

Federal Deposit Insurance Corporation

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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.

(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.

[76 FR 41395, July 14, 2011]

PART 331—FEDERAL INTEREST RATE AUTHORITY

Sec.

331.1 Authority, purpose, and scope.
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AUTHORITY: 12 U.S.C. 1819(a)(Tenth), 1820(g), 1831d.

SOURCE: 85 FR 44157, July 22, 2020, unless otherwise noted.

§ 331.1 Authority, purpose, and scope.

(a) *Authority.* The regulations in this part are issued by the Federal Deposit Insurance Corporation (FDIC) under

sections 9(a)(Tenth) and 10(g) of the Federal Deposit Insurance Act (FDI Act), 12 U.S.C. 1819(a)(Tenth), 1820(g), to implement sections 24(j) and 27 of the FDI Act, 12 U.S.C. 1831a(j), 1831d, and related provisions of the Depository Institutions Deregulation and Monetary Control Act of 1980, Public Law 96-221, 94 Stat. 132 (1980).

(b) *Purpose.* Section 24(j) of the FDI Act, as amended by the Riegle-Neal Amendments Act of 1997, Public Law 105-24, 111 Stat. 238 (1997), was enacted to maintain parity between State banks and national banks regarding the application of a host State's laws to branches of out-of-State banks. Section 27 of the FDI Act was enacted to provide State banks with interest rate authority similar to that provided to national banks under the National Bank Act, 12 U.S.C. 85. The regulations in this part clarify that State-chartered banks and insured branches of foreign banks have regulatory authority in these areas parallel to the authority of national banks under regulations issued by the Office of the Comptroller of the Currency, and address other issues the FDIC considers appropriate to implement these statutes.

(c) *Scope.* The regulations in this part apply to State-chartered banks and insured branches of foreign banks.

§ 331.2 Definitions.

For purposes of this part—

Home State means, with respect to a State bank, the State by which the bank is chartered.

Host State means a State, other than the home State of a State bank, in which the State bank maintains a branch.

Insured branch has the same meaning as that term in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813.

Interest means any payment compensating a creditor or prospective creditor for an extension of credit, making available a line of credit, or any default or breach by a borrower of a condition upon which credit was extended. Interest includes, among other things, the following fees connected with credit extension or availability: numerical periodic rates; late fees; creditor-imposed not sufficient funds (NSF) fees

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charged when a borrower tenders payment on a debt with a check drawn on insufficient funds; overlimit fees; annual fees; cash advance fees; and membership fees. It does not ordinarily include appraisal fees, premiums and commissions attributable to insurance guaranteeing repayment of any extension of credit, finders' fees, fees for document preparation or notarization, or fees incurred to obtain credit reports.

Out-of-State State bank means, with respect to any State, a State bank whose home State is another State.

Rate on 90-day commercial paper means the rate quoted by the Federal Reserve Board of Governors for 90-day A2/P2 nonfinancial commercial paper.

State bank has the same meaning as that term in section 3 of the Federal Deposit Insurance Act, 12 U.S.C. 1813.

§ 331.3 Application of host State law.

The laws of a host State shall apply to any branch in the host State of an out-of-State State bank to the same extent as such State laws apply to a branch in the host State of an out-of-State national bank. To the extent host State law is inapplicable to a branch of an out-of-State State bank in such host State pursuant to the preceding sentence, home State law shall apply to such branch.

§ 331.4 Interest rate authority.

(a) *Interest rates.* In order to prevent discrimination against State-chartered depository institutions, including insured savings banks, or insured branches of foreign banks, if the applicable rate prescribed in this section exceeds the rate such State bank or insured branch of a foreign bank would be permitted to charge in the absence of this paragraph (a), such State bank or insured branch of a foreign bank may, notwithstanding any State constitution or statute which is preempted by section 27 of the Federal Deposit Insurance Act, 12 U.S.C. 1831d, take, receive, reserve, and charge on any loan or discount made, or upon any note, bill of exchange, or other evidence of debt, interest at a rate of not more than 1 percent in excess of the rate on 90-day commercial paper or at the rate allowed by the laws of the State, terri-

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tory, or district where the bank is located, whichever may be greater.

(b) *Classes of institutions and loans.* A State bank or insured branch of a foreign bank located in a State may charge interest at the maximum rate permitted to any State-chartered or licensed lending institution by the law of that State. If State law permits different interest charges on specified classes of loans, a State bank or insured branch of a foreign bank making such loans is subject only to the provisions of State law relating to that class of loans that are material to the determination of the permitted interest. For example, a State bank may lawfully charge the highest rate permitted to be charged by a State-licensed small loan company, without being so licensed, but subject to State law limitations on the size of loans made by small loan companies.

(c) *Effect on State law definitions of interest.* The definition of the term *interest* in this part does not change how interest is defined by the individual States or how the State definition of interest is used solely for purposes of State law. For example, if late fees are not *interest* under the State law of the State where a State bank is located but State law permits its most favored lender to charge late fees, then a State bank located in that State may charge late fees to its intrastate customers. The State bank also may charge late fees to its interstate customers because the fees are *interest* under the Federal definition of interest and an allowable charge under the State law of the State where the bank is located. However, the late fees would not be treated as *interest* for purposes of evaluating compliance with State usury limitations because State law excludes late fees when calculating the maximum interest that lending institutions may charge under those limitations.

(d) *Corporate borrowers.* A State bank or insured branch of a foreign bank located in a State whose State law denies the defense of usury to a corporate borrower may charge a corporate borrower any rate of interest agreed upon by the corporate borrower.

(e) *Determination of interest permissible under section 27.* Whether interest on a loan is permissible under section 27 of

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the Federal Deposit Insurance Act is determined as of the date the loan was made. Interest on a loan that is permissible under section 27 of the Federal Deposit Insurance Act shall not be affected by a change in State law, a change in the relevant commercial paper rate after the loan was made, or the sale, assignment, or other transfer of the loan, in whole or in part.

PART 332—PRIVACY OF CONSUMER FINANCIAL INFORMATION

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APPENDIX A TO PART 332—MODEL PRIVACY FORM

AUTHORITY: 12 U.S.C. 1819 (Seventh and Tenth); 15 U.S.C. 6801 *et seq.*

SOURCE: 65 FR 35216, June 1, 2000, unless otherwise noted.

§ 332.1 Purpose and scope.

(a) *Purpose.* This part governs the treatment of nonpublic personal information about consumers by the financial institutions listed in paragraph (b) of this section. This part:

(1) Requires a financial institution to provide notice to customers about its privacy policies and practices;

(2) Describes the conditions under which a financial institution may disclose nonpublic personal information about consumers to nonaffiliated third parties; and

(3) Provides a method for consumers to prevent a financial institution from disclosing that information to most nonaffiliated third parties by “opting out” of that disclosure, subject to the exceptions in §§ 332.13, 332.14, and 332.15.

(b) *Scope.* (1) This part applies only to nonpublic personal information about individuals who obtain financial products or services primarily for personal, family, or household purposes from the institutions listed below. This part does not apply to information about companies or about individuals who obtain financial products or services for business, commercial, or agricultural purposes. This part applies to the United States offices of entities for which the Federal Deposit Insurance Corporation (FDIC) has primary federal supervisory authority. They are referred to in this part as “you.” These are: banks insured by the FDIC (other than members of the Federal Reserve System), insured state branches of foreign banks, and certain subsidiaries of such entities.

(2) Nothing in this part modifies, limits, or supersedes the standards governing individually identifiable health information promulgated by the Secretary of Health and Human Services under the authority of sections 262 and 264 of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. 1320d–1320d–8).