

**FEDERAL RESERVE BANK
OF NEW YORK**

[Circular No. **9981**
January 7, 1986]

**PROPOSED AMENDMENTS TO REGULATIONS D AND Q
Comments Due by February 18, 1986**

*To All Depository Institutions, and Others Concerned,
in the Second Federal Reserve District:*

The following is quoted from the text of a statement issued by the Board of Governors of the Federal Reserve System:

The Federal Reserve Board has issued for comment proposed amendments to Regulations D (Reserve Requirements of Depository Institutions) and Q (Interest on Deposits) to preserve money market deposit accounts (MMDAs) and to maintain penalties for early withdrawal of time deposits, in certain circumstances, for monetary policy purposes.

In 1980 Congress passed the Depository Institutions Deregulation and Monetary Control Act which called for the orderly phase-out and ultimate elimination of interest rate ceilings under the direction of an interagency committee, the Depository Institutions Deregulation Committee (DIDC). Under the present law, the DIDC terminates and all interest rate ceiling authority expires March 31, 1986.

In 1982 the Garn-St Germain Depository Institutions Act amended the original legislation by directing the DIDC to authorize a new deposit account directly equivalent to and competitive with money market mutual funds. Depository institutions were permitted to offer the resulting money market deposit account beginning December 14, 1982.

In order to preserve the current treatment of MMDAs for reserve requirement purposes, the Board proposes to retain in its definition of savings deposit the features of the MMDA. Thus, the Board will define MMDAs as a kind of savings account allowing up to six transfers per month by telephone instruction, pre-authorized transfer, or other order by the customer, no more than three of which may be by check or draft. In addition, the Board proposes to eliminate the current \$150,000 limitation on business savings accounts, bringing the treatment of such accounts in line with MMDAs.

When the limitations on rates of interest that may be paid on deposits expire, the explicit authority for a mandatory early withdrawal penalty also expires. The Board is proposing to redefine time deposits to incorporate an early withdrawal penalty in order to distinguish transaction accounts from time deposits for reserve requirement purposes. This action will also retain the current one and one-half year maturity break on nonpersonal time deposits.

Currently, short-term nonpersonal time deposits (those with maturities of 7 days to less than 1-1/2 years) are subject to a 3 percent reserve requirement. Nonpersonal time deposits with maturities of 1-1/2 years or more are subject to a zero percent reserve requirement. Under the proposal, a deposit qualifies as a time deposit only if customers cannot make withdrawals for the first six days or if customers are penalized seven days' interest for making withdrawals during that period. Because personal time deposits are not subject to reserves, a personal time deposit need have a withdrawal penalty only to distinguish it from a transaction account.

Business deposits regardless of their original maturity must be nonwithdrawable within six days or be subject to the seven days' of interest penalty to qualify as nonpersonal time deposits, rather than transaction accounts. Thus, they would be subject to the 3 percent reserve requirement on nonpersonal time deposits. In order to have no reserve requirement, a nonpersonal time deposit must have an original maturity of at least 18 months, be subject to the seven days' of interest penalty (or be nonwithdrawable), and either be subject to a penalty at least equal to one month's simple interest on the amount withdrawn after the sixth day but within the first 18 months of the deposit or not be withdrawable within this period.

The Depository Institutions Deregulation Committee, as part of its mandate to deregulate the payment of interest on deposits by regulation, has provided that on January 1, 1986, the minimum balance requirements on ceiling-free negotiable order of withdrawal (NOW) accounts or Super NOWs, MMDAs, and 7- to 31-day time deposits will be eliminated. The regulatory prohibition that prevents institutions from guaranteeing a rate on a ceiling-free NOW account for longer than 30 days is also eliminated. Institutions are reminded that all other account characteristics and limitations remain in place until March 31, 1986.

Printed on the following pages is the text of the proposed amendments to Regulations D and Q, which have been reprinted from the *Federal Register* of January 2, 1986. Comments thereon should be submitted by February 18, 1986, and may be sent to our Regulations Division.

E. GERALD CORRIGAN,
President.

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Reg. D; Docket No. R-0565]

Definition of Deposits and Technical Amendments

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rules.

SUMMARY: Pursuant to its authority under section 19 of the Federal Reserve Act, as amended, the Board requests comment on proposed amendments to 12 CFR Part 204 (Regulation D—Reserve Requirements of Depository Institutions). The amendments arise from the expiration of limitations on the payment of interest on deposits, other than demand deposits, under the Depository Institutions Deregulation Act of 1980 (Title II of Pub. L. 96-221) on March 31, 1986. On that date, legislative and regulatory authority for setting limitations on the payment of interest on deposits, other than demand deposits, expires along with express authority for setting mandatory early withdrawal penalties and the specific legislative mandate prescribing the terms and characteristics of Money Market Deposit Accounts. The proposed amendments redefine the terms "transaction account," "savings deposit," and "time deposit." The Board also proposes to make other technical amendments to Regulation D.

