

(v) *Clearing balance* means the average balance held in an account at a Federal Reserve Bank by an institution over a reserve maintenance period to satisfy its contractual clearing balance with a Reserve Bank.

* * * * *

(y) *Eligible institution* means—

(1) Any depository institution as described in § 204.1(c) of this part;

(2) Any trust company;

(3) Any corporation organized under section 25A of the Federal Reserve Act (12 U.S.C. 611 *et seq.*) or having an agreement with the Board under section 25 of the Federal Reserve Act (12 U.S.C. 601 *et seq.*); and

(4) Any branch or agency of a foreign bank (as defined in section 1(b) of the International Banking Act of 1978, 12 U.S.C. 3101(b)).

(z) *Excess balance* means the average balance held in an account at a Federal Reserve Bank by or on behalf of an institution over a reserve maintenance period that exceeds the sum of the required reserve balance and any clearing balance.

(aa) *Excess balance account* means an account at a Reserve Bank pursuant to § 204.10(d) of this part that is established by one or more eligible institutions through an agent 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.

(bb) *Required reserve balance* means the average balance held in an account at a Federal Reserve Bank by or on behalf of an institution over a reserve maintenance period to satisfy the reserve requirements of this part.

(cc) *Targeted federal funds rate* means the federal funds rate established from time to time by the Federal Open Market Committee.

■ 3. Revise § 204.10 to read as follows:

§ 204.10 Payment of interest on balances.

(a) *Payment of interest.* The Federal Reserve Banks shall pay interest on balances maintained at Federal Reserve Banks by or on behalf of an eligible institution as provided in this section and under such other terms and conditions as the Board may prescribe.

(b) *Rate.* Except as provided in paragraph (c) of this section, Federal Reserve Banks shall pay interest at the following rates—

(1) For required reserve balances, at ¼ percent;

(2) For excess balances, at ¼ percent; or

(3) For required reserve balances or excess balances, at any other rate or

rates as determined by the Board from time to time.

(c) *Pass-through balances.* A pass-through correspondent that is an eligible institution may pass back to its respondent interest paid on balances held on behalf of that respondent. In the case of balances held by a pass-through correspondent that is not an eligible institution, a Reserve Bank shall pay interest only on the required reserve balances held on behalf of one or more respondents, and the correspondent shall pass back to its respondents interest paid on balances in the correspondent’s account. Any passing back of interest by a correspondent to a respondent under this subsection is not a payment of interest on a demand deposit for purposes of Part 217 of this chapter (Regulation Q).

(d) *Excess balance accounts.* (1) A Reserve Bank may establish an excess balance account for eligible institutions under the provisions of this paragraph (d). Notwithstanding any other provisions of this part, the excess balances of eligible institutions in an excess balance account 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 participating 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. An excess balance account must be established at the Reserve Bank where the agent maintains its master account, unless otherwise determined by the Board. The agent may not commingle its own funds in the excess balance account.

(3) No required reserve balances or clearing balances 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 reserve balance requirement or contractual clearing balance.

(4) An excess balance account must 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 paragraph (b)(2) or (b)(3) of this section.

(6) A Reserve Bank may establish additional terms and conditions consistent with this part with respect to the operation of an excess balance

account, including, but not limited to, terms of and fees for services, conditions under which an institution may act as agent for an account, restrictions on the agent with respect to account management, penalties for noncompliance with this section or any terms and conditions, and account termination.

By order of the Board of Governors of the Federal Reserve System, May 22, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

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FEDERAL RESERVE SYSTEM

12 CFR Parts 204 and 209

[Regulations D and I; Docket No. R–1307]

Reserve Requirements of Depository Institutions; Issue and Cancellation of Federal Reserve Bank Capital Stock

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation D (Reserve Requirements of Depository Institutions) and Regulation I (Issue and Cancellation of Federal Reserve Bank Capital Stock) to make two substantive changes and other clarifying amendments. The first substantive amendment conforms Regulation D to Section 603 of the Financial Services Regulatory Relief Act of 2006 (Pub. L. 109–351, Oct. 13, 2006) by authorizing member banks of the Federal Reserve System to enter into pass-through arrangements. Previously, member banks were statutorily prohibited from passing required reserve balances through a correspondent institution. The second substantive amendment eliminates the provision in Regulation D’s definition of “savings deposit” that limits certain kinds of transfers from savings deposits to not more than three per month. As a result, all transfers and withdrawals from a savings deposit that are subject to a monthly limit will be subject to the same limit of not more than six per month. The remaining clarifying amendments reorganize the provisions relating to deposit reporting and the calculation and maintenance of required reserves, clarify the definition of “vault cash,” and make other minor editorial changes.

DATES: This final rule is effective July 2, 2009.

FOR FURTHER INFORMATION CONTACT: Sophia H. Allison, Senior Counsel (202/

452-3565), or Dena L. Milligan, Attorney (202/452-3900), Legal Division, 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. Statutory Background

For monetary policy purposes, section 19 of the Federal Reserve Act (the "Act") imposes reserve requirements on certain types of deposits and other liabilities of depository institutions. Currently, reserve requirement ratios for "transaction accounts" are graduated between three and ten percent. Reserve requirement ratios for "nonpersonal time deposits" and "Eurocurrency liabilities" are currently zero percent. Although section 19 expressly defines accounts with certain transfer characteristics as "transaction accounts," section 19 authorizes the Board "to determine, by regulation or order, that an account or deposit is a transaction account if such account or deposit may be used to provide funds directly or indirectly for the purpose of making payments or transfers to third persons or others."¹ Section 19 also authorizes the Board to define, by regulation, the terms used in the section. The Board implements the provisions of section 19 through Regulation D.

Section 11(a)(2) of the Act authorizes the Board to require any depository institution "to make, at such intervals as the Board may prescribe, such reports of its liabilities and assets as the Board may determine to be necessary or desirable to enable the Board to discharge its responsibility to monitor and control monetary and credit aggregates."² These provisions are specifically implemented in the computation and maintenance provisions of Regulation D (12 CFR 204.3).

Section 19(c)(1) of the Act provides that a depository institution's required reserves shall be either in the form of a balance maintained for such purposes by such a depository institution in an account at a Federal Reserve Bank or in the form of vault cash. Prior to 2006, section 19(c)(1)(B) of the Act provided that non-member banks could maintain

required reserves in an account at a depository institution that maintained required reserve balances at a Federal Reserve Bank, known as a "pass-through account." The Financial Services Regulatory Relief Act of 2006 (Pub. L. 109-351, Oct. 13, 2006), amended section 19(c)(1)(B) of the Act to remove the language restricting pass-through arrangements to non-member banks. Accordingly, the Act now permits all depository institutions to maintain required reserves in a pass-through account with a correspondent depository institution.

II. Request for Public Comment and Summary of Comments Received

The Board requested public comment on proposed changes to Regulations D and I on February 7, 2008 (73 FR 8009 (Feb. 12, 2008)). In response, the Board received 27 comments on the proposal, consisting of comments from nine depository institutions, two financial holding companies on behalf of their depository institution subsidiaries, seven individuals, seven financial institution trade associations, one law firm, and one association of depository institutions. Of these, three commenters supported the proposal in its entirety, while the majority of the other comments received concerned (A) the proposed amendment to the definition of "savings deposit" describing the monthly numeric limits imposed on certain "convenient" types of transfers and withdrawals from savings deposits or (B) the proposed amendments to the definitions of "time deposit" and "vault cash." Other comments addressed reserve requirements generally and other technical aspects of the proposal.

