FEDERAL RESERVE BANK OF DALLAS

ROBERT D. McTEER, JR.
PRESIDENT

October 2, 1992

Notice 92-93

TO: The Chief Executive Officer of each member bank and others concerned in the Eleventh Federal Reserve District

SUBJECT

**Final Regulation DD (Truth in Savings)
and Related Revision to Regulation Q (Interest on Deposits)**

DETAILS

The Federal Reserve Board has issued its final Regulation DD to carry out provisions of the Truth in Savings Act. Regulation DD requires depository institutions to disclose to consumers any fees imposed on deposit accounts, the interest rate paid, the annual percentage yield, and other terms before an account is opened or upon request. Existing consumer account holders must be notified that such disclosures are available. The regulation went into effect on September 21, 1992, but compliance is optional until March 21, 1993.

Major provisions of Regulation DD include:

- Establish formulas for computing the annual percentage yield to ensure a uniform method for institutions to calculate the return on accounts.

- Require that if institutions provide a periodic statement to consumers, they must disclose the fees imposed, the annual percentage yield, and other information.

- Establish rules for the advertising of deposit accounts. In this connection, the Board deleted similar provisions in its Regulation Q which retains provisions prohibiting the payment of interest on demand deposits.

- Restricts how institutions determine the balance on which interest is calculated. Institutions are required to calculate interest on the full principal balance in the account each day.

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ATTACHMENTS

Attached are a copy of the final Regulation DD and a copy of the revision to Regulation Q as they appear on pages 43336-93, Vol. 57, No. 183, of the Federal Register dated September 21, 1992.

MORE INFORMATION

For more information, please contact Eugene Coy at (214) 922-6201. Supplementary information is available upon request from the Board or from the Federal Reserve Bank. The Board has also established a "hotline" telephone hookup to respond to questions concerning Truth in Savings and Regulation DD. The number is (202) 736-5500.

For additional copies of this Bank's notice or for a copy of the supplementary information, please contact the Public Affairs Department at (214) 922-5254.

Sincerely yours,

Robert D. McTeer, Jr.

FINAL REGULATION DD

(TRUTH IN SAVINGS)

AND

RELATED REVISION TO REGULATION Q

(INTEREST ON DEPOSITS)

FEDERAL RESERVE SYSTEM

12 CFR Part 217

[Regulation Q: Docket No. R-0775]

Prohibition Against the Payment of Interest on Demand Deposits

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is retitling and amending Regulation Q in conjunction with its adoption of Regulation DD, which implements the Truth in Savings Act. Since Regulation DD provides for rules relating to advertisements and other disclosures for deposit accounts, similar provisions in Regulation Q are deleted. Regulation Q retains provisions prohibiting the payment of interest on demand deposits.

EFFECTIVE DATE: March 21, 1993.

FOR FURTHER INFORMATION CONTACT: Patrick J. McDivitt, Staff Attorney, Legal Division, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-3818; for the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544.

SUPPLEMENTARY INFORMATION:

(1) Background

Section 19(i) of the Federal Reserve Act (FRA) (12 U.S.C. 371(a)) prohibits member banks from paying interest on demand deposits, and section 19(a) of the FRA (12 U.S.C. 461(a)) authorizes the Board to define terms and prescribe regulations to effectuate the purposes of the section. Section 19(j) of the FRA authorizes the Board to prescribe rules governing the advertisement of interest on deposits bv member banks on time and savings deposits. Currently, Regulation Q prohibits the payment of interest on demand deposits and sets forth disclosure and advertising requirements for interest on deposits by member banks and certain other institutions.

The Truth in Savings Act (12 U.S.C. 4301) directs the Board to issue an implementing regulation, which shall apply six months after the final regulation is issued. The purpose of the regulation is to assist consumers in comparing deposit accounts offered by depository institutions, principally through the disclosure of account terms, including the annual percentage yield and the interest rate, whenever a consumer requests the information and before an account is opened. The regulation also provides for rules regarding advertisements of deposit accounts. On April 13, 1992, the Board published a proposed rule, 57 FR 12735 (correction notice at 57 FR 22021, May 26, 1992).

The Board requested comment on whether certain provisions in the Board's Regulation Q dealing with advertising and other disclosure rules should be included in Regulation DD and removed from Regulation Q. Commenters strongly endorsed the idea of consolidating the requirements of these two regulations. Based on comments received to proposed Regulation DD and upon further analysis, the Board is amending Regulation Q to eliminate its advertising provisions, effective on March 21, 1993, the mandatory compliance date for Regulation DD. (See Docket R-0753 published elsewhere in this issue of the **Federal Register**, which sets forth Regulation DD.) Institutions that begin compliance with Regulation DD prior to the mandatory compliance date may comply solely with the advertising provisions of Regulation DD, and not the advertising and disclosure provisions in Regulation Q.

All rules relating to disclosures and the advertisement of deposit accounts are deleted from Regulation Q. Rules relating to the prohibition of interest on demand deposits remain in the regulation, which is retitled, "Prohibition Against the Payment of Interest on Demand Deposits," to reflect the subject it addresses. All interpretations to 12 CFR part 217 are deleted, with the exception of § 217.302 (premiums on deposits). This interpretation relates to the payment of interest on demand deposits, and is redesignated as § 217.101.

List of Subjects in 12 CFR Part 217

Federal Reserve System.

For the reasons set forth in the preamble, the Board is amending 12 CFR part 217 as follows:

PART 217—PROHIBITION AGAINST THE PAYMENT OF INTEREST ON DEMAND DEPOSITS

1. The authority citation for part 217 is revised to read as follows:

Authority: 12 U.S.C. 248, 371a, 461, 505, 1818, and 3105.

2. The heading of part 217 is revised to read as set forth above.

3. In § 217.1, paragraphs (a) and (b) are revised to read as follows:

§ 217.1 Authority, purpose, and scope.

(a) *Authority.* This part is issued under the authority of section 19 of the Federal Reserve Act (12 U.S.C. 371a, 461, 505), section 7 of the International Banking Act of 1978 (12 U.S.C. 3105), section 11 of the Federal Reserve Act (12 U.S.C. 248), and section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818), unless otherwise noted.

(b) *Purpose.* This part prohibits the payment of interest on demand deposits by member banks and other depository institutions within the scope of this part.

* * * * *

§§ 217.4, 217.6, 217.201; 217.301, 217.601, 217.602, and 217.603 [Removed]

4. Sections 217.4, 217.6, 217.201, 217.301, 217.601, 217.602, and 217.603 are removed.

§ 217.302 [Redesignated as § 217.101]

5. Section 217.302 is redesignated as § 217.101.

By order of the Board of Governors of the Federal Reserve System, September 11, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-22479 Filed 9-18-92; 8:45 am]

BILLING CODE 6210-01-M

12 CFR Part 230

[Reg. DD: Docket No. R-0753]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is adopting a new regulation, Regulation DD, to implement the Truth in Savings Act. The act and regulation require depository institutions to disclose fees, interest rates and other terms concerning deposit accounts to consumers before they open accounts. The act requires depository institutions that provide periodic statements to consumers to include information about fees imposed, interest earned and the annual percentage yield earned on those statements. The act and regulation impose substantive limitations on the methods by which institutions determine the balance on which interest is calculated. Rules dealing with advertisements for deposit accounts are also included in the new regulation.

DATES: This final rule is effective September 21, 1992, but compliance is optional until March 21, 1993.

FOR FURTHER INFORMATION CONTACT: Leonard Chanin, Senior Attorney, or Jane Ahrens, Kurt Schumacher, or Mary Jane Seebach, Staff Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 736-5500; for the hearing impaired only, contact Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452-3544. For information about the Board's action concerning the recordkeeping and disclosure requirements under the Paperwork Reduction Act only, contact Mary McLaughlin, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-3829, or Gary Waxman, OMB Desk Officer, Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503, at (202) 395-7340.

SUPPLEMENTARY INFORMATION:

(1) Background

The Truth in Savings Act (the act) (12 U.S.C. 4301 et seq., contained in the Federal Deposit Insurance Corporation Improvement Act of 1991, Public Law 102-242, 105 Stat. 2236) was enacted in December 1991. The act directs the Board to issue final regulations by September 1992, and provides that the statutory provisions and rules adopted by the Board shall apply six months after that. On April 13, 1992, the Board published a proposed rule to implement the act, 57 FR 12735 (correction notice at 57 FR 22021, May 26, 1992).

The purpose of the regulation is to assist consumers in comparing deposit accounts offered by depository institutions, principally through the disclosure of fees, the annual percentage yield, the interest rate, and other account terms whenever a consumer requests the information and before an account is opened. The regulation also requires that fees and other information be provided on any periodic statement the institution sends to the consumer. Rules are set forth for advertisements of deposit accounts and advance notices to account holders of adverse changes in terms. The regulation places one substantive restriction on institutions' practices: How institutions determine the account balance on which interest is calculated.

The Board is publishing sample disclosure forms and model clauses to assist institutions in preparing their account disclosures. They appear in appendix B to the proposed regulation.

(2) Regulatory Provisions

The act is quite detailed and, for the most part, the regulation mirrors the statutory requirements. The act recognizes that implementation of a comprehensive scheme such as this may require some adjustments and, in section 269(a)(3), it authorizes the Board to make such classifications, differentiations, adjustments and exceptions as, in the judgment of the Board, are necessary or proper to carry out the purposes of this Act, to prevent circumvention or evasion of the requirements of this Act, or to facilitate compliance with the requirements of this Act. In addition, section 265 of the act authorizes the Board to vary the requirements relating to the annual percentage yield for several particular types of accounts. In several circumstances, as discussed in the information that follows, the Board has used these grants of authority.

The section-by-section description which follows points out those provisions that differ in any significant way from the act—for example, creating an exception to a statutory provision, adding a disclosure, or departing significantly from the language of the act—and explains why the differences exist. In those cases where the act is not specific and parallel rules would be beneficial, the Board has frequently used definitions and provisions from its other consumer regulations (for example, Regulation Z (12 CFR part 226), which implements the Truth in Lending Act, and Regulation E (12 CFR part 205), which implements the Electronic Fund Transfer Act).

The section-by-section description indicates any significant differences between the proposal and the final regulation. The supplementary information addresses concerns raised by commenters, and provides guidance on many questions raised. The Board expects that much of the discussion below will be included in the Official Staff Commentary to the regulation. Since the Board does not plan to issue a proposed commentary until the fall of 1993, the section-by-section description was drafted with the purpose of providing institutions the necessary guidance until the commentary is published. One consequence of providing such guidance is that the supplementary information section is lengthy. The Board believes it will more fully assist institutions in complying with the new regulation.

The Board received over 1400 comment letters on the proposal, with all but about 100 from institutions that would be covered by the regulation or their trade associations. A number of commenters questioned the need for the act and raised concerns about the burden and costs the new requirements would impose. Many of the commenters, however, provided information that has been useful to the Board in preparing a final rule. A significant number of commenters raised specific questions about various provisions in the proposal, and the Board has responded to many of those concerns by adopting both substantive and technical changes to the proposal.

In examining the proposal and the issues raised by the commenters, the Board used several principles in fashioning the final regulation. First, the Board has closely followed the provisions set forth by the Congress in the act. In a few cases, where statutory provisions simply elaborate on one basic requirement, the regulation contains only the basic requirement, and the supplementary information reflects the elaboration of that requirement. The Board believes this approach provides a more concise regulation without losing the additional information the Congress wanted.

Second, the Board has attempted to write precise, simple rules to help ensure that institutions understand the requirements of the act. The Board believes this will minimize the

possibility of errors and the potential for civil liability due to complicated or vague requirements. Exceptions to rules have been carefully considered and in several cases adopted in the final regulation. However, the Board is mindful that special rules add to the length, detail and complexity of the regulation. It has taken this into account, especially when considering suggestions for minor exceptions that would add significant complexity to the rules.

Third, the Board has sought to ensure that the disclosures provided to consumers are clear and meaningful. The Board believes providing overly complicated or technical disclosures to consumers provides little value in shopping for accounts and may diminish the value of information given.

