

## Selected Subjects

Guru Chatter\*

on CDs



[www.bankersonline.com](http://www.bankersonline.com)

### CD Early Withdrawal Penalties

by John Burnett, BOL Guru

[BIO AND CONTACT INFO](#)

**Question:** Our President wants to implement a different type of early withdrawal penalty structure. For example, for CDs of 1 year or less, the penalty assessed would be 3% of the amount withdrawn. For CDs of maturity of greater than 1 year, the penalty assessed would be 6% of the amount withdrawn. If we are able to get our data processor to support this and our documents and disclosures to correctly disclose this, do the regulations allow us to use such an early withdrawal penalty structure?

**Answer:** As long as your penalty is always at least equal to 7 days' interest on the amount withdrawn if the withdrawal is less than 7 days from the deposit date or last withdrawal date, how you calculate the penalty is a matter of contract, which might be subject to some state law restrictions.

I haven't worked the math, but it appears your suggested penalties would pass the test.

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### What are the maximum interest rates on CD loans?

Answer by Jim Bedsole, BOL Guru

[BIO AND CONTACT INFO](#)

**Question:** What are the regulations regarding the maximum interest rate banks can charge on closed-ended loans secured by CDs? We charge 3% over the rate the CD is earning with a minimum rate of 6%. Is this permissible?

**Answer:** I'm not aware of any federal regulations as to setting a maximum rate on this or any type of loan. For that, you'll need to look to state law for any usury limits.

Reg Q used to have provisions regarding the minimum amount of spread required on a loan secured by deposit accounts, but that was removed some time ago.

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### Can Beneficiary Transfer IRA CDs?

Answer by Ken Gollhofer, BOL Guru

[BIO AND CONTACT INFO](#)

**Question:** A beneficiary inherited (mother to daughter) several IRA CDs and is currently receiving the minimum distribution which is paid from the lowest interest CD. Two of the CDs are maturing in April, 2003 and the beneficiary wants to transfer them to another bank where she has a substantial IRA comprised of CDs. Are there IRS or ABA rules/regs covering this situation? Can the daughter/beneficiary transfer the CDs without having to incur a tax liability above the minimum distribution she elected?

**Answer:** First, an inherited IRA cannot be combined with an IRA which the daughter has established with her own contributions.

Second, the sending institution must make the required minimum distribution for the calendar year; it cannot transfer that amount to the successor fiduciary.

Third, several years ago the IRS issued a private letter ruling saying that an inherited IRA could be transferred to another custodian, if the sending institution received an acknowledgement from the receiving institution that the IRA was inherited. The point being that the account would be properly titled, the appropriate distribution calculations would be made and the funds would not be commingled with IRA's in the beneficiary's name alone.

A private letter ruling is a fragile source of legal authority and I would suggest that any advice that this is O.K. come from someone other than you. Remember, the funds are being transferred to another bank. Let them take the responsibility for giving the advice that says it's not a problem.

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## Interest Paid During CD Grace Period

Answer by David Dickinson, BOL Guru  
[Guru BIOS](#)

**Question:** When a certificate of deposit is cashed in during the 10 day grace period, does the interest have to be paid through the day of withdrawal? A bank in the area does not pay any interest during the 10 day grace period. Is this correct or not?

**Answer:** The CD expires the date of maturity. You are under no obligation to pay interest beyond the contracted maturity date. If the CD renews, you can pay interest during the grace period as the CD technically renewed on the maturity date. But if the CD does not renew, why pay interest past the maturity date?

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## Using a CD to Offset a Delinquent Note

by Andy Zavoina, BOL Guru  
[BIO AND CONTACT INFO](#)

**Question:** If we use a Certificate of Deposit for an offset on a delinquent note, should we charge the early withdrawal penalty and credit the accrued interest?

**Answer:** In the past I would examine the circumstances of the account and generally did not charge the penalty on a CD when I took it. I think you may be within your rights, but I'd associate it with rubbing salt in a wound. Maybe I was too nice.

First published on BankersOnline.com 05/5/03

## CD Renewals: Do we need to certify the TIN again?

by John Burnett and Ken Golliver, BOL Gurus

**Question:** What are the legal implications if on CD renewals we allow the TIN to be certified either by phone or by the joint accountholder? We have many instances where a spouse will come to the bank to renew a CD, but the other spouse is the primary accountholder and the TIN is not re-certified or the primary accountholder "certifies" it by phone. This has been done as a convenience to the customer, but we are concerned there could be problems.