DATES: Comments on the proposed rule must be received no later than February 18, 1986. The final rule will be effective at the end of March 31, 1986.

ADDRESS: Interested parties are invited to submit written data, views, or arguments concerning the proposal to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551, or such comments may be delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m. All comments should refer to Docket No. 0565. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. on business days, except as provided in §261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

FOR FURTHER INFORMATION CONTACT: John Harry Jorgenson, Senior Attorney (202/452-3778) or Patrick McDivitt, Attorney (202/452-3818), Legal Division,

Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b) of the Federal Reserve Act, 12 U.S.C. 461(b), as amended by the Monetary Control Act of 1980 (Title I of Pub. L. 96-221) provides the Board with the authority to impose reserve requirements on deposits held by depository institutions, and section 19(a) of that Act, 12 U.S.C. 461(a), gives the Board the authority to define terms used in section 19 and to prevent evasions of section 19. Pursuant to this authority, the Board promulgated Regulation D. Regulation D incorporates definitions of deposit categories that have been used to regulate the payment of interest on deposits under the Board's Regulation Q—Interest on Deposits (12 CFR Part 217). One such category is the money market deposit account ("MMDA").¹

The Garn-St Germain Depository Institutions Act of 1982 (Pub. L. 97-320) mandated the creation of the MMDA which permitted depositors limited authority to withdraw funds by draft from the account. Senate Joint Resolution 97-271 (Pub. L. 97-457) also provided that the MMDA would not be considered as a transaction account for purposes of Regulation D. Consequently, Regulation D excluded the MMDA from the definitions of "transaction account" and "demand deposit" even though it was subject to drafts.

On March 31, 1986, the statutory authority mandating the MMDA and excluding it from the definition of "transaction account" and the regulations of the DIDC implementing the MMDA expire along with the regulatory limitations on the payment of interest on deposits.² In order to preserve the current treatment of MMDAs for reserve requirement purposes, the Board proposes to amend its definition of "savings deposit" to include explicitly the MMDA characteristics as a subcategory in that definition in lieu of the current reference to the DIDC's rule authorizing the MMDA. Specifically, the Board proposes that transaction reserve requirements

¹ Similar categories have been established under comparable authority of the Federal Deposit Insurance Corporation, the Federal Home Loan Bank Board, and the National Credit Union Administration.

² Statutory limitations, such as the prohibitions against the payment of interest on demand deposits and the eligibility requirements on NOW accounts and ATS accounts, are not affected by the expiration.

not be applied to MMDA-type savings deposits that conform to current regulatory limitations on withdrawals and transfers. Thus, the Board proposes that the definition describe MMDAs as a kind of savings account allowing up to six transfers per month by preauthorized, automatic, telephonic or other data transmission agreement, order, or instruction and no more than three of the six such transfers may be by check, draft or other similar order. In addition, the Board proposes to eliminate the current \$150,000 limitation on business savings accounts, thus bringing the treatment of such accounts in line with the treatment of MMDAs.

When the limitations on rates of interest that may be paid on deposits expire, the express authority for a mandatory early withdrawal penalty also expires. This penalty has been used by the Board to define deposit categories for the purposes of Regulation D as well as to regulate the payment of interest on deposits under its Regulation Q. In order to preserve the distinction between time deposits and transaction accounts for reserve requirement purposes and to enforce the current one and one-half year maturity break on reservable and nonreservable nonpersonal time deposits, the Board is redefining time deposits to require a penalty for certain early withdrawals if such withdrawals are permitted. The amendments are discussed in detail below.

Changes to the Definitions of Certain Types of Deposits

1. Currently, the Board's Regulation D imposes, subject to certain adjustments and deductions, a 12 percent reserve requirement on transaction accounts and a 3 percent reserve requirement on nonpersonal savings deposits and on nonpersonal time deposits with original maturities or notice periods or less than one and one-half years. In § 204.2(e) of Regulation D, the Board currently defines a "transaction account" to be any deposit payable on demand or any account from which the depositor is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone transfers, or other similar device for the purpose of making payments to third parties.

The Board excludes from the definition of "transaction account" savings accounts that permit the depositor to make withdrawals for the

purpose of making transfers to other accounts of the depositor or for covering or making third-party payments if the transactions are of a certain type and if the number of transactions is limited. For example, an account is not a "transaction account" if the depositor is permitted to make no more than three withdrawals per month or four-week statement cycle by means of a preauthorized or telephone or data transmission agreement, order, or instruction for the purpose of transferring funds to another account, including a transaction account, or for the purpose of making a third party payment.

As a general rule, the Board considers any account that permits the depositor to make withdrawals or third party payments by means of a check, draft or other similar order to be a "transaction account". However, the Board excludes from the definition of "transaction account" any money market deposit account ("MMDA") from which the depositor is permitted to make no more than six transfers per month or statement cycle of at least four weeks to another account, to the institution itself, or to a third party by means of a preauthorized, automatic, or telephonic or data transmission agreement, order, or instruction and no more than three of the six such transfers may be by check or draft or other similar order drawn by the depositor.

