



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM
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Board staff has received a number of inquiries about the requirements for a retail sweep program to comply with the Board's Regulation D ("Reserve Requirements of Depository Institutions"). In a "retail sweep program," a depository institution transfers funds between a customer's transaction accounts and that customer's savings deposit accounts up to six times per month by means of preauthorized or automatic transfers, typically in order to reduce transaction account reserve requirements while providing the customer with access to the funds. The following is a summary of previously-issued staff opinions and informal staff guidance with respect to the requirements of an acceptable retail sweep program.

Staff opinions from the Board's Legal Division have established three key criteria for retail sweep programs to comply with Regulation D:

- (1) A depository institution must establish by agreement with its transaction account customer two legally separate accounts: a transaction account (a NOW account or demand deposit account) and a nontransaction account (usually a savings deposit account, also sometimes called a "money market deposit account" or "MMDA");
- (2) The swept funds must actually be moved from the customer's transaction account to the customer's savings deposit account on the official books and records of the depository institution as of the close of the business on the day(s) on which the depository institution intends to report the funds in question as savings deposits and not transaction accounts, and vice versa; and
- (3) The maximum number of preauthorized or automatic funds transfers ("sweeps") from a savings deposit account into a transaction account in a retail sweep program is limited to not more than six (6) per month.

Account Establishment

When a depository institution intends to establish a retail sweep program with respect to its established transaction account customers, the depository institution must first ensure that it has amended its customer account agreements under applicable contract law to provide for the existence of two distinct accounts (a transaction account and a savings deposit account) rather than a single account. This step is necessary because account agreements typically provide for the existence of only one account: a transaction account. These distinct accounts may be referred to as “subaccounts” provided that there are legally two distinct accounts and not just one account “subdivided” in name only.

Many depository institutions have drafted their customer account agreements to provide that the depository institution has the right to amend those agreements unilaterally by giving advance written notice to its customers of the amendments. Where a depository institution has reserved to itself under applicable contract law the right unilaterally to amend its existing customer account agreements by giving advance written notice to its customers thereof, it may be permissible under applicable contract law for the depository institution to amend its customer account agreements in this manner to provide for the two distinct accounts that are necessary to establish a retail sweep program. Otherwise, it will probably not be sufficient for a valid retail sweep program for the depository institution simply to give advance written notice to its customers of the intended establishment of such a program or of the intended creation of two distinct accounts.

When a depository institution intends to establish a retail sweep program with respect to new transaction account customers, the depository institution must ensure that its customer account agreements provide for the existence of two distinct accounts (a transaction account and a savings deposit account) rather than a single (transaction) account.

Recordkeeping

A valid retail sweep program requires that the distinction between customer transaction accounts and customer nontransaction accounts (savings deposits) be reflected on the institution's official books and records. If the institution's general ledger is sufficiently disaggregated to distinguish between customer transaction accounts and customer nontransaction accounts, then the general ledger entry for transaction accounts must include the sum of customers' transaction account balances, and the general ledger entry for nontransaction accounts must include the sum of customers' nontransaction account (savings deposit) balances. If the institution's general ledger is not sufficiently disaggregated to distinguish between customer transaction accounts and customer nontransaction accounts, the distinction may be reflected in supplemental records or systems provided that those supplemental records or systems constitute part of the institution's official books and records. The supplemental records or systems outside the general ledger must meet all the relevant requirements of being official books and records of the depository institution. Among other things, the supplemental records or systems must be reflected in and consistent with the institution's data as reported on its "Report of Transaction Accounts, Other Deposits and Vault Cash" (FR 2900) and its data submitted to banking supervisors, such as the Call Report¹, and must be subject to the same prudent managerial oversight and control as the general ledger. The maintenance of such records or systems by a third party, such as a service provider, may raise questions as to whether those records or systems are subject to prudent managerial oversight and control. A valid retail sweep program may not exist solely in records or on systems that do not constitute official books and records of the depository institution and that are not used for any purpose other than generating "reclassified" FR 2900 deposit reports.

¹ Call Report refers to the Consolidated Reports of Condition and Income for banks (FFIEC 031 or FFIEC 041; OMB No. 7100-0036), the Thrift Financial Report for savings associations (OTS 1313; OMB No. 1550-0023) and the Statement of Financial Condition for credit unions (NCUA 5300; OMB No. 3133-0004).

Movement of Funds

In addition to reflecting the existence of two distinct customer accounts, the official books and records of the institution must reflect the movement of funds between the customer's accounts on each day that sweep activity occurs. In other words, funds that the depository institution intends to sweep into and report as "savings deposits" must actually have been moved from the customer's transaction account to the customer's nontransaction account (savings deposit or MMDA) before the close of business that day for the sweep to be valid. Similarly, funds that the depository institution is sweeping back into and reporting as a transaction account must actually have been moved from the customer's savings deposit or MMDA to the customer's transaction deposit before the close of business that day. Regardless of the structure of the institution's official books and records, both the customer-account-level records and the aggregate-level records must reflect the actual movement of funds between the accounts (if any) for each reporting date, so that the manner in which the funds are reported (transaction or savings) on any given reporting date corresponds to where the funds are located (transaction account or savings account).

The term "close of business" refers to the time established by the reporting institution as the cut-off time for receipt of work for posting transactions to its general ledger accounts for that day. The time designated as the close of business should be reasonable and applied consistently. The posting of a transaction to the general ledger means that both debit and credit entries are recorded as of the same date. The close of business for a depository institution's retail sweep program cannot be after the institution's close of business for its general ledger.