Fourth, the Board has sought to provide institutions with flexibility to minimize compliance costs. It has also tried to minimize the possibility that institutions will unnecessarily reduce the variety of existing product choices offered to consumers. Similarly, the Board has tried to ensure that the compliance requirements do not have the effect of limiting the development of new products for consumers.

Fifth, the Board has used its "exception" authority judiciously. The Board has made adjustments and exceptions to the act when essential to assist consumers in comparing accounts and to minimize significant compliance problems for institutions.

In conjunction with the implementation of the act, the Board also is amending its Regulation Q (12 CFR part 217). (See Docket R–0775 published elsewhere in this issue of the **Federal Register**.) Currently, Regulation Q prohibits the payment of interest on demand deposits and sets forth disclosure and advertising requirements for interest on deposits by member banks and certain other institutions. (Other federal financial regulatory agencies have similar advertising rules, such as 12 CFR 329.3, issued by the Federal Deposit Insurance Corporation (FDIC).) Given this regulation's comprehensive disclosure and advertising rules for deposit accounts, the Board is deleting advertising and other disclosure rules in Regulation Q. The Board has consulted with the other agencies to try to ensure that all depository institutions are governed by the same rules, and expects that the agencies will eliminate any inconsistent rules in light of the new act.

The amendments to Regulation Q become effective on March 21, 1993, the mandatory compliance date for Regulation DD. Institutions that begin compliance with Regulation DD prior to the mandatory compliance date may comply solely with the advertising provisions of Regulation DD.

Section 230.1—Authority, Purpose, Coverage, and Effect on State Laws

Paragraph (c)—Coverage

This paragraph has been revised from the proposal. First, the final rule reflects the fact that a definition of deposit broker has been added to the regulation. Although many commenters requested that securities brokers and dealers be fully covered by the regulation, neither is included in the definition of a "depository institution" under the act and regulation. As discussed in §§ 230.2(a) and 230.8, however, the advertising rules apply to deposit brokers who advertise deposit accounts.

The proposal stated that the regulation applies to all depository institutions except credit unions. A number of commenters also urged that the Board's final regulation cover credit unions. The act explicitly states that credit unions are to be covered by rules issued by the National Credit Union Administration (NCUA), not the regulation issued by the Board.

Paragraph (d)—Effect on State Laws

Section 273 of the act provides a narrow standard for preemption of state laws (only if they are inconsistent), and refers only to state disclosure laws. The Board solicited comment on whether the same preemption standard should apply to all provisions in the act, including § 230.7, dealing with the payment of interest. Many commenters urged the Board to adopt a rule that applied the same standard to such provisions as well as to the disclosure rules, thus enabling the Board to make preemption determinations on such issues. The Board believes that under general preemption standards a state law could not require what federal law prohibits. (For example, a state law could not permit use of a low balance method of calculating interest since the act and regulation prohibit such a practice.) The Board also believes the Congress intended for the Board to make determinations of preemption for all aspects of the act, not just disclosures. To read the Board's ability to make preemption determinations more narrowly could provide uncertainty as to the status of state laws, and create potential civil liability and compliance concerns that the Congress sought to avoid. The Board's Regulation Z (Truth in Lending) takes this broader approach of dealing with both disclosures and substantive requirements. (See 12 CFR 226.28.)

The Board has therefore changed the wording of the final rule. The proposed rule provided that state "disclosure" law requirements are preempted if they are inconsistent with the requirements of the regulation. The word "disclosure" has been deleted from the regulation to make clear that the standard applies to all requirements of the act and regulation, including the requirement to pay interest on the full balance in the account.

Section 230.2—Definitions

Paragraph (a)—Account

Section 274(1) of the act defines an account as any account offered to 1 or more individuals or an unincorporated nonbusiness association of individuals by a depository institution into which a customer deposits funds. The Board is generally defining the term as any deposit account held by, or offered to, a consumer. The regulation covers interest-bearing as well as noninterest-bearing accounts.

Covered accounts. The Board solicited comment on whether uninsured accounts offered by depository institutions should be covered. Based on a review of the comments and on the statutory language, the Board has defined an "account" to include all deposit accounts offered to consumers by depository institutions, whether the account is insured or uninsured. For example, even though federal deposit insurance limits are exceeded, a time account in excess of $100,000 would be covered.

Deposit accounts denominated in a foreign currency are accounts under this regulation, if offered to or held by consumers. These accounts are typically offered as money market accounts or through certificates of deposit that may be designated as foreign currency accounts. Such accounts are eligible for deposit insurance, but are not insured for losses resulting from exchange rate fluctuations. The Board believes it is important that such accounts receive the same disclosure and other protections of the regulation as consumer accounts denominated in United States dollars. However, as discussed in the supplementary information to § § 230.4(b) and 230.8(a), the Board has not adopted special disclosures for these types of accounts, as had been proposed.

Several commenters pointed out that the proposed definition of a consumer could be interpreted to include non-residents of the United States. The Board believes the act is intended to provide protections only to those

persons who are residents of the United States (including resident aliens). The Board also believes the regulation applies to accounts at or offered by depository institutions located in the United States. Thus, if a depository institution is located in the United States and an account is held by or offered to a U.S. resident, the regulation applies. The regulation does not apply to accounts opened by non-resident aliens or to accounts of residents of a state opened at institutions located outside the United States.

Accounts held by deposit brokers. The act specifies that, in addition to depository institutions, "deposit brokers" are subject to its advertising provisions. In the proposed regulation, the Board solicited comment on whether third parities (including deposit brokers) who place advertisements that refer to deposit accounts at depository institutions should be covered by the advertising rules of the regulation. Many commenters urged the Board to apply the advertising provisions to all parties who offer accounts at depository institutions or interests in such accounts. Otherwise, they noted, consumers being offered interests in accounts at depository institutions through deposit brokers would not have the benefit of uniform advertising disclosures. Further, they argued, the regulation would create an "unequal playing field" which would place depository institutions offering the same type of account as those being offered by deposit brokers at a competitive disadvantage.

Based on the comments received and upon further analysis, the final rule provides that the advertising provisions cover interests in accounts at depository institutions that are offered by deposit brokers to consumers (even if the account at the depository institution is held in the name of the deposit broker, its agent or custodian). The Board believes that by using the broad definition of "deposit broker" to cover advertisers of accounts that are not themselves depository institutions, the Congress intended for consumers to have uniform disclosures to comparison shop whether the advertised account is offered by institution directly or through an independent entity. (See section 29(g) of the Federal Deposit Insurance Act (FDIA), which defines deposit broker as any person in the business of placing or facilitating the placement of deposits in an institution.) Thus, for purposes of the advertising rules, the Board is defining the term "account" to include an account at a depository institution that is held by or on behalf of a deposit broker, if any interest in the account is held by or offered to a consumer. For example, if a deposit broker purchases for its customers a time account at an institution in its own name, or in the name of its agent or custodian, the interests held by consumers are accounts that are covered by the advertising provisions of the regulation. Where an account offered to consumers through a deposit broker is advertised, it is the sole responsibility of the broker (and not the depository institution where the underlying account is located) to comply with the advertising rules. While brokers must comply with § 230.8, they are not required to provide other disclosures or comply with the other portions of the act or regulation.

Existing accounts held by unincorporated nonbusiness associations. An addition has been made to the paragraph to deal with accounts existing on the mandatory compliance date of the regulation that are held by associations such as book clubs or softball leagues. The act and regulation cover accounts held by "consumers," which includes "unincorporated nonbusiness associations of natural persons." (See § 230.2(h).) Many commenters noted that operational difficulty of identifying those existing "consumer" account holders that are not individuals. For example, some larger institutions commented that the ownership status of literally millions of existing accounts held by organizations and associations might have to be manually reviewed to determine whether accounts are covered or exempt.

All existing consumer accounts are covered by the regulation. However, the Board recognizes that the regulation's rules may cover accounts using criteria that differ from distinctions currently made by institutions between accounts of individuals and accounts of organizations. The Board is authorized under section 269(a)(3) to create exceptions for classes of accounts to facilitate compliance with the act. To ease the significant burden of reevaluating the ownership status of existing nonindividual consumer accounts, the Board is exercising its exception authority under section 269(a)(3) to exclude a limited class of existing accounts from coverage. Thus, the final rule excepts from all aspects of coverage those existing accounts held by unincorporated nonbusiness associations of natural persons opened prior to the mandatory compliance date of the regulation. If the institution is notified by an unincorporated nonbusiness association that an existing account is held by such an entity, the exception will cease to apply and the account must thereafter be considered a consumer account which is covered by the regulation. Institutions that are so notified must begin complying with the regulation within a reasonable time. For example, if the institution is notified during a statement cycle or a compounding period that the account holder fits the "consumer" definition, commencing coverage at the beginning of the following statement cycle or compounding period would be acting within a reasonable time.

For purposes of determining coverage under this provision, institutions may initially assume that existing accounts covered are those identified for tax purposes by an individual's social security number. Of course, even accounts identified with a social security number are not covered if they are for a business purpose, for example, an account held by a sole proprietor.

Institutions must have procedures in place so that unincorporated nonbusiness associations that open new accounts on or after the mandatory compliance date (or existing customers that inform the institution of their "consumer" status) receive all applicable disclosures required to be provided (1) at account opening and upon request, (2) on periodic statements sent on the account, and (3) if terms are changed. They will also be covered by all other provisions of the regulation (such as the interest payment requirements).

Other investments. As stated in the proposal, the term "account" does not include every financial relationship a consumer might have with an institution. For example, the purchase of a government security or an annuity through a depository institution is not an "account" subject to the regulation. Also, a consumer's interest in the securities or obligations of a depository institution that are being held by the institution on the consumer's behalf, or offered by the institution to the consumer is not an "account." Similarly, the term "account" does not include other contractual relationships a consumer may have with a depository institution such as repurchase agreements, interest rate swaps and banker's acceptances.

As stated in the proposal, the Board believes the Congress did not intend to cover certain other investments that may be offered through (as opposed to offered by) depository institutions, such as mutual funds. Often these investments are offered by affiliates of the depository institution, such as by a

non-depository subsidiary of a bank holding company. These investments are not deposit accounts of the depository institution, and are thus not covered by the final regulation.

Many commenters urged the Board to expand the definition of "account" to cover accounts held by consumers with non-depository affiliates or other non-depository financial service providers. Since the scope of the act is clearly limited to accounts at depository institutions and, to a limited extent, those offered by deposit brokers, the Board believes that the Congress did not intend to cover accounts for mutual funds and other investments offered by such non-depositories.

Paragraph (b)—Advertisement

The regulation retains the proposed definition of an advertisement. Thus, an advertisement is any commercial message appearing in any medium (for example, newspaper, television, lobby boards and telephone response machines) if it directly or indirectly promotes the availability of an account. Similarly, a message promoting a savings account that is sent to consumers on their NOW account periodic statement is an advertisement. As discussed more fully in the supplementary information accompanying § 230.8(e), the regulation contains a limited exception from some of the advertising provisions for advertisements such as lobby boards, telephone response machines, broadcast and electronic media, and outdoor advertising.

The act covers advertisements "initiated by a depository institution or deposit broker." The Board has defined "advertisement" without regard to the party initiating it, but, by virtue of the definition of "account" in paragraph (a) of this section, both depository institutions and deposit brokers are subject to the advertising provisions of the final regulation.

Rate sheets. The Board requested comment on whether the savings "rate sheets" published in newspapers, periodicals, or trade journals should be considered as advertisements. These rate sheets typically list certain limited information about the deposit account rates of selected depository institutions. Often, these rate sheets are independent third-party compilations of information on the rates of many of an area's depository institutions, with no payment made by the institutions to the third party nor any duty by the third party to include information about a specific institution.

Many commenters argued that rate sheets should not be classified as advertisements under the regulation. They believed that most of the rate sheets being published provide consumers with valuable information on the current savings rate environment, and that the regulation would reduce the availability of such information if all of the advertising rules applied to rate sheets.

It is the Board's position that rate sheets published in newspapers, periodicals, or trade journals are not advertisements as long as the depository institution does not pay a fee to have the information included and does not have control over whether the information will be published. The Board believes these types of rate sheets are not "commercial" messages of the type contemplated by the term "advertisement."

