

FREQUENTLY ASKED QUESTIONS REGARDING SECTIONS 343 and 627 of the DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT

Updated as of August 9, 2011

Please be aware that since the last version of the Frequently Asked Questions on the Dodd-Frank Act dated June 13, 2011, some questions have been added, deleted, and amended.

Section 343 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“DFA”) provides temporary unlimited deposit insurance coverage for noninterest-bearing transaction accounts at all FDIC-insured depository institutions (the “Dodd-Frank Deposit Insurance Provision”). The FDIC has added section 12 C.F.R. § 330.16 and amended certain other provisions of the deposit insurance regulations to implement the Dodd-Frank Deposit Insurance Provision. The new and revised rules are discussed in Financial Institution Letter FIL-76-2010 issued November 9, 2010, and in Financial Institution Letter FIL-2-2011 issued January 21, 2011.

Section 627 of the DFA, which became effective July 21, 2011, repeals the statutory prohibition against the payment of interest on demand deposit accounts (“DDAs”). To make FDIC regulations consistent with Section 627, on July 6, 2011 the FDIC Board of Directors issued a new final rule (76 Federal Register 41392) rescinding 12 C.F.R. Part 329, the regulations that had prohibited the payment of interest on DDAs. Two provisions from Part 329 have been retained and moved to 12 C.F.R. Part 330. One is the definition of “interest” which is now found at 12 C.F.R. § 330.1(k). The other retained provision, relating to “premiums” and certain payments which are not deemed “interest,” is now section 12 C.F.R. § 330.101.

Below are frequently asked questions and answers concerning Sections 343 and 627 of the DFA and the related FDIC regulations.

Implementation of the Dodd-Frank Deposit Insurance Provision

1. How long will the full deposit insurance coverage for noninterest-bearing transaction accounts last?

The Dodd-Frank Deposit Insurance Provision is effective from December 31, 2010 through December 31, 2012.

Please note that the FDIC did not extend the Transaction Account Guarantee Program (“TAGP”) beyond its sunset date of December 31, 2010. On the same day that the TAGP expired – December 31, 2010 – the Dodd-Frank Deposit Insurance Provision became effective. There was a one-day overlap of the TAGP and the Dodd-Frank Deposit Insurance Provision.

2. What types of deposit accounts are included in the definition of a “noninterest-bearing transaction account”?

All funds in noninterest-bearing transaction accounts held at FDIC-insured depository institutions (“IDIs”) will be fully insured under the Dodd-Frank Deposit Insurance Provision. A “noninterest-bearing transaction account” is defined as an account (1) with respect to which interest is neither accrued nor paid; (2) on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other electronic media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; and (3) on which the IDI does not reserve the right to require advance notice of an intended withdrawal. The definition of “noninterest-bearing transaction accounts” also includes Interest on Lawyer Trust Accounts (“IOLTAs”) and functionally equivalent accounts. Note: The unlimited coverage for IOLTA accounts only applies to those accounts established by an attorney, containing funds held by the attorney on behalf of one or more clients, where the accrued interest is paid to the state bar association or other organizations to fund legal assistance programs. All other fiduciary accounts maintained by attorneys or other entities (for instance, IORTAs -- Interest on Realtor Trust Accounts) are subject to the standard insurance limits.

The definition of a “noninterest-bearing transaction account” cannot include any interest-bearing accounts, NOW accounts, or money market deposit accounts (“MMDAs”), except as expressly provided in 12 C.F.R. § 330.16(b) with respect to certain swept funds. The exception for swept funds is applicable only in situations where funds are swept from a noninterest-bearing transaction account to a noninterest-bearing savings account, notably a MMDA. Pursuant to 12 C.F.R. § 330.16(b), such noninterest-bearing savings accounts into which funds are swept would be considered noninterest-bearing transaction accounts. Apart from this exception for “reserve sweeps,” MMDAs and noninterest-bearing savings accounts do not qualify as noninterest-bearing transaction accounts.

