

# Proposed Rules

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This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

## FEDERAL RESERVE SYSTEM

### 12 CFR Part 204

[Regulation D; Docket No. R-1350]

#### Reserve Requirements of Depository Institutions

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Notice of proposed rulemaking; request for public comment.

**SUMMARY:** The Board is requesting public comment on proposed amendments to Regulation D, Reserve Requirements of Depository Institutions, to authorize the establishment of limited-purpose accounts at Federal Reserve Banks ("Reserve Banks") for the maintenance of excess balances of eligible institutions (both as defined in Regulation D). These excess balance accounts ("EBAs") would contain only the excess balances of the eligible institutions participating in such accounts, although the participating eligible institutions ("EBA Participants") would authorize another institution ("EBA Agent") to manage the EBA on their behalf. The authorization of EBAs is intended to allow eligible institutions to earn interest on their excess balances at the excess balance rate in an account relationship directly with the Federal Reserve Bank as counterparty without disrupting established business relationships with their correspondents. Continuing strains in financial markets and the configuration of interest rates support the implementation of EBAs; however, the Board will evaluate the continuing need for EBAs when more normal market functioning is restored. The Board seeks comment on all aspects of the proposal.

**DATES:** Comments must be submitted by March 2, 2009.

**ADDRESSES:** You may submit comments, identified by Docket No. R-1350, by any of the following methods:

Agency Web Site: <http://www.federalreserve.gov>. Follow the

instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>. Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

*E-mail:*

[regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov).

Include the docket number in the subject line of the message.

*Fax:* (202) 452-3819 or (202) 452-3102.

*Mail:* Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551.

All public comments are available from the Board's Web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information.

Public comments may also be viewed electronically or in paper in Room MP-500 of the Board's Martin Building (20th and C Streets, NW.) between 9 a.m. and 5 p.m. on weekdays.

**FOR FURTHER INFORMATION CONTACT:** Sophia H. Allison, Senior Counsel (202/452-3565), or Dena L. Milligan, Staff Attorney (202/452-3900), Legal Division, or Seth Carpenter, Deputy Associate Director (202/452-2385), or Margaret Gillis DeBoer, Section Chief (202/452-3139), Division of Monetary Affairs; for users of Telecommunications Device for the Deaf (TDD) only, contact (202/263-4869); Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

#### SUPPLEMENTARY INFORMATION:

##### I. Background—Interest on Reserves

Section 128 of the Emergency Economic Stabilization Act of 2008, enacted on October 3, 2008 (the "2008 Act"), accelerated the effective date of the authority for the Reserve Banks to pay earnings on balances maintained at the Reserve Banks by or on behalf of depository institutions. The 2008 Act made this authority effective on October 1, 2008. This authority was originally enacted in Title II of the Financial Services Regulatory Relief Act of 2006 (the "2006 Act") (Pub. L. 109-351, 120 Stat. 1966 (Oct. 13, 2006)), with an original effective date of October 1,

2011. The 2006 Act provides that such earnings must be paid at least once each quarter at a rate or rates not to exceed the general level of short-term interest rates. The 2006 Act also provides that the Board may prescribe regulations concerning the payment of earnings, the distribution of earnings to the depository institutions that maintain balances or on whose behalf balances are maintained, and the responsibilities of correspondents to distribute and credit earnings on balances maintained by the respondent on a pass-through basis with the correspondent.

On October 9, 2008, the Board published in the **Federal Register** an interim final rule amending Regulation D (Reserve Requirements of Depository Institutions) to direct the Reserve Banks to pay interest on balances held at Reserve Banks to satisfy reserve requirements ("required reserve balances") and balances held in excess of required reserve balances and clearing balances ("excess balances") (73 FR 59482) (Oct. 9, 2008). At that time, the Board announced two formulas by which the amount of earnings payable on required reserve balances and excess balances would be calculated. For required reserve balances, the Board set the initial formula for the rate of interest to be the average federal funds rate target established by the Federal Open Market Committee (the "FOMC") over the reserve maintenance period less 10 basis points. For excess balances, the Board set the initial formula for the rate of interest to be the lowest federal funds rate target established by the FOMC in effect during the reserve maintenance period minus 75 basis points. The Board stated that it might adjust the formula for the interest rate on excess balances in light of experience and evolving market conditions. The Board has subsequently adjusted the formula for the rate of interest for excess balances three times and the rate of interest on required reserve balances twice. The rate of interest on both required reserve balances and on excess balances currently is equal to ¼ percent. The Board may from time to time determine any other rate or rates for such balances, which would be announced when determined.