III. Section-by-Section Analysis of Proposal and Comments

A. Section 204.2(c) Definition of Time Deposit

(1) Background of Proposed Amendment

The current definition of "time deposit" in Regulation D provides that an early withdrawal penalty must be charged on any amount withdrawn from a time deposit "from within six days after the date of deposit."³ The definition contemplates that an early withdrawal might be an early withdrawal of the entire deposit amount or of a partial withdrawal, that is, a withdrawal of some amount that is not the entire deposit amount. In either case, if part or all of the time deposit is withdrawn within six days after the date of the initial deposit, the specified early

withdrawal penalty must be imposed on the amount so withdrawn. The current definition further states that "[a] time deposit from which partial early withdrawals are permitted must impose additional early withdrawal penalties of at least seven days' simple interest on amounts withdrawn within six days after each partial withdrawal." This language has been subject to numerous inquiries as to the meaning of the terms "additional" and "early."

(2) Proposed Amendment and Comments

The Board proposed to amend the definition of "time deposit" to remove the references to "early" and "additional" in the second sentence of the definition and to clarify that "early" withdrawals include withdrawals within six days after deposit as well as withdrawals within six days of the last withdrawal. The Board received two comments on the proposed amendments to the definition of "time deposit." Both comments expressed concern that the proposed amendments, if adopted, would have the effect of precluding certain depository institutions from continuing to avail themselves of the deposit type referred to as a "time deposit open account," or "TDOA."

From as early as 1915, "time deposit open account" was a separately defined term within the general category of "time deposit" in Regulation D.⁴ Board interpretations in later decades described bank trust departments' use of TDOAs for disposition of certain commingled uninvested trust and agency funds awaiting disbursement or further investment.⁵ "Time deposit open account," however, ceased being a separately defined term under the general definition of "time deposit" in 1980. Further, the Board interpretations discussing use of TDOAs by trust departments for trust and agency funds were rescinded in 1987 as having been incorporated into section 204.2(c)(1)(i)(C) of Regulation D.⁶ Nevertheless, the Board referred to TDOAs by name in subsequent rulemakings as continuing to be viable, at least when used other than as a method of evading reserve requirements.⁷

⁴ Federal Reserve Board, Circular No. 6 (Series of 1915) (Jan. 15, 1915).

⁵ Board Interpretation, 1950 Fed. Res. Bull. 44; Board Interpretation, 1959 Fed. Res. Bull. 1475.

⁶ 52 FR 47689, 47691 (Dec. 16, 1987). Section 204.2(c)(1)(i)(C) states that "[t]ime deposit includes funds * * * payable only upon written notice that is actually required to be given by the depositor not less than seven days prior to withdrawal * * *"

⁷ 57 FR 38417, 38423-24 (Aug. 25, 1992) (declining to adopt "LIFO" rule for withdrawals from time deposits, in part because of potential

¹ Section 19(b)(1)(F) of the Federal Reserve Act, 12 U.S.C. 461(b)(1)(F).

² 12 U.S.C. 248(a).

³ 12 CFR 204.2(c)(1).

(3) Comment Analysis and Final Rule

The Board believes that adopting the proposed amendments would have no effect on the continued use of TDOAs in *bona fide* arrangements by trust departments for trust and agency funds. The final amendments, however, do not adopt revisions to the definition of "time deposit" that were proposed in the Board's request for public comment because the only two comments received on the proposed revisions indicated that the proposed revisions would create more confusion than clarity.

B. Section 204.2(d) Transfers From Savings Deposits

(1) Background of Proposed Amendment

The Board's criteria for distinguishing between "transaction accounts" and "savings deposits" in Regulation D are based on the ease with which the depositor may make transfers (payments to third parties) or withdrawals (payments directly to the depositor) from the account. Generally, the more convenient making withdrawals or transfers from an account is, the more likely the account holder will use the account for making payments or transfers to third parties rather than for holding savings. Accordingly, Regulation D limits the number of certain convenient kinds of transfers or withdrawals that an account holder may make in a single month from an account if that account is to be classified as a "savings deposit."⁸ "Convenient" transfers or withdrawals for this purpose include preauthorized or automatic transfers (such as overdraft protection transfers or arranging to have bill payments deducted directly from the depositor's savings account), telephonic transfers (made by the depositor telephoning or sending a fax or online instruction to the bank and instructing the transfer to be made), and transfers by check, debit card, or similar order payable to third parties.

Regulation D currently limits the number of "convenient" transfers and withdrawals from savings deposits to not more than six per month. Within this overall limit of six, not more than three transfers or withdrawals may be made by check, debit card, or similar order made by the depositor and payable to third parties (the "three"

sublimit). Regulation D does not limit less convenient transfers and withdrawals from savings deposits. For example, an account holder may make transfers or withdrawals "by mail, messenger, automated teller machine, or in person or * * * made by telephone (via check mailed to the depositor)" from savings deposits without numerical limit.

(2) Proposed Amendment and Comments

The Board proposed to amend Regulation D's definition of "savings deposit" to eliminate the "three" sublimit that applies to checks and drafts and simply limit all "convenient" transfers to not more than six per month. Fourteen commenters supported eliminating the "three" sublimit, eight commenters favored doing away with numeric transfer limits entirely, and five commenters favored raising the monthly numeric limit to some number higher than six. One commenter proposed allowing depository institutions to set their own monthly numeric limits on convenient transfers and withdrawals. One commenter opposed both raising the monthly numeric limit to a higher number and making all kinds of transfers and withdrawals unlimited in number. One commenter stated that eliminating only the "three" sublimit did not go far enough, but made no recommendations as to how the Board could improve the proposal to address that concern. Two commenters requested that, if the proposed amendment becomes final, then the Board should provide a sufficiently delayed effective date (either six months or one year) to allow depository institutions time to modify their systems and customer disclosures.

(3) Comment Analysis and Final Amendment

The Board has carefully considered the comments received and has adopted the amendment to the definition of "savings deposit" as proposed. The sublimit in the definition of "money market deposit account" began in 1982 with the enactment of the Garn-St Germain Depository Institutions Act and lapsed in 1986. The Board retained the distinction between transactions subject to the overall limit of six and those subject to the sublimit in Regulation D after the Depository Institutions Act lapsed in 1986. Technological advancements, however, have eliminated any rational basis for the distinction.

The Board has determined neither to raise the monthly numeric limit on convenient transfers to a number higher

than six, nor to eliminate monthly numeric limits on all convenient transfers and withdrawals (including online) from savings deposits generally. Section 19 of the Act requires the Board to impose reserve requirements on transaction accounts and not on other types of accounts. Accordingly, the Board must maintain the capacity to distinguish between transaction accounts and savings deposits. The six-per-month limitation on certain convenient transfers and withdrawals has existed, in one form or another, since 1982. Such types of transfers and withdrawals appear to have become even more convenient since that time due to technological advances, such as the ability to make transfers online, and the increased availability of debit-card transfers at point-of-sale terminals and elsewhere. The greater the number of convenient transfers and withdrawals permitted per month from a "savings deposit," the greater the difficulty in distinguishing such an account from a transaction account. Therefore, the Board has determined that the final rule will neither increase the number of convenient transfers and withdrawals permitted per month from a savings deposit, nor eliminate such numeric limits entirely (on either online transfers or all convenient transfers and withdrawals).