3. How does the Dodd-Frank Deposit Insurance Provision differ from the expired TAGP?

There are three important differences between the Dodd-Frank Deposit Insurance Provision and the TAGP:

- The Dodd-Frank Deposit Insurance Provision applies to all IDIs with noninterest-bearing transaction accounts.
- The Dodd-Frank Deposit Insurance Provision does not include low-interest NOW accounts within the definition of noninterest-bearing transaction account.
- The FDIC does not charge a separate assessment (or premium) for the insurance of noninterest-bearing transaction accounts under the Dodd-Frank Deposit Insurance Provision.

4. Does the temporary full deposit insurance coverage for noninterest-bearing transaction accounts cover all such accounts in the IDI regardless of ownership?

Yes. The temporary deposit insurance coverage provided under the Dodd-Frank Deposit Insurance Provision applies to all noninterest-bearing transaction accounts at all IDIs, regardless of the account owner or ownership capacity.

5. Must all IDIs make available to depositors noninterest-bearing transaction accounts that are fully insured under the Dodd-Frank Deposit Insurance Provision?

No. IDIs are not required by any statute or regulation to provide noninterest-bearing transaction accounts to depositors. However, if an IDI does offer noninterest-bearing transaction accounts, that IDI cannot opt out of the Dodd-Frank Deposit Insurance Provision and its noninterest-bearing transactions accounts shall be fully insured through December 31, 2012.

6. How will NOW accounts be insured?

The FDIC insures NOW accounts (together with any other interest-bearing deposits held by the depositor at the same IDI) based on the depositor's ownership capacity.

7. How does the deposit insurance coverage on noninterest-bearing transaction accounts affect a customer's insurance coverage for other types of accounts?

The insurance coverage on noninterest-bearing transaction accounts is separate from, and in addition to, the coverage provided for other accounts maintained at the same IDI. Funds held in noninterest-bearing transaction accounts will not be aggregated for purposes of determining deposit insurance coverage on the depositor's interest-bearing accounts. For example, if under the single ownership category a customer has \$500,000 in a noninterest-bearing transaction account and \$250,000 in a certificate of deposit, the FDIC would fully insure the entire \$750,000.

8. Are Interest on Realtor Trust Accounts (IORTAs) or similar accounts where an attorney/realtor holds client funds in trust also included within the definition of a noninterest-bearing transaction accounts?

No. IOLTAs -- accounts established by an attorney, containing funds held by the attorney on behalf of one or more clients, with accrued interest paid to the state bar association or other organizations to fund legal assistance programs -- are included within the definition of noninterest-bearing transaction accounts, but all other interest-bearing fiduciary accounts maintained by attorneys or other entities (including, IORTAs) are subject to the standard insurance limits.

9. Are official checks included in the definition of a “noninterest-bearing transaction account”?

Official checks issued by IDIs are included in the definition of a noninterest-bearing transaction account. Official checks, such as cashier’s checks and money orders issued by IDIs, are “deposits” as defined under the FDI Act (12 U.S.C. § 1831(l)) and related FDIC regulations. The payee of the official check (the party to whom the check is payable) or, if applicable, the party to whom the payee has negotiated the official check, is the insured party. Because official checks meet the definition of a noninterest-bearing transaction account, the payee (or the party to whom the payee has endorsed the check) would be insured for the full amount of the check if the issuing IDI were to fail on or prior to December 31, 2012.

10. Are interest-bearing accounts that offer zero interest fully insured under the Dodd-Frank Deposit Insurance Provision?

No, only noninterest-bearing transaction accounts are covered. Whether an account is noninterest-bearing is determined by the terms of the account agreement and not whether the interest rate on an account may be zero percent at a particular point in time. If an account agreement provides for the possible payment of interest, then regardless of any conditions or limitations relating to interest accrual or payment, the account will be treated as an interest-bearing account.

Since IDIs no longer are prohibited from paying interest on DDAs as of July 21, 2011, DDAs that allow for the payment of interest will not satisfy the definition of a noninterest-bearing transaction account.

