

# Regulatory Bulletin 2.1-106: Guidelines for "18-65" Accounts for Banks and Credit Unions

**DATE:** 10/7/22

**REFERENCED SOURCES** [G.L. c. 167D, s. 5; G.L. c. 171, s. 32B](#)

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## 1.0 Applicability and Scope

The purpose of these guidelines is to provide banks and credit unions with guidance on how to comply with the provisions of the "18-65 laws" so called. This bulletin retains a question and answer format in order to provide practical information to institutions and individuals seeking information on certain aspects of the 18-65 laws. Institutions with additional questions or concerns should refer to the entire statutes for additional guidance on the laws' scope.

A bank, as defined by G.L. c. 167D, s. 1, is prohibited from imposing any fee, charge or other assessment against the savings account or demand deposit account of any persons 65 years of age or older or 18 years of age or younger pursuant to G.L. c. 167D, s. 5.

Similarly, a credit union, as defined by G.L. 171, s. 1, is prohibited from imposing any fee, charge or other assessment against the savings account or demand deposit account of any persons 65 years of age or older or 18 years of age or younger pursuant to G.L. c. 171, s. 32B.

However, both G.L. c. 167D, s. 5 and G.L. c. 171, s. 32B specifically provide that a reasonable charge, as determined by the Division of Banks (Division), may be assessed against any such

account of any such persons when payment has been refused because of insufficient funds or paid despite insufficient funds on any check or other action drawn on such account, as set forth in both statutory provisions.

Pursuant to the requirements of section 5 of chapter 167D, as rewritten, and section 32B of chapter 171, the Division has determined that, for any account covered by the laws, the charge to be assessed for a transaction refused because of insufficient funds or paid despite insufficient funds shall not exceed \$5.00 per such transaction.

With regard to banks, G.L. c. 167D, s. 5, as most recently amended by Chapter 482 of the Acts of 2014 (Chapter 482), sets forth, in part, the following:

A natural person 18 years of age or under or 65 years of age or older may choose 1 demand deposit account and 1 savings account which, in each instance, shall include a joint account in which the spouse of the eligible depositor, regardless of age, is the joint tenant therein or the joint tenant would otherwise be an eligible depositor, and which has been established and used for personal, family or household purposes, upon which no service, maintenance or other similar charge shall be imposed. No such account shall be subject to: (i) a minimum balance requirement; (ii) a charge for a deposit or withdrawal; or (iii) a fee for the initial order or subsequent refills of the basic line of checks offered by the bank, which shall include the name of the depositor. For the purposes of this section, the term "savings account" shall include a regular passbook, regular statement savings or regular NOW account, so-called.

With regard to credit unions, G.L. c. 171, s. 32B sets forth, in part, the following:

A natural person not more than 18 years of age or not less than 65 years of age may choose 1 demand deposit account and 1 savings account upon which no service, maintenance or other similar charge shall be imposed; provided, however, that any such demand deposit account and any such savings account shall each include a joint account in which the spouse of the eligible depositor if applicable and regardless of age, is the joint tenant therein or the joint tenant would otherwise be an eligible depositor and that has been established and used for personal, family or household purposes. Such account shall not be subject to: (i) a minimum balance requirement; (ii) a charged for a deposit or withdrawal, or (iii) a fee for the initial order or subsequent refills of the basic line of checks offered by the credit union, which shall include the name of the depositor...

## **2.0 Implementation Procedures Set Out in Statute**

The "18-65" laws, so-called, as set forth in G.L. c. 167D, s. 5 for banks and in G.L. c. 171, s. 32B for credit unions, are, for the most part, self-implementing statutes.

### **Procedures to Demonstrate Eligibility**

As specified in G.L. c. 167D, s. 5 and G.L. c. 171, s. 32B, a consumer who is eligible for an 18-65 account has the responsibility of notifying their bank or credit union of the consumer's status. As

set forth in each statute, a consumer shall notify a bank of his eligibility for such accounts and provide proof of age in a form acceptable to the bank or credit union.

### **Posting of Notice and Annual Disclosure to Depositors**

The statutes require that notice of the laws must be posted within all bank and credit union offices. The location and size of such notice are left to the discretion of bank or credit union management. In addition, as also specified in the statute, the bank or credit union must provide an annual disclosure of the respective 18-65 law to all depositors in a manner of the bank or credit union choosing. All notices and disclosures, however, are subject to examiner review and comment.

## **3.0 Policy**

Following are selected Questions and Answers:

**1. May a bank or credit union choose which accounts are subject to the respective 18-65 law, designate a single savings account, or create a special savings or checking account solely for the purpose of compliance with the respective 18-65 law?**

**No.** Under said section 5 of chapter 167D and under section 32B of chapter 171, each qualifying consumer may choose one demand deposit account and one savings account for personal, family or household purposes.

**2. What savings accounts are covered by the 18-65 laws?**

As set out in G.L. c. 167D, s. 5, for purposes of the 18-65 law, a savings account shall mean a regular passbook, regular statement savings or regular NOW account. For credit unions pursuant to G.L. c. 171, s. 32B, this specific description of savings accounts is not included. Regular accounts generally refer to the standard types of accounts offered by the bank; however, consumers should inquire before opening an account.