For similar reasons, the Board believes that it would not be appropriate to adopt a rule allowing depository institutions to set their own monthly numeric limits on convenient transfers and withdrawals that account holders may make from savings deposits. Allowing different limits at different depository institutions would erode any definitional distinction between "transaction accounts" and "savings deposits." Even if some depository institutions were to choose relatively low numeric limits, there likely would be broad variation among depository institutions in the numeric limits selected, creating significant discrepancies between accounts classified as "savings deposits." In addition, the Board believes that depository institutions would have cost-avoidance and competitive incentives to set numeric limits as high as possible while still being able to report such deposits as nonreservable "savings deposits" that may bear interest. The Board is obligated by statute to maintain some regulatory distinction between "transaction accounts" and "savings deposits" and to enforce such a distinction with consistency. Accordingly, the Board has determined not to adopt a final rule permitting

negative impact on operation of TDOAs; interpretation prohibiting linked time deposit accounts at 12 CFR 204.134 limited to its terms and does not necessarily apply to TDOA types of accounts operated by trust departments).

⁸ 12 CFR 204.2(d)(2) (definition of "savings deposit").

depository institutions to select their own numeric limits on convenient transfers and withdrawals from savings deposits.

The Board also believes that selecting a monthly numeric limit to apply to all types of transfers and withdrawals from "savings deposits," including those types that are currently unlimited in number per month, would not be appropriate. The Act provides that a "transaction account" is one "on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone transfers, or other similar items for the purpose of making payments or transfers to third persons or others."⁹ As such, the statutory definition specifically contemplates the kinds of transfers and withdrawals that are, or are most likely to be, transfers and withdrawals "for the purpose of making payments or transfers to third persons or others." In contrast, withdrawals made in person or at an ATM are generally payments directly to the depositor, even if the depositor may subsequently provide those same funds to a third person or use them for a payment. Accordingly, the Board has determined that the final rule not impose numeric limits on all types of transfers and withdrawals that may be made from savings deposits, including those that are currently unlimited.

Finally, the Board believes that delaying the effective date for the final rule eliminating the "three" sublimit from the definition of "savings deposit" is unnecessary because the final rule is permissive. Under the final rule, depository institutions may classify accounts subject to the "three" sublimit as "savings deposits" as long as necessary. Accordingly, the Board has determined not to delay the final rule's effective date.

C. Section 204.2(k) "Vault Cash" Definition

(1) Background of Proposed Amendment

From 1917 to 1959, the Act permitted member banks to satisfy reserve requirements solely with balances in their accounts at Federal Reserve Banks. In 1959, Congress amended section 19 of the Act to provide that the Board, "under such regulations as it may prescribe, may permit member banks to count all or part of their currency and coin as reserves required under this section."¹⁰ The history of the 1959

legislation recognized that currency and coin in a member bank's vault and a balance in a member bank's account at a Federal Reserve Bank were "interchangeable" as liabilities of the Reserve Banks.¹¹ For operational reasons, however, "country banks" generally found it necessary to hold more currency and coin in their vaults than did "reserve city banks" or "central reserve city banks."¹²

In 1970, the Board issued an interpretation of Regulation D relating to the eligibility of currency or coin held principally for numismatic value to satisfy member bank reserve requirements.¹³ The Board specified in the 1970 interpretation that in order for a member bank to count currency or coin towards reserve requirements, the member bank must have "the full and unrestricted right to use [such currency or coin] at any time to meet depositors' claims. * * *" ¹⁴ The 1970 interpretation also specified that a bank does not have such a "full and unrestricted right" if the bank is prevented, legally or practically, * * * from using the currency or coin at any time to meet customer's demands."¹⁵

The 1980 amendments to Regulation D, which implemented the Monetary Control Act of 1980, introduced "vault cash" as a defined term. The 1980 amendments defined "vault cash" to mean "currency and coin owned and held by a depository institution that may, at any time, be used to satisfy depositors' claims," incorporating into the new definition the 1970 interpretation's principles of bank ownership and availability at any time to satisfy depositors' claims. Subsequent Board guidance and staff opinions provided additional clarification of these requirements, including clarifying what vault cash is "owned and held" by the depository institution claiming it and the circumstances under which vault cash is "immediately available."

(2) Proposed Amendment and Comments

The Board proposed amending the definition of "vault cash" to incorporate the substance of prior written staff guidance as to when currency and coin that the depository institution does not hold at its physical location may be considered "vault cash."¹⁶ Specifically, the Board proposed dividing the

definition of "vault cash" into two subsections: one that addresses vault cash "held at a physical location of the depository institution * * * from which the institution's depositors may make cash withdrawals," and the other that addresses vault cash "held at an alternate physical location." The amendments proposed by the Board expanded primarily the second proposed subsection to incorporate prior guidance.

(3) Comment Analysis and Final Amendment

The Board received two comments on the proposed amendments to the definition of "vault cash." One commenter expressed support for the proposed amendments, and one commenter opposed the proposed amendments. The commenter opposing the amendments specifically opposed certain provisions relating to when vault cash at alternate physical locations may be considered to be "immediately available," namely, that (1) the depository institution claiming the currency and coin as "vault cash" must receive it by 4 p.m. on the same day if requested by 10 a.m., and that (2) the depository institution must have a written contract in place for the delivery of the currency and coin claimed as "vault cash." This commenter stated that 4 p.m. should not be selected as a cut-off hour because some depository institutions conduct business after 4 p.m., and because customers can usually obtain cash through an ATM or at POS (point of sale) terminals after 4 p.m. The commenter proposed an amendment that would require the currency and coin to be received on the same calendar day that it is requested. The commenter also stated that requiring written contractual arrangements for delivery of currency and coin claimed as "vault cash" imposes unnecessary costs on depository institutions because contractual agreements "will likely never be used" and because updating the agreements as offices are opened and closed would be expensive. The commenter proposed "leav[ing] the particular details of the arrangement up to the institution."

The Board believes that the selection of 4 p.m. as a cut-off hour for characterizing currency and coin as "vault cash" under Regulation D is appropriate. The Board believes that the rationale provided for an alternate "same calendar day" rule would not justify such a significant departure from the consistent position taken in numerous Board staff opinions over the years on the issue. Furthermore, such a

¹¹ S. Rep. No. 86-195, at 3 (1959); H. Rep. No. 86-403, at 3 (1959).

¹² *Id.*

¹³ Former 12 CFR 204.116 (1979).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See, e.g. FRRS ¶ 2-307.2 (rented vault); Staff Opinion of Aug. 9, 1982 (ATMs).

⁹ 12 U.S.C. 461(b).

¹⁰ The Act of July 28, 1959 (73 Stat. 263).

rule would remove any nexus between the characterization of currency and coin as “vault cash” and having such currency and coin “immediately available,” because any such currency and coin received after a closing hour (no matter how late) would not be available to a customer until the next business day. While customers may be able, as a practical matter, to obtain cash from ATMs and from POS terminals at various hours, not all such cash is sought to be characterized as “vault cash” for Regulation D purposes: the 4 p.m. requirement would apply only to currency and coin that an institution counts towards satisfying its reserve requirement.