As discussed in more detail in more detail in FAQs 31 through 33, if an IDI modifies the terms of its DDA agreement so that the account may pay interest, the IDI must notify affected customers that the account no longer will be eligible for full deposit insurance coverage as a noninterest-bearing transaction account under the Dodd-Frank Deposit Insurance Provision. Moreover, this notice must be used in any other circumstance that results in deposits no longer being eligible for full temporary coverage of noninterest-bearing transaction accounts.

11. Can an account that now earns interest be converted to a noninterest-bearing checking account and upon such conversion be subject to full deposit insurance coverage as a noninterest-bearing account?

Only if the corresponding deposit agreement is modified to convert an account to a noninterest-bearing transaction account as defined in the Dodd-Frank Deposit Insurance Provision will an account be eligible for full deposit insurance as a noninterest-bearing transaction account through December 31, 2012. If the account agreement in any way allows for the possible accrual of interest, restricts the ability of the depositor to make withdrawals, or requires the depositor to provide the IDI with advance notice of intended

withdrawals, then that account will not be insured under the Dodd-Frank Deposit Insurance Provision as a noninterest-bearing transaction account.

12. Are accounts that waive fees or provide fee-reducing credits considered “noninterest-bearing” under the temporary Dodd-Frank Deposit Insurance Provision?

FDIC regulation 12 C.F.R. § 330.1(k) expressly provides that,

... 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.

Accordingly, neither the waiving of fees nor the provision of fee-reducing credits will be deemed payment of interest under the Dodd-Frank Deposit Insurance Provision; if an IDI waives fees or provides fee-reducing credits for a customer with a noninterest-bearing DDA, such features would not prevent that account from qualifying as a noninterest-bearing transaction account.

13. Will “reward programs” offered by IDIs on noninterest-bearing checking accounts prevent such accounts from meeting the definition of a noninterest-bearing transaction account?

The answer will depend on the specifics of a particular reward program. FDIC regulation 12 C.F.R. § 330.101 describes certain payments to or for the account of a depositor that are not deemed “interest” –

(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 § 330.1(k) 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.

...

(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 . . .

Since the above is substantively identical to provisions in the rescinded FDIC rule 12 C.F.R. § 329.103 and 12 C.F.R. § 217.101 of Regulation Q of the Board of Governors of the Federal Reserve System, the FDIC will look to past interpretations of these former

regulations to determine whether a specific reward provided in connection with transaction accounts will be considered interest paid on the account.

For instance, suppose an IDI offers depositors a one-time gift merely for opening a new noninterest-bearing DDA at the IDI. This gift is not directly or indirectly related to or dependent on the account balance or how long the account remains open. In fact, there is no minimum deposit balance and the depositor can keep the gift even if the account is closed on the same day it is opened. Based on 12 C.F.R. § 330.101 and past interpretations of former 12 C.F.R. § 329.102 and 12 C.F.R. § 217.101, such a gift would not be deemed interest and the noninterest-bearing DDA would be fully insured under the Dodd-Frank Deposit Insurance Provision through December 31, 2012.

14. If an IDI offers “relationship pricing” in the form of higher interest rates to depositors with multiple accounts (with an option to set up an internal deposit-to-deposit sweep arrangement), will the noninterest-bearing DDAs of such depositors be fully insured under the Dodd-Frank Deposit Insurance Provision?

Pursuant to 12 C.F.R. § 330.101(e), if the interest rate paid or other premium given by an IDI to a depositor is, directly or indirectly, related to or dependent on the balance or the duration of the balance maintained in the depositor’s DDA, then the DDA will be deemed interest-bearing and, therefore, not subject to unlimited deposit insurance coverage under the Dodd-Frank Deposit Insurance Provision.

For example, if the rate of interest paid on an interest-bearing deposit account is conditioned on the customer maintaining a minimum balance in a noninterest-bearing DDA, the FDIC would attribute part of the interest earned on the interest-bearing account to the DDA. As a result, the DDA would not be deemed a noninterest-bearing transaction account fully insured under the Dodd-Frank Deposit Insurance Provision.