Paragraph (c)—Annual Percentage Yield

The regulation incorporates a definition of the annual percentage yield that is substantially similar to the act's definition. The act defines annual percentage yield by referencing the total amount of interest that would be received on a $100 deposit. As proposed and adopted, the definition does not incorporate the reference to a $100 deposit, since the annual percentage yield calculation can be performed with any amount of principal, and the Board believes reference to $100 could be confusing. The language of the final rule varies slightly from the proposed text for clarity, but the meaning is unchanged.

Paragraph (d)—Average Daily Balance Method

The proposed regulation did not have a definition of the "average daily balance method." An explanation of the daily balance and average daily balance methods were contained in footnote 1 to § 230.7(a) in the proposed regulation, however, and the present definition is taken from that footnote.

Several commenters asked how the average daily balance should be calculated if a "negative collected balance" occurs. This takes place if a consumer "overdraws" an account and thus produces a negative balance. In such circumstances, institutions should treat the balance in the account for that day (or days) as $0 and not average a negative sum into the calculation. If a fee is assessed in such circumstances (and is not part of a credit transaction), it should be disclosed as a fee—in the initial disclosures—and should not be treated as "negative" interest.

Paragraph (f)—Bonus

The act does not use or define the term "bonus." However, the definition of a "bonus" has significance under the regulation because a bonus is excluded from interest, must be disclosed under § 230.4(b)(7), and because mention of a bonus in an advertisement "triggers" or requires other disclosures to be made.

The Board's proposal defined the term "bonus" very broadly. Under the proposal, it would have encompassed any cash, premium, gift, award, or other consideration regardless of the form the payment takes. Commenters were concerned that with such a broad definition, inexpensive "promotional" items such as pens or coffee mugs would be bonuses, and would trigger additional disclosures. Based on these comments and upon further analysis, the Board has modified the definition of a bonus. The final rule excludes premiums (or any other consideration) of *de minimis* amounts. The *de minimis* amount the Board has adopted is $10 or less given during any consecutive 12-month period. This is the same amount used under current Official Staff Interpretation § 217.302 of the Board's Regulation Q (see Docket R–0775 published elsewhere in this issue of the **Federal Register**, where the interpretation is redesignated as § 217.101) and under section 6049 of the Internal Revenue Code for excluding amounts from being considered as interest and for reporting interest for tax purposes, respectively.

While Regulation Q contains a two-tier *de minimis* rule ($10 for deposits under $5,000 and $20 for deposits of $5,000 or more), the Board feels that providing a flat $10 *de minimis* amount is the best approach. Adding a tiered bonus rule would add complexity that is unnecessary to address the commenters' concerns.

The $10 *de minimis* exception is the same amount used by the Internal Revenue Service (IRS). The Board believes it is appropriate to mirror IRS rules for determining the value of any bonus. As a result, once the duty is triggered under IRS provisions for a depository institution and a consumer to report a bonus as interest for tax purposes, the bonus will be covered by the account disclosure and advertising rules (See paragraph (n) of this section for further discussion of the valuation of bonuses for tax purposes.)

Based on comments received, the regulation has been revised to clarify that a bonus does not include the payment of interest on an account. Also, some commenters suggested that the waiver or reduction of a fee or the absorption of expenses by a depository institution should not be considered a bonus. The Board agrees with this

position. Thus, under the final rule, an offer of certain "fringe benefits" by an institution to a consumer is not considered a bonus.

Finally, the supplementary information to the proposed rule stated that an item could be a bonus if given or offered to a third party, rather than to the consumer. Commenters suggested that the definition include only items given or offered to the consumer holding the account. They suggested compliance would be eased by such a rule and that the disclosures applicable to bonuses are most important where the consumer, and not some third party, is the recipient of the financial benefit from the payment of a bonus. The Board agrees that a concise rule regarding the disclosure of information concerning bonuses is desired. It has thus modified its position. Under the final regulation, an item of any value given or offered directly to a third party by a depository institution in exchange for a consumer opening or renewing an account with the institution is not a bonus.

Paragraph (g)—Business Day

The regulation tracks the definition of business day used in Regulation CC (Expedited Funds Availability). (See 12 CFR 229.2(g).) This definition differs from that in the proposed rule, which referred to days when an institution "carries on substantially all business functions." The change is in response to commenters' concerns that the proposal could present difficulty in determining whether an institution is open "for substantially all business functions," since certain banking services might be performed on weekends while others might not. Additionally, the change responds to commenters' requests that uniformity be provided between the Board's Regulation CC and Regulation DD. Thus, the final rule defines business day as any calendar day other than a Saturday, a Sunday, or any of the legal public holidays specified in 5 U.S.C. 6103(a). If New Year's Day, Independence Day, Veterans Day or Christmas Day falls on a Sunday, the next Monday is not a business day. While Regulation CC contains the previous sentence in the regulation itself, the Board believes it is unnecessary for purposes of this regulation. This rule follows the general Federal Reserve check collection and payment schedule in Regulation CC, and provides uniformity for institutions regarding when interest must begin to accrue on deposits. (See § 230.7(c).)

Business days are used for timing rules regarding the delivery of account disclosures to consumers who are not present at the institution when an account is opened and when a request is made for account disclosures. In all other circumstances, timing rules use calendar days.

Paragraph (h)—Consumer

The act does not define the term "consumer," although it is clear from the act and legislative history that the protections were intended to apply only to consumer purpose—and not business purpose—accounts.

The final regulation, as proposed, defines the term "consumer" by using the term "natural person" rather than "individual," and by adding the phrase "primarily for personal, family, or household purposes" to the definition. A similar definition has worked well in Regulation Z (Truth in Lending) in determining whether credit is for a consumer purpose, and the Board believes it will be equally helpful in determining coverage for deposit products. Although the proposal also included the phrase "or other nonbusiness purpose," the Board has deleted the phrase as unnecessary.

Sole proprietorships. The act does not expressly exclude from coverage accounts held by, or offered to, individuals operating businesses in the form of a sole proprietorship. The proposed regulation excluded such accounts. Commenters agreed with the Board's proposed position not to cover such accounts, and this position has been adopted in the final rule. Thus, because sole proprietorship accounts are for a business purpose, they are not subject to the act or regulation.

Unincorporated associations. An account held by or offered to an unincorporated association of natural persons (such as a softball team or a book club) is a consumer account covered by the regulation if that account is primarily for nonbusiness purposes. An account held by an incorporated, not-for-profit organization is not covered by the act, since the act limits its protection to unincorporated associations.

Commenters expressed concern regarding an institution's ability to determine the "consumer" status of existing accounts held by organizations. The supplementary information to paragraph (a) of this section provides guidance to depository institutions for these accounts in existence prior to the mandatory compliance date of the regulation. Thereafter, depository institutions must determine whether associations opening new accounts are covered by the regulation. Institutions may rely on the assertions of the association's representatives in making those determinations.

Custodial accounts. The Board solicited comment on whether custodial accounts, in which a natural person is a beneficial owner but where the legal holder (the custodian) is not a consumer should be subject to the act and regulation. Commenters felt it would be extremely burdensome and difficult for institutions in many cases to determine the identity of the person for whom an account is held. Commenters also questioned the value of requiring disclosures to be given to the custodian, since beneficiaries often cannot control the investment decisions of the custodian, and cannot comparison shop for accounts, one of the main purposes of the act. Moreover, they argued, custodians for such accounts—often large institutional investors—are in the business of acting as professional custodians, and are not the type of account holder the Congress intended to protect. The Board agrees that it would be burdensome to depository institutions to treat such custodial accounts as accounts held by consumers, and that disclosures generally could not be used by individuals in the way the Congress intended. Thus, the final definition of "consumer" excludes natural persons who, in their professional capacity, hold an account for another.

Several commenters asked whether Individual Retirement Accounts (IRAs) at depository institutions are covered by the regulation. The Board believes such accounts are covered to the extent funds are invested in an "account," as defined by the regulation. While IRAs technically are custodial accounts, they differ from typical custodial accounts. Unlike other custodial accounts, the consumer (beneficiary) usually controls the investment decisions for an IRA. Furthermore, the depository institution itself is the "custodian" rather than a third party acting on behalf of the consumer. The Board believes consumers would benefit and be better able to comparison shop if disclosures were received for such accounts. Of course, the regulation does not apply to all products in which a consumer may invest IRA funds. For example, if a consumer invests funds in a product such as government securities, the regulation would not apply.

Some commenters expressed concern about whether the proposed regulation would cover accounts such as landlord-tenant security accounts and attorney-client trust accounts where both the legal holder and the beneficial owner of an account may be natural persons. These accounts are established by the landlord or the attorney for a business

purpose, though the funds may represent a personal or household purpose for the tenant or the attorney's client. Such accounts are not primarily for personal, family, or household purposes, and thus are not consumer accounts covered by the regulation. Likewise, accounts held by a natural person for the benefit of a non-natural person or persons (for example, a charity) also would not be a covered consumer account if the holder is acting in a professional capacity.

However, where a natural person holds an account in a non-professional capacity for the benefit of another and the account is not for business purposes, the act and regulation apply. Thus, an account opened by a parent for a child under the Uniform Gifts to Minors Act would be covered by the regulation.

Commenters also requested guidance on the coverage of escrow accounts. To the extent that a general "escrow" or dispute-resolution account is opened by a consumer primarily for personal, family or household purposes, it would be covered by the final regulation. For example, an account established by an individual for lease payments pending resolution of a dispute with a landlord would be a consumer account for the purposes of the regulation. However, a typical escrow account established for the payment of funds (such as for taxes and property insurance) in connection with a real estate transaction is not a consumer account. Such escrow accounts are normally opened primarily as a mechanism for the safe-keeping of funds pending a future event, and not as an independent investment decision allowing the consumer to shop for an account. For example, mortgagors typically do not determine the particular depository institution where the mortgage escrow account is established.

Some commenters requested that the Board modify its proposal to exclude accounts—even if held by natural persons for nonbusiness purposes—where such accounts are typically designed for, but not limited to, businesses or sophisticated individual investors. Similarly, others requested a dollar threshold, for example, $100,000, above which an account would be deemed not to be a consumer account. While the Board believes there may be some consumers holding such accounts who arguably do not need the protections of the act and regulation, others would certainly find these protections beneficial. In addition, neither the act nor the legislative history suggests any Congressional intent to exempt any consumers from the scope of the act's provisions based on the amount deposited. Therefore, the Board does not believe it is appropriate to modify the regulation to provide exceptions from coverage based on the size of the account or the target group intended for a particular account. A depository institution must determine in each case whether a consumer will hold an account primarily for personal, family or household purposes (or if an association meets the "consumer" definition).

Paragraph (i)—Daily Balance Method

As with the term "average daily balance method," there was no definition for the term "daily balance" in the proposed regulation. The Board has moved the material from footnote 1 to § 230.7(a) in the proposal to the definition of this term.

Paragraph (j)—Depository Institution and Institution

Section 274(6) of the act defines a "depository institution" as that term is defined in clauses (i) through (vi) of section 19(b)(1)(A) of the Federal Reserve Act. The Federal Reserve Act includes in its definition any insured bank, savings bank, mutual savings bank, or savings association, and any institution eligible to make application to become an "insured" institution under the FDIA. The FDIA definition of an insured institution includes any state of federally chartered bank, any insured branch of a foreign bank, as well as industrial banks and other state incorporated banking institutions that are engaged in the business of receiving deposits (other than trust funds). (See section 3 of the FDIA.) Based on these definitions, the act's coverage is very broad, and covers both state and federally chartered institutions if the institution is insured, or is uninsured but is eligible to make application to become insured. Branches of foreign banks that meet this definition are covered.

The final regulation adopts the definition of depository institution as it was proposed. Many commenters believed credit unions should be subject to the Board's regulation. As discussed in the proposal and in § 230.1(c) of the final rule, the act specifically provides that the Board's regulation shall not apply to credit unions; instead, the NCUA is required to issue substantially similar Truth in Savings regulations for credit unions within 90 days of the effective date of this regulation.

Paragraph (k)—Deposit Broker

The act defines "deposit broker" by reference to section 29(f)(1) of the FDIA. The act also includes any person who solicits any amount from any other person for deposit in an insured depository institution in its definition.