The Board also believes that the rationale provided for eliminating the requirement for written contractual arrangements to be in place for “vault cash” does not justify changing the long-standing position on this issue. As with the 4 p.m. cut-off, the requirement for written contractual arrangements in this context is the position the Board has consistently taken over the years in staff opinions. Moreover, the Board believes it would be difficult, if not impossible, for a depository institution to establish what currency and coin is physically subject to the retrieval plan without written delivery plan to that effect. Likewise, the Board believes that it would be difficult, if not impossible, for the depository institution to establish its “full and unrestricted right” to such currency and coin if it were subject only to an oral understanding for retrieval within the requisite time frame. Accordingly, the Board is adopting the “vault cash” amendments as proposed.

D. Section 204.2(l) Definition of “Pass-through Account”

The Board proposed to amend the definition of “pass-through account” to eliminate the language restricting pass-through account arrangements to non-member banks in order to conform the definition to section 19(c)(1)(B) of the Act. The Board also proposed moving the provisions relating to pass-through accounts to paragraph (d) under proposed § 204.5, “Maintenance of Required Reserves.” The Board received five comments in support of the proposed amendments, and is adopting them as proposed.

E. Section 204.2(w) Definition of “Clearing Balance Allowance”

The Board proposed (1) adding a new definition of “clearing balance allowance” to Regulation D to replace the undefined term “required charge-free band” used in provisions relating to

carryovers of excess reserves and deficiencies in reserves and (2) moving the existing carryover provisions to a new paragraph (e) under proposed § 204.5, “Maintenance of Required Reserves.” The Board received no comments on these amendments. The Board is setting forth the definition of “clearing balance allowance” in new § 204.2(w), and moving the carryover provisions to § 204.5, as proposed.

F. Section 204.2(x) Definition of “Contractual Clearing Balance”

The Board proposed adding a new definition of “contractual clearing balance” to Regulation D to replace the undefined term “required clearing balance.” The Board proposed to define “contractual clearing balance” as “the amount that a depository institution agrees or is required to maintain in its account at a Federal Reserve Bank in addition to balances the depository institution may hold to satisfy its required reserve balance.” Further, the definition specified that “[a] depository institution that has a required reserve balance of zero may still hold a contractual clearing balance.” The Board received no comments on the proposed amendment.

The Board is revising the proposed definition of “contractual clearing balance” to provide consistency of usage of terms throughout Regulation D. When the Board proposed the new definition of “contractual clearing balance,” “required reserve balance” was an undefined term. New § 204.2(bb), however, defines “required reserve balance” as “the average balance held in an account at a Federal Reserve Bank by or on behalf of an institution over a reserve maintenance period to satisfy the reserve requirements of this part.”¹⁷ The proposed definition of “contractual clearing balance” contemplated the contractual clearing balance to be in addition to the amount an institution is required to maintain as a balance at a Reserve Bank in order to satisfy its reserve requirements, and not in addition to those balances actually held to satisfy such requirements. Accordingly, the final rule defines “contractual clearing balance” as “an amount that an institution agrees or is required to maintain in its account at a Federal Reserve Bank in addition to any reserve balance requirement.” For similar reasons, the Board is amending the last sentence in the definition of “contractual clearing balance” to read: “An institution that has a reserve

balance requirement of zero may still have a contractual clearing balance.”

G. Section 204.3 Reporting and Location

(1) Proposed Amendment

The Board proposed re-organizing the regulatory provisions governing the calculation of required reserves, the maintenance of required reserves, and the submission of reports of deposits (from which required reserves are calculated) into three separate subsections. The proposed amendments were not intended to make substantive changes to these provisions, but rather to reorganize them for greater ease of reference and to make minor editorial changes for clarity.

The Board proposed a new § 204.3(a), consisting of the text of the first sentence of current § 204.3(a)(2)(i) with proposed amendments clarifying (1) the authority of the Board or a Federal Reserve Bank to require reports of deposits or any other form or statement from a depository institution relating to reserve requirements and (2) where reports of deposits are to be submitted in light of the account location provisions of the regulation.

The Board proposed to relocate the text of the second sentence of current § 204.3(a)(2)(i) (stipulating reporting requirements for a foreign bank’s U.S. branches and agencies and for an Edge or Agreement corporation’s offices operating within the same State and the same Federal Reserve District) to new § 204.3(b). The Board proposed to relocate the text of the third sentence of current § 204.3(a)(1) (obligations of majority-owned U.S. subsidiaries of a depository institution) to new § 204.3(c).

The Board proposed to relocate the text, with one technical amendment, of current § 204.3(a)(3) (governing assignment of low reserve tranche and reserve requirement exemption) to new § 204.3(d). The Board proposed amending the text of current § 204.3(a)(3) (new § 204.3(d)) to conform the section number reference to reserve requirement ratios (§ 204.9) to that section’s new section number (§ 204.4(f)).

The Board did not propose any changes to current § 204.3(e), which addresses computation of transaction accounts for deposit reporting purposes. The Board proposed to relocate current § 204.3(a)(2)(iii) (correspondent not responsible for guaranteeing the accuracy of reports submitted by respondents) to new § 204.3(f).

Finally, the Board proposed to relocate the text of current § 204.3(b)(2) to new § 204.3(g) with two amendments. One amendment would conform

¹⁷ See final rule on payment of interest on balances and excess balance accounts in today’s **Federal Register**.

internal references to other proposed amendments. The other amendment would provide that a depository institution is considered to be located at the location specified in the institution's articles of incorporation or as specified by the institution's primary regulator. The Board proposed the second amendment in light of the fact that an institution may move its head office or primary location from that specified in its charter or organizing certificate, but that the charter or organizing certificate may not reflect that move. In such cases, the move instead may be reflected in the institution's revised articles of incorporation or otherwise as recognized by the institution's primary regulator.

(2) Comments Received

The Board received one comment regarding proposed new § 204.3(a), asking that the Board "be judicious in the information requested" from reporting entities because "the collective burden of myriad reports and other information collections imposed by the bank regulators is enormous." This commenter stated that "[w]hile the proposed additional text in section 204.3(a) is not objectionable on its face, it nevertheless creates another opportunity for the Federal Reserve System to impose more regulatory burden in a way that evokes the image of 'death by a thousand cuts.'"

(3) Comment Analysis and Final Rule

The Board is keenly aware of the burden imposed by regulatory reporting on depository institutions. The proposed amendment to section 204.3(a) was intended solely to express existing authority. The Board did not propose this amendment as an attempt to increase its authority to require regulatory reports, or to increase the number or extent of regulatory reports currently required. As required by other law, the Board re-evaluates its reporting requirements periodically in order to minimize or eliminate duplicative or otherwise burdensome reports. As also required by other law, the Board carefully evaluates any proposed new reporting requirements to avoid placing unnecessary additional costs on reporting entities. With these principles in mind, the Board is adopting § 204.3(a) as proposed.

The Board received no comments on proposed §§ 204.3(b)–(g) and is adopting those amendments as proposed.

H. Section 204.4 Computation of Required Reserves

The Board proposed moving the provisions relating to computation of

required reserves to a new separate paragraph, proposed § 204.4, "Computation of Required Reserves." For some provisions, the Board proposed minor editorial amendments for clarity; for other provisions, the Board proposed no changes (apart from re-designation as § 204.4). The Board received one comment on these proposed amendments, suggesting that the words "or agreement corporation" should be added to the end of proposed § 204.4(b) (providing that Edge and agreement corporations may not deduct balances due from another U.S. office of "the same Edge or agreement corporation"). The Board is adopting a final § 204.4(b) that incorporates this comment as the existing omission of "or Agreement corporation" was unintentional. The Board is also making an editorial change to § 204.4(a) to provide consistent usage of terms throughout Regulation D. The Board received no other comments on these proposed amendments and, apart from adopting the one suggestion proposed by the comment and the editorial change, is adopting the amendments as proposed.