**Answer John Burnett:**

[BIO AND CONTACT INFO](#)

W-9 forms have no expiration dates. Once the customer has certified his/her TIN once, there would be no reason I'm aware of to have it recertified at renewal, unless you've received the dreaded "B Notice" from the IRS.

You might have a documentation challenge if you treat each renewal as a new account, but there's nothing wrong with using a dated W-9.

**Answer Ken Gollither:**

[BIO AND CONTACT INFO](#)

As John indicates, once I have certified my TIN in writing under penalties of perjury, the certification is good until the IRS notifies you otherwise with the B notice.

However, you need to eliminate the concept that a TIN can be certified over the phone or by a spouse from your thinking - it cannot.

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## Definition of Dormant CD

by John Burnett, BOL Guru

[BIO AND CONTACT INFO](#)

**Question:** I am working on processing dormant certificate of deposits for the first time. I need a confirmation on the definition of a dormant certificate of deposit. Is it considered dormant due to inactivity for a year from the original maturity date?

**Answer:** This is a function of your state's abandoned property laws, coupled with reasonable controls designed to prevent insiders from messing with inactive accounts. Check with local counsel on the former, and with peers in your area for the latter. Guidance from your regulator or outside audit firm might also help on either side of this issue.

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## How should we handle uncashed CD interest checks for a deceased customer?

by John Burnett and Ken Gollither, BOL Gurus

**Question:** I had a customer who is now deceased who had several CD's with our bank. Some were joint with her daughter and others are POD for her daughter or for her son. We have several CD interest checks that were issued prior to her death are still outstanding and need to be reissued or escheated. My question is for those CD interest checks made payable to the CD owner, who has since passed away, should the checks be reissued to the POD or the CD account or to her estate?

**Answer by John Burnett:**

[BIO AND CONTACT INFO](#)

If the checks payable to the deceased are to be reissued, make them payable to the estate of the deceased. I don't believe they are part of the account that devolves to the beneficiary of a POD designation.

**Answer by Ken Gollither:**

[BIO AND CONTACT INFO](#)

I agree with John, but we are both offering you a judgment call on delivering the checks on the joint accounts to the daughter; they could also be delivered to the personal representative of the decedent's estate. State laws often acknowledge rights of survivorship in bank accounts, but not

in checks. The distinction here is that, prior to her mother's death, the daughter could have cashed the checks that were payable to her mother or her. She could not have cashed the checks on the POD accounts.

My suggestion is slightly different on the method for reissuing the checks: reissue them the way they were originally formatted; e.g. "Jane Doe or Sally Doe" and "Jane Doe POD Sally Doe." Deliver the "or" checks to the daughter and the "POD" checks to the personal representative of the decedent's estate. (The personal representative can properly endorse a check made payable to the decedent.)

However, make certain the personal representative is aware of all the checks.

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## Renewal During Grace Period: Backdate the CD?

by Ken Gollhofer, BOL Guru  
[BIO AND CONTACT INFO](#)

**Question:** If a customer renews a matured CD within the 10 day grace period, should the new CD be backdated to the maturity date of the original CD or dated on the date of the renewal?

**Answer:** The maturity date of the original CD. The underlying concept is that the original CD renewed automatically at its maturity date, but a penalty free withdrawal is allowed because it is within the "grace period" after renewal.

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## Changing CD Terms

by David Dickinson, BOL Guru  
[BIO AND CONTACT INFO](#)

**Question:** Our bank recently acquired another bank, and when their CDs are up for renewal, we will be changing the terms (sometimes adversely) to our own current products being offered. My question is: Should we send out our disclosures along with the maturity notices and letter, regardless of the term of the CD?

**Answer:** I think it would be best to provide a new disclosure in this case.

[§230.5\(b\)\(2\)](#) applies to renewal of CD's with a term of greater than 1 month or less than or equal to 1 year. It states "for time accounts with a maturity of longer than one month, the institution shall either: (i) **provide account disclosures set forth in section 230.4(b) of this part {an initial disclosure}**; or (ii) disclose to the consumer: (A) the date the existing account matures and the new maturity date if the account is renewed; (B) the interest rate and annual percentage yield for the new account if they are known (or that those rates have not yet been determined, the date when they will be determined, and a telephone number the consumer may call to obtain the interest rate and annual percentage yield that will be paid on the new account); and (C) any difference in the terms of the new account as compared to the terms required to be disclosed under section 230.4(b) (initial disclosure) of this part for the existing account. The renewal notice shall be mailed at least 20 calendar days before maturity of the grace period (10 days before maturity if you offer a 10 day grace period).

If the term of the CD is greater than 1 year, a whole new disclosure is required per §230.5(b)(1) of Regulation DD.

