
LEGAL UPDATES AND NEWS

**FDIC Issues Final Rule on
Noninterest-Bearing Transaction Accounts**

On November 9, 2010, the Federal Deposit Insurance Corporation (“FDIC”) issued a final rule under the Dodd-Frank Act that provides temporary unlimited deposit insurance coverage for noninterest-bearing transaction accounts. This coverage will be separate from, and in addition to, the coverage provided to a depositor for other accounts maintained at a depository institution. The coverage provided under this rule will become effective December 31, 2010, and will end on December 31, 2012.

The temporary unlimited coverage provided under this rule is similar to the coverage that was available under the FDIC’s Transaction Account Guarantee Program (“TAGP”), which expires on December 31, 2010. However, unlike the TAGP, the definition of “noninterest-bearing transaction account” under the new rule does not include low-interest negotiable order of withdrawal (NOW) accounts or Interest on Lawyers Trust Accounts (IOLTAs). The new rule defines a noninterest-bearing transaction account as “a deposit or account maintained at an insured depository institution with respect to which interest is neither accrued nor paid; on which the depositor or account holder is permitted to make withdrawals by negotiable or transferable instrument, payment orders of withdrawal, telephone or other electronic media transfers, or other similar items for the purpose of making payments or transfers to third parties or others; and on which the insured depository institution does not reserve the right to require advance notice of an intended withdrawal.” Therefore, neither NOW accounts nor IOLTAs are within the definition of noninterest-bearing transaction account.

The coverage provided under the new rule also differs from the TAGP in that depository institutions may not opt out of participating. Institutions are not required to take any action to obtain separate coverage for noninterest-bearing transaction accounts. In addition, unlike the TAGP, the FDIC will not charge a separate assessment for the insurance of noninterest-bearing transaction accounts pursuant to the new rule.

Finally, depository institutions should be aware that the new rule imposes the following disclosure and notice requirements:

- 1) Institutions must post a prescribed notice in their main office, each branch, and, if applicable, on their website;
- 2) Institutions currently participating in the TAGP program must notify NOW account depositors and IOLTA account depositors that, beginning January 1, 2011, those accounts will no longer be eligible for unlimited deposit insurance coverage; and

- 3) Institutions must notify customers individually of any action they take to affect the deposit insurance coverage of funds held in noninterest-bearing transaction accounts (such as modifying the terms of an account so that it may pay interest).

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