The proposal did not specifically define "deposit broker," although § 230.1(c) referred to the FDIA definition. However, the Board solicited comment on whether third parties (including deposit brokers) who place advertisements that refer to deposit accounts at depository institutions should be covered by the advertising rules of the regulation. Given the Board's position that deposit brokers are covered by the advertising rules, the term has been defined in the final regulation. To facilitate compliance, the Board is defining deposit broker by reference to the FDIA. The Board believes that the FDIA, which covers any person in the business of placing or facilitating the placement of deposits in an institution, essentially captures Congressional intent. If the Act's exact language were used, persons such as employees of depository institutions or pension plan administrators—and others expressly excluded from the FDIA definition—could arguably become subject to rules governing deposit brokers, creating confusing and potentially conflicting coverage standards.

Paragraph (l)—Fixed-Rate Account

The Board has added a definition for fixed-rate accounts since the final regulation uses the term in § 230.4(b)(1)(i). The term includes those accounts in which the institution, by contract, gives at least 30 calendar days advance written notice of decreases in the interest rate. Thus, institutions offering fixed-rate accounts may change rates from time to time, but only if they provide advance notice of rate decreases. (An increase in the rate would not require any notice.)

Paragraph (m)—Grace Period

The proposal did not define "grace period," though comment was requested on whether a grace period should be disclosed. The final regulation incorporates a definition because, if a grace period is provided for an automatically renewable time account, it must be disclosed under § 230.4(b)(6)(iv). In addition, a grace period may be important for purposes of § 230.5(b), dealing with the timing of disclosures for rollover time accounts. A grace period is defined as a period after maturity of an automatically renewing time account during which the consumer may withdraw funds without being assessed a penalty. An institution is free to provide a grace period or not. (See footnote 1 to the Board's Regulation D,

12 CFR 204.2(c)(1) and footnote 1 to Regulation Q, 12 CFR 217.3, however, dealing with the payment of interest during any grace period, and similar rules of other federal financial regulatory agencies.)

Paragraph (n)—Interest

This definition, which is adopted substantially unchanged from the proposal, states that bonuses and similar offers do not constitute interest for purposes of the regulation. This differs from the rule in Regulation Q, 12 CFR 217.2(d), which does include bonuses as part of its definition of interest, due to the prohibition on paying interest on demand accounts, and the fact that in that context a bonus is the equivalent of interest. (See also the rules of other federal financial regulatory agencies.) This rule also differs from the position of the IRS. In 26 CFR 1.6049-5(a)(2), the IRS states that the fair market value of property received as interest or in lieu of a cash payment of interest is "interest" for reporting purposes.

Though commenters were divided in their views on the issue, many agreed with the Board's proposal to not include the payment of a bonus as interest. As discussed in the proposal, the Board believes that the benefit of including bonuses as interest is outweighed by the burden such a requirement would impose upon depository institutions and the confusion that would be caused to consumers.

The definition has been revised by an additional reference to the fact that interest is calculated by applying a periodic rate to the balance in the account. The final regulation makes clear that an institution's absorption of expenses or its forbearance from charging a fee in connection with a service is not considered to be payment of interest. A depository institution's practice of charging higher fees to non-account holders than to account holders does not make the differential "interest."

Paragraph (o)—Interest Rate

Section 274(3) of the act defines the "annual rate of simple interest" as the annualized rate of interest paid with respect to each compounding period, expressed as a percentage. In the proposal, the Board simplified the phrase to "simple interest rate" and reworded the definition to clarify that the "interest rate" is the rate of interest paid without regard to compounding, shown as an annual figure and expressed as a percentage.

The Board has revised the proposed definition by further abbreviating the term to "interest rate." Several commenters remarked that the word "simple" in conjunction with "interest rate" has no standard meaning in the industry and does not assist consumers in understanding the figure disclosed. The Board agrees with this position, and has deleted the word "simple" from the term.

Section 274(3) of the act provides that the interest rate may be referred to as the "annual percentage rate." The Board proposed to use its exception authority to limit use of the term "annual percentage rate" so that it may be used only in conjunction with the term "interest rate," and only for purposes of account disclosures (that is, not in advertisements). The Board pointed out the importance of standardized terminology in advertising in order to assist consumers in comparing accounts, and requested comment on this issue.

With very few exceptions, commenters opposed allowing any use of "annual percentage rate" under the regulation because the term is associated with credit, not deposits. Commenters recognized that the term "annual percentage rate," as required to be disclosed under Regulation Z, is commonly understood by consumers to encompass the total cost of credit—including both interest and other finance charges. Most commenters believed strongly that confusion could arise if that term were used to designate an interest rate for the consumer's deposit account at a depository institution, while the same terminology would be used to designate a rate that includes both interest and, for example, "points" charged for a mortgage loan from the same institution. In addition, most commenters believed that it would be confusing for prospective account holders to see the same figure labeled as the "interest rate" in some advertisements and disclosures and as the "annual percentage rate" in others.

The Board agrees with these commenters. For these reasons the Board is using its exception authority under section 269(a)(3) of the act, and is adopting the rule regarding use of the term "annual percentage rate" as it was proposed. Some commenters urged the Board to prohibit the use of the term "annual percentage rate" in disclosures as well as in advertisements. In the light of the statutory provision, however, the Board is taking a more limited approach. The Board believes that the potential for confusion is greatest in advertisements and so is prohibiting it only in advertisements. Thus, institutions are permitted (but not required) to use the term "annual percentage rate" only in the account disclosures and only in addition to the term "interest rate."

Paragraph (p)—Passbook Savings Account

The final rule adds a definition of passbook savings account because the Board excludes from the definition of periodic statement any statements for passbook savings accounts. (See paragraph (q) of this section.) The regulation defines passbook savings account as a savings account in which the consumer retains a book or other document in which the institution records transactions on the account.

Paragraph (q)—Periodic Statement

Neither the act nor the regulation requires institutions to provide periodic statements (though a large number of commenters misunderstood this point). Disclosures are required to be included if the institution sends such statements. Further, the act does not define "periodic statement," although the term, or a similar term "account statement," is used in two provisions (sections 266 and 268). Section 266(e) of the act (which requires a notice to be given to existing account holders) refers to account statements provided on a quarterly basis. The Board looked to this provision and to requirements in other regulations in proposing to define a periodic statement as one sent on a quarterly or more frequent basis. The majority of commenters agreed with the Board's proposed definition. Thus, the general definition of a periodic statement in the final rule is one that sets forth account information and is provided to a consumer on a regular basis four or more times a year. An example of a periodic statement is a monthly statement for a NOW account, listing transactions and balance information.

In response to comments and upon further analysis, the Board has exercised its exception authority under section 269(a)(3) of the act to exclude specific types of accounts from the periodic statement requirements of the final rule. The regulation excludes from the definition any statement about either time accounts or passbook savings accounts.

Under the proposal, if an institution included information about any account on a statement, all of the disclosures of § 230.6 would be required for each type of account listed on the statement. A number of commenters noted that institutions often provide "combined statements." These combined statements contain detailed information about one or two accounts (typically, a

checking account or a checking and savings account), but also contain a limited mention of other accounts (typically, just the balance or interest earned on a certificate of deposit) held by the consumer at the same institution. Institutions that currently provide such status information for the accounts urged the Board to exempt those accounts from the periodic statement requirements.

Commenters noted that institutions may stop providing information about time accounts on combined statements without such an exception, due to the burden of calculating rates on multiple accounts and concerns about potential civil liability. In addition, commenters noted that space and printing limitations might prompt institutions to stop sending periodic statements that are presently provided voluntarily. Commenters also noted that, for time accounts, the required disclosures may be of limited value to the consumer. For example, disclosure of the number of days in the statement cycle is not particularly useful since these accounts have a set maturity. In addition, since most time accounts have no transactions and are fixed rate, the annual percentage yield earned would likely remain the same throughout the term of the account. The Board believes that exempting statements on time accounts from the definition of periodic statement, and thus from the disclosure requirements in § 230.6, is appropriate as it will encourage institutions to continue providing account information on the regular statements provided to consumers, without a significant sacrifice of useful information to consumers. Thus, regardless of their frequency, statements providing information to consumers about time accounts, whether sent separately or in combination with statements for other accounts, are not covered by this paragraph.

The Board is also using its exception authority to exclude information provided about passbook savings accounts from the definition of a periodic statement. Consumers who maintain such accounts generally understand that account information will only be made available when the passbook is presented for updating a transaction. Consumers do not expect periodic statements for their passbook savings accounts. A consumer may receive a periodic statement for other accounts, on which the institution elects to provide brief status information about the passbook account. As with the exception from the disclosure requirements for statements on time accounts, the Board believes it is important that institutions not be discouraged from providing this type of useful information to consumers.

The Board believes that certain other types of communication are not "periodic statements." For example, additional statements provided solely upon request and information provided by computer through home banking services are not periodic statements. In addition, general service information sent to customers which does not discuss specific transaction activity or other aspects of a particular consumer's account (for example, a quarterly newsletter or other correspondence that describes available services and products) is not a periodic statement.

If an institution provides a periodic statement to meet other legal requirements (for example, if an account involves electronic fund transfers and is covered by Regulation E (12 CFR part 205)), such a statement would be a periodic statement for purposes of this regulation. Also, if an institution provides a combined statement containing both credit and deposit account activity, such a statement would be covered by the periodic statement rules. In both cases, of course, if the statement is for a time account or passbook savings account it is exempt from this regulation.

Paragraph (s)—Stepped-Rate Account

The act defines "multiple rate" accounts, and authorizes the Board to adjust its general annual percentage yield disclosure rules to ensure that meaningful disclosures are provided for such accounts. The Board has separately defined "stepped-rate" and "tiered-rate" accounts, both of which are "multiplied rate" accounts under the act.

The final regulation defines stepped-rate accounts as that term appeared in the proposed rule: those in which two or more interest rates that are known at the time the account is opened will take effect in succeeding periods. An example of a stepped-rate account is a one-year certificate of deposit in which a 5.00% interest rate is paid for the first six months, and 5.50% for the second six months.

Paragraph (t)—Tiered-Rate Account

The Board's proposal defined tiered-rate accounts as those in which two or more interest rates paid on the account "are determined by reference to a specified balance level." One commenter suggested that this definition be revised to read "an account that has two or more interest rates that are applicable to specified balance levels." The Board agrees that this suggestion more accurately describes tiered-rate accounts, and has adopted a revised definition based on this suggestion.

An example of a tiered-rate account is one in which an institution pays, for example, a 5.00% interest rate on balances below $1,000, and 5.50% on balances $1,000 and above. There are two types of tiered accounts which are described more completely in appendix A, part I, paragraph D.

If interest is not paid on amounts below a specified balance level, the account has a minimum balance requirement (required to be disclosed under § 230.4(b)(3)(i)), but the account does not thereby constitute a tiered-rate account. For example, an account that does not pay any interest on account balances of less than $1,000, but pays a 5.50% interest rate on account balances of $1,000 or more is not a tiered-rate account, but rather is a single rate account with a minimum balance of $1,000 required to earn the specified annual percentage yield.

Paragraph (u)—Time Account

The proposed regulation did not include a definition of a "time account." However, because the final regulation provides special rules for certain time accounts (such as automatically renewable and non-automatically renewable certificates of deposit) and since time accounts are exempt from the periodic statement rules, the Board has adopted a definition. The term is based on the term "time deposit" under the Board's Regulation D (12 CFR 204.2(c)(1)). However, the regulation uses the phrase "time account" rather than "time deposit" to avoid confusion since time deposit, as used in Regulation D, has a broader meaning than that in this regulation. For example, a "time deposit" in Regulation D includes savings deposits, which do not fit the definition of "time account" in this regulation.

A time account is defined as an account with a definite maturity of at least seven days where a consumer generally does not have a right to make full or partial withdrawals from the account for six days after the account is opened, unless the deposit is subject to an early withdrawal penalty of at least seven days' interest on amounts withdrawn.

The most common time accounts are certificates of deposit; but certificate accounts and notice accounts issued by savings and loan associations are also included. Time accounts also may include some types of "club" accounts (such as "holiday club" and "vacation club" accounts)—where consumers

agree by written contract not to withdraw funds until a certain number of periodic deposits are made—even though deposits may be made within six days before the end of the period.