## II. Maintenance of Required Reserve Balances and Excess Balances

Under Regulation D, a depository institution must maintain reserves against its reservable liabilities in the form of cash in its vault or, if vault cash is insufficient, in the form of a balance in an account at a Reserve Bank.<sup>1</sup> 12 CFR 204.3(b)(1). A depository institution may maintain such balances in an account in its own name at a Reserve Bank, or it may choose a pass-through correspondent through which it may pass through its required reserve balance. The pass-through correspondent holds its respondents' required reserve balances in an account of the correspondent at a Reserve Bank. Under Regulation D, the balance in a pass-through correspondent's account at a Reserve Bank is deemed to be the property of the pass-through correspondent exclusively, and the account balance represents a liability of the Reserve Bank solely to the pass-through correspondent, regardless of whether the funds represent the required reserve balances of another institution that have been passed through the pass-through correspondent. 12 CFR 204.3(i)(2).

Under the Board's October interim final rule, any excess balances in a pass-through correspondent's account are deemed to be balances held on behalf of its respondents. Reserve Banks credit the pass-through correspondent's account with the interest on the required reserve balances and excess balances of the pass-through correspondent's respondents. The October interim final rule permits, but does not require, correspondents to pass back the interest earned to their respondents.

## III. Implications in the Current Market Environment

The respondents of a pass-through correspondent can, by agreement with the correspondent, receive earnings on their excess balances by directing the correspondent to sell those balances in the federal funds market, or by having the correspondent hold those balances in the correspondent's account at a Reserve Bank under a pass-through arrangement. These two approaches have different implications for the correspondent's balance sheet and its leverage ratio for capital adequacy purposes.

<sup>1</sup> The 2006 Act amended section 19 of the Act to authorize member banks to enter into pass-through account arrangements. Prior to the 2006 Act, only nonmember banks were authorized to enter into such arrangements. See Notice of Proposed Rulemaking, Request for Public Comment, 73 FR 8009 (Feb. 12, 2008).

As noted above, Regulation D currently deems the entire balance in a pass-through correspondent's account at a Reserve Bank to be the exclusive property of the pass-through correspondent and to represent a liability of that Reserve Bank to the pass-through correspondent exclusively. Therefore, the pass-through correspondent must show the entire balance in its Reserve Bank account on its own balance sheet as an asset, even if the balance consists, in whole or in part, of amounts that are passed through on behalf of a respondent.<sup>2</sup>

Accordingly, when a correspondent's respondents want to earn interest on excess balances by leaving them with their correspondent (which in turn passes those balances through to the Reserve Bank), the correspondent has a larger balance at the Reserve Bank. As a result, the correspondent has more assets on its balance sheet and a lower leverage ratio for capital adequacy purposes.

In contrast, when the correspondent sells the respondent's federal funds on the respondent's behalf, the respondent directs its correspondent to transfer funds to the entity purchasing federal funds. This transaction is effected by a debit to the correspondent's account at a Reserve Bank and a credit to the purchaser's account at a Reserve Bank. On the correspondent's balance sheet, all other things being equal, the correspondent's assets decline (as does its liability to its respondent) because the correspondent's account balance at the Reserve Bank is lower and therefore its regulatory leverage ratio would be higher.

Since the implementation of interest on excess balances through the October interim final rule, the actual federal funds rate has generally averaged significantly below the interest rate paid by the Reserve Banks on excess balances, although this spread narrowed significantly after the FOMC established a range for the federal funds rate of 0 to ¼ percent on December 16. When the market rate of interest on federal funds is below the rate paid by the Reserve Banks on excess balances, respondents have an incentive to shift the investment of their surplus funds away from sales of federal funds (through their correspondents acting as agents), and toward holding funds directly as excess balances with the Reserve Banks,

<sup>2</sup> The same would be true of a correspondent that was not acting in a pass-through capacity: its entire account balance at the Reserve Bank would be an asset on the correspondent's own balance sheet. Regulation D, however, does not specifically address correspondents other than pass-through correspondents.

potentially disrupting established correspondent-respondent relationships. A correspondent could offer to purchase federal funds directly from its respondents and hold those funds as excess balances at a Reserve Bank; however, such transactions could result in a significant reduction in regulatory leverage ratios for some correspondents. The Board believes that the disparity between the actual federal funds rate and the rate paid by Reserve Banks on excess balances may partly be caused by the leverage incentives imposed on correspondent institutions to sell excess balances into the federal funds market rather than maintaining those balances in an account at a Reserve Bank.