I. Section 204.5 Maintenance of Required Reserves

The Board proposed moving the existing provisions regarding maintenance of required reserves, including the provisions on maintenance of required reserves pursuant to pass-through agreements, to a new § 204.5, "Maintenance of Required Reserves." Specifically, the proposed amendments deleted references to "non-member institutions" in discussing pass-through arrangements, clarified that depository institutions that do not hold required reserve balances may serve as pass-through correspondents, conformed numeric references to other proposed amendments, and made other minor editorial amendments for clarity and to conform language to other proposed amendments and current usage. No substantive changes were intended. The Board received no comments on these proposed amendments and is adopting them as proposed.

J. Section 204.6 Charges for Reserve Deficiencies

(1) Proposed Amendment

The Board proposed moving the existing provisions regarding charges for reserve deficiencies to a new § 204.6, "Charges for Reserve Deficiencies." The Board also proposed deleting provisions describing guidelines for waivers by Reserve Banks of small or infrequent

charges. The Board proposed this deletion because the provision described only in part the extent of the discretion of the Reserve Banks with respect to waivers of deficiency charges. The deletion was intended to avoid the implication that Reserve Banks must waive charges in the circumstances described.

(2) Comments Received

The Board received two comments on these proposed amendments, both in opposition to the proposal to delete the provisions related to waivers. One commenter stated that it is "inappropriate to eliminate this policy direction to Reserve Banks without acknowledging that its elimination represents a substantive change" from existing policy, which the commenter described as "sound policy [that] should not be eliminated nor changed." The other commenter stated that the existing provision "simply incorporates the Reserve Banks' guidelines [that outline when waivers may be appropriate] and notes two instances where waivers are available." This commenter also expressed concern that the proposal to delete the waiver provision "impli[es] that waivers may not be available in the circumstances identified in the current rule," that is, "when the charge would be small or when the deficiency falls below a predetermined threshold." The commenter stated that these two circumstances "seem appropriate situations for the Board to exercise its discretion not to impose a charge" and that the Board should "share its reasoning" if the Board intends for charges to be automatically imposed in those cases. The commenter urged the Board "to retain the current examples of when charges will be waived and simply note that they are illustrative."

(3) Comment Analysis and Final Rule

The intent of the Board's proposal was to eliminate references to obsolete guidelines and to avoid the implication that Reserve Banks must waive deficiency charges in certain circumstances. The Board did not intend the proposed amendments to be a substantive policy change, as the Reserve Banks retain the same discretion with respect to waivers of deficiency charges under the proposed amendment as under former section 204.7(a)(2). Accordingly, the Board has decided to delete the reference to the obsolete guidelines, as proposed, and to add language to the provision clarifying the discretion of the Reserve Banks with respect to waiver of deficiency charges. The Board is retaining the current examples of when a Reserve Bank may

waive charges and clarifying that they are illustrative. As proposed, the language relating to charges for reserve deficiencies is moved from § 204.7 to § 204.6.

K. Section 204.7 Transitional Adjustments in Mergers

The Board proposed re-designating the current provisions regarding transitional adjustments in mergers to a new section, § 204.7. No other changes were proposed. The Board received no comments on these proposed amendments. Since the Board proposed these amendments in February 2008, the Board has made adjustments to its clearing balance policy that discontinued practices related to reserve requirements that were no longer necessary in light of the amendments to Regulation D implementing the payments of interest on balances at Reserve Banks.¹⁸ At that time, the Board accordingly removed the provision in Regulation D regarding transitional adjustments in mergers. The Board has decided to retain the changes to its clearing balance policy and has confirmed that removal as part of the final rule on payment of interest on balances at Reserve Banks.¹⁹

L. Section 204.8 International Banking Facilities

The Board did not propose any changes to § 204.8.

M. Section 204.9 Emergency Reserve Requirement

The Board proposed re-designating the current provisions related to emergency reserve requirements to a new section, § 204.9. No other changes to the section were proposed. The Board received no comments on these proposed amendments and is adopting them as proposed.

N. Section 204.7 Supplemental Reserve Requirement

The Board proposed re-designating the current provisions to a new section, § 204.10. No other changes to the section were proposed. The Board received no comments on the proposed amendments. Since the proposal, § 204.10 has been designated "Payment of interest on balances." The Board, however, has removed the provisions relating to transitional adjustments in mergers that were proposed to be moved to § 204.7. In light of the designation of § 204.10 as "Payment of interest on balances," the Board is moving the

provisions previously set forth in section 204.9 to new § 204.7.

O. Section 209.2(c)(1) of Regulation I Location of Bank—General Rule

The Board proposed amending section 209.2(c)(1) to conform that section to the proposed § 204.3(g) of Regulation D, which the Board has decided to adopt, discussed *supra*. The Board received no comments on these proposed amendments and is adopting them as proposed.

IV. Solicitation of Comments Regarding Use of "Plain Language"

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use "plain language" in all final rules. 12 U.S.C. 1408. The Board has sought to present this amendment in a simple and straightforward manner. The Board received no comments on whether the proposed rule was clearly stated and effectively organized or on how the Board might make the proposed text easier to understand.

V. Final Regulatory Flexibility Analysis

An initial regulatory flexibility analysis (IRFA) was included in the Board's proposed rule in accordance with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 *et seq.*). In the IRFA, the Board specifically solicited comment on whether the proposed rule would have a significant economic impact on a substantial number of small entities. The Board received no comments in response to its request. Section 4 of the RFA requires an agency either to provide a final regulatory flexibility analysis with a final rule or to certify that the final rule will not have a significant economic impact on a substantial number of small entities. Banks and other depository institutions are considered "small" if they have less than \$165 million in assets. For the reasons stated below, the Board is certifying that the final rule will not have a significant impact on a substantial number of small entities.

1. *Statement of the need for and the objectives of the final rule.* The Board is publishing final amendments to Regulations D and I to conform the regulations to provisions of the Financial Services Regulatory Relief Act of 2006, to modernize the regulations in light of technological developments, to reduce regulatory burden, and to simplify regulatory compliance. Section 19 of the Act was enacted to impose reserve requirements on certain deposits and other liabilities of depository institutions for monetary policy purposes. Section 19 also authorizes the Board to promulgate such regulations as

it may deem necessary to effectuate the purposes of the section. The Board believes that the final rule is within Congress' broad grant of authority to the Board to adopt provisions that carry out the purposes of section 19 of the Act.

2. *Summary of significant issues raised by the public comments in response to the initial regulatory flexibility analysis.* The Board received no comments on its initial regulatory flexibility analysis or on whether the proposed rule would have a significant economic impact on a substantial number of small entities.

3. *Small entities affected by the final rule.* The final rule would affect all depository institutions currently subject to reserve requirements. The Board estimates that approximately 8,195 depository institutions are subject to reserve requirements, of which approximately 3,800 could be considered "small" for purposes of RFA (entities with assets of \$165 million or less).

4. *Description of projected reporting, recordkeeping and other compliance requirements of the final rule.* The final rule does not alter any of the reporting or recordkeeping provisions that already apply to depository institutions.

