

## A Solemn Farewell to Reg. D's Convenient Transfer Restrictions

Effective April 24<sup>th</sup>, 2020 the Federal Reserve Board (FRB) did away with a longstanding, and, in the opinion of some, outdated rule in Regulation D. The Interim Final Rule amended Reg. D by deleting the six convenient transfers and withdrawals restriction that has become synonymous with savings accounts. Because the rule change puts the ball in each depository institution's court, in terms of whether or not to continue enforcing the restrictions, banks are now left at a crossroads. While the Interim Final Rule provides some clarification on the impact of the change, there are still unanswered questions as well as compliance considerations in proceeding down either path.

With the Reg. D restrictions being antiquated for years due to changes in the industry, what precipitated Reg. D's amendments now? In the Interim Final Rule, the FRB noted an "ample reserves regime" shift, which led to the FRB reducing reserve requirement ratios to zero percent effective March 26, 2020. As a result of the elimination of reserve requirements on all transaction accounts, the FRB stated that the distinction between transaction accounts and savings deposit accounts was no longer necessary. Lastly, the FRB pointed to disruptions caused by COVID-19, which in turn has caused many depositors to have an urgent need for access to their funds by remote means.

Because the FRB pointed to recent developments as a basis of the change as well as its timing amidst the COVID-19 pandemic has led some to question whether the Reg. D changes are permanent or only temporary in order to provide relief during the current crisis. The Interim Final Rule as currently written does not indicate that these changes are temporary. However, because it is an Interim Final Rule and there is a comment period, there remains a possibility that there could be changes to the rule after the comments are considered and a finalized version of the rule is issued. Due to uncertainty on the permanency of the changes, as well as its significant impact on the bank decision of whether or not to suspend restrictions; stakeholders in the industry are reportedly pressing the FRB for clarity on the Interim Final Rule's permanency.

While the question of the Interim Final Rule's permanency remains an open one, changes in the rule are clearly explained. For example, the rule explains that enforcement of the changes is not mandatory. Instead, it is completely up to each bank whether to suspend enforcement of the six transfer limit and even provides that a temporary suspension is an option. Additionally, the rule allows a certain amount of flexibility in that a bank that suspends enforcement of the transfer limits can either continue to report these accounts as savings deposits or alternatively report them as transaction accounts for purposes of the FR 2900. Further, the rule does not require reclassification or name changes for effected accounts. Lastly, the rule also clarifies that the changes have no impact on the "reservation of right" which continues to be part of the definition of a savings deposit, nor does it impact the way that a bank calculates or reports interest for these accounts.

Because it is up to each bank on whether to suspend enforcement of the six transfer limits, one of the most frequent questions we have received is whether notice is required when suspending enforcement. Neither the Interim Final Rule nor relevant guidance

regarding the Reg. D changes have specifically stated notice is required. Additionally, Regulation DD only requires advance notice in certain circumstances which suspension of transfer limits would not trigger. Even though not specifically required by regulation, providing notice is considered a best practice from a customer relationship and UDAAP perspective when significantly changing the terms of an account, as would be the case when suspending enforcement of the convenient transfer restrictions. Additionally, for those institutions that will be suspending enforcement of the transfer limitations only temporarily, generally Reg. DD would require advance notice when re-implementing the transfer restrictions, as this would adversely affect the consumer. We have heard from many banks that plan to temporarily suspend enforcement of the transfer restrictions that they will be providing a statement notice informing the customer of the change and indicating the date on which the restrictions will be re-implemented.

Another issue presented by the change is whether it is necessary to amend account agreements. While the Interim Final Rule does not specify the manner in which account agreements may be amended, the issue of whether they should be amended remains open. If choosing to suspend enforcement of the restrictions, this would arguably lead to a conflict between the depository institutions practices and the current terms of the account agreement. Additionally, even if not suspending enforcement of the restrictions, it is common to cite Reg. D as a source of the restrictions, which is no longer the case anymore. Either of these issues could cause compliance issues for a depository institution and therefore should be taken into consideration in determining how to proceed.

Lastly, it appears that the Reg. D amendments have caused an unintended consequence concerning Regulation CC. Because Reg. CC defines “account” by referencing Reg. D’s amended definition of “transaction account”, it appears that this has caused a conflict within Reg. CC and thus presents a question of whether saving deposit accounts are now subject to Reg. CC. Essentially, Reg. CC now includes saving deposits in the definition of “account” while also expressly excluding saving deposits from the definition of “account”. There is an argument that because the specific exclusion appears later in the regulation than the general reference, that savings deposits are still excluded from Reg. CC’s definition of “account”. Because it is unclear, ultimately banks will have to make a judgment call in the time being until further guidance is issued regarding Reg. D’s impact on Reg. CC.

Even though the Reg. D changes do present some unanswered questions, ultimately the elimination of the convenient transfer restriction will relieve banks choosing to suspend enforcement the burden of having to monitor for excessive transactions. Additionally, for bank’s opting to suspend enforcement, the changes will benefit account holders by providing greater accessibility to funds. While there will be effort and resources required in implementing these changes, overall it appears that the Reg. D changes have the potential of providing a net benefit to banks and account holders alike.

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## About the Author



Michael presently serves as Associate General Counsel for Compliance Alliance. He holds a bachelor's degree in Business Administration in Finance from the University of Texas McCombs School of Business. While attending Baylor Law School, he further pursued his interest in finance by taking a variety of courses that focused on transactional and business issues. After law school, Michael worked at a litigation firm with a specific focus on collection matters.