## IV. EBA Proposal

The Board is proposing to authorize the establishment of EBAs to reduce disruptions in established relationships between correspondents and their respondents that would result from a shift by those respondents away from federal funds sales and toward holding excess balances in individual accounts at the Reserve Banks. These disruptions appear to be directly related to the current configuration of interest rates and the unprecedented volume of excess balances provided through the Federal Reserve's open market operations and liquidity facilities. When more normal market functioning resumes, the Board would re-evaluate the continuing need for EBAs.

The Board proposes to authorize EBAs with the following characteristics.

### A. Account Structure

EBAs would be established by the EBA Participants. One possible application of this structure would be that the respondent institutions of a particular correspondent could become EBA Participants by establishing an EBA for the maintenance overnight of their aggregate excess balances. The EBA would be established at the Reserve Bank where the EBA Agent (discussed below) maintains its own master account. All EBA Participants would be required to be the type of institution that is eligible, as defined in the 2008 Act, to receive interest on their excess balances.<sup>3</sup> Any eligible institution could be an EBA Participant.

<sup>3</sup> The 2008 Act permits Federal Reserve Banks to pay interest on balances held by or on behalf of "depository institutions," but the 2008 Act's definition of "depository institution" has a broader meaning than the definition of that term in section 19(b)(1)(A) of the Act and Regulation D. Therefore, the Board believed that a different term would be useful to refer only to those institutions included in the 2008 Act's broader definition of "depository institution." In its October 9, 2008 notice of

As noted above, Regulation D currently provides that balances in a pass-through correspondent's account at a Reserve Bank represent a liability of the Reserve Bank solely to that pass-through correspondent, even though that account may also contain funds that are attributable to one or more of the pass-through correspondent's respondent institutions. With the EBA, however, all balances in the EBA would be deemed to be the property solely of the EBA Participants, and to represent a liability of the Reserve Bank to the EBA Participants alone and not to the EBA Agent. Because the excess balances of EBA Participants in EBAs would be the Reserve Bank's direct liability to the EBA Participants, the adverse leverage impact of such arrangements on correspondents would be mitigated.

#### B. Authority to Manage Account

The EBA Participants of an EBA would be required to authorize one institution (which may or may not be an "eligible institution" but that must have its own account at a Reserve Bank) to manage the EBA on behalf of the EBA Participants, including giving instructions for the transfer of EBA Participants' excess balances in and out of the EBA. The EBA Agent would not be allowed to commingle its own funds in the EBA. The EBA Agent would be required to have its own account at a Federal Reserve Bank. The EBA Agent could be, but need not be, a correspondent institution that serves the EBA Participants as its respondents under a correspondent, or pass-through correspondent, arrangement. This EBA Agent would be authorized to place EBA Participant excess balances into the EBA, remove those excess balances, and generally manage the EBA (which may include facilitating the opening of the EBA on behalf of EBA Participants). The EBA Agent would be responsible for determining amounts of excess balances to deposit into the EBA and for maintaining adequate records to demonstrate the level of excess balances in the EBA of each EBA Participant. The Reserve Banks would calculate interest on an EBA on an aggregate basis and

proposed rulemaking, the Board proposed using the term "eligible institution" to refer to institutions that are eligible to receive interest on their balances maintained at Federal Reserve Banks. "Eligible institution" includes the depository institutions defined in section 19(b)(1)(A) of the Act, including banks, savings associations, savings banks and credit unions that are federally insured or eligible to apply for federal insurance. "Eligible institution" also includes trust companies, Edge and agreement corporations, and U.S. agencies and branches of foreign banks. The definition does not include all entities for which the Reserve Banks hold accounts, such as entities for which the Reserve Banks act as fiscal agents, including Federal Home Loan Banks.

would not calculate an interest amount for each EBA Participant. The EBA Participants would be responsible for instructing the EBA Agent with respect to the disposition of the interest and the balances, of the EBA Participant in the EBA—presumably within the context of any applicable correspondent-responder agreement, taking into account all of the services and other terms and conditions of the relationship.