The Board recognizes that Regulation D permits withdrawals without penalty during the first six days after a time deposit is opened under limited circumstances, such as upon the death of any owner of the deposited funds or within a "grace period" for automatically renewable certificates of deposit. Accounts that permit withdrawals of funds in accordance with those provisions of Regulation D remain time accounts for purposes of this regulation.

Paragraph (v)—Variable-Rate Account

The act does not define variable-rate accounts, but section 265 of the act authorizes the Board to adjust its annual percentage yield disclosure rules for such accounts. The legislative history accompanying the act also indicates that modifications to the act's advance notice requirement for changes in terms were contemplated for variable-rate accounts. (See discussion of § 230.5(a)(2)(i) below.) The Board requested comment on how variable-rate accounts should best be defined to further the purposes of the act. Two alternative definitions were proposed: A narrow one that tied rate changes to an index, and a broad one that encompassed any account agreement allowing rate changes where the institution did not commit itself to giving at least 30 days advance notice of the change.

The classification of an account as a "variable-rate account" affects institutions in three ways:

(1) Additional account disclosures are required in § 230.4(b)(1)(ii);

(2) Rate decreases are exempted from the change in terms requirements in § 230.5(a)(2)(i); and

(3) A notice is required in advertisements under § 230.8(c)(1).

Many commenters expressed their views on the proposal. A few commenters supported the narrow definition linking rate changes on an account to changes in an index. They preferred a standard that paralleled Regulation Z's definition of variable rates for open-end credit to an expansive definition which they believed to be too broad.

The overwhelming majority of commenters, however, preferred a broader definition, based on both competitive and safety and soundness concerns. Some stated that without a broad definition consumers would be hurt since institutions would keep rates lower than they otherwise might offer, either to avoid the cost of sending advance notices if the rate had to be lowered or to guard against having to send notices because of unanticipated fluctuations in the financial marketplace. Many were concerned that advance notice requirements would restrict their ability to deal with competitive factors and other investment options available to consumers such as money market mutual funds, which are not covered by the act and regulation. Some were concerned that tying changes to an index—internal or external—would inhibit an institution's ability to respond appropriately to volatility in obtaining funds and to manage the liability side of the institution's balance sheet. Others were concerned about the cost of sending notices on accounts that may change rates as frequently as daily or weekly and the annoyance to consumers of receiving a constant deluge of notices about changes they already know can occur on their accounts.

In the proposal, the Board discussed its concern that if institutions reserve the right to change rates on accounts but seldom do, consumers would view these accounts essentially as fixed-rate accounts. Many commenters pointed out that account disclosures for variable-rate features required by § 230.4(b)(1)(ii) will alert consumers to the fact that the rates may change and the circumstances for such changes. They also pointed out that consumers can always contact the institution to get current rate information. (See §§ 230.3(e) and 230.4(a)(2) regarding responses to oral inquiries and providing disclosure of account terms upon request.)

The Board believes that a narrow definition of "variable-rate account" would require a substantial change in how depository institutions price their accounts, a change that was unintended by the disclosure provisions of the act. Also, consumers would be harmed if institutions offered artificially low rates to avoid repeated and expensive mailings. Thus, the regulation broadly defines a variable-rate account as one in which the interest rate may change after the account is opened, unless the institution contracts to give at least 30 calendar days advance written notice of rate decreases. An account meets this definition whether the change is determined by reference to an index, by use of a formula, or merely at the discretion of the institution. A certificate of deposit that permits one or more rate adjustments at the consumer's option is a variable-rate time account.

For institutions that prefer to offer—and consumers who prefer to hold—fixed-rate accounts, the regulation excludes from the definition of variable-rate those accounts where the institution agrees to provide at least a 30-day advance written notice of rate decreases. (See paragraph (l) of this section.)

Section 230.3—General Disclosure Requirements

Paragraph (a)—Form

Section 264(e) of the act requires disclosures to be written in "clear and plain language." The Board proposed that information be presented "clearly and conspicuously," a standard used in other regulations adopted by the Board, such as Regulation Z. This standard was supported by commenters, and is used in the final rule for all disclosures provided to consumers, including account opening disclosures, change in terms notices and information given on periodic statements. (The same standard applies to advertisements by virtue of § 230.8.)

Design requirements. The proposal provided depository institutions with flexibility in designing the account disclosures, as long as the information is presented in a format that allows consumers to readily understand the terms of their own accounts. The final regulation provides even more flexibility regarding the order of disclosures, the use of multiple documents for accounts, the use of documents that describe more than one account, and the combination of disclosures with contract terms and with disclosures required by other regulations (such as Regulation E and Regulation CC).

The regulation does not require the disclosures to be provided in any particular order or segregated from other disclosures or account terms. Disclosures may be made on more than one page and may appear on front and reverse sides. For example, periodic statements may consist of several pages, depending on the consumer's account activity. Institutions may also use inserts to a document or fill in blanks to show current rates or fees in account opening disclosures. Whereas the proposal suggested that disclosures had to be part of "one document," the final regulation permits use of more than one document. However, if more than one document is used for a single account (or if more than one account is described in an institution's brochure), consumers must be able to understand from the several documents (or multiple account disclosures) which terms apply to their particular account. See, for

example, the approach taken in Sample Form B-4 in appendix B.

Depository institutions could comply with the regulation by providing consumers with disclosures contained in one or more of the following documents: a signature card, a rate sheet, a fee schedule and a brochure that described other terms of the account. However, if the disclosures consist of more than one document, all relevant documents must be provided at the same time, and it must be clear to which account each document relates. For example, the regulation would not permit a customer service representative to hand a consumer a brochure that describes some terms of the account when an account is opened and mail a rate sheet and fee schedule at a later time. Disclosures must be in a form the consumer may retain. Thus, for example, disclosures could not be made on a signature card if the consumer is not given a copy to keep.

Institutions may choose to prepare a single document or brochure that contains disclosures for all accounts offered, or prepare different documents for different types of accounts. For example, an institution may provide one brochure for all of its transaction accounts, such as NOW and demand deposit accounts. An institution may provide disclosures for each type of account, such as a document that describes all time accounts offered. If the institution chooses to provide one document for several accounts, the consumer must be able to understand clearly which disclosures apply to the consumer's account. Thus, if an institution offers two NOW accounts ("A" and "B") with some fees applicable to both accounts, certain fees and rates unique to the "A" account, and other fees and rates unique to the "B" account, the disclosures must make clear (by the use of headings or some other means) which fees and rates apply to which account. Finally, the regulation permits institutions to provide individual disclosures describing a single account product; for example, an institution offering three different NOW accounts may provide a separate document for each account.

Disclosures need be made only as applicable. For example, disclosures for noninterest-bearing accounts need not include disclosure of an annual percentage yield, interest rate, or any other disclosures required under the regulation that pertain to interest calculations.

Format requirements. Adopted as proposed, the regulation does not require any particular type size or typeface, nor does it require any term to be stated more conspicuously than any other term in the account disclosures. Sections 230.4(b) and 230.8(b) of the regulation require the "annual percentage yield" (and, in some cases, the "interest rate") to be so labeled in account disclosures and advertisements, and § 230.6(a) requires the "annual percentage yield earned" to be so labeled on periodic statements. Apart from this, there is no required terminology. Institutions must be consistent, however, in the use of a term whenever the term is required to be disclosed. For example, if an institution identifies a monthly fee imposed regardless of a consumer's balance or activity in the account disclosures as a "service" fee, a "maintenance" fee, or a "monthly" fee, it must use the same term in its periodic statements and change in term notices.

Several commenters requested guidance on the use of abbreviations. Use of the abbreviation "APY" for the annual percentage yield is discussed in § 230.8(b) (dealing with advertisements).

Paragraph (b)—General

The proposal stated that disclosures should reflect the legal obligation between the parties. This standard is used in Regulation Z and was proposed to provide guidance about the basis for disclosures. Some commenters expressed concerns about whether inclusion of this provision in the regulation implied the existence of some new requirement for institutions to enter into account contracts with their consumers. This requirement does not impose any contract terms or supplant state or other laws that define how the legal obligation between a consumer and a depository institution is determined (for example, whether a written contract is required or whether disclosures may act as the basis for the obligation). The regulation requires the disclosures to reflect the terms of the legal obligation that exist once the consumer opens an account.

Institutions offering automatically renewable time accounts must base their disclosures on the terms in effect for the initial term of the account, and not on terms that may apply if the account is renewed. Thus, if an institution offers a six-month certificate of deposit at an initial annual percentage yield of 4.00% with a guaranteed renewal at an annual percentage yield of 5.00%, the institution would not disclose the account as a one-year stepped-rate account. Similarly, the fact that the rate may change on a fixed-rate time account at renewal does not make it a variable-rate account.

The Board sought comment on the use of estimates in making disclosures. Some commenters requested that estimates be permitted for charges imposed by third parties such as check vendors as an alternative to the use of a range of check printing charges. But many opposed the use of estimates under any circumstance; they viewed the imprecision of estimates as being more confusing than helpful to consumers. The Board believes that, on balance, a rule on estimates is not needed because virtually all information required to be disclosed is within the total control of the institution (with the special rules provided in §§ 230.4(b)(4) and 230.5(a)(2)(ii), to deal with the issue of check printing charges). Furthermore, the introduction of estimates complicates the disclosure scheme without providing attendant benefits to consumers. Thus, the regulation does not permit the use of estimates in making disclosures.

The act does not contain any special requirements regarding whether disclosures may be made in a foreign language rather than in English. The Board sought comment on incorporating a rule similar to that in Regulation Z, which allows creditors in Puerto Rico the option of providing credit disclosures in Spanish, as long as those that do so furnish disclosures in English upon request. Most commenters endorsed the alternative of providing disclosures in languages other than English. Some institutions currently reach out to the communities they serve by offering disclosures in languages other than English, where appropriate, and asked for express authority to do so. A few commenters were concerned that the proposed regulation could be interpreted to impose a duty upon institutions to provide disclosures in languages other than English. Based on comments received and upon further analysis, the final regulation permits (but does not require) institutions to provide disclosures in languages other than English, as long as disclosures in English are available upon request. This rules applies to institutions in every state, not just in Puerto Rico. The Board believes that the rule will promote delivery of more useful information to consumers.

Paragraph (c)—Relation to Regulation E

The final regulation expressly allows institutions to fulfill their requirements under this regulation with disclosures that also satisfy the requirements of Regulation E. Thus, if an institution is required to provide information pursuant to Regulation E, such as a fee

related to an electronic fund transfer, disclosures given pursuant to that regulation will be deemed to comply with this regulation as long as they are given at the same time as other Regulation DD disclosures. Similarly, if an institution changes a term that triggers a change in term notice under Regulation E (as well as under this regulation), the institution may use the timing rules set forth in Regulation E for sending the notice to affected consumers. (See the discussion in §§ 230.4(b)(4) and 230.4(b)(5) regarding disclosures of fees and transaction limitations.)

Paragraph (d)—Multiple Consumers

The regulation retains without change the proposed rule that in the case of an account held or to be held by more than one consumer, institutions may provide the account disclosures to any consumer who holds or will hold the account. Similarly, if the account is held by a group or organization, depository institutions may provide the disclosures to any one individual who represents or acts on behalf of the group. Some commenters requested that the Board consider identifying a "primary account owner," such as the consumer whose tax identification number is assigned to the account. The Board believes that requiring institutions to provide disclosures to a "primary account owner" adds an unnecessary compliance burden; thus, it has not added such a requirement to the regulation. Some commenters were concerned that accounts "held" by multiple consumers implied that only account holders with ownership interests in the account could receive disclosures. The Board believes that where there are multiple consumer account holders, delivery to any account holder or an agent authorized by the account holder satisfies this paragraph.

Paragraph (e)—Oral Response to Inquiries

Although not required by the act, the Board proposed to standardize rate information that is given by institutions in response to an oral inquiry regarding rates. This requirement does not impose a duty on institutions to provide responses to oral inquiries, nor would a response trigger the advertising disclosures of the regulation. The proposal would have required institutions to use the terms "annual percentage yield" and "simple interest rate." The final regulation merely requires that institutions that provide oral responses for requests for rate information state the annual percentage yield figure. The interest rate figure may also be provided. (This would also permit a statement of the corresponding periodic rate.)