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## Notice Requirements For Automatically Renewed Short Term CDs

by Ken Gollhofer, BOL Guru

[BIO AND CONTACT INFO](#)

**Question:** On a 7-day certificate of deposit that automatically renews, are we required to send an interest notice every time that interest adds to the account (every 7 days)?

**Answer:** No, TISA does not require banks to send interest notices on time deposits under any circumstances. Some banks have suspended the practice on all time deposits.

TISA does require that maturity notices be sent for time deposits. However, if the original maturity of the time deposit is less than 30 days, no advance notice required. Notice must be sent within a "reasonable time" after renewal if any change made to disclosed term (other than interest rate and annual percentage yield.)

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## When to Send Maturity Notices?

Answer by David Dickinson, BOL Guru

[BIO AND CONTACT INFO](#)

**Question:** How far in advance do maturity notices have to be sent?

**Answer:** If you are referring to a CD Maturity notice, refer to [§230.5\(b\)](#). For CD's with a term of >1 month and that are automatically renewable, they must be sent 20 days before the end of the grace period. IOW, if your grace period is 10 days long, they must be sent at least 10 days prior to maturity.

For CD's >1 year that do not automatically renew, a notice must be sent 10 days prior to maturity. Refer to [§230.5\(c\)](#).

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## CDs, POD Designation, and Beneficiaries

by John Burnett, BOL Guru

[BIO AND CONTACT INFO](#)

**Question:** Is it mandatory to have "POD" on a Certificate of Deposit or any account on which a beneficiary has been named. In addition, if a "POD" is listed on a "CD" is the bank required to have the named beneficiary sign loan documents if the owner of the CD pledges the account?

**Answer:** If it's the intent of the owner that the CD be transferred to the named beneficiary immediately upon the owner's death, and to take advantage of the FDIC insurance rules covering Totten trust accounts, the account needs to be captioned to show that intent. Whether it's POD or ITF or Trustee For will depend upon local law and/or customer.

As for a pledged CD captioned in such a way, there could be a problem. Check with a local attorney. Obtaining a valid lien on a consumer account can be problematic under revised UCC rules, and the difficulty is compounded by what could happen at the death of the owner. IMHO, the beneficiary has no present rights in the CD that can be pledged, nor can you require his/her signature on the note under Regulation B.

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## CD Maturity Notification Requirements

by John Burnett, BOL Guru  
[BIO AND CONTACT INFO](#)

**QUESTION:** How far in advance of CD maturity do notices have to be sent?

**ANSWER:** Your answer is in [§230.5](#) of Regulation DD. Any more onerous state law will, of course, take precedence. If the CD is for one month or less, Reg. DD does not require a maturity notice. (§230.5(a)(2)(iii))

If the CD is for longer than one month and automatically renews, the notice must be sent 30 days before maturity unless there is a grace period after renewal. If there is a grace period of at least 5 days, the notice can be sent 20 days or more before the end of the grace period. More simply -- if you have a 10-day grace period you can send the notice as late as 10 days before maturity. ([§230.5\(b\)](#))

If the CD does not automatically renew, the notice needs to be sent 10 days before maturity. (§230.5(c))

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## Early CD Redemption: Forfeiture Of Interest

Answer by: Ken Gollhofer, BOL Guru  
[BIO AND CONTACT INFO](#)

**Question:** If a certificate of deposit is redeemed early (not during the allowed grace days), do we have the option of paying the accrued interest? I was told that we can waive the early withdrawal penalty if we choose, but that we still have to pay the accrued interest.

**Answer:** Early withdrawal penalties and possible interest forfeitures are controlled by your TISA disclosures - they are not the same for all banks.

If a customer closing an account loses accrued interest, your disclosure must say so. 12 CFR 230.4(b)(2)(ii) If your disclosure does not mention forfeiture of accrued interest, you must pay it.

On early withdrawal penalties, your disclosure must also include... "A statement that a penalty will or may be imposed for early withdrawal, how it is calculated, and the conditions for its assessment." 12 CFR 230.4(b)(6)(ii). Regulation D does not impose any substantial limitation on your ability to waive penalties.

A note of caution, early withdrawal penalties reflect sound business judgment. In effect, they are liquidated damages from the customer's decision not to leave the funds with your bank as promised. Early withdrawals have an effect on your institution's asset-liability management - don't be too anxious to waive the penalties.

