

[6714-01-P]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 329, 330

RIN 3064-AD78

Interest On Deposits; Deposit Insurance Coverage

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Notice of proposed rulemaking (NPR) and request for comment.

SUMMARY: Effective July 21, 2011, the statutory prohibition against the payment of interest on demand deposits will be repealed pursuant to section 627 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the DFA).¹ In light of this, the FDIC proposes to rescind Part 329, the regulation that has implemented this prohibition with respect to state-chartered nonmember (SNM) banks. Because Part 329 includes a definition of “interest” that may assist the FDIC in interpreting a recent statutory amendment that provides temporary, unlimited deposit insurance coverage for noninterest-bearing transaction accounts, the FDIC also proposes to retain and move the definition of “interest” into Part 330, the deposit insurance regulations.

DATES: Comments must be received on or before [insert date 30 days after date of publication in the Federal Register].

¹ Pub. L. 111-203, 124 Stat.1376.

ADDRESSES: You may submit comments on the notice of proposed rulemaking, identified by RIN number and the words “Interest On Deposits; Deposit Insurance Coverage NPRM,” by any of the following methods:

- *Agency Web Site:* <http://www.fdic.gov/regulations/laws/federal/propose.html>. Follow the instructions for submitting comments on the Agency Web Site.
- *E-mail:* Comments@fdic.gov. Include the RIN number in the subject line of the message.
- *Mail:* Robert E. Feldman, Executive Secretary, Attention: Comments, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.
- *Hand Delivery:* Guard station at the rear of the 550 17th Street Building (located on F Street) on business days between 7 a.m. and 5 p.m.
- *Instructions:* All submissions received must include the agency name and RIN for this rulemaking.
- *Public Inspection:* All comments received will be posted without change to <http://www.fdic.gov/regulations/laws/federal/propose.html> including any personal information provided. Paper copies of public comments may be ordered from the Public Information Center by telephone at 1-877-275-3342 or 703-562-2200.

FOR FURTHER INFORMATION CONTACT: Martin Becker, Senior Consumer Affairs Specialist, Division of Consumer and Depositor Protection (703) 254-2233, Mark Mellon, Counsel, Legal Division, (202) 898-3884, Federal Deposit Insurance Corporation, 550 17th Street, NW, Washington, DC 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Section 343 of the DFA amended section 11(a)(1) of the Federal Deposit Insurance Act, 12 U.S.C. 1821(a)(1), to provide full insurance coverage for depository institution noninterest-bearing transaction accounts from December 31, 2010, through December 31, 2012. Section 627 of the DFA repealed the statutory prohibition against the payment of interest on demand deposits, effective one year from the date of the DFA's enactment, July 21, 2011.

In light of the prospective repeal of the demand deposit interest prohibition, the FDIC proposes to rescind 12 CFR Part 329, the regulation which implements that prohibition with respect to SNM banks, to be effective on the same date as the statutory repeal, July 21, 2011. At the same time, however, a regulatory definition of the term "interest" will still be useful in interpreting the requirements of section 343 of the DFA providing temporary, unlimited deposit insurance coverage for noninterest-bearing transaction accounts. For this reason, the FDIC proposes, as part of this same rulemaking, to transfer the definition of "interest" currently found at 12 CFR 329.1(c) to Part 330, specifically the definitions section at 12 CFR 330.1. The FDIC also specifically solicits comment on whether other parts of Part 329 could also prove useful and therefore should be moved into Part 330 as well. For example, section 329.103 provides an interpretive rule that defines what constitutes a "premium" which may prove useful in determining whether an account qualifies as a noninterest-bearing transaction account. The FDIC seeks comment on every aspect of this proposed rule.

II. Regulatory Analysis and Procedure

A. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act, Public Law 106-102, 113 Stat.

1338, 1471 (Nov. 12, 1999), requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. We invite your comments on how to make this proposal easier to understand. For example:

- Have we organized the material to suit your needs? If not, how could this material be better organized?
- Are the requirements in the proposed regulation clearly stated? If not, how could the regulation be more clearly stated?
- Does the proposed regulation contain language or jargon that is not clear? If so, which language requires clarification?
- Would a different format (grouping and order of sections, use of headings, paragraphing) make the regulation easier to understand? If so, what changes to the format would make the regulation easier to understand?
- What else could we do to make the regulation easier to understand?

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA) requires that each federal agency either certify that a proposed rule would not, if adopted in final form, have a significant economic impact on a substantial number of small entities or prepare an initial regulatory flexibility analysis of the rule and publish the analysis for comment. For purposes of the RFA analysis or certification, financial institutions with total assets of \$175 million or less are

considered to be “small entities.” The FDIC hereby certifies pursuant to 5 U.S.C. 605(b) that the NPR, if adopted, will not have a significant economic impact on a substantial number of small entities. This is because the FDIC already applies the Part 329 definition of “interest” for purposes of determining whether an account qualifies for full deposit insurance coverage as a noninterest-bearing transaction account. The FDIC is only proposing to transfer the definition from Part 329 to Part 330 because the former regulation will become moot on July 21, 2011, pursuant to section 627 of the DFA and its repeal of the statutory ban on the payment of interest on demand deposits. There will therefore be no significant economic impact on a substantial number of small entities as a result of this change.

C. Paperwork Reduction Act

No collections of information pursuant to the Paperwork Reduction Act (44 U.S.C. Ch. 3501 et seq.) are contained in the proposed rule.

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

The FDIC has determined that the proposed rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105-277, 112 Stat. 2681).

List of Subjects in 12 CFR Part 329

Banks, banking, interest rates.

List of Subjects in 12 CFR Part 330

Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Savings and loan associations, Trusts and trustees.

For the reasons set forth in the preamble, the FDIC proposes to amend chapter III of title 12 of the Code of Federal Regulations as follows:

PART 329 — Interest On Deposits

1. Part 329 is removed and reserved.

Part 330 — Deposit Insurance Coverage

1. The authority for part 330 continues to read as follows:

12 U.S.C. 1813(*l*), 1813(*m*), 1817(*i*), 1818(*q*), 1819(*Tenth*), 1820(*f*), 1821(*a*), 1822(*c*).

2. In § 330.1, paragraphs (k) through (q) of § 330.1 are redesignated as paragraphs (l) through (r) respectively and new paragraph (k) is added to read as follows:

§ 330.1 Definitions

- (k) *Interest*, with respect to a deposit, means any payment to or for the account of any depositor as compensation for the use of funds constituting a deposit. A 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.

By order of the Board of Directors.

Dated at Washington, DC, this 12th day of April, 2011.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Executive Secretary.