this account at the same institution.

(e) (1) Depository institutions are not required to limit the number of transfers of funds from this account to another account of the same depositor, or the number of withdrawals (*i.e.*, payments directly to the depositor), when such transfers or withdrawals are made by mail, telephone, messenger, automated teller machine or in person. Depository institutions must

restrict all preauthorized (including automatic) transfers of funds from this account to a maximum of six per month. Three of such transfers may be by check, draft or similar device drawn by the depositor to third parties. Telephone transfers to third parties are regarded as preauthorized transfers. There is no required minimum denomination for the transfers allowed by this section.

(2) In order to ensure that no more than the permitted number of transfers are made, depository institutions must either:

(i) prevent transfers of funds in this account which are in excess of the limits established by this paragraph, or

(ii) adopt procedures to monitor those transfers on an *ex post* basis and contact customers who exceed the limits established by this paragraph on more than an occasional basis. For customers who continue to violate those limits after being contacted by the depository institution, the institution will be required to either close the account or take away the account's transfer and draft capacities.

(3) Depository institutions, at their option, may use on a consistent basis either the date on a check or the date it is paid in applying the limit on checks established by this paragraph.

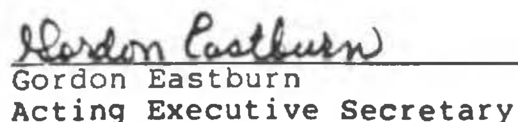
(4) The rate of interest or other charges imposed on an overdraft credit arrangement on an account to which withdrawals from this account can be paid must be not less than those imposed on overdrafts for customers who do not maintain this account.

(f) Depository institutions may offer the account authorized by this section to any depositor.

(g) Depository institutions are not required to impose restrictions on the number of additional deposits (including sweeps from other accounts) into this account.

(h) A depository institution is not permitted to lend funds to a depositor to meet the $2,500 balance requirements of this account.

By order of the Committee, November 23, 1982.



Gordon Eastburn
Acting Executive Secretary