5. *Significant alternatives to the revisions in the final rule.* The Board received no comments suggesting significant alternatives to the proposed rule that would minimize the impact of the proposed rule on small entities. There are no significant alternatives to the revisions in the final rule that would minimize the impact on small entities.

The final rule does not impose any additional burden on depository institutions, including small entities. Moreover, the final rule relieves depository institutions, including small entities, of any burdens associated with the "three" sublimit on certain convenient transfers from savings deposits, as well as any burdens associated with restricting pass-through account arrangements to non-member banks. Thus, the Board certifies that the final rule will not have a significant economic impact on small entities.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR Part 1320 Appendix A.1), the Board reviewed the final rule under the authority delegated to the Board by the Office of Management and Budget. No collections of information pursuant to the Paperwork Reduction Act are contained in the final rule.

¹⁸ See 73 FR 59482, 59484–85 (Oct. 9, 2008).

¹⁹ See final rule on payment of interest on balances elsewhere in today's **Federal Register**.

List of Subjects in 12 CFR Parts 204 and 209

Banks, Banking, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board is amending 12 CFR parts 204 and 209 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 3105.

2. § 204.2 is amended by revising paragraphs (d)(2), (k) and (l), and adding new paragraphs (w) and (x) to read as follows:

§ 204.2 Definitions.

* * * * *

(d) * * *

(2) The term "savings deposit" also means: A deposit or account, such as an account commonly known as a passbook savings account, a statement savings account, or as a money market deposit account (MMDA), that otherwise meets the requirements of § 204.2(d)(1) and from which, under the terms of the deposit contract or by practice of the depository institution, the depositor is permitted or authorized to make no more than six transfers and withdrawals, or a combination of such transfers and withdrawals, per calendar month or statement cycle (or similar period) of at least four weeks, to another account (including a transaction account) of the depositor at the same institution or to a third party by means of a preauthorized or automatic transfer, or telephonic (including data transmission) agreement, order or instruction, or by check, draft, debit card, or similar order made by the depositor and payable to third parties. A preauthorized transfer includes any arrangement by the depository institution to pay a third party from the account of a depositor upon written or oral instruction (including an order received through an automated clearing house (ACH)) or any arrangement by a depository institution to pay a third party from the account of the depositor at a predetermined time or on a fixed schedule. Such an account is not a transaction account by virtue of an arrangement that permits transfers for the purpose of repaying loans and associated expenses at the same depository institution (as originator or servicer) or that permits transfers of funds from this account to another account of the same depositor at the

same institution or permits withdrawals (payments directly to the depositor) from the account when such transfers or withdrawals are made by mail, messenger, automated teller machine, or in person or when such withdrawals are made by telephone (via check mailed to the depositor) regardless of the number of such transfers or withdrawals.⁴

* * * * *

(k)(1) Vault cash means United States currency and coin owned and booked as an asset by a depository institution that may, at any time, be used to satisfy claims of that depository institution's depositors and that meets the requirements of paragraph (k)(2)(i) or (k)(2)(ii) of this section.

(2) Vault cash must be either:

(i) Held at a physical location of the depository institution (including the depository institution's proprietary ATMs) from which the institution's depositors may make cash withdrawals; or

(ii) Held at an alternate physical location if—

(A) The depository institution claiming the currency and coin as vault cash at all times retains full rights of ownership in and to the currency and coin held at the alternate physical location;

(B) The depository institution claiming the currency and coin as vault cash at all times books the currency and coin held at the alternate physical location as an asset of the depository institution;

(C) No other depository institution claims the currency and coin held at the alternate physical location as vault cash in satisfaction of that other depository institution's reserve requirements;

(D) The currency and coin held at the alternate physical location is reasonably

⁴ In order to ensure that no more than the permitted number of withdrawals or transfers are made, for an account to come within the definition of "savings deposit," a depository institution must either:

(a) Prevent withdrawals or transfers of funds from this account that are in excess of the limits established by paragraph (d)(2) of this section, or

(b) Adopt procedures to monitor those transfers on an ex post basis and contact customers who exceed the established limits on more than occasional basis. For customers who continue to violate those limits after they have been contacted by the depository institution, the depository institution must either close the account and place the funds in another account that the depositor is eligible to maintain or take away the transfer and draft capacities of the account. An account that authorizes withdrawals or transfers in excess of the permitted number is a transaction account regardless of whether the authorized number of transactions is actually made. For accounts described in paragraph (d)(2) of this section, the institution at its option may use, on a consistent basis, either the date on the check, draft, or similar item, or the date the item is paid in applying the limits imposed by that section.

nearby a location of the depository institution claiming the currency and coin as vault cash at which its depositors may make cash withdrawals (an alternate physical location is considered "reasonably nearby" if the depository institution that claims the currency and coin as vault cash can recall the currency and coin from the alternate physical location by 10 a.m. and, relying solely on ground transportation, receive the currency and coin not later than 4 p.m. on the same calendar day at a location of the depository institution at which its depositors may make cash withdrawals); and

(E) The depository institution claiming the currency and coin as vault cash has in place a written cash delivery plan and written contractual arrangements necessary to implement that plan that demonstrate that the currency and coin can be recalled and received in accordance with the requirements of paragraph (k)(2)(ii)(D) of this section at any time. The depository institution shall provide copies of the written cash delivery plan and written contractual arrangements to the Federal Reserve Bank that holds its account or to the Board upon request.

(3) "Vault cash" includes United States currency and coin in transit to a Federal Reserve Bank or a correspondent depository institution for which the reporting depository institution has not yet received credit, and United States currency and coin in transit from a Federal Reserve Bank or a correspondent depository institution when the reporting depository institution's account at the Federal Reserve or correspondent bank has been charged for such shipment.

(4) Silver and gold coin and other currency and coin whose numismatic or bullion value is substantially in excess of face value is not vault cash for purposes of this part.

* * * * *

(l) Pass-through account means a balance maintained by a depository institution with a correspondent institution under § 204.5(d).

* * * * *

(w) Clearing balance allowance means the greater of \$25,000 or two percent of an institution's contractual clearing balance.

(x) Contractual clearing balance means an amount that an institution agrees or is required to maintain in its account at a Federal Reserve Bank in addition to any reserve balance requirement. An institution that has a reserve balance requirement of zero may still have a contractual clearing balance.

■ 3. Amend § 204.3 by revising the heading, removing paragraphs (h) and (i), and revising paragraphs (a) through (d), (f), and (g) to read as follows:

§ 204.3 Reporting and location.

(a) Every depository institution, U.S. branch or agency of a foreign bank, and Edge or Agreement corporation shall file a report of deposits (or any other form or statement that may be required by the Board or by a Federal Reserve Bank) with the Federal Reserve Bank in the Federal Reserve District in which it is located, regardless of the manner in which it chooses to maintain required reserve balances.

(b) A foreign bank's U.S. branches and agencies and an Edge or Agreement corporation's offices operating within the same State and the same Federal Reserve District shall prepare and file a report of deposits on an aggregated basis.

(c) For purposes of this part, the obligations of a majority-owned (50 percent or more) U.S. subsidiary (except an Edge or Agreement corporation) of a depository institution shall be regarded as obligations of the parent depository institution.