**3. Are all existing bank or credit union savings accounts, as defined, or checking accounts available to an 18-65 consumer regardless of any specific requirements for that account?**

**No.** A bank must make one of the following savings accounts available for choice by the 18-65 consumer, which is then eligible to have the protections of the 18-65 law applied to that account: an existing regular passbook, statement savings or NOW account. The bank must also make available a demand deposit account, which is a legal name for a traditional checking account, to the 18-65 consumer, who is also then eligible to have the protections of the 18-65 law applied to that account. The law does not require that all of the bank's accounts be eligible for the 18-65 consumer protections.

A credit union must make available a savings account or demand deposit account. As noted above, this description is not included in the credit union statute. Consumers should inquire before opening an account. All of a credit union's accounts do not need to be eligible for 18-65 consumer protections.

**4. Can an 18-65 eligible consumer choose a savings or checking account which has unique advantages or benefits based on a higher minimum balance requirement as their 18-65 account and not be subject to the minimum balance requirement as provided for in the respective law?**

If, and only if, that is the bank's or credit union's existing, regular savings or demand deposit account. If there is an existing, full service, lesser minimum balance savings account and demand deposit account offered by the bank, the bank or credit union need only make those savings accounts and demand deposit account available to the 18-65 consumer.

**5. The statute allows a reasonable charge, as determined by the Commissioner, against any such account when payment on a check or other transaction drawn on the account has been refused because of insufficient funds or paid despite insufficient funds. Does the statute only cover paper checks?**

**No.** Passage of Check Clearing for the 21st Century Act, known as "Check 21", was recognized in the Commonwealth by Chapter 279 of the Acts of 2006, and clearly demonstrates that the financial payment system is not solely driven by paper instruments. The 18-65 statutes reflect that as well. In the provision for banks, G.L. c. 167D, s. 5 states that "the term 'check or other transaction' shall include, but not be limited to, a check for purpose of the Check Clearing for the 21st Century Act, 12 USC Sec. 5001 et seq., an electronic funds transfer as defined in section 1 of chapter 167B or regulations thereunder or a transaction processed by an automated clearinghouse." The provision for credit unions at G.L. c. 171, s. 32B is the same, although it does not include the reference to regulations promulgated pursuant to G.L. c. 167B. Accordingly, the Division considers for the purposes of G.L. c. 167D s. 5 and G.L. c. 171 s. 32B, a check or other transaction to include, but not be limited to, an automated clearinghouse transaction in the form of Back Office Conversion, an Accounts Receivable Entry, and a Point of Purchase, as those and similar terms are defined by the Operating Rules of NACHA, which oversees the Automated Clearing House Network.

Moreover, the 18-65 laws are applicable to electronic funds transfers as referenced above. An electronic funds transfer is defined to include any transfer of funds, other than one initiated by a paper instrument, which is initiated through an electronic telephone instrument, or computer or magnetic tape or point-of-sale terminal so as to order, instruct, or authorize a financial institution to debit or credit a consumer asset account. This definition encompasses and includes a debit card transaction.

**6. May a bank or credit union require an adult cosigner on a minor's account?**

**Yes.** The 18-65 laws do not prohibit a bank or credit union policy requiring adult cosigners on accounts of minors. Such accounts remain protected under the statutes.

**7. Is a trust account established for the benefit of a minor subject to the 18-65 statutes?**

**Yes,** if and only if the trustee of a trust account for the benefit of a minor meets the age requirements of the laws.

**8. Is an account established under Massachusetts General Laws chapter 201A, The Massachusetts Uniform Transfers to Minors Act, subject to the 18-65 laws?**

**Yes.** As the transfer is irrevocable and the custodian must use the funds only for the minor's benefit, it is the minor's account and is therefore covered until that minor reaches the age of 19.

## **4.0 Historical Notes**

Regulatory Bulletin 3.3-101 was originally issued as former Administrative Bulletin 24-1 issued in 1984 and former Administrative Bulletin 24-2 issued on December 22, 1992 which were re-issued in March 1998 as Regulatory Bulletin 3.3-101. This Regulatory Bulletin was revised in October 2010 as a result of the amendments made by Chapter 234 of the Acts of 2010, which became effective on November 2, 2010.

Regulatory Bulletin 2.1-106 is being issued as a new Regulatory Bulletin to combine the revised provisions of Regulatory Bulletin 3.3-101: Guidelines for “18-65” Accounts to update certain provisions relative to banks and to add provisions relative to the inclusion of credit unions under Chapter 338 of the Acts of 2020. Regulatory Bulletin 2.1-106 will take effect on October 7, 2022. Accordingly, Regulatory Bulletin 3.3-101 will be repealed on October 7, 2022.

### **Editorial Note:**

The Division notes that House 4341 of the 2009-2010 Session of the General Court contained additional language that appears to have been inadvertently deleted when the bill was signed into law as Chapter 234. The deleted language from subparagraph 1 of SECTION 2 of Chapter 234 is in italics as follows:

...transactions at electronic branches and through other electric devices; *and that the bank may assess a reasonable charge...*

It is provided here due to inquiry as well as allowing for a clearer reading of the statute.

## **5.0 Authority**

G.L. c. 167D, s. 5, as most recently amended by Chapter 482 of the Acts of 2014, and G.L. c. 171 s. 32B, as added by Chapter 338 of the Acts of 2020.