First published on BankersOnline.com 7/15/02

## Early Withdrawals and Accrued Interest

by: Ken Gollhofer, BOL Guru  
[BIO AND CONTACT INFO](#)

**Question:** If a certificate of deposit is redeemed early (not during the allowed grace days), do we have the option of paying the accrued interest? I was told that we can waive the early withdrawal penalty if we choose, but that we still have to pay the accrued interest.

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## Distributing CD Proceeds When Some Of The Beneficiaries Have Died

by Ken Gollhofer, BOL Guru  
[BIO AND CONTACT INFO](#)

**QUESTION:** We have a CD that is titled Jane Doe POD to Bob Doe and Mel Doe. Jane Doe dies and so does Mel Doe. Do all the funds go to Bob Doe or does he only get half and Mel Doe's Estate get half?

**ANSWER:** Ownership and survivorship provisions on deposit accounts are always a function of state law. The Maine answer may be dramatically different from the Arizona answer, so you need to look in your state's statutes for multiple party account provisions. (They are sometimes located in the probate code as statutory exceptions to the requirement for a will.) The generic answer is that POD beneficiaries must survive the last original payee in order to receive the funds. If Mel Doe survived Jane Doe he (his estate) gets half. If Mel predeceased Jane, the entire amount on deposit at Jane Doe's death goes to Bob.

Note: A generic answer is often more dangerous than no answer. If you are not confident about your ability to look it up, try posting your question in the "State Specific..." Bankers Thread. If you mention your state in the title, maybe one of your peers can provide an answer or, more helpful still, a citation.

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## Tax Levies & CDs

by Sam Ott, BOL Guru  
[BIO AND CONTACT INFO](#)

**QUESTION:** The bank was served with a tax levy in which the customer has a certificate of deposit. Is the bank obligated to close the CD and assess a penalty? How should the bank respond?

**ANSWER:** Upon receipt of a Notice of Levy the bank must deny the customer access to the funds and surrender them to the IRS. However, the bank must wait 21 days after the service of the levy before surrendering any deposits in order to give the customer time to respond to the IRS. The IRS is required to contact the customer, inform them of the levy and the customer's right to a hearing. The customer, not the bank, must raise any objections or any exemptions to the

levy. If a bank fails or refuses to surrender the funds, it may be liable for the amount of the funds subject to the levy. The IRS is only entitled to what the taxpayer (your customer) is entitled to. If an early withdrawal penalty would normally be deducted for a withdrawal made by the customer on the date the funds are surrendered to the IRS, that amount can be deducted from the amount sent to the IRS. The bank must send to the IRS the funds on deposit at the time the Notice of Levy is received, plus any interest accrued on the funds, up to the end of the 21-day period, but not to exceed the stated amount of the levy. Your customer may waive the 21-day holding period by notifying the bank in writing. A copy of the written waiver must be included in the levy response made by the bank.

If the tax levy was issued by a State taxing authority, different procedures may apply. Contact your legal counsel to make sure you comply with applicable state law.

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## Timely Disbursement Of CD Proceeds: How much can the institution delay?

by Ken Gollhofer, BOL Guru

[BIO AND CONTACT INFO](#)

**QUESTION:** A couple of our customers have had problems getting their CD's from a large bank. They have notified the bank a couple of days prior to the maturity date that they do not wish to roll-over the CD and would like the funds wired to them on the maturity date. The bank in question claims a ten-day waiting period (without payment of interest) and then refuses to wire or fed-ex funds (even though the customer wants to pay the appropriate fee). They state they can only mail a check which causes an additional 2 - 3 day delay. (To make money from the float, no doubt.) I can see in the reg's that you don't have to pay interest during the grace-period (if you disclose it), however I am completely at a loss as to why they wait ten days and refuse to wire. Have you heard of this practice? Also, where in the regs does it address prompt payment of funds to the customer?

**ANSWER:** I am not aware of any federal law or regulation which governs a bank's responsibility to disburse funds from a maturing time deposit promptly. However, if enough banks adopt such practices, I am certain we will get one.

Hopefully, the reference to a 10 day "waiting period" reflects a misunderstanding by the customer. There may be a 10 day "grace period" in which the funds can be withdrawn without penalty, but a "waiting period" after maturity? No. The issues would be breach of contract; the accuracy of the APY under TISA; and unfair and deceptive practices under state law.

On the other institution's refusal to wire the funds, there may be an explanation other than intransigence. For example, they may require a written agreement for all wire transfers and your customer does not have one in place.

I have seen banks do things as abusive as your customer describes, but have gotten burned a couple times when I relied only on the customer's rendition of the facts. However, if I were the customer whose time deposit had matured and the depository institution was as obstructive as indicated here, I would file a written complaint with their primary regulatory agency, state or federal. For additional weight, I would file a complaint with the state attorney general's office.