#### C. Limited-Purpose Properties of Account

The EBA would exist for the sole purpose of holding excess balances of EBA Participants, generally on an overnight basis. The EBA would not be permitted to be overdrawn at any time, either intra-day or overnight. Balances maintained overnight in an EBA would not satisfy a required reserve balance or a contractual clearing balance for any EBA Participant or for the EBA Agent. The EBA could not be used for general payments or other activities.

#### D. Payment of Interest on EBAs

Excess balances maintained in an EBA would earn interest at the excess balances rate specified in section 204.10(b)(2) of Regulation D. The Board's interim final rule published in the **Federal Register** on October 9 defines "excess balances" as an institution's balances in an account at a Reserve Bank in excess of the institution's required reserve balance (which may be zero) and the institution's contractual clearing balance (if any). The October 9 interim final rule also provides that interest on required reserve balances and excess balances is credited to eligible institutions 15 days after the close of the applicable reserve maintenance period. Under Regulation D, the reserve maintenance period is the period during which a depository institution must maintain, on average, its required reserve balance. For institutions with reservable liabilities below the exemption amount or those with only a contractual clearing balance, the reserve maintenance period is one week long. The Board would compute average balances in an EBA during a one-week maintenance period that begins on Thursday and ends the following Wednesday and would credit interest to the EBA fifteen (15) days after the close of the one-week maintenance period. The EBA Agent would be responsible for disbursing interest in the EBA in accordance with the directions given by each EBA Participant to the EBA Agent for such disbursements.

## V. Section-by-Section Analysis

### Section 204.10(d)(6)

Proposed section 204.10(d)(6) adds a new subsection to section 204.10(d), which sets forth definitions relating to the payment of interest on reserves and other balances maintained at Reserve Banks. Proposed section 204.10(d)(6) adds the term "excess balance account" as a defined term in Regulation D. Section 204.10(d) defines "excess balance account" as an account at a Reserve Bank established by one or more eligible institutions and in which only excess balances of the participating eligible institutions may at any time be maintained. Proposed section 204.10(d)(6) also clarifies that such an account is not a "pass-through account" for purposes of Regulation D. This clarification is appropriate because a pass-through account represents a liability of a Reserve Bank solely to a correspondent institution, whereas the liability represented by an EBA represents a liability of the Reserve Bank solely to the institutions whose excess balances are maintained in the EBA.

### Section 204.10(e)(1)

Proposed section 204.10(e)(1) provides that eligible institutions may establish an EBA at a Reserve Bank when the EBA is (A) established by the eligible institutions and is (B) established solely for the purpose of maintaining overnight excess balances of the participating eligible institutions. Proposed section 204.10(e)(1) also provides that balances maintained in such an account are the property of the eligible institutions that participate in the EBA, and represent a liability of the Reserve Bank solely to those institutions. Proposed section 204.10(e)(1) is intended to distinguish such account arrangements from the definition and operation of the term "pass-through account" elsewhere in Regulation D.

### Section 204.10(e)(2)

Proposed section 204.10(e)(2) sets forth the regulatory provisions relating to the appointment and authorization of an EBA Agent to manage an EBA on behalf of EBA Participants. The EBA Agent must have its own account at a Reserve Bank unless otherwise determined by the Board. Proposed section 204.10(e)(2) also provides that an EBA Agent must not commingle any of its own funds in an EBA at any time, either intra-day or overnight.

**Section 204.10(e)(3)**

Proposed section 204.10(e)(3) specifies that balances maintained in an EBA must consist solely of excess balances of EBA Participants, and that such balances will not satisfy any institution's required reserve balance or contractual clearing balance.

**Section 204.10(e)(4)**

Proposed section 204.10(e)(4) specifies that an EBA is for the exclusive purpose of maintaining EBA Participants' excess balances and is not be used for general payments or other activities.

**Section 204.10(e)(5)**

Proposed section 204.10(e)(5) provides that balances in an EBA would earn interest at the rate specified for "excess balances" in current section 204.10(b)(2) of Regulation D.

