

sold Federal funds to a depository institution, subsequently *sells* or participates out that obligation to a non-depository third party without notifying the obligated institution.

(b) The Board's interpretation regarding Federal funds transactions (12 CFR 204.126) clarified that a depository institution's liability must be issued to an exempt institution described in § 204.2(a)(1)(vii)(A) of Regulation D for its own account in order to come within the nondeposit exemption for inter-depository liabilities. The Board regards transactions which result in third parties gaining access to the Federal funds market as contrary to the exemption contained in § 204.2(a)(1)(vii)(A) of Regulation D regardless of whether the nondepository institution third party is a party to the initial transaction or thereafter becomes a participant in the transaction through purchase of all or part of the obligation held by the *selling* depository institution.

(c) The Board regards the notice requirements set out in 12 CFR 204.126 as applicable to IDLP-type transactions as described herein so that a depository institution *selling* Federal funds must provide to the purchaser—

(1) Notice of its intention, at the time of the initial transaction, to sell or participate out its loan contract to a nondepository third party, and

(2) Full and prompt notice whenever it (the *selling* depository institution) subsequently sells or participates out its loan contract to a non-depository third party.

[52 FR 47695, Dec. 16, 1987]

§ 204.128 Deposits at foreign branches guaranteed by domestic office of a depository institution.

(a) In accepting deposits at branches abroad, some depository institutions may enter into agreements from time to time with depositors that in effect guarantee payment of such deposits in the United States if the foreign branch is precluded from making payment. The question has arisen whether such deposits are subject to Regulation D, and this interpretation is intended as clarification.

(b) Section 19 of the Federal Reserve Act which establishes reserve require-

ments does not apply to deposits of a depository institution "payable only at an office thereof located outside of the States of the United States and the District of Columbia" (12 U.S.C. 371a; 12 CFR 204.1(c)(5)). The Board rule in 1918 that the requirements of section 19 as to reserves to be carried by member banks do not apply to foreign branches (1918 *Fed. Res. Bull.* 1123). The Board has also defined the phrase *Any deposit that is payable only at an office located outside the United States*, in § 204.2(t) of Regulation D, 12 CFR 204.2(t).

(c) The Board believes that this exemption from reserve requirements should be limited to deposits in foreign branches as to which the depositor is entitled, under his agreement with the depository institution, to demand payment only outside the United States, regardless of special circumstances. The exemption is intended principally to enable foreign branches of U.S. depository institutions to compete on a more nearly equal basis with banks in foreign countries in accordance with the laws and regulations of those countries. A customer who makes a deposit that is payable solely at a foreign branch of the depository institution assumes whatever risk may exist that the foreign country in which a branch is located might impose restrictions on withdrawals. When payment of a deposit in a foreign branch is guaranteed by a promise of payment at an office in the United States if not paid at the foreign office, the depositor no longer assumes this risk but enjoys substantially the same rights as if the deposit had been made in a U.S. office of the depository institution. To assure the effectiveness of Regulation D and to prevent evasions thereof, the Board considers that such guaranteed foreign-branch deposits must be subject to that regulation.

(d) Accordingly, a deposit in a foreign branch of a depository institution that is guaranteed by a domestic office is subject to the reserve requirements of Regulation D the same as if the deposit had been made in the domestic office. This interpretation is not designed in any respect to prevent the head office of a U.S. bank from repaying borrowings from, making advances to, or supplying capital funds to its foreign

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branches, subject to Eurocurrency liability reserve requirements.

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§ 204.130 Eligibility for NOW accounts.

(a) *Summary.* In response to many requests for rulings, the Board has determined to clarify the types of entities that may maintain NOW accounts at member banks.

(b) *Individuals.* (1) Any individual may maintain a NOW account regardless of the purposes that the funds will serve. Thus, deposits of an individual used in his or her business including a sole proprietor or an individual doing business under a trade name is eligible to maintain a NOW account in the individual's name or in the "DBA" name. However, other entities organized or operated to make a profit such as corporations, partnerships, associations, business trusts, or other organizations may not maintain NOW accounts.

(2) Pension funds, escrow accounts, security deposits, and other funds held under various agency agreements may also be classified as NOW accounts if the entire beneficial interest is held by individuals or other entities eligible to maintain NOW accounts directly. The Board believes that these accounts are similar in nature to trust accounts and should be accorded identical treatment. Therefore, such funds may be regarded as eligible for classification as NOW accounts.

(c) *Nonprofit organizations.* (1) A nonprofit organization that is operated primarily for religious, philanthropic, charitable, educational, political or other similar purposes may maintain a NOW account. The Board regards the following kinds of organizations as eligible for NOW accounts under this standard if they are not operated for profit:

(i) Organizations described in section 501(c)(3) through (13), and (19) of the Internal Revenue Code (26 U.S.C. (I.R.C. 1954) section 501(c)(3) through (13) and (19));

(ii) Political organizations described in section 527 of the Internal Revenue Code (26 U.S.C. (I.R.C. 1954) section 527); and

(iii) Homeowners and condominium owners associations described in section 528 of the Internal Revenue Code

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(26 U.S.C. (I.R.C. 1954) section 528), including housing cooperative associations that perform similar functions.

(2) All organizations that are operated for profit are not eligible to maintain NOW accounts at depository institutions.

(3) The following types of organizations described in the cited provisions of the Internal Revenue Code are among those not eligible to maintain NOW accounts:

(i) Credit unions and other mutual depository institutions described in section 501(c)(14) of the Internal Revenue Code (26 U.S.C. (I.R.C. 1954) section 501(c)(14));

(ii) Mutual insurance companies described in section 501(c)(15) of the Internal Revenue Code (26 U.S.C. (I.R.C. 1954) section 501(c)(15));

(iii) Crop financing organizations described in section 501(c)(16) of the Internal Revenue Code (26 U.S.C. (I.R.C. 1954) section 501(c)(16));

(iv) Organizations created to function as part of a qualified group legal services plan described in section 501(c)(20) of the Internal Revenue Code (26 U.S.C. (I.R.C. 1954) section 501(c)(20)); or

(v) Farmers' cooperatives described in section 521 of the Internal Revenue Code (26 U.S.C. (I.R.C. 1954) section 521).

(d) *Governmental units.* Governmental units are generally eligible to maintain NOW accounts at member banks. NOW accounts may consist of funds in which the entire beneficial interest is held by the United States, any State of the United States, 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.

(e) *Funds held by a fiduciary.* Under current provisions, funds held in a fiduciary capacity (either by an individual fiduciary or by a corporate fiduciary such as a bank trust department or a trustee in bankruptcy), including those awaiting distribution or investment, may be held in the form of NOW accounts if all of the beneficiaries are otherwise eligible to maintain NOW accounts. The Board believes that such a