The regulation differs from the proposal in two respects. First, in response to comments, the regulation has been clarified to state the interest rate may be quoted in addition to (not in lieu of) the annual percentage yield. Second, the regulation has deleted the requirement that the annual percentage yield or interest rate be stated using those terms. While the Board expects that institutions will use those terms to describe the figures quoted to consumers, the regulation does not require this terminology. The requirement was deleted due to the Board's concern about the potential for civil liability if an employee of an institution inadvertently failed to use the specified term.

Paragraph (f)—Rounding and Accuracy Rules for Rates and Yields

In the proposal, rules relating to the calculation and accuracy of the annual percentage yield were contained in appendix A. In response to suggestions made by commenters, a new paragraph that contains rules regarding rounding and accuracy of the annual percentage yield, the annual percentage yield earned, and interest rate has been added to this section of the regulation. Regulation Z has a similar provision, and the Board believes a single section setting forth the accuracy standards for rates and yields will ease compliance.

Paragraph (f)(1)—Rounding

As proposed, the final rule provides that annual percentage yields are to be shown to two decimal places and rounded to the nearest one-hundredth of one percent (.01%). If an institution calculated an annual percentage yield to be 5.644%, it would be rounded down and shown as 5.64%; 5.645% would be rounded up and disclosed as 5.65%. The Board believes that expressing all yields to two decimal places will assist consumers in comparing the rates of competing depository institutions. The same rule applies to the annual percentage yield and the annual percentage yield earned.

In response to comments received, the final rule adds rounding rules for the interest rate. For advertisements, the interest rate must also be rounded to the nearest one-hundredth of one percentage point (.01%) and expressed to two decimal places. For example, if an institution's interest rate is 5.344%, that figure would be rounded down and shown in an advertisement as 5.34%; 5.345% would be rounded up and disclosed as 5.35%. This parallels the rule adopted for the annual percentage yield. The Board believes that figures shown to two decimal places in advertisements will assist consumers in successfully comparing the rates of competing depository institutions. Without such a rule an institution with an interest rate of 5.45% could advertise and disclose a rate of 5.5%, the same rate advertised and disclosed by another institution with an interest rate of 5.50%. The Board believes this would hinder consumers' ability to compare accounts. The interest rate also must be shown to two decimal places in account disclosures. At the depository institution's option, however, the interest rate may be shown with greater specificity (more than two decimal places) in account disclosures, in order to allow the use of the exact contract rate.

Paragraph (f)(2)—Accuracy

As proposed, the final rule provides a tolerance of 1/20 of one percentage point (.05%) for the accuracy of the annual percentage yield. While some commenters believed that technology makes a tolerance unnecessary, many commenters supported a calculation tolerance and felt that 1/20 of one percentage point was appropriate. If the annual percentage yield disclosed is not more than one-twentieth of one percentage point (.05%) above or below the actual annual percentage yield as determined in accordance with appendix A, no violation of the act or regulation has occurred. The same rule applies to the annual percentage yield and the annual percentage yield earned. The tolerance is designed to take account of inadvertent errors. By adopting the tolerance, the Board does not intend to sanction intentional misstatements of the annual percentage yield. Institutions may not purposefully incorporate the tolerance as part of their calculations. Thus, the amount of the tolerance could not be routinely added in when calculating the annual percentage yield to be disclosed.

Although the regulation allows a tolerance in the accuracy for annual percentage yields, there is no corresponding tolerance for the accuracy of the interest rate. The interest rate offered on accounts is chosen by, and therefore known to, institutions and involves minimal risk of calculation error. Further, the Board believes the Congress intended consumers to receive a disclosure of the precise interest rate paid on the account. The Board believes adopting a tolerance for the interest rate therefore is not appropriate.

Section 230.4—Account Disclosure

The Board proposed and retains in the regulation its use of "account disclosures" (rather than the term "account schedule" used in the act) in connection with the information required to be provided to consumers. Similarly, the regulation does not impose an independent duty on institutions to "maintain" disclosures but merely to deliver them in the necessary circumstances. These positions were supported by the commenters.

Paragraph(a)—Delivery of Account Disclosures

The regulation is organized differently from the proposal. The proposal outlined subsequent disclosure duties for maturing time accounts in both §§ 230.4(a)(3) and 230.5(b). For ease of compliance, all requirements for providing information to consumers after an account is opened (other than ongoing disclosure duties for accounts that receive periodic statements) are now located in § 230.5. Thus, rules regarding subsequent notices for maturing time accounts are found in § 230.5(b), 230.5(c), and 230.5(d) of the regulation.

Paragraph (a)(1)—Account Opening

The proposal and the final regulation parallel the act, and require institutions to provide account disclosures to consumers before an account is opened or a service is provided, whichever is earlier.

Service fees. The Board is retaining the proposed provision requiring disclosures to be given before a fee (required to be disclosed under paragraph (b) of this section) for a service is imposed. The Board believes this disclosure covers the unusual circumstance where a fee is assessed for a service prior to the opening of an account. This provision, however, does not require institutions to give disclosures to existing account holders prior to imposing a service fee connected with the account, such as for stopping payment on a check.

Consumer absent when account is opened. Section 266(b) of the act allows the disclosures to be sent within 10 days of "the initial deposit" if the consumer is not physically present when the deposit is accepted and the disclosures have not been provided previously. The proposed regulation applied the 10-day rule to the provision of services as well as to opening accounts, and defined the period as 10 business days rather than calendar days. The final regulation reflects the same position. Thus, if an account is opened by mail, the account disclosures must be mailed or delivered within 10 business days of the time the account is opened. Institutions comply with the provision if the account disclosures are mailed or delivered to the consumer at the address shown on the records of the depository institution.

The Board solicited comment on whether business days or calendar days should be used in setting forth the timing rules for opening accounts and providing services, as well as for responding to requests for disclosures. The majority of commenters favored use of business days, and that is retained in the final rule for providing disclosures when an account is not opened in person. The Board believes that using 10 business days as the timing measure for the account opening rule is appropriate to allow institutions adequate time to provide disclosures (especially since the disclosures cannot be used for comparison shopping in any event since they come after the deposit decision has been made). However, the timing rules for other provisions (for example, the subsequent disclosures required in § 230.5) are measured by calendar days.

The act states that disclosures need not be provided to the absent consumer if the disclosures were previously provided. The Board requested comment on whether it would be desirable to specify a time limit, for example, 60 days, beyond which prior disclosures would be deemed not to be current—even if they have not changed. Commenters strongly opposed a rule with a specified time limit. Based on comments received, the Board is not adopting the reference to 60 days. However, the Board believes that the Congress intended to permit institutions to rely on this provision only if the disclosures previously provided remain the same (including the annual percentage yield and interest rate). As a practical matter, the Board believes this provision of the regulation is of limited benefit, as institutions that rely on it must know both that their customers previously received the disclosures and that the account terms remain the same.

New accounts. Section 230.4(a)(3)(i) (cited as § 230.4(a)(3)(A) in the April 13 **Federal Register** notice) of the proposal provided that renewals of all time accounts were new accounts. Commenters argued that an automatically renewed time account is *not* a new account, but acknowledged that a nonautomatically renewable time account that is "renewed" at the consumer's request *is* a new account. In light of these comments, the Board has modified the final regulation by deleting proposed § 230.4(a)(3)(i). Renewals of "rollover" time accounts are dealt with in §§ 230.5(b) and 230.5(c). A "renewal" of a time account that does not automatically renew is a new account requiring account disclosures delivered according to the usual rules for account opening.

Some commenters asked whether a new account would be considered to be opened when an institution acquires an existing account through merger with or acquisition of another institution. Acquiring accounts through acquisition or merger does not trigger the disclosure rules under this section. Of course, if terms required to be disclosed are changed, the acquiring institution must follow the rules in § 230.5(a) regarding advance notice.

Paragraph (a)(2)—Requests

Paragraph (a)(2)(i). The act requires that account disclosures be made available to any person upon request. The proposal required depository institutions to mail or deliver the disclosures no later than three business days following receipt of a consumer's oral or written request.

Several commenters requested clarification about customer actions that trigger the rule. A mere inquiry about rates for an account does not trigger an institution's duty to provide account disclosures. For example, common telephone inquiries about rates and yields on certificates of deposit or about fees and charges for an account do not trigger an institution's duty to send disclosures to the caller. However, the duty is triggered if, in the course of inquiring about an account, a consumer asks for written information to be provided. This section also governs requests for account disclosures by existing consumer account holders. (See the discussion in § 230.4(c) below.)

Some commenters were concerned how the rule might apply to repeat callers who make numerous requests for disclosures for the same account. If an institution has already sent disclosures to a consumer who is repeating requests for the same account, and institution need not respond to the repeated requests, if the disclosures previously provided remain accurate.

An institution must provide disclosures to consumers for each account for which the consumer requests information. If the consumer makes the request in person, disclosures must be provided at that time. If a consumer expresses a general interest in a type of account (NOW accounts, for example) of which an institution offers several versions, an institution may comply by sending disclosures for any

one of the products. Institutions are not required to provide disclosures for accounts that are no longer available to the public. For example, an institution that no longer opens passbook savings accounts (but continues to service existing passbook accounts) is not required to provide account disclosures for the passbook savings account upon request.

Some commenters objected to the proposed duty to "mail or deliver" disclosures; instead, they urged that the regulation use the statutory phrase to "make available" disclosures upon request and allow institutions to merely keep disclosures in their offices or branches for consumers to pick up in person. The Board believes that the purposes of the act would not be furthered if consumers were required to visit branches to obtain information about an account. Convenient access to account disclosures is essential to comparison shopping and in-person visits are not always possible. The Board believes that the Congress contemplated that institutions would have the duty to actually get account information to consumers who request it. Thus, the regulation requires institutions to mail or deliver account disclosures upon request if the requester is not at the institution when the request is made.

Timing requirements. The Board proposed a three-business-day rule—a timing rule used in Regulation Z for certain transactions—for responding to requests from consumers. The Board solicited comment on whether it was necessary to establish a specific time period in which institutions must respond to requests for disclosures, and whether the appropriate period should be three business days or longer, such as 10 business days. Many commenters opposed a specific time limit, stating that competition and customary business practices ensure institutions will respond in a timely manner. If a time limit were imposed, however, commenters requested that timing rules be consistent throughout the regulation and that a period longer than three business days be permitted.

The Board is persuaded that competitive demands require institutions to respond promptly to potential and current account holders. Thus, the final rule requires institutions to respond to requests for disclosures within a reasonable time. Ten business days, consistent with the timing rule for opening accounts, would be considered a reasonable time to respond. Of course, when the consumer is present at the institution and requests information about an account, the disclosures must be given at that time.

Paragraph (a)(2)(ii). Commenters requested clarification about the content of disclosures sent in response to a consumer request for information. Disclosures must be accurate when sent to the consumer, and the regulation has been modified to explain how institutions may comply with that standard in the case of the annual percentage yield, interest rate and a time account's maturity date. An institution must specify an interest rate and annual percentage yield that were offered within the most recent seven calendar days; state that the rate and yield are accurate as of an identified date; and give a telephone number consumers may call to obtain current rate information. The regulation also permits institutions to describe a time account's maturity as a term such as "1 year" or "6 months," rather than a specific date, such as "January 10, 1994," since the actual date will not be known.

Paragraph (b)—Content of Account Disclosures

This paragraph is rearranged from the proposal. For ease of compliance, requirements relating solely to time accounts (listed individually in the proposal as § 230.4(b)(2), (b)(7), and (b)(8)) have been combined in § 230.4(b)(6) in the final rule. Remaining paragraphs have been renumbered accordingly.

A disclosure regarding bonuses has been added, as described in paragraph (b)(7) of this section.