**VI. Form of Comment Letters**

Comment letters should refer to Docket No. R-1350 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed electronically to [regs.comments@federalreserve.gov](mailto:regs.comments@federalreserve.gov).

**VII. Solicitation of Comments Regarding Use of "Plain Language"**

Section 722 of the Gramm-Leach-Bliley Act of 1999 (12 U.S.C. 4809) requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the interim final rule is clearly stated and effectively organized, and how the Board might make the text of the rule easier to understand.

**VIII. Regulatory Flexibility Act**

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.* (RFA), requires an agency that is issuing a proposed rule to prepare and make available an initial regulatory flexibility analysis that describes the impact of the final rule on small entities. 5 U.S.C. 603(a). The RFA provides that an agency is not required to prepare and publish a regulatory flexibility analysis if the agency certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

Pursuant to section 605(b) of the RFA, the Board certifies that this interim final rule will not have a significant adverse economic impact on a substantial number of small entities. The proposed

rule would permit, but does not require, institutions to establish EBAs at Reserve Banks. The impact on institutions choosing to establish EBAs at Reserve Banks would be positive and not adverse, because EBA Participants would be able to earn the rate payable on excess balances in a debtor-creditor relationship directly with a Reserve Bank without disrupting established correspondent-respondent relationships. Likewise, the impact would be positive and not adverse on institutions that choose to establish EBAs but are not currently in a correspondent-respondent relationship, as such institutions would be expected to establish EBAs only to the extent that EBA Agents and EBA Participants found it mutually beneficial to do so.

**IX. Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The proposed rule contains no requirements subject to the PRA.

**List of Subjects in 12 CFR Part 204**

Banks, banking, Reporting and recordkeeping requirements.

**Authority and Issuance**

For the reasons set forth in the preamble, the Board is proposing to amend 12 CFR part 204 as follows:

**PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)**

1. The authority citation for part 204 continues to read as follows:

**Authority:** 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 6105.

2. Section 204.10 is amended by adding new paragraphs (d)(6) and (e) to read as follows:

**§ 204.10 Payment of interest on balances.**

\* \* \* \* \*

(d) \* \* \*

(6) *Excess balance account* means an account at a Reserve Bank pursuant to § 204.10(e) of this part that is established by one or more eligible institutions and in which only excess balances of the participating eligible institutions may at any time be maintained. An excess balance account is not a "pass-through account" for purposes of this part.

(e) *Excess balance accounts.* (1) Establishing an excess balance account. A Reserve Bank may establish an excess balance account for eligible institutions

under the provisions of this paragraph. Notwithstanding any other provisions of this part, the excess balances of eligible institutions in an excess balance account are the property of the eligible institutions that participate in the account, and represent a liability of the Reserve Bank solely to those participating eligible institutions.

(2) The participating eligible institutions in an excess balance account shall authorize another institution to act as agent of the eligible institutions for purposes of general account management, including but not limited to transferring the excess balances of participating institutions in and out of the excess balance account. The agent must maintain its own separate account at a Reserve Bank unless otherwise determined by the Board. The agent may not commingle its own funds in the excess balance account.

(3) No reserve balances or clearing balances of any institution may be maintained at any time in an excess balance account, and balances maintained in an excess balance account will not satisfy any institution's required reserve balance or contractual clearing balance.

(4) An excess balance account may be used exclusively for the purpose of maintaining the excess balances of participants and may not be used for general payments or other activities.

(5) Interest shall be paid on excess balances of eligible institutions maintained in an excess balance account in accordance with § 204.10(b)(2) of this part.

By order of the Board of Governors of the Federal Reserve System, January 25, 2009.

**Jennifer J. Johnson,**

*Secretary of the Board.*

[FR Doc. E9-1996 Filed 1-29-09; 8:45 am]

**BILLING CODE 6210-01-P**

**DEPARTMENT OF THE INTERIOR****National Park Service****36 CFR Part 7****Negotiated Rulemaking Advisory Committee for Off-Road Vehicle Management for Cape Hatteras National Seashore**

**AGENCY:** National Park Service (NPS), Interior.

**ACTION:** Notice of Thirteenth Meeting.

**SUMMARY:** Notice is hereby given, in accordance with the Federal Advisory Committee Act (Pub. L. 92-463, 86 Stat. 770, 5 U.S.C. App 1, section 10), of the