The same result would apply if the account agreements include a sweep arrangement where funds are swept daily from an interest-bearing account to a noninterest-bearing DDA, so that the depositor maintains a required minimum balance in the noninterest-bearing DDA.

In contrast, if the rate paid on an interest-bearing account remains the same regardless of the balance maintained in the noninterest-bearing DDA, then no portion of the interest earned will be attributed to the noninterest-bearing DDA.

15. If an IDI offered a sweep-account product providing for an overnight sweep of funds from an interest-bearing account to a noninterest-bearing transaction account, would the noninterest-bearing transaction account qualify for unlimited deposit insurance coverage under the Dodd-Frank Deposit Insurance Provision?

No. The Dodd-Frank Deposit Insurance Provision provides unlimited deposit insurance coverage (through December 31, 2012) only with respect to accounts for which interest is neither accrued nor paid. Deposit products involving the overnight transfer of funds from an interest-bearing account (for which interest is credited to the account before the funds are

transferred to the noninterest-bearing account) to a noninterest-bearing transaction account are, in substance, one deposit product on which the IDI pays interest. As such, viewed as a whole, the funds involved would not qualify for coverage under the Dodd-Frank Deposit Insurance Provision.

16. While the Dodd-Frank Deposit Insurance Provision is in effect, how will the FDIC determine the amount of deposit insurance coverage available for revocable trust accounts, where some of the revocable trust accounts are noninterest-bearing transaction accounts and others are not?

Coverage for revocable trust accounts, in general, is based on the number of “eligible” beneficiaries named in the account. The specific question is how the FDIC will “count up” the number of eligible beneficiaries to determine revocable trust account coverage for an account owner who has multiple revocable trust accounts, including one or more such accounts that qualify as noninterest-bearing transaction accounts under the Dodd-Frank Deposit Insurance Provision.

For example, if a depositor has an interest-bearing account with a balance of \$400,000 payable on death to a niece, and a qualifying noninterest-bearing transaction account with a balance of \$200,000 payable on death to a friend, how much coverage would be available for the accounts?

To make this deposit insurance calculation, the FDIC would first determine the total number of different beneficiaries the account owner has named in all revocable trust accounts (both interest-bearing and noninterest-bearing) at the same IDI. In this example, there is one owner and two beneficiaries (the niece and the friend). The FDIC would multiply the number of owners times the number of beneficiaries times the SMDIA of \$250,000 to determine the maximum coverage available on the account owner’s revocable trust accounts. In this example, the amount is \$500,000. We then would apply that amount to the total balance of the account owner’s interest-bearing revocable trust accounts. Because that amount is \$400,000, the interest-bearing payable on death account would be fully covered. The balance in the noninterest-bearing transaction account (in this case, \$200,000) would be separately and fully covered under the Dodd-Frank Deposit Insurance Provision.

17. How will IDIs be assessed for the cost of the temporary full deposit insurance coverage for noninterest-bearing transaction accounts?

Because the Dodd-Frank Deposit Insurance Provision establishes a new, although temporary, form of deposit insurance coverage rather than a separate program for these accounts, there will be no separate assessment (or premium) for this insurance.

Section 627 of the DFA (Eliminating the Prohibition on the Payment of Interest on Demand Deposit Accounts)

18. What actions are required of an IDI in order to begin paying interest on DDAs?

The FDIC has imposed no specific conditions that must be satisfied if an IDI chooses to offer new interest-bearing DDAs to its customers. However, as is always the case, the FDIC expects IDIs to act in a commercially reasonable manner and to comply with applicable state and federal laws and regulations in establishing and marketing such accounts.

If an IDI modifies existing DDA agreements to allow for the payment of interest, then (as discussed in more detail in FAQs 31 through 33) pursuant to 12 C.F.R. § 330.16(c)(3) the IDI must notify affected customers in writing that their DDAs are no longer fully insured as noninterest-bearing transaction accounts under the Dodd-Frank Deposit Insurance Provision.

19. Are all IDIs required to make interest-bearing DDAs available to depositors?

No. IDIs are not required by any statute or regulation to provide interest-bearing DDAs to depositors.