In response to comments received and upon further analysis, the Board has not adopted the proposed requirement that institutions inform consumers if an account involves the risk of a loss of principal (see § 230.4(b)(9) of the proposal). Adopting the rule, which is not mandated by the act, would have added complexity to the regulation. For example, although the provision was aimed at foreign currency denominated accounts, commenters raised concerns about its applicability to losses of principal due to deposit insurance limitations, right of offset and the operation of escheat laws. Although the Board believes that it is important for institutions to disclose to consumers when an account involves a potential loss of principal—particularly in accounts denominated in a foreign currency—information indicates that the industry currently alerts consumers to the risks associated with such accounts. Thus, on balance, the Board believes an additional disclosure in the regulation is not needed at this time.

Paragraph (b)(1)—Rate Information

Paragraph (b)(1)(i)—Annual percentage yield and interest rate. Institutions are required to disclose the "annual percentage yield," using that term, computed in accordance with appendix A, part I. Institutions also are required to disclose the "interest rate," using that term. Aside from the corresponding periodic rate, no other term regarding rates (for example, an "average" rate) is permitted to be used. If the interest rate and the annual percentage yield are the same, institutions must use both terms but may disclose a single figure.

Institutions must also disclose the period of time the interest rate will be in effect after a fixed-rate account is opened. (This does not require institutions to state how long the rate will be offered to consumers who open accounts. However, see the discussion to § 230.8(c)(2), which requires advertisements to state how long the advertised annual percentage yield will be offered.) The final rule clarifies that this requirement applies only to fixed-rate accounts. (The Board believes that disclosures required under paragraph (b)(1)(ii) of this section adequately convey the same information for variable-rate accounts.) If an institution agrees to pay a rate until maturity of a fixed-rate time account, disclosure of the maturity date satisfies this requirement. Fixed-rate accounts other than time accounts could disclose a date, a period, or include a statement that the rate will be in effect for at least 30 days. (See § 230.2(l), which defines fixed-rate accounts as those in which an institution agrees to provide at least 30 days' advance notice of a rate decrease, and § 230.5(a), which discusses change in term requirements for rate decreases for these accounts.) Even if an institution retains the ability to increase a rate without giving prior notice, it should disclose that the initial rate will be in effect for at least 30 days. Any rate increase following delivery of disclosures is not an event that would make the account disclosure incorrect.

Commenters asked for clarification of several issues relating to the disclosure of the interest rate and annual percentage yield. Some institutions asked for guidance about how accurate their disclosures must be when their agreements permit changes as frequently as daily in the rate and yield paid. Some suggested that institutions be permitted to provide a recently available rate, along with a telephone number the consumer could call for current rates. The Board believes that

the most current rate and yield information must be provided to consumers who are opening new accounts. (See paragraph (a)(1) of this section.) The Board believes the Congress did not intend for institutions to disclose, for example, a recent interest rate of 5.00%, if in fact the institution is offering a 4.75% interest rate on the day the consumer opens the account. However, recent rates and yields that are updated at least weekly may be provided to consumers who have merely requested information on an account. (See paragraph (a)(2) of this section.) As mentioned previously, institutions may use inserts or rate sheets in combination with their other disclosures to state current interest rates and annual percentage yields, but institutions must make clear in the account disclosures which rates and yields apply to the account for which disclosures are being given. (See discussion of design requirements in the supplementary information to § 230.3(a), above.)

A number of commenters requested guidance about how minimum balance requirements affect the disclosure of rates. If an institution sets a minimum daily balance to earn interest, it need not disclose that "0%" annual percentage yield applies on those days when the balance in the account drops below the minimum balance. (Similarly, a disclosure of "0%" is not required for institutions that use the average daily balance method, if the consumer fails to meet the minimum balance required for the period.) The Board believes that, in light of the disclosures about minimum balance requirements, consumers will readily understand that interest is not paid if a minimum balance is not maintained, and the rule simplifies disclosures for both consumers and institutions.

Section 230.4(b)(1)(i) of the proposal (cited as § 230.4(b)(1)(A) in the April 13 **Federal Register** notice) included a sentence stating that for stepped- and tiered-rate accounts all interest rates and annual percentage yields must be stated. The final rule does not include this provision in the regulation itself. This requirement is simply an elaboration on the general requirement to state the interest rate and annual percentage yield, and the Board believes it is unnecessary for the regulation itself to contain this rule. This provision does require that, for stepped-rate and tiered-rate accounts, institutions must state all annual percentage yields and interest rates.

A single annual percentage yield must be disclosed for stepped-rate accounts. (See appendix A, part I, paragraph B.) However, each interest rate and the period of time each will be in effect must be provided in the disclosures. For example, if an institution offers a 1-year certificate of deposit with daily compounding and an interest rate of 5.00% for the first 180 days and 5.50% for the remaining 185 days, it might say something like the following: "The interest rate on your account is 5.00% for the first 180 days and 5.50% for the remaining 185 days, with an annual percentage yield of 5.39%." (See Model Clause B–1(a)(iii) in appendix B.)

An institution offering tiered-rate accounts must disclose each interest rate along with the corresponding annual percentage yield (or range of annual percentage yields if appropriate) for that specified balance level. For example, if an institution pays a 5.00% interest rate for balances below $5,000 and a 5.50% interest rate for balances $5,000 or above, both rates must be provided, as well as the annual percentage yields that would apply to the two tiers in the account. (See appendix A, part I for the calculation of the annual percentage yields for stepped-rate and tiered-rate accounts.)

Commenters asked for guidance when the initial rate offered on a variable-rate account is higher than the rate that would otherwise be paid on the account. For example, an institution may promote a particular account by offering to pay a premium rate to new customers for a given period such as 90 days. Such accounts would be considered stepped-rate accounts and the annual percentage yield would be figured according to the rules in Appendix A. (See the supplementary information to appendix A, discussing variable rates.)

In addition, as with any other stepped-rate account, an institution would state the initial interest rate and the time that rate is in effect, as well as the rate that otherwise would apply if the initial rate were not in effect. For example, an institution might state: "You will be paid an interest rate of 6.00% for the first 90 days. The current rate being paid on the account is 4.50%." (The disclosures for variable-rate accounts will alert consumers that the rate may change after 90 days.)

Paragraph (b)(1)(ii)—Variable rates. The act does not expressly require specific additional disclosures for variable-rate accounts. Sections 264(d) and 265(2) of the act, however, recognize that the Board may wish to prescribe specific disclosures for variable-rate accounts. The Board proposed that account disclosures include information similar to the variable-rate disclosures for open-end credit found in Regulation Z.

Commenters agreed that the purposes of the act would be well served if consumers were alerted to the basic features of a variable-rate account, but many commenters expressed concern that lengthy and complicated disclosures would confuse rather than help consumers. The proposal required institutions to provide four pieces of information about variable-rate accounts, and the Board believes it is appropriate for each to be retained in the final rule. The Board believes it is important for consumers to receive basic information about a variable-rate account initially, particularly since consumers will not receive change in terms notices if the rate is later decreased. (See § 230.5(a)(2)(i).)

First, institutions must state that the interest rate and annual percentage yield may change. Second, they must explain how the interest rate is determined. For example, if the interest rate is tied an index (for example, the 1-year Treasury bill) plus or minus a specified margin, the index must be clearly identified and the specific margin stated. If an institution reserves the right to change rates and does not tie changes to an index, the fact that rate changes are solely within the institution's discretion must be stated. Third, depository institutions must explain the frequency—such as weekly or monthly—with which the interest rate may change. Institutions that reserve the right to change rates at any time must state that fact.

Finally, if the deposit contract places any limits on the amount the interest rate will change at any one time or for any period, the limitation must be explained. For example, if the institution places a floor or ceiling on rates or provides that a rate may not decrease or increase more than a specified amount during any time period, that must be disclosed. An institution may describe a floor or ceiling as a specific rate (for example, "your interest rate will always be at least 3%") or by explaining how the limitation operates (for example, "your interest rate will never drop lower than 2% below the interest rate initially disclosed to you"). If there are no limitations placed on rate changes, institutions may, but need not, disclose that fact.

Paragraph (b)(2)—Compounding and Crediting

Paragraph (b)(2)(i)—Frequency. The act requires institutions to disclose the frequency with which interest is compounded and credited, and any

changes in either frequency if a time requirement is not met. The supplementary information in the proposal tracked the act, but stated that institutions would have to disclose if changes in the compounding or crediting frequency would occur "under any other circumstance." The final regulation retains the basic disclosure regarding an institution's compounding and crediting practices. (See the supplementary information accompanying § 230.7(b) for a discussion of crediting practices.) The supplementary information accompanying § 230.4(b)(6)(ii) retains the substance of the statutory disclosure concerning changes in compounding and crediting frequencies, but simplifies the regulation by locating this provision in the paragraph dealing with early withdrawal penalties for time accounts. There it more plainly states that, if the institution changes compounding and crediting frequencies if a time requirement is not met, the institution must describe such changes and the conditions under which they will occur. The Board believes this event will rarely occur, but is retaining the requirement in light of the statutory provision.

Commenters asked about the degree of precision required to describe crediting and compounding practices. Descriptions such as "quarterly" or "monthly" adequately disclose the institution's practices. Also, institutions need not disclose irregular crediting and compounding periods such as if a cycle is cut short at year end for tax reporting purposes.

Paragraph (b)(2)(ii)—Effect of closing an account. Section 264(c)(9) of the act requires institutions to provide a statement, if applicable, that interest that has accrued but not been credited to the account at the time of a withdrawal will not be paid (or credited) due to the withdrawal. Section 267 of the act requires institutions to calculate interest on the full amount of principal in the account each day and prohibits calculating interest using methods such as the "low balance" method. In the proposal, the Board stated its belief that the Congress did not intend the disclosure provisions of section 264 to be interpreted as overriding the general rule regarding payment of interest. Thus, the Board proposed (in § 230.4(b)(7)) that institutions could not fail to pay interest on amounts withdrawn, and the statement required by section 264(c)(9) would be inapplicable.

Many comments were received on this provision. As discussed in § 230.7(b) below, commenters urged the Board to reconsider its interpretation of the act, particularly regarding accounts that are closed between crediting periods. For the reasons set forth in § 230.7, the Board believes that institutions may provide that if an account is closed before interest is credited, the institution need not pay interest that has accrued but not been credited on the account. Thus, the regulation has been revised to add a disclosure of this policy if it is relevant. If an institution has contracted to withhold interest that has accrued but not been credited on an account that is closed, that fact must be disclosed. (See Model Clause B-1(b)(ii).)

This issue was raised in the supplementary information to the proposed disclosure requirements for early withdrawal penalties. However, if an institution discloses an early withdrawal penalty for a time account (see paragraph (b)(6)(ii) of this section) that encompasses that amount of accrued but uncredited interest when all funds are withdrawn before maturity, such a disclosure will satisfy the requirements of this paragraph.

Paragraph (b)(3)—Balance Information

Paragraph (b)(3)(i)—Minimum balance requirements. The regulation requires institutions to disclose any minimum balance required to open the account, to avoid the imposition of fees, or to obtain the annual percentage yield. Institutions must also describe how they determine any minimum balance. A minor revision to the proposal (changing "fees" to "a fee") clarifies that the minimum balance disclosure requirement is triggered by the imposition of a single fee (for example, a $3 fee imposed if the average daily balance in the account drops below $500).

Commenters asked how to make this disclosure if fees on one account are tied to the balance in another account. Such a provision must be explained. For example, if an institution ties fees payable on a NOW account to a minimum balance maintained in a savings account (or a combination of the savings and the NOW account), the NOW account disclosures must explain that fact and how the balance in the savings account (or in both accounts) is determined. The fee need not be disclosed in the savings account disclosures if the fee is not imposed on that account.

Commenters requested guidance on describing the method used to determine a minimum balance. Institutions may combine their explanations of balance computation methods required under paragraphs (b)(3)(i) and (ii) if the methods are the same. Some institutions, however, use different cycles for determining minimum balance requirements for purposes of assessing fees and for paying interest. For example, an account's statement cycle may begin on the 15th of the month and that period is used for interest calculations. However, the institution may assess fees based on the balance in the account for the preceding calendar month. In such cases, institutions must disclose the specific cycle or time period used for each purpose. Institutions may assess fees by using any method they choose.

Paragraph (b)(3)(ii)—Balance computation method. The regulation requires institutions to describe the balance computation method the institution uses to calculate interest on the account. Sections 230.2(d) and 230.2(i) of the final regulation contain definitions of the two balance computation methods permitted under § 230.7(a).

