

(3) Any noninsured bank in a State if the total amount of time and savings deposits held in all such banks in the State, plus the total amount of deposits, shares, and withdrawable accounts held in all building and loan, savings and loan, and homestead associations (including cooperative banks) in the State which are not members of a Federal home loan bank, is more than 20 per centum of the total amount of such deposits, shares, and withdrawable accounts held in all banks and building and loan, savings and loan, and homestead associations (including cooperative banks) in the State.

(b) The term *demand deposit* includes:

(1) Any deposit that has a maturity or required-notice period of less than seven days;

(2) Any deposit regarding which the bank does not reserve the right to require at least seven days' written notice prior to withdrawal or transfer of any funds from the account; or

(3) Any other deposit from which, under the terms of the deposit contract, the depositor is authorized to make, during any month or statement cycle of at least four weeks, more than six transfers by means of a preauthorized or automatic transfer or telephonic (including data transmission) agreement, order or instruction, which transfers are made to another account of the depositor at the same bank, to the bank itself, or to a third party:

Provided, That any deposit specified in this paragraph (b)(3) will be deemed to be a *demand deposit* if more than three of the six authorized transfers are authorized to be made by check, draft, debit card or similar order made by the depositor;

And provided further, That no deposit specified in this paragraph (3) will be deemed to be a *demand deposit* if the entire beneficial interest of the deposit is held by a depositor identified in paragraph (2) of section 2(a) of Pub. L. 93-100 (12 U.S.C. 1832(a)(2)).¹

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

(c) The term *interest* 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.

[51 FR 10808, Mar. 31, 1986, as amended at 53 FR 47523, Nov. 23, 1988]

§ 329.2 Payment of interest.

No bank shall, directly or indirectly, by any device whatsoever, pay interest on any demand deposit.

§ 329.3 Exception to prohibition on payment of interest.

Section 329.2 shall not apply to the payment of interest or other remuneration on any deposit which, if held by a member bank, would be allowable under 12 U.S.C. 371a and 461, or by regulation of the Board of Governors of the Federal Reserve System.

[63 FR 8342, Feb. 19, 1998]

§ 329.101 Transfers not included within the six transfers allowed for nondemand deposits pursuant to § 329.1(b)(3).

This interpretive rule describes certain transfers that are not included as any of the six transfers allowed pursuant to § 329.1(b)(3).

(a) Transfers from a deposit described in § 329.1(b)(3) that are made to the bank are not deemed to be included within the six transfers permitted for a nondemand deposit by that paragraph (3) when the transfers are made for the

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

§ 329.102

purpose of repaying loans and associated expenses at the bank (as originator or servicer). This exemption does not apply to transfers to the bank that are made for the purpose of repaying loans that are made by the bank to the depositor's demand account for the purpose of covering overdrafts.

(b) Transfers from a deposit described in § 329.1(b)(3) that are made to another account of the same depositor at the bank are not deemed to be included within the six transfers permitted for a nondemand deposit by that paragraph (3) when the transfers are made by mail, messenger, automated teller machine or in person.

(c) Withdrawals from a deposit described in § 329.1(b)(3) are not deemed to be included within the six transfers permitted for a nondemand deposit by that paragraph (3) when the withdrawals are made by mail, messenger, telephone (via check mailed to the depositor), automated teller machine, or in person.

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

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

(a) No deposit described in § 329.1(b)(3) that is held by an organization that is not organized for profit and that is described in paragraphs 501(c) (3) through (13) and (19) and section 528 of the Internal Revenue Code of 1954 (26 U.S.C. 501(c) (3) through (13) and (19), and 528) is deemed to be a demand deposit. Actual Internal Revenue Service documentation of the organization's tax-exempt status is not required; it is merely an aid in making the determination.

(b) No deposit described in § 329.1(b)(3) that is held by a depositor identified in section 2(a)(2) of Pub. L. 93-100 (12 U.S.C. 1832(a)(2))—whether the deposit is used for business purposes or otherwise—is deemed to be a demand deposit.

(c) No deposit described in § 329.1(b)(3) that represents funds held in a fiduciary capacity (whether the fiduciary is a natural person or otherwise) is deemed to be a demand deposit if all the beneficiaries of the account are natural persons.

12 CFR Ch. III (1-1-05 Edition)

§ 329.103 Premiums.

This interpretive rule describes certain payments that are not deemed to be *interest* as defined in § 329.1(c).

(a) Premiums, whether in the form of merchandise, credit, or cash, given by a bank to the holder of a deposit will not be regarded as *interest* as defined in § 329.1(c) if:

(1) The premium is given to the depositor only at the time of the opening of a new account or an addition to an existing account;

(2) No more than two premiums per deposit are given in any twelve-month interval; and (3) the value of the premium (in the case of merchandise, the total cost to the bank, including shipping, warehousing, packaging, and handling costs) does not exceed \$10 for a deposit of less than \$5,000 or \$20 for a deposit of \$5,000 or more.

(b) The costs of premiums may not be averaged.

(c) A bank may not solicit funds for deposit on the basis that the bank will divide the funds into several accounts for the purpose of enabling the bank to pay the depositor more than two premiums within a twelve-month interval on the solicited funds.

(d) The bank must retain sufficient information for examiners to determine that the requirements of this section have been satisfied.

(e) Notwithstanding paragraph (a) of this section, any premium that is not, directly or indirectly, related to or dependent on the balance in a demand deposit account and the duration of the account balance shall not be considered the payment of interest on a demand deposit account and shall not be subject to the limitations in paragraph (a) of this section.

[51 FR 10808, Mar. 31, 1986, as amended at 62 FR 40732, July 30, 1997]

§ 329.104 Ten-day grace period.

This interpretive rule provides for 10-day grace periods during which interest may be paid on a deposit without violating § 329.2.

(a) During the ten calendar days following the maturity of a time deposit, the bank may continue to pay interest on the matured deposit at the contract rate of the deposit, or at any lesser