20. Since IDIs can now pay interest on DDAs, can IDIs still offer NOW account products?

Yes. Congress did not abolish or change the law regarding NOW accounts when it enacted Section 627. The laws (e.g., 12 U.S.C. 1832) and regulations (e.g., 12 C.F.R. § 204.130) regarding NOW accounts remain intact without any modifications. IDIs can still offer NOW account products to eligible customers – individuals, nonprofit organizations and governmental units. For-profit entities are not eligible to own NOW accounts.

21. How does an interest-bearing DDA differ from a NOW account?

As outlined in the following table, there are several differences between DDAs (interest-bearing and noninterest-bearing) and NOW accounts:

NOW Accounts	DDAs
IDI reserves the right to require at least seven days' written notice prior to withdrawal or transfer of any funds (See 12 C.F.R. § 204.2(e)(2))	IDI <u>does not</u> reserve the right to require at least seven days' written notice of an intended withdrawal (See 12 C.F.R. § 204.2(b)(1))
Only individuals, nonprofit organizations and governmental units can own a NOW account; for-profit entities are expressly prohibited from holding NOW accounts	Any depositor can own a DDA

22. In light of the Dodd-Frank Deposit Insurance Provision and with the implementation of Section 627 of the DFA, how will the FDIC calculate deposit insurance coverage for government/public fund depositors?

Pursuant to the Dodd-Frank Deposit Insurance Provision, through December 31, 2012, the FDIC will insure in full the noninterest-bearing transaction accounts of all government/public fund depositors.

Prior to July 21, 2011 (when IDIs could begin to offer interest-bearing DDAs), each official custodian of a government/public unit was also insured for up to \$250,000 for the combined amount of all time and savings accounts at each separately-chartered IDI.

For the period from July 21, 2011 through December 31, 2012,

- If the public unit is located in the same state as the IDI where the public funds are deposited, then each official custodian, in addition to having temporary unlimited deposit insurance coverage for all noninterest-bearing transaction accounts, will also be insured for (a) up to \$250,000 for the combined amount of all time and savings accounts, and (b) up to an additional \$250,000 for the combined amount of all interest-bearing DDAs.
- If the public unit is located in a different state than the IDI where the public funds are deposited, then each official custodian, in addition to having temporary unlimited deposit insurance coverage for all noninterest-bearing transaction accounts, will also be insured for up to \$250,000 for the combined amount of all time and savings accounts and interest-bearing DDAs.

After December 31, 2012, when the Dodd-Frank Deposit Insurance Provision terminates,

- If the public unit is located in the same state as the IDI where the public funds are deposited, then each official custodian will be insured for (a) up to \$250,000 for the combined amount of all time and savings accounts, and (b) up to an additional \$250,000 for the combined amount of all (interest-bearing and noninterest-bearing) DDAs.
- If the public unit is located in a different state than the IDI where the public funds are deposited, then each official custodian will be insured for up to \$250,000 for the combined amount of all deposit accounts.

23. For government/public fund depositors, do IDIs need to pledge collateral on noninterest-bearing transaction accounts?

The requirement that collateral be pledged to secure public deposits at IDIs is imposed by state law and not by the FDIC; there is no provision in the FDIC regulations requiring collateralization of government/public fund deposits. Although the FDIC provides temporary unlimited deposit insurance coverage for noninterest-bearing transaction

accounts, the amount of collateral, if any, required to be pledged on such accounts will depend upon the applicable state law. As a result, questions about this matter should be presented to the responsible State regulator or State Department of Banking.

Disclosure Requirements of the Dodd-Frank Deposit Insurance Provision

24. How are depositors notified of the temporary unlimited insurance coverage for noninterest-bearing transaction accounts?