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## Earned (but not paid) CD Interest & OID 1099s

by: Ken Gollhofer, BOL Guru

[BIO AND CONTACT INFO](#)

**Question:** What is the rule regarding certificates of deposit and the requirement of providing OID 1099 information when interest is earned and not paid in the tax year?

**Answer:** If the time deposit has an original maturity of greater than one year and interest is not paid at least annually, OID reporting is required. In short, the financial institution reports interest accrued on the instrument, even though it has not been paid.

Time deposits with original maturities of greater than one year that pay "bonus" interest also trigger OID reporting. For example, a 24 month instrument where the rate is contractually guaranteed to go up 50 basis points every six months would trigger OID reporting. There the interest reported would be on the average rate over the life of the instrument. (There are many banks advertising products that sound exactly like this, but when you see the documentation it is actually a series of six months time deposits where the rate is guaranteed to go up with each consecutive maturity.)

What the IRS tries to preserve with OID reporting is the concept of the "calendar year taxpayer." The effect is that you cannot choose the year in which you decide to pay taxes on your income by the way you structure a time deposit.

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## Book Entry CDs: What is required?

by: Ken Golliher, BOL Guru

[BIO AND CONTACT INFO](#)

**Question:** We are considering going from issuing an actual Certificate of Deposit to book entry only. What information are we required to disclose on the CD receipt?

**Answer:** Let's say the customer is purchasing a time deposit, you can give her a receipt or a "certificate of deposit" on fancy paper. Either way, you are going to give her the same Truth-in-Savings disclosure. So, what is there that you are legally required to put on the receipt vs. the CD?

There is no legal list.

The language on the receipt should reflect the terms of the agreement beyond those already included on the TISA disclosure. The amount of the deposit, the style of the account (names, POD, JTWRS, etc), perhaps a clear statement that presentation of the receipt at maturity is not necessary to redeem the deposit, and anything else that is necessary to make the customer and the financial institution feel comfortable.

Ask a couple vendors for sample forms...they will include that vendor's best judgment on what to include, but they will not be identical.

The concept that a time deposit needs to be represented by an expensive piece of paper and that a customer who loses it should offer bonds, etc. is obsolete. Good for you in making the change.

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## Gambling on CD Rates

Answers by Andy Zavoina and Mary Beth Guard

**Question:** A competitor is offering a CD tied to a baseball game. The purchaser chooses one of the two teams and if his team wins the game, the purchaser receives a bonus APY of 7.80% on

the CD. Is this legal?

**Answer by Andy Zavoina:** [BIO AND CONTACT INFO](#)

The bank can set its rates. This may just be a fun way of doing it.

**Answer by Mary Beth Guard:** [BIO AND CONTACT INFO](#)

This type of promotion has been run successfully in many states. I have never heard of any state taking the position that this would be an illegal sweepstakes or lottery. The customer will get their principal back, plus interest. They may simply get lucky and receive what amounts to additional interest if they choose wisely.

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## Don't Renew That CD

by Mary Beth Guard, BOL Guru

[BIO AND CONTACT INFO](#)

**QUESTION:** A customer opened a CD with 3 beneficiaries. The customer died prior to maturity. The beneficiaries want to renew the CD under the original customer's name and TIN and have the interest paid to one of the beneficiaries. Can the bank renew a CD in a deceased person's name or should it be renewed in the name of the estate or the name of the beneficiaries?

**ANSWER:** The beneficiaries you described will not be able to do what they propose. It is not permissible for a CD to be renewed in the name of a deceased individual and using that individual's TIN. Once an individual has passed away, they can no longer earn interest, for one thing, so even if the CD was in one person's name with no beneficiaries, at the very least the CD would have to be retitled in the name of their estate and the estate would be the payee of the interest.

In this instance, however, since there are beneficiaries, I assume you are saying this was held POD. If that was the case, then at the moment of death the deceased individual ceased to have any ownership interest and the CD became the property of the beneficiaries. It would be legally incorrect to have it reflect the name of the deceased owner.

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## Non-compounding CDs, APR, & APY

by Andy Zavoina, BOL Guru

[BIO AND CONTACT INFO](#)

**QUESTION:** There was a revision to Reg DD that stated "If a CD has a term of longer than one year and you do not compound, the APY may be stated the same as the rate". Where can I find that to show to a customer?

**ANSWER:** [230.4](#) states in the commentary that "If the annual percentage yield is the same as the interest rate, institutions may disclose a single figure but must use both terms." This is also guidance under [part E of Appendix A](#).

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