The Board believes that the regulations that created the MMDA and the statutory provisions excluding MMDAs from the definition of "transaction account" will expire on March 31, 1986, at the same time authority governing the limitations of the rates of interest paid on deposits expires. The Board proposes to retain in its Regulation D its current treatment of the MMDA. Such amounts would continue to be excluded from the definition of "transaction account" provided they meet the regulatory limitations on withdrawals which currently apply and the Board proposes will continue to apply to these accounts. Thus, such an account would not be subject to transaction account reserve requirements so long as the depositor is permitted to make no more than six transfers per month by means of preauthorized, automatic, or telephonic or data transmission agreement, order, or instruction and no more than three of these six transfers may be by check,

draft, or other similar order drawn by the depositor. The transfer limitation would continue effectively to limit the scope of savings accounts' use for transaction purposes without placing undue burdens on current holders of MMDAs or unduly placing depository institutions at a competitive disadvantage with money market mutual funds. Any account that otherwise meets the definition of "money market deposit account" but that exceeds the six transfer rule (or three draft rule) and any other account that meets the definition of "savings deposit" but that exceeds the three transfer rule (none of which can be by check) would be considered a "demand deposit" (and thus under a related provision in the Board's Regulation Q (12 CFR Part 217) could not earn interest) unless the depositor is eligible to maintain a NOW account or an ATS account; in such a case, the account would be considered a NOW account.

2. The Board also proposes to amend its definition of "savings deposit" in Regulation D to remove the \$150,000 limitation on business savings accounts. This limitation now applies to ordinary passbook and statement savings accounts but not to MMDAs.

3. Currently, section 19(j) of the Federal Reserve Act provides that a depositor may withdraw funds from a time deposit before maturity only under the rules and regulations of the Board. A mandatory early withdrawal penalty helps to distinguish transaction accounts from time deposits and to enforce the differences in maturities on time deposits as well as to enforce interest rate ceilings. The express statutory authority to prescribe rules regarding withdrawals expires on March 31, 1986, however, and the Board no longer will require such a penalty under that authority. Nevertheless, the Board still believes that the early withdrawal of the funds from time deposits undermines the distinction between transaction accounts and time deposits and between deposits of varying maturities for monetary policy purposes under Regulation D. Therefore, the Board proposes to redefine "time deposit" to incorporate an early withdrawals where certain early withdrawals are permitted. A depository institution need not include the penalty where no early withdrawals are permitted but if it does permit certain early withdrawals without imposing any minimum penalty,

the deposit may not be a "time deposit" for purposes of Regulation D.

The Board proposes to consider any deposit from which withdrawals are permitted within the first six days after the date of deposit to be a "time deposit" only if it meets the other criteria for a time deposit and is subject to a minimum penalty equal to seven days' simple interest on the amount withdrawn. If a nonpersonal time deposit has a stated maturity or notice period of one and one-half years or more, and if early withdrawals are permitted after six days but before one and one-half years after the date of deposit, it must be subject to a minimum penalty equal to one month's simple interest on the amount withdrawn in order to be treated as a "nonpersonal time deposit" with a maturity of one and one-half years or more for purposes of Regulation D. Any deposit failing to meet either the definition of "time deposit" or "savings deposit" will be considered a "transaction account" and will be subject to the appropriate reserve requirements.

In addition to their use in distinguishing between accounts, early withdrawal penalties help to reduce the adverse effects on the earnings and liquidity of depository institutions caused by early withdrawals. Early withdrawals can adversely affect the ability of institutions to balance maturities of assets and liabilities. The proposed penalties address reserve requirement concerns, but because they will not require penalties on all early withdrawals from time deposits, such penalties may not be sufficient for safety and soundness purposes. Accordingly, the Board will consult with the other federal depository regulatory agencies concerning the appropriate structure and use of these penalties to address concerns about safety and soundness.

4. Currently, the Board excludes from the term "transaction account" a savings deposit that permits the depositor to make no more than three preauthorized or telephone transfers per month and MMDAs with no more than six such transfers per month. The Board has been asked whether transfers by remote computer and other telecommunications access count toward these totals if the customer may electronically withdraw funds from such accounts and then redeposit the funds in a transaction or other account by means of an electronic

device (such as a computer or touch tone telephone). The Board has concluded that each such withdrawal should be counted toward the monthly limitations because there is no practical difference between the customer using data signals from a site remote from the depository institution's premises to order transfers and using oral commands over the telephone to order transfers. These remote terminals would be distinguished from automatic teller machines ("ATMs") and remote service units ("RSUs").

5. The Board proposes to make technical amendments to other portions of the regulation to remove obsolete terms and requirements.