(d) A depository institution, a foreign bank, or an Edge or Agreement corporation shall, if possible, assign the low reserve tranche and reserve requirement exemption prescribed in § 204.4(f) to only one office or to a group of offices filing a single aggregated report of deposits. The amount of the reserve requirement exemption allocated to an office or group of offices may not exceed the amount of the low reserve tranche allocated to such office or offices. If the low reserve tranche or reserve requirement exemption cannot be fully utilized by a single office or by a group of offices filing a single report of deposits, the unused portion of the tranche or exemption may be assigned to other offices or groups of offices of the same institution until the amount of the tranche (or net transaction accounts) or exemption (or reservable liabilities) is exhausted. The tranche or exemption may be reallocated each year concurrent with implementation of the indexed tranche and exemption, or, if necessary during the course of the year to avoid underutilization of the tranche or

exemption, at the beginning of a reserve computation period.

* * * * *

(f) The Board and the Federal Reserve Banks will not hold a pass-through correspondent responsible for guaranteeing the accuracy of the reports of deposits submitted by its respondents.

(g)(1) For purposes of this section, a depository institution, a U.S. branch or agency of a foreign bank, or an Edge or Agreement corporation is located in the Federal Reserve District that contains the location specified in the institution's charter, organizing certificate, license, or articles of incorporation, or as specified by the institution's primary regulator, or if no such location is specified, the location of its head office, unless otherwise determined by the Board under paragraph (g)(2) of this section.

(2) If the location specified in paragraph (g)(1) of this section, in the Board's judgment, is ambiguous, would impede the ability of the Board or the Federal Reserve Banks to perform their functions under the Federal Reserve Act, or would impede the ability of the institution to operate efficiently, the Board will determine the Federal Reserve District in which the institution is located, after consultation with the institution and the relevant Federal Reserve Banks. The relevant Federal Reserve Banks are the Federal Reserve Bank whose District contains the location specified in paragraph (g)(1) of this section and the Federal Reserve Bank in whose District the institution is proposed to be located. In making this determination, the Board will consider any applicable laws, the business needs of the institution, the location of the institution's head office, the locations where the institution performs its business, and the locations that would allow the institution, the Board, and the Federal Reserve Banks to perform their functions efficiently and effectively.

■ 4. A new § 204.4 is added to read as follows:

§ 204.4 Computation of required reserves.

(a) In determining the reserve requirement under this part, the amount of cash items in process of collection and balances subject to immediate

withdrawal due from other depository institutions located in the United States (including such amounts due from United States branches and agencies of foreign banks and Edge and Agreement corporations) may be deducted from the amount of gross transaction accounts. The amount that may be deducted may not exceed the amount of gross transaction accounts.

(b) United States branches and agencies of a foreign bank may not deduct balances due from another United States branch or agency of the same foreign bank, and United States offices of an Edge or Agreement Corporation may not deduct balances due from another United States office of the same Edge or Agreement Corporation.

(c) Balances "due from other depository institutions" do not include balances due from Federal Reserve Banks, pass-through accounts, or balances (payable in dollars or otherwise) due from banking offices located outside the United States. An institution exercising fiduciary powers may not include in balances "due from other depository institutions" amounts of trust funds deposited with other banks and due to it as a trustee or other fiduciary.

(d) For institutions that file a report of deposits weekly, required reserves are computed on the basis of the institution's daily average balances of deposits and Eurocurrency liabilities during a 14-day computation period ending every second Monday.

(e) For institutions that file a report of deposits quarterly, required reserves are computed on the basis of the institution's daily average balances of deposits and Eurocurrency liabilities during the 7-day computation period that begins on the third Tuesday of March, June, September, and December.

(f) For all depository institutions, Edge and Agreement corporations, and United States branches and agencies of foreign banks, required reserves are computed by applying the reserve requirement ratios below to net transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities of the institution during the computation period.

Reservable liability	Reserve requirement ratio
NET TRANSACTION ACCOUNTS:	
\$0 to reserve requirement exemption amount (\$10.3 million)	0 percent of amount.
Over reserve requirement exemption amount (\$10.3 million) and up to low reserve tranche (\$44.4 million).	3 percent of amount.
Over low reserve tranche (\$44.4 million)	\$1,023,000 plus 10 percent of amount over \$44.4 million.
Nonpersonal time deposits	0 percent.

Reservable liability	Reserve requirement ratio
Eurocurrency liabilities	0 percent.

§ 204.9 [Removed]

■ 5. Section 204.9 is removed.

§ 204.5 [Redesignated as § 204.9]

■ 6. Section 204.5 is redesignated as § 204.9.

■ 7. New § 204.5 is added to read as follows:

§ 204.5 Maintenance of required reserves.

(a)(1) A depository institution, a U.S. branch or agency of a foreign bank, and an Edge or Agreement corporation shall maintain required reserves in the form of vault cash and, if vault cash does not fully satisfy the institution's required reserves, in the form of a balance maintained

(i) Directly with the Federal Reserve Bank in the Federal Reserve District in which the institution is located, or

(ii) With a pass-through correspondent in accordance with § 204.5(d).

(2) Each individual institution subject to this part is responsible for satisfying its reserve balance requirement, if any, either directly with a Federal Reserve Bank or through a pass-through correspondent.

(b)(1) For institutions that file a report of deposits weekly, the balances that are required to be maintained with the Federal Reserve shall be maintained during a 14-day maintenance period that begins on the third Thursday following the end of a given computation period.

(2) For institutions that file a report of deposits quarterly, the balances that are required to be maintained with the Federal Reserve shall be maintained during each of the 7-day maintenance periods during the interval that begins on the fourth Thursday following the end of the institution's computation period and ends on the fourth Wednesday after the close of the institution's next computation period.

(c) Cash items forwarded to a Federal Reserve Bank for collection and credit shall not be counted as part of the reserve balance to be carried with the Federal Reserve until the expiration of the time specified in the appropriate time schedule established under Regulation J, "Collection of Checks and Other Items by Federal Reserve Banks and Funds Transfers Through Fedwire" (12 CFR Part 210). If a depository institution draws against items before that time, the charge will be made to its account if the balance is sufficient to

pay it; any resulting impairment of reserve balances will be subject to the penalties provided by law and to the reserve-deficiency charges provided by this part. However, the Federal Reserve Bank may, at its discretion, refuse to permit the withdrawal or other use of credit given in an account for any time for which the Federal Reserve Bank has not received payment in actually and finally collected funds.

(d)(1) A depository institution, a U.S. branch or agency of a foreign bank, or an Edge or Agreement corporation required to maintain reserve balances ("respondent") may select only one pass-through correspondent institution to pass through its required reserve balances, unless otherwise permitted by the Federal Reserve Bank in whose District the respondent is located. Eligible pass-through correspondent institutions are Federal Home Loan Banks, the National Credit Union Administration Central Liquidity Facility, depository institutions, U.S. branches or agencies of foreign banks, and Edge and Agreement corporations that maintain required reserve balances, which may be zero, at a Federal Reserve Bank. In addition, the Board reserves the right to permit other institutions, on a case-by-case basis, to serve as pass-through correspondents. The correspondent chosen must subsequently pass through the required reserve balances of its respondents directly to a Federal Reserve Bank. The correspondent placing funds with a Federal Reserve Bank on behalf of respondents will be responsible for account maintenance as described in paragraph (d)(4) of this section.

(2) Respondents or correspondents may institute, terminate, or change pass-through agreements for the maintenance of required reserve balances by providing all documentation required for the establishment of the new agreement or termination of the existing agreement to the Federal Reserve Banks involved within the time period provided for such a change by those Reserve Banks.