Each IDI that offers noninterest-bearing transaction accounts must have posted, prominently, a copy of the following notice (“Dodd-Frank Notice”) in the lobby of the IDI’s main office, in each domestic branch, and, if it offers internet deposit services, on its website:

NOTICE OF CHANGES IN TEMPORARY FDIC INSURANCE COVERAGE FOR TRANSACTION ACCOUNTS

All funds in a “noninterest-bearing transaction account” are insured in full by the Federal Deposit Insurance Corporation from December 31, 2010, through December 31, 2012. This temporary unlimited coverage is in addition to, and separate from, the coverage of at least \$250,000 available to depositors under the FDIC’s general deposit insurance rules.

The term “noninterest-bearing transaction account” includes a traditional checking account or demand deposit account on which the insured depository institution pays no interest. It also includes Interest on Lawyers Trust Accounts (“IOLTAs”). It does *not* include other accounts, such as traditional checking or demand deposit accounts that may earn interest, NOW accounts and money-market deposit accounts.

For more information about temporary FDIC insurance coverage of transaction accounts, visit www.fdic.gov.

25. Is the FDIC supplying signage with the amended Dodd-Frank Notice, or do IDIs have to print their own signs?

The FDIC will not be providing signage for the amended Dodd-Frank Notice. IDIs must print their own signage using the required language.

26. Can IDIs amend the text of the Dodd-Frank Notice?

No. IDIs must utilize the specific language provided in FAQ 24 for the Dodd-Frank Notice to be posted in IDIs’ main offices, domestic branches and websites.

27. Can the font or formatting of the Dodd-Frank Notice be modified?

Yes. There is no specified font or formatting requirement for the Dodd-Frank Notice. The notice should be prominent, clear and conspicuous, so that it stands out and can be read by customers from a few feet away.

28. Can an IDI include its logo or brand symbol in the Dodd-Frank Notice?

Yes.

29. For IDIs that offer internet banking services, does the entire Dodd-Frank Notice have to appear on the IDI's homepage?

No. The Dodd-Frank Notice on an IDI's website can either be prominently posted in full on the IDI's home page or made available through a link designed to bring attention to the importance of the information. As an example, "Important Disclosure Regarding Deposit Insurance on Noninterest-bearing Transaction Accounts," with a link to the full Dodd-Frank Notice, would be appropriate.

30. For how long must the Dodd-Frank Notice remain posted?

The Dodd-Frank Notice must be posted by all IDIs through December 31, 2012, when the temporary unlimited deposit insurance for noninterest-bearing transaction accounts expires, as provided by the DFA.

Notice Requirement for Account Modifications (including Modifications to Demand Deposit Accounts to Allow Interest Accrual) and Sweep Accounts

31. What type of action by an IDI would trigger the notification requirement under 12 C.F.R. § 330.16(c)(3)?

Section §330.16(c)(3) provides that if an IDI "uses sweep arrangements, modifies the terms of an account, or takes other actions that result in funds no longer being eligible for full coverage" under the Dodd-Frank Deposit Insurance Provision, the IDI "must notify the affected customer and clearly advise them, in writing, that such actions will affect their deposit insurance coverage."

This notice requirement is intended primarily to apply to IDIs that, on or after July 21, 2011, begin paying interest on DDAs, as is permitted under Section 627 of the DFA. If an IDI modifies the terms of its DDA agreement so that the account may pay interest, the IDI must notify affected customers and clearly advise them in writing that the account no longer will be eligible for full deposit insurance coverage as a noninterest-bearing transaction account.

This provision also applies to "sweep accounts" where funds are swept from a noninterest-bearing transaction account to an interest-bearing deposit account.

32. Are there any specific requirements regarding the timing, form and/or content of the 12 C.F.R. § 330.16(c)(3) notice to depositors?

No. Although notifications are mandatory, 12 C.F.R. § 330.16(c)(3) does not impose specific requirements regarding the timing, form and/or content of the notice. Rather, the FDIC expects IDIs to act in a commercially reasonable manner and to comply with applicable state and federal laws and regulations in informing depositors of changes to their account agreements.

33. Does 12 C.F.R. § 330.16(c)(3) require customer notification if on or after July 21, 2011 an IDI offers a new interest-earning DDA product (but makes no changes to any existing noninterest-bearing demand deposit agreements)?