6. Finally, an additional reporting and reserve maintenance issue must be clarified. Because MMDA-type deposits held by depository institutions beginning with April 1, 1986, will be subject to the phase-in schedules for federal reserve requirements rather than to full reserve requirements, the Board has determined that, for weekly reporters, full reserves shall continue to be maintained on these deposits until the reserve maintenance period for nontransaction accounts beginning April 24, 1986, which corresponds to the computation period commencing March 25, 1986. For quarterly reporters, full reserves shall be maintained until the reserve maintenance period commencing April 17, 1986, which corresponds to the quarterly computation period beginning March 18, 1986.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the Board to consider the impact of this proposal on small entities. In this regard, it is the Board's view that the proposal would not impose any additional reporting or recordkeeping requirements. The purpose of this proposal is to request comment on any alternatives that the public believes may be preferable to the Board's proposed amendment of its Regulation D set out below. Suggested alternatives will be considered when comments are reviewed. The proposed rule would apply to all depository institutions. It is not anticipated that the proposal will have a negative effect on the ability of small depository institutions to attract deposits.

List of Subjects in 12 CFR Part 204

Banks, banking, Federal Reserve System, Foreign banking.

Pursuant to its authority under section 19(a) of the Federal Reserve Act (12 U.S.C. 461(a)), the Board proposes to amend Part 204 as follows:

PART 204—[AMENDED]

1. The Authority citation for 12 CFR Part 204 continues to read:

Authority: Secs. 19, 25, 25(a) of the Federal Reserve Act (12 U.S.C. 461, 601, 611); and sec. 7 of the International Banking Act of 1978 (12 U.S.C. 3105), unless otherwise noted.

2. Section 204.2 would be amended by revising the introductory text to § 204.2, paragraph (b), (c), (d), (e)(1) and (2), (f)(1)(i), (ii), (v), and (3) to read:

§ 204.2 Definitions.

For purposes of this part, the following definitions apply unless otherwise specified:

* * * * *

(b)(1) "Demand deposit" means a deposit that is payable on demand, or a deposit issued with an original maturity or required notice period of less than seven days, or a deposit representing funds for which the depository institution does not reserve the right to require at least seven days' written notice of an intended withdrawal. Demand deposits may be in the form of (i) checking accounts; (ii) certified, cashier's and officer's checks (including checks issued by the depository institution in payment of dividends); (iii) traveler's checks and money orders that are primary obligations of the issuing institution; (iv) checks or drafts drawn by, or on behalf of, a non-United States office of a depository institution on an account maintained at any of the institution's United States offices; (v) letters of credit sold for cash or its equivalent; (vi) withheld taxes, withheld insurance and other withheld funds; (vii) time deposits that have matured or time deposits upon which the contractually required notice of withdrawal was given and the notice period has expired and which have not been renewed (either by action of the depositor or automatically under the terms of the deposit agreement); (viii) an obligation to pay on demand or within six days a check (or other instrument, device, or arrangement for the transfer of funds) drawn on the depository institution, where the account of the institution's customer already has been debited; and (ix) the remaining balance in an account that meets the definition of "time deposit" in § 204.2(c) from which a partial early withdrawal has been made.

(2) The term "demand deposit" also includes: (i) any deposit described in § 204.2(d)(2)(i) if the depositor is authorized or permitted to exceed the transfer limitation specified in that section unless the depositor is eligible to hold an ATS account; and (ii) any deposit described in § 204.2(d)(2)(ii) if the depositor is authorized or permitted to exceed the transfer limitations specified in that section unless the depositor is eligible to hold a NOW account.

(3) "Demand deposit" does not include: (i) any obligation that is a time deposit under § 204.2(c)(2)(ii); or (ii) checks or drafts drawn by the depository institution on the Federal Reserve or on another depository institution.

(c)(1) "Time deposit" means a deposit with a stated maturity of at least seven days and that the depositor does not have a right and is not permitted to withdraw for a period within six days after the date of deposit unless the deposit is subject to an early withdrawal penalty of at least seven days interest on amounts withdrawn within the first six days after deposit. A time deposit from which a partial early withdrawal is made ceases to be a "time deposit" on the date of withdrawal unless the remaining balance is placed in a new account meeting the definition of "time deposit." An account that otherwise meets the definition of "time deposit" but does not require such a penalty is a "transaction account".³ "Time deposit" includes funds: (i) Payable on a specified date not less than seven days after the date of deposit; (ii) payable at the expiration of a specified time not less than seven days after the date of deposit; (iii) payable only after the depositor gives the depository institution actual written notice of an intended withdrawal and the notice is received prior to the time required in the contract which cannot be less than seven days prior to withdrawal; and (iv) held in "club" accounts (such as "Christmas club" accounts and "vacation club" accounts not maintained as "savings deposits") that are deposited under written contracts providing that no withdrawal shall be made until a certain number of

³ A nonpersonal time deposit with a stated maturity of one and one-half years or more may be treated as having an original maturity of one and one-half years or more for reserve requirement purposes only if it is subject to the minimum penalty described in § 204.2(f)(3).

periodic deposits have been made during a period of not less than three months even though some of the deposits may be made within six days from the end of the period.

