

Regulation D: NOW Account Eligibility

Regulation D sets out very specific guidance regarding eligibility for negotiable order of withdrawal (NOW) accounts.

The following individuals and entities **are** eligible for NOW accounts. Under the Dec. 16, 1987, Federal Reserve Board Interpretation of Reg. D (12 CFR 204.2(b)(3)(ii)(A)), NOW account eligibility includes:

1. **Individuals.** Any individual may maintain a NOW account regardless of the purpose of the funds. The account may be used by the individual in the conduct of his or her business, including a sole proprietorship, but not a partnership or a corporation. The account may be maintained in the individual's name or the "DBA" or trade name.
2. **Nonprofit organizations.** Any organization that is operated primarily for religious, philanthropic, charitable, educational, political or other similar purposes is eligible for a NOW account. Such organizations include:
 - a) **Tax-exempt Organizations.** The following tax-exempt organizations are eligible for NOW organizations include:
 - i) Any corporation, community chest, fund or foundation operated exclusively for religious, charitable, scientific, public safety, literary or educational purposes, or to foster amateur sports competition, or for the prevention of cruelty to children or animals.
 - ii) Civic leagues or organizations operated exclusively for the promotion of social welfare, and local associations of employees of a particular employer or from a particular municipality the net earnings of which are devoted exclusively to charitable, educational or recreational purposes.
 - iii) Labor, agricultural or horticultural organizations.
 - iv) Business leagues, chambers of commerce, real estate boards, boards of trade or professional football leagues which are not organized for profit.
 - v) Clubs organized for pleasure, recreation and other non-profitable purposes if none of the net earnings of the club benefits any private shareholder.
 - vi) Fraternal beneficiary societies, orders or associations.
 - vii) Voluntary employees' beneficiary associations.
 - viii) Domestic fraternal societies, orders or associations operating under the lodge system if the net earnings are devoted exclusively to religious, charitable, scientific, literary, educational and fraternal purposes.
 - ix) Teachers' retirement fund associations of a purely local character.
 - x) Benevolent life insurance companies of a purely local character, mutual ditch or irrigation companies, mutual or cooperative telephone companies or life organizations, if 85 percent or more of the income is collected from members for the sole purpose of meeting losses and expenses.
 - xi) Cemetery companies owned and operated exclusively for the benefit of their members or which are not operated for profit.
 - xii) Organizations of past or present members of the U.S. Armed Forces, or an auxiliary unit of such an organization, if none of the earnings of the organization benefit any private shareholder or individual.
 - b) Political organizations, including a party, committee, association, fund or other organization.
 - c) Home owners' and condominium owners' associations, including housing cooperative associations.
 - d) Other nonprofit organizations operated primarily for religious, philanthropic, charitable, educational, political or other similar purposes.
3. **Governmental Units.** Governmental units are eligible to maintain NOW accounts if the entire beneficial interest is held by the United States, any state, county, municipality or political subdivision, the District of Columbia or any territory or possession of the United States.

4. **Pension Funds, etc.** Pension funds, escrow accounts, security deposits and other funds may be classified as NOW accounts if the entire beneficial interest is held by individuals or other entities eligible to maintain NOW accounts directly.
5. **Fiduciaries.** Funds held in a fiduciary capacity (either by an individual fiduciary or by a corporate fiduciary such as a bank trust department or a trustee in bankruptcy) may be held in NOW accounts if all the beneficiaries are otherwise eligible to maintain NOW accounts.
6. **Grandfather Provision.** NOW accounts established on or before Aug. 31, 1981, that represent funds of an ineligible entity that previously was eligible to maintain a NOW account may continue to maintain such NOW account.

Entities **not eligible** for NOW accounts:

1. **For-profit organizations.** All organizations operated for profit, such as corporations, partnerships, associations and business trusts (but not sole proprietorships) are ineligible to maintain NOW accounts.
2. **Certain tax-exempt organizations.** Some organizations that are exempt from tax are nevertheless ineligible to maintain NOW accounts. These organizations include:
 - a) Credit unions and other associations described in section 501(c)(14) of the Internal Revenue Code (the "Code").
 - b) Mutual insurance companies described in section 501(c)(15) of the Code.
 - c) Crop financing organizations described in section 501(c)(16) of the Code.
 - d) Organizations created to form a qualified group legal services plan described in section 501(c)(20) of the Code.
 - e) Farmers' Cooperatives described in section 521 of the Code.

The FDIC interprets Reg. D the same way as the Federal Reserve Board. In its rules at 12 CFR 329.1(b)(3), the FDIC states:

"An individual may maintain a NOW account regardless of the purposes that the funds will serve...However, other entities organized or operated to make a profit may not maintain NOW accounts regardless of whether they are corporations, partnerships, associations, business trusts or other organizations."

One type of business entity not specifically named in the regulation is the limited liability company (LLC). Under Iowa Code § 490A.102(13), a "limited liability company" is defined as, "an unincorporated **association** having two or more members." If the LLC is organized for profit, it will fall under the general restriction in Reg. D prohibiting entities organized or operated to make a profit (such as corporations, partnerships, **associations**, business trusts, etc.) from maintaining NOW accounts. If the LLC meets the eligibility requirements as a nonprofit association operated primarily for religious, philanthropic, charitable, educational, political or other similar purpose (evidenced by a copy of IRS 501(c) determination letter), it may maintain a NOW account.

Depository institutions violating the prohibitions on eligibility for NOW accounts may be cited in an examination and fined \$1,000 per violation.