No. The notice requirement in 12 C.F.R. § 330.16(c)(3) is triggered only if an IDI uses sweep arrangements or when deposit insurance coverage on existing accounts are affected by account modifications or other actions initiated by the IDI. Please note that an IDI is not required to provide any FDIC mandated disclosures in connection with the opening of a business, interest-bearing DDA. Only new consumer accounts require disclosures under the Truth in Savings Act and its implementing regulation, Regulation DD.

34. How is a “sweep account” defined for purposes of the 12 C.F.R. § 330.16(c)(3) notice requirement?

For purposes of the 12 C.F.R. § 330.16(c)(3) notice requirement, the FDIC considers a “sweep account” to be an account held pursuant to a contract between an IDI and a customer involving the pre-arranged, automated transfer of funds from a deposit account that qualifies as a noninterest-bearing transaction account to an interest-bearing deposit account. This definition is intended to include sweep arrangements providing for the automated, recurring movement of funds, typically daily, between a noninterest-bearing transaction account and an interest-bearing account (for example, a savings account such as an MMDA). This definition does not include, for example, non-automated, customer-initiated transfers and transactions used to amortize a loan according to a designated payment schedule. So-called "target-balance" sweeps where, upon reaching a designated balance, funds are swept from a noninterest-bearing transaction account to an interest-bearing account would come within this definition of "sweep account."

35. Does 12 C.F.R. § 330.16(c)(3) require IDIs to notify existing and future sweep account customers that funds swept from a noninterest-bearing transaction account to an interest-bearing account will no longer be eligible for unlimited coverage under the Dodd-Frank Deposit Insurance Provision?

Yes. Pursuant to 12 C.F.R. § 330.16(c)(3), IDIs must notify existing and future sweep account customers, whose funds are swept from a noninterest-bearing transaction account to an interest-bearing deposit account, that the swept funds will not be eligible for unlimited coverage.

Sweep arrangements requiring this notice include the following:

- "Target-balance" sweeps where, upon reaching a designated balance, funds are swept from a noninterest-bearing transaction account to an interest-bearing account.
- Automated, recurring transfers of funds from a noninterest-bearing transaction account to an interest-bearing account specifically provided for in a deposit agreement signed by the customer.

The following types of arrangements will not require notification under Section 330.16(c)(3):

- *Ad hoc* transfers of funds (not provided for in the deposit agreement) from a noninterest-bearing transaction account to an interest-bearing account, where the transfer is initiated by the customer, whether on-line or in-person at the IDI.
- "Round-up" arrangements consisting of small transfers of funds to a consumer savings account based solely on debit card usage.
- Pre-arranged periodic transfers of funds initiated by the customer, whether on-line or in-person, that are not part of the deposit agreement (for example, where a customer establishes a noninterest-bearing transaction account and thereafter opts to have funds transferred on a monthly basis to an interest-bearing account).
- Prearranged periodic sweeps or transfers from a noninterest-bearing transaction account to make loan or other bill payments.
- Transfers initiated by an IDI for overdraft purposes.
- Sweeps to repurchase accounts or money market mutual funds. (These are covered under 12 C.F.R. § 360.8(e).)

36. Do the 12 C.F.R. § 330.16(c)(3) notice requirements apply in cases where funds are swept from a noninterest-bearing transaction account to a non-deposit account, such as a repurchase agreement or money market mutual fund outside the IDI?

No. The 12 C.F.R. § 330.16(c)(3) notice requirements do not extend to such sweep products; however, a customer notification regarding such sweep accounts is required annually under Section 360.8(e) of the FDIC's regulations (12 C.F.R. § 360.8(e)).

37. Will funds swept out of a noninterest-bearing transaction account to a noninterest-bearing savings account such as a noninterest-bearing MMDA (also known as a “Reserve Sweep”) receive temporary full deposit insurance coverage under the Dodd-Frank Deposit Insurance Provision?

Yes. Such noninterest-bearing savings accounts into which funds are swept would be considered noninterest-bearing transaction accounts and would be fully insured under the Dodd-Frank Deposit Insurance Provision.