(2) The term "time deposit" also includes (i) a "savings deposit"; and (ii) borrowings, regardless of maturity, represented by a promissory note, and acknowledgement of advance, or similar obligation described in § 204.2(a)(1)(vii) that is issued to, or any bankers' acceptance (other than the type described in 12 U.S.C. 372) of the depository institution held by: (A) any office located outside the United States of another depository institution or Edge or agreement corporation organized under the laws of the United States; (B) any office located outside the United States of a foreign bank; or (C) a foreign national government, or an agency or instrumentality thereof,⁴ engaged principally in activities which are ordinarily performed in the United States by governmental entities, (D) an international entity of which the United States is a member, or (E) any other foreign, international, or supra national entity specifically designated by the Board.

(3) A time deposit may be represented by a transferable or nontransferable, or a negotiable or nonnegotiable, certificate, instrument, passbook, statement, or otherwise. A "time deposit" includes share certificates and certificates of indebtedness issued by credit unions, and certificate accounts and notice accounts issued by savings and loan associations.

(d)(1) "Savings deposit" means a deposit or account with respect to which the depositor is not required by the deposit contract but may at any time be required by the depository institution to give written notice of an intended withdrawal not less than seven days before withdrawal is made, and that is not payable on a specified date or at the expiration of a specified time after the date of deposit. The term "savings deposit" includes a regular share account at a credit union and a regular account at a savings and loan association.

(2) The term "savings deposit" also includes: (i) A deposit that otherwise meets the definition of "savings deposit" and which, under the terms of the

deposit contract or by practice of the depository institution, the depositor is permitted or authorized to make no more than three withdrawals per month or statement cycle (or similar period) of at least four weeks for the purpose of transferring funds to another account (including a transaction account) or for making payment to a third party, other than the depository institution itself, by means of preauthorized or telephonic or data transmission agreement, order or instruction but it not allowed to make any withdrawals or transfers by check, draft or similar order (including by debit card or transfer at an ATM or RSU); and (ii) a deposit, commonly known as a "money market deposit account" ("MMDA"), that otherwise meets the definition of "savings deposit" and which, under the terms of the deposit contract or by practice of the depository institution, the depositor is permitted or authorized to make no more than six transfers per month or statement cycle (or similar period) of at least four weeks to another account (including a transaction account) of the depositor at the same institution, to the institution itself, or to a third party by means of preauthorized, automatic or telephonic or data transmission agreement, order or instruction and no more than three of the six such transfers may be by check, draft or similar order (including debit card or transfer at an ATM or RSU) drawn by the depositor.

(3) A deposit may continue to be classified as a savings deposit even if the depository institution exercises its right to require notice of withdrawal.

(4) "Savings deposit" does not include funds deposited to the credit of the depository institution's own trust department where the funds involved are utilized to cover checks or drafts. Such funds are "transaction accounts."

(e)(1) "Transaction account" means a deposit or account on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone transfers, or other similar device for the purpose of making payments or transfers to the institution itself, to other accounts of the depositor, or to third persons or others or from which the depositor may make third party payments at an automated teller machine ("ATM") or a remote service unit ("RSU"), or by debit card. "Transaction account" includes:

(i) Demand deposits;

(ii) Deposits or accounts subject to check, draft, negotiable order of withdrawal, share draft, or other similar item including the accounts authorized by 12 U.S.C. 1832(a) ("NOW accounts") on which the depository institution has reserved the right to require at least seven days' notice prior to withdrawal or transfer of any funds in the account provided that the account consists of funds in which the entire beneficial interest is held by a party eligible to have such an account as prescribed by 12 U.S.C. 1832(a)(1);

(iii) Deposits or accounts, such as accounts authorized by 12 U.S.C. 371a (automatic transfer accounts or "ATS accounts"), on which the depository institution has reserved the right to require at least seven days' notice prior to withdrawal or transfer of any funds in the account and from which more than three withdrawals per month may be made automatically through payment to the depository institution itself or through transfer of credit to a demand deposit or other account in order to cover checks or drafts drawn upon the institution or to maintain a specified balance in, or to make periodic transfers to, such other accounts provided that the account consists of funds in which the entire beneficial interest is held by one or more individuals as prescribed by 12 U.S.C. 371a;

(iv) Deposits or accounts maintained in connection with an arrangement that permits the depositor to obtain credit directly or indirectly through the drawing of a negotiable or nonnegotiable check, draft, order or instruction or other similar device (including telephone or electronic order or instruction) on the issuing institution that can be used for the purpose of making payments or transfers to third persons or others, or to a deposit account of the depositor.