(3) A correspondent that passes through required reserve balances of respondents shall maintain such balances, along with the correspondent's own required reserve balances (if any), in a single commingled account at the Federal Reserve Bank in whose District the correspondent is located. The balances

held by the correspondent in an account at a Reserve Bank are the property of the correspondent and represent a liability of the Reserve Bank solely to the correspondent, regardless of whether the funds represent the reserve balances of another institution that have been passed through the correspondent.

(4)(i) A pass-through correspondent shall be responsible for assuring the maintenance of the appropriate aggregate level of its respondents' required reserve balances. A Federal Reserve Bank will compare the total reserve balance required to be maintained with the total actual reserve balance held in such account for purposes of determining required-reserve deficiencies, imposing or waiving charges for deficiencies in required reserves, and for other reserve maintenance purposes. A charge for a deficiency in the aggregate level of the required reserve balance will be imposed by the Reserve Bank on the correspondent maintaining the account.

(ii) Each correspondent is required to maintain detailed records for each of its respondents in a manner that permits Reserve Banks to determine whether the respondent has provided a sufficient required reserve balance to the correspondent. A correspondent passing through a respondent's required reserve balance shall maintain records and make such reports as the Board or Reserve Bank requires in order to ensure the correspondent's compliance with its responsibilities for the maintenance of a respondent's reserve balance. Such records shall be available to the Reserve Banks as required.

(iii) The Federal Reserve Bank may terminate any pass-through agreement under which the correspondent is deficient in its recordkeeping or other responsibilities.

(iv) Interest paid on supplemental reserves (if such reserves are required under § 204.7) held by a respondent will be credited to the account maintained by the correspondent.

(e) Any excess or deficiency in an institution's required reserve balance shall be carried over and applied against the balance maintained in the next maintenance period as specified in this paragraph. The amount of any such excess or deficiency that is carried over shall not exceed the greater of:

(1) The amount obtained by multiplying 0.04 times the sum of depository institution's required

reserves and the depository institution's contractual clearing balance, if any, and then subtracting from this product the depository institution's clearing balance allowance, if any; or

(2) \$50,000, minus the depository institution's clearing balance allowance, if any. Any carryover not offset during the next period may not be carried over to subsequent periods.

§ 204.7 [Removed]

- 8. Section 204.7 is removed.

§ 204.6 [Redesignated as § 204.7]

- 9. Section 204.6 is redesignated as § 204.7.

- 10. New § 204.6 is added to read as follows:

§ 204.6 Charges for reserve deficiencies.

(a) Deficiencies in a depository institution's required reserve balance, after application of the carryover provided in § 204.5(e), are subject reserve-deficiency charges. Federal Reserve Banks are authorized to assess charges for deficiencies in required reserves at a rate of 1 percentage point per year above the primary credit rate, as provided in § 201.51(a) of this chapter, in effect for borrowings from the Federal Reserve Bank on the first day of the calendar month in which the deficiencies occurred. Charges shall be assessed on the basis of daily average deficiencies during each maintenance period. Reserve Banks may, as an alternative to levying monetary charges, after consideration of the circumstances involved, permit a depository institution to eliminate deficiencies in its required reserve balance by maintaining additional reserves during subsequent reserve maintenance periods.

(b) Reserve Banks may waive the charges for reserve deficiencies except when the deficiency arises out of a depository institution's gross negligence or conduct that is inconsistent with the principles and purposes of reserve requirements. Decisions by Reserve Banks to waive charges are based on an evaluation of the circumstances in each individual case and the depository institution's reserve maintenance record. For example, a waiver may be appropriate for a small charge or once during a two-year period for a deficiency that does not exceed a certain percentage of the depository institution's required reserves. If a depository institution has demonstrated a lack of due regard for the proper maintenance of required reserves, the Reserve Bank may decline to exercise the waiver privilege and assess all

charges regardless of amount or reason for the deficiency.

(c) In individual cases, where a Federal supervisory authority waives a liquidity requirement, or waives the penalty for failing to satisfy a liquidity requirement, the Reserve Bank in the District where the involved depository institution is located shall waive the reserve requirement imposed under this part for such depository institution when requested by the Federal supervisory authority involved.

(d) Violations of this part may be subject to assessment of civil money penalties by the Board under authority of Section 19(1) of the Federal Reserve Act (12 U.S.C. 505) as implemented in 12 CFR part 263. In addition, the Board and any other Federal financial institution supervisory authority may enforce this part with respect to depository institutions subject to their jurisdiction under authority conferred by law to undertake cease and desist proceedings.

PART 209—ISSUE AND CANCELLATION OF FEDERAL RESERVE BANK CAPITAL STOCK (REGULATION I)

- 10. The authority citation for part 209 continues to read as follows:

Authority: 12 U.S.C. 2222, 248, 282, 286–288, 321, 323, 327–328, 333, and 466.

- 11. § 209.2 is amended by revising paragraph (c)(1) to read as follows:

§ 209.2 Banks desiring to become member banks.

* * * * *

(c) * * *

(1) *General rule.* For purposes of this part, a national bank or a State bank is located in the Federal Reserve District that contains the location specified in the bank's charter or organizing certificate, or as specified by the institution's primary regulator, or if no such location is specified, the location of its head office, unless otherwise determined by the Board under paragraph (c)(2) of this section.

* * * * *

By order of the Board of Governors of the Federal Reserve System, May 22, 2009.

Robert deV. Frierson,

Deputy Secretary of the Board.

[FR Doc. E9–12431 Filed 5–28–09; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 327

RIN 3064–AD35

Special Assessments

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: Pursuant to section 7(b)(5) of the Federal Deposit Insurance Act, 12 U.S.C. 1817(b)(5), the FDIC is adopting a final rule to impose a 5 basis point special assessment on each insured depository institution's assets minus Tier 1 capital as of June 30, 2009. The amount of the special assessment for any institution, however, will not exceed 10 basis points times the institution's assessment base for the second quarter 2009 risk-based assessment. The special assessment will be collected on September 30, 2009. The final rule also provides that if, after June 30, 2009, the reserve ratio of the Deposit Insurance Fund is estimated to fall to a level that the Board believes would adversely affect public confidence or to a level that shall be close to or below zero at the end of any calendar quarter, the Board, by vote, may impose additional special assessments of up to 5 basis points on all insured depository institutions based on each institution's total assets minus Tier 1 capital reported on the report of condition for that calendar quarter. Any single additional special assessment will not exceed 10 basis points times the institution's assessment base for the corresponding quarter's risk-based assessment. The earliest possible date for imposing any such additional special assessment under the final rule would be September 30, 2009, with collection on December 30, 2009. The latest possible date for imposing any such additional special assessment under the final rule would be December 31, 2009, with collection on March 30, 2010. Authority to impose any additional special assessments under the final rule terminates on January 1, 2010.

DATES: *Effective Date:* June 30, 2009.

FOR FURTHER INFORMATION CONTACT: Munsell W. St. Clair, Acting Chief, Fund Analysis and Pricing Section, Division of Insurance and Research, (202) 898–8967; Christopher Bellotto, Counsel, Legal Division, (202) 898–3801 or Sheikha Kapoor, Senior Attorney, Legal Division, (202) 898–3960; Donna Saulnier, Manager, Assessment Policy Section, Division of Finance (703) 562–6167.