(2) "Transaction account" does not include:

(i) Deposits or accounts defined in § 204.2(d)(2)(i) under the terms of which, or by practice of the depository institution, the depositor is permitted or authorized to make no more than three withdrawals per month for purposes of transferring funds to another account (including a "transaction account") or for making a payment to a third party by means of preauthorized, automatic, or telephonic or data transmission agreement, order, or instruction. An account that permits or authorizes more than three such withdrawals in a

⁴ Other than States, provinces, municipalities, or other regional or local governmental units or agencies or instrumentalities thereof.

calendar month, or statement cycle (or similar period) of at least four weeks, is a "transaction account" regardless of whether more than the allowable number of withdrawals actually are made during such period. A "preauthorized transfer" includes any arrangement by the depository institution to pay a third party from the account of a depositor upon written or oral instruction (including an order received through an automated clearing house (ACH)) or by electronic instruction (including computer or touch-tone telephone), or any arrangement by a depository institution to pay a third party from the account of the depositor at a predetermined time or on a fixed schedule. Such an account is not a "transaction account" by virtue of an arrangement that permits withdrawals for the purpose of repaying loans and associated expenses at the same depository institution (as originator or servicer) regardless of the number of such transfers.

(ii) A deposit described in § 204.2(d)(2)(ii), commonly known as a "money market deposit account" ("MMDA"), that otherwise meets the definition of "savings deposit" and which, under the terms of the deposit contract or by practice of the depository institution, the depositor is permitted or authorized to make no more than six transfers per month or statement cycle (or similar period) of at least four weeks to another account (including a transaction account) of the depositor at the same institution, to the institution itself, or to a third party by means of preauthorized, automatic or telephonic or data transmission order or instruction and no more than three of the six such transfers may be by check, draft or similar order (including debit card) drawn by the depositor. Such an account is not necessarily a "transaction account" by virtue of an arrangement that permits withdrawals for the purpose of repaying loans and associated expenses at the same depository institution (as originator or servicer), but each such withdrawal must be counted as one of the permissible six transfers.

* * * * *

(f)(1) "Nonpersonal time deposit" means:

(i) A time deposit, including a savings deposit, representing funds in which any

beneficial interest is held by a depositor which is not a natural person;

(ii) A time deposit, including a savings deposit, that represents funds deposited to the credit of a depositor that is not a natural person, other than a deposit to the credit of a trustee or other fiduciary if the entire beneficial interest in the deposit is held by one or more natural persons;

* * * * *

(v) A time deposit represented by a promissory note, an acknowledgment of advance, or similar obligation described in § 204.2(a)(1)(vii) that is issued to, or any bankers' acceptances (other than the type described in 12 U.S.C. 372) of the depository institution held by, (A) any office located outside the United States of another depository institution or Edge or agreement corporation organized under the laws of the United States, (B) any office located outside the United States of a foreign bank, (C) a foreign national government, or an agency or instrumentality thereof,⁵ engaged principally in activities which are ordinarily performed in the United States by governmental entities, (D) an international entity of which the United States is a member, or (E) any other foreign, international, or supra national entity specifically designated by the Board.

* * * * *

(3) Any nonpersonal time deposit with a stated maturity or notice period of one and one-half years or more that permits early withdrawal must be subject to a minimum early withdrawal penalty equal to at least one month's simple interest on the amount withdrawn for any withdrawals that occur more than six days but within one-half years after the date of deposit or it will be regarded as a nonpersonal time deposit with an original maturity or notice period of from seven days to less than one and one-half years (and thus will be subject to a three percent reserve requirement).

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 23, 1985.

William W. Wiles,
Secretary of the Board.

[FR Doc. 85-30740 Filed 12-31-85; 8:45 am]

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⁵ Other than States, provinces, municipalities, or other regional or local governmental units or agencies or instrumentalities thereof.

12 CFR Part 217

[Reg. Q; Docket No. R-0566]

Interest on Deposits; Definition of Deposits and Technical Amendments

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Request for public comment on proposed rules and on technical amendments.

SUMMARY: Pursuant to its authority under section 19 of the Federal Reserve Act, as amended, the Board requests comment on its proposed amendments to 12 CFR Part 217 (Regulation Q—Interest on Deposits). The proposed amendments to Regulation Q redefine the categories of "deposit" for the purposes of Regulation Q. The amendments are being proposed due to the expiration of the Depository Institutions Deregulation Act of 1980 (Title II of Pub. L. 96-221; "DIDA") which mandated the phase-out of limitations on the payment of interest on deposits. These amendments would also have the effect of eliminating the \$150,000 limit on business savings accounts as well as the sections of Regulation Q defining time and savings deposits, governing withdrawals from such deposits, setting early withdrawal penalties, and establishing account characteristics and interest rate ceilings. The amendments would define as a demand deposit any business account that otherwise meets the definition of "savings deposit" but that permits more than three preauthorized or telephone transfers per month and any business account that otherwise meets the definition of "money market deposit account" but that permits more than six such transfers or more than three checks or drafts to be drawn per month. No interest may be paid on such a demand deposit. When the Board issues its final rule, it intends to make other technical amendments to Regulation Q, to rescind some published interpretations of Regulation Q, and to revise other interpretations in order to reflect the changes it makes to the regulation resulting from this proposal.

DATES: Comments must be received no later than February 18, 1986. The final rule will be effective at the end of March 31, 1986.

ADDRESS: Comments, data, views, or arguments concerning the proposal from

interested parties should refer to Docket No. R-0566 and should be submitted to William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th and C Streets NW., Washington DC 20551. Comments also may be delivered to Room B-2223 between 8:45 a.m. and 5:15 p.m. Comments may be inspected in Room B-1122 between 8:45 a.m. and 5:15 p.m. on business days, except as provided in § 261.6(a) of the Board's Rules Regarding Availability of Information (12 CFR 261.6(a)).

FOR FURTHER INFORMATION CONTACT: John Harry Jorgenson, Senior Attorney (202/452-3778), or Daniel L. Rhoads, Senior Attorney (202/452-3711), Legal Division, Board of Governors of the Federal Reserve System, Washington DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(a) of the Federal Reserve Act, 12 U.S.C. 461(a), gives the Board the authority to issue rules defining terms used in section 19 in order to prevent evasions of that section. Section 19(i) of that Act (12 U.S.C. 371a) prohibits the payment by a member bank of interest on a demand deposit, and section 19(j) of that Act (12 U.S.C. 371b) gives the Board authority to issue rules governing the payment and advertising of interest on deposits.¹ Pursuant to this authority, the Board promulgated its current Regulation Q which regulates the payment of interest on deposits. The Board's authority under section 19(j) to issue rules governing the payment of interest on deposits, other than demand deposits, and the comparable authority of the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board expire with the expiration of the Depository Institutions Deregulation Act of 1980 at the end of March 31, 1986.

The expiration of the rules of the DIDC and of the authorities transferred to the DIDC at the end of March 31, 1986, will not affect section 19(i) of the Federal Reserve Act which prohibits the payment by a member bank of interest on a demand deposit. Nor will these expirations affect the authority of member banks to offer accounts that permit automatic transfers to checking accounts ("ATS accounts") as

¹ The current advertising rule is codified in Regulation Q at 12 CFR 217.6—Advertising of Interest on Deposits. In a separate rulemaking proceeding, the Board will be requesting comment on proposed revisions to its rules on member bank advertising of interest on deposits.

authorized by the last sentence of section 19(i) of the Federal Reserve Act (12 U.S.C. 371a) or to offer accounts subject to negotiable orders of withdrawal ("NOW accounts") as authorized by section 2(a) of Pub. L. 93-100 (12 U.S.C. 1832(a)).

The proposed amendments would revise the various "deposit" definitions and account characteristics found in §§ 217.1-217.7 of Regulation Q by removing account limitations and characteristics that expire at the end of March 31, 1986. The limitations and characteristics expiring on that date include the rules relating to penalties for early withdrawals from time deposits (§ 217.4) and the interest rate ceilings and account characteristics for time and savings deposits (primarily § 217.7). In addition, the Board is proposing to remove the \$150,000 limitation on business savings accounts. In order to prevent savings accounts from being used to evade the prohibition against paying interest on demand deposits, the Board is proposing to amend the definition of demand deposit in Regulation D, which is incorporated by reference in Regulation Q, to include any business account that otherwise meets the definition of "savings deposit" but that permits the depositor to make more than three withdrawals per month by means of preauthorized or telephone transfer and any business account that otherwise meets the definition of "money market deposit account" but that permits the depositor to make more than six transfers per month by means of preauthorized or telephone transfer or, within these six transfers, permits more than three withdrawals by check, draft, or other order payable to a third party. Additional account characteristics affecting the payment of interest are also set forth in various Board interpretations and policy statements and in staff opinions and rulings. The revisions would render many of these interpretations, policy statements, and staff opinions unnecessary.

The Board also proposes to remove from Regulation Q the rules regarding withdrawals from savings deposits (§ 217.5). Many of the rules were used to ensure that savings deposits could not be used as demand deposits, but the redefinition of demand deposits, for the purposes of sections 19(b) and 19(i) of the Federal Reserve Act, make the savings withdrawal rules unnecessary.

Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires the Board to consider the impact of this proposal on small entities. In this regard, it is the Board's view that the proposal would not impose any additional reporting or recordkeeping requirements. The purpose of this proposal is to request comment on any alternatives that the public believes may be preferable to the Board's proposed amendment of its Regulation Q set out below. Suggested alternatives will be considered when comments are reviewed. The proposed rule would apply to commercial banks that are members of the Federal Reserve System although the Board expects that the Federal Deposit Insurance Corporation and the Federal Home Loan Bank Board will apply similar rules to the institutions they supervise. It is anticipated that the proposal will have little or no adverse effect on the ability of small depository institutions to attract deposits.

List of Subjects in 12 CFR Part 217

Banks, banking, Federal Reserve System, Foreign banking.

Pursuant to its authority under section 19 of the Federal Reserve Act (12 U.S.C. 461 *et seq.*, 371a and 371b), the Board proposes to amend Part 217 as follows:

PART 217—[AMENDED]

1. The Authority citation for 12 CFR Part 217 is revised to read:

Authority: 12 U.S.C. 248, 371, 371a, 371b, 461, 1828, 3105, unless otherwise noted.

§§ 217.4, 217.5, and 217.7 [Removed]

2. Sections 217.3, 217.4, 217.5 and 217.7 of this part would be removed and §§ 217.0 through 217.2 would be redesignated as §§ 217.1 through 217.3 and revised to read:

§ 217.1 Authority, purpose, and scope.

(a) **Authority.** This regulation is issued under the authority of section 19 of the Federal Reserve Act (12 U.S.C. 371, 371a, 371b, 461), section 7 of the International Banking Act of 1978 (12 U.S.C. 3105), and section 11 of the Federal Reserve Act (12 U.S.C. 248), unless otherwise noted.

(b) **Purpose.** This regulation prohibits the payment of interest on demand deposits by member banks and other depository institutions within the scope of this regulation and sets forth requirements concerning the

advertisement of interest on deposits by member banks and these other institutions.

(c) *Scope.* (1) This regulation applies to state chartered banks that are members of the Federal Reserve under section 9 of the Federal Reserve Act (12 U.S.C. 321, et seq.) and to all national banks. The regulation also applies to any Federal branch or agency of a foreign bank and to a State uninsured branch or agency of a foreign bank in the same manner and to the same extent as if the branch or agency were a member bank, except as may be otherwise provided by the Board, if:

(i) Its parent foreign bank has total worldwide consolidated bank assets in excess of \$1 billion;

(ii) Its parent foreign bank is controlled by a foreign company which owns or controls foreign banks that in the aggregate have total worldwide consolidated bank assets in excess of \$1 billion; or

(iii) Its parent foreign bank is controlled by a group of foreign companies that own or control foreign banks that in the aggregate have total worldwide consolidated bank assets in excess of \$1 billion.

(2) For deposits held by a member bank or a foreign bank, this regulation does not apply to "any deposit that is payable only at an office located outside of the United States" (i.e., the States of the United States and the District of Columbia) as defined in § 204.2(t) of the Board's Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204).

§ 217.2 Definitions.

For purposes of this part, the following definitions apply unless

otherwise specified:

(a) "ATS account" means a deposit subject to automatic withdrawals or transfers authorized by 12 U.S.C. 371a, and on which the member bank has reserved the right to require at least seven days' notice prior to withdrawal or transfer of any funds in the account. Under the last sentence of that section, a member bank may permit withdrawals to be made automatically from a deposit that consists only of funds in which the entire beneficial interest is held by one or more individuals through payment to the bank itself or through transfer of credit to a demand deposit or other account pursuant to written authorization from the depositor to make such payments or transfers in connection with checks or drafts drawn on the member bank.

(b) "Demand deposit" means any deposit that is considered to be a "demand deposit" under § 204.2(b) of the Board's Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204).

(c) "Deposit" means any liability of a member bank that is considered to be a "deposit" under § 204.2(a)(1) of the Board's Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204).

(d) "Foreign bank" means any bank that is considered to be a "Foreign bank" under § 204.2(o) of the Board's Regulation D—Reserve Requirements of Depository Institutions (12 CFR Part 204).

(e) "Interest" means any payment to or for the account of any depositor as compensation for the use of funds constituting a deposit. A member bank's absorption of expenses incident to providing a normal banking function or

its forbearance from charging a fee in connection with such a service is not considered a payment of interest.²

(f) "NOW account" means an account authorized by 12 U.S.C. 1832(a) on which the member bank has reserved the right to require at least seven days' notice prior to withdrawal or transfer of any funds in the account but only if the account consists of funds in which the entire beneficial interest is held by a party eligible to have such an account as prescribed by 12 U.S.C. 1832(a)(1).³

§ 217.3 Interest on demand deposits.

Except as provided by section 19 of the Federal Reserve Act, no member bank of the Federal Reserve System shall, directly or indirectly, by any device whatsoever, pay any interest on any demand deposit. This prohibition does not apply to NOW accounts, ATS accounts, or accounts subject to withdrawals by telephonic or data transmission order or instruction which consist of funds, the entire beneficial interest of which is held by a party eligible to hold a NOW account.

* * * * *

By order of the Board of Governors of the Federal Reserve System, December 23, 1985.

William W. Wiles,

Secretary of the Board.

[FR Doc. 85-30741 Filed 12-31-85; 8:45 am]

BILLING CODE 6210-01-M

²The Board has issued an interpretation excluding premiums on deposits from the definition of "interest" in certain circumstances. See 12 CFR 217.147.

³The Board has issued an interpretation concerning NOW account eligibility. See 12 CFR 217.157.