Paragraph (b)(3)(iii)—When interest begins to accrue. The Board solicited comment on whether a disclosure of when interest on noncash items begins to accrue should be required. The Board received many comments on the issue. Section 230.7(c) requires institutions to begin paying interest no later than the business day specified in section 606 of the Expedited Funds Availability Act (EFAA) and its implementing Regulation CC. However, institutions may begin to pay interest earlier, such as the day a noncash deposit (typically, a check) is received by the institution. Commenters generally considered the information to be important for consumers and supported the disclosure. However, many were unsure that the information could be conveyed in a simple and effective way that consumers would readily understand. For example, the procedures that institutions follow to determine when interest must begin to accrue under EFAA are very complex. (See 12 CFR 229.14 and its accompanying staff commentary.) Commenters were concerned that considerable detail would be required and that the information would be more confusing than helpful. Others stated that consumers might not understand general industry terms to describe the balances on which interest begins to accrue, such as "ledger" balance to indicate that interest begins to accrue the day a noncase deposit is received by the institution and "collected" balance to indicate that interest begins to accrue no later than the business day required by EFAA and Regulation CC. Further, the term "collected balance" does not have a uniform meaning within the financial services industry.

The Board believes that comparison shopping by consumers will be enhanced if account disclosures reveal basic differences regarding when interest begins to accrue for noncash deposits. Thus, the regulation requires institutions to briefly state when interest begins to accrue. For example, institutions that begin to accrue interest pursuant to EFAA could explain that interest begins to accrue no later than the business day when the institution receives credit for the deposit. Institutions that begin to accrue interest the day a noncash deposit is received by the institution could state that fact. (See Model Clause B-1(e) in appendix B.)

Finally, some commenters requested that descriptions of balance methods under paragraphs (b)(3)(i) and (ii) of this section distinguish balances that include deposits from the day the deposit is made (described as a "ledger balance") from those that delay inclusion (described as a "collected balance"). Given the additional disclosures required by this subparagraph (3)(iii), the regulation does not require institutions to define balance computation methods as being a ledger or collected balance method.

Paragraph (b)(4)—Fees

The act requires disclosure of fees that may be assessed against the "account holder" as well as against the account. The regulation requires the disclosure of all fees that may be assessed "in connection with" the account which, as explained in the proposal, the Board believes captures the act's intent.

The act requires the Board to specify, in the regulation, which fees must be disclosed. The proposal, however, did not list every fee that might be imposed, nor did it mandate terminology for fees. The proposal provided guidance on types of fees that would and would not be considered to be assessed in connection with an account, and the Board solicited comments on the proposed approach for implementing the act.

Many comments were received on this provision. Some suggested that the scope of the fee disclosure be narrowed. However, the regulation retains a broad requirement to disclose all fees that may be assessed in connection with the account. The Board believes a broader definition more closely implements the statutory requirement and Congressional intent. This broader definition differs from the approach taken for advertising rules discussed in § 230.8(a) in conjunction with "free" or "no-cost" accounts. There, fees that trigger the rule are limited to "maintenance or activity fees." To illustrate, institutions must disclose fees to stop payment on a check under this paragraph, even though the fees would not be deemed an "activity" or "maintenance" fee for purposes of § 230.8(a).

Commenters asked for specific examples of fees that must or need not be disclosed. The Board believes that identifying all fees by name is not possible, as new fees may arise and names may differ among institutions. Types of fees that may be assessed in connection with an account would include, for example, maintenance fees (such as service fees and dormant account fees); fees related to deposits or withdrawals, whether by check or electronic transfer (such as per check fees, fees for use of the institution's automated teller machines (ATMs), fees to stop payment on a check previously issued, and fees associated with checks returned due to insufficient funds); fees for special account services (such as fees for balance inquiries and fees to certify checks); and fees to open or to close accounts (other than early withdrawal penalties for time accounts, which are addressed in paragraph (b)(6)(iii) of this section).

The proposal also required check printing fees to be disclosed. Many commenters opposed the disclosure of this fee, mainly due to the difficulty in describing the amount of the charges (which vary depending on the consumer's choice and which are in the control of a third party vendor). Commenters also stated it would be difficult to comply with an advance change in terms notice, given that the timing of price increases are controlled by the vendor. The Board believes that the concerns about disclosing costs for check printing are valid and therefore permits a variety of ways to make this disclosure. Institutions may disclose the lowest price at which checks could be purchased and indicate that higher prices may apply for the initial order and when checks are reordered; they may give a range of prices; or they may state that prices vary. (See, for example, Sample Forms B-4 and B-5 in appendix B.) Furthermore, the Board has provided an exception in § 230.5(a)(2) from the requirement to send an advance notice of change in terms for check printing fees assessed by third parties.

Fees that may be charged to a consumer for services unrelated to the account are not required to be disclosed. This includes fees that would be assessed to nonaccount holders, even if the amount of the fees differs for account and nonaccount holders. Examples are fees to purchase cashier's or traveler's checks, fees to lease a safe deposit box, fees for handling bond coupon redemption, and wire transfer fees. Although the proposal had included wire transfer fees as a fee assessed in connection with an account, many commenters argued that the service is provided to nonaccount holders as well as account holders and should be considered unrelated to the account. The Board has determined that wire transfer fees are not assessed "in connection with an account." (Of course, as with other fees not required to be disclosed under this paragraph, wire transfer fees may be included with the required disclosures.) Finally, the following fees need not be disclosed: fees for photocopying a statement of interest earned for tax purposes (IRS Form 1099), fees for name changes on an account, fees for a midcycle periodic statement, and fees for wrapping loose coins.

The regulation does not mandate terminology for fees. Thus, different institutions may describe the same type of fee by different names. For example, a monthly fee imposed regardless of the consumer's balance or activity might be identified as a "monthly service" fee, a "monthly maintenance" fee, or simply "monthly" fee, or other term, as long as the term is used consistently throughout the institution's disclosures.

The regulation requires institutions to state the amount of the fee and the "conditions" under which the fee may be imposed. The Board believes that typically the name and description of the fee will satisfy this requirement. For example, if an institution charges a $5.00 monthly service fee, and describes it in that manner, no further information need be provided.

Under the rule stated in § 230.3(c), if fees required to be disclosed under this section are also required to be disclosed under Regulation E (12 CFR 205.7), compliance with the disclosure requirements of Regulation E will be deemed to be in compliance with this section. For example, under Regulation E an institution issuing access devices must disclose fees assessed for transactions at its own ATMs, but is not required to disclose charges assessed by another institution for the use of an ATM owned by the other institution. That will also suffice for this regulation.

However, this regulation covers situations that are not covered by Regulation E. A fee assessed for an electronic fund transfer that is not covered by Regulation E (for example, a transfer of funds between accounts held at an institution) must be disclosed under this section.

Paragraph (b)(5)—Transaction Limitations

The act requires institutions to disclose the terms and conditions and account restrictions applicable to accounts. Adopted as proposed, the regulation requires institutions to state any limitations on the number or dollar amount of deposits to, withdrawals from, or checks written on an account for any time period. If withdrawals or deposits are not permitted on a time account, that fact must be disclosed.

Commenters asked for clarification regarding the disclosure of limitations addressed by Regulation E. Regulation E requires disclosure of limitations on the frequency and amount of electronic fund transfers except where confidentiality is essential to maintain the security of the electronic fund transfer system. (See 12 CFR 205.7(a)(4).) Institutions may rely on Regulation E's disclosure rules regarding limitations on the frequency and amount of electronic fund transfers, including security-related exceptions in complying with this regulation. If, however, disclosures are required under this paragraph, such as if an institution limited the number of transfers from other accounts at the institution each month, the fact that Regulation E exempts "intra-institutional transfers" from its coverage would not relieve the institution from making the Regulation DD disclosure.

Paragraph (b)(6)—Features of Time Accounts

Paragraph (b)(6)(i)—Time requirements. The proposal (in paragraph (b)(2) of this section) required institutions to state any time requirement that must be met to obtain the annual percentage yield on a time account. Commenters requested clarification whether institutions may disclose either a date ("March 3, 1993") or a term ("six months" or "182 days"). The Board believes that the actual maturity date must be given to consumers who open new accounts to ensure consumers know the exact date the account matures. However, institutions may state a term (for example, "six months" or "182 days") rather than a specific date when providing disclosures in response to requests by consumers. (See paragraph (a)(2) of this section.) If the agreement provides that the time account may be redeemed at the institution's option (a "callable" certificate of deposit), the disclosure must state the date or the circumstances under which the institution may redeem the deposit. (See Model Clause B-1(h)(i) in appendix B.) Commenters also asked whether the maturity date stated on the time account certificate would satisfy this disclosure requirement. As stated earlier in connection with § 230.3(a), the Board believes that account disclosures—including those for time accounts—may consist of more than one document, so the certificate could be used. However, all documents containing the required disclosures must be provided to the consumer at the same time and must be in a form the consumer can retain. Thus, if a disclosure is made on a certificate of deposit that must be returned to the institution at maturity, the disclosure must also be provided to the consumer in a form the consumer may retain permanently.

Paragraph (b)(6)(ii)—Early withdrawal penalties. Section 264(c)(10) of the act requires institutions to disclose any requirement relating to the nonpayment of interest, including any early withdrawal penalty. The Board proposed (in § 230.4(b)(7)) to limit this requirement to time accounts, although the act does not explicitly do so, since an early withdrawal contemplates a maturity date, which exist only in time accounts. Commenters supported this limitation and the final regulation reflects this position. The act and regulation place no limitations on how early withdrawal penalties are calculated.

Commenters asked for clarification of whether existing rules and contract rights are affected. Rules relating to the imposition of early withdrawal penalties found in regulations such as the Board's Regulation D are not affected by this provision. This paragraph does not confer upon consumers a right to withdraw funds from a time account even if they are willing to accept the penalty described in their account disclosures. It does not impair an institution's right to refuse to permit a withdrawal prior to the maturity of a time account. For institutions that choose to permit withdrawals, this disclosure provision also does not regulate under what circumstances the institution may impose an early withdrawal penalty.

The regulation requires institutions to disclose the conditions under which an early withdrawal penalty will be assessed. Some commenters asked whether bonuses that may be "reclaimed" must be disclosed under this provision. The Board believes that institutions that offer bonuses for time accounts must disclose if the bonus may or will be reclaimed and the circumstances under which the reclamation will occur, since this is a type of early withdrawal penalty.

The language of the regulation differs from the proposal in three respects. In response to comments from institutions that impose early withdrawal penalties on a case-by-case basis, the regulation permits institutions to disclose the possibility—rather than the certainty—of such a penalty. Thus, institutions may state they "may" impose a penalty if that more accurately describes their agreement with the consumer. Also, the regulation clarifies that institutions must state how the penalty is calculated. For example, institutions may disclose a specific dollar amount or describe the penalty, such as "seven days' interest." (If accrued but uncredited interest is withheld as a part of, or in addition to, the early withdrawal penalty, this must also be disclosed.) Model Clause B-1(h)(ii) in appendix B provides examples of how early withdrawal penalties may be disclosed.

Also, many commenters were concerned that the proposal seemed to require institutions to calculate an interest rate and an annual percentage yield assuming that an early withdrawal penalty will be imposed during the term of the time account. The regulation does *not* require institutions to make such calculations, and the sentence has been deleted from the regulation. However, if a withdrawal of some funds triggers a change in the interest rate and annual percentage yield that is paid on funds remaining on deposit, or a change in the compounding or crediting frequency, those terms must be disclosed as an early withdrawal penalty.

Commenters requested guidance on the disclosure of penalties associated with withdrawals of funds from club accounts such as "holiday club" accounts that are time accounts. (See discussion in § 230.2(u).) If these accounts meet the definition of a time account, they must disclose any early withdrawal policy.

Paragraph (b)(6)(iii)—Withdrawal of interest prior to maturity. The proposal has been revised to add a disclosure to alert consumers to the effect of withdrawing accrued interest before additional interest begins to accrue on that account, since the annual percentage yield for time accounts generally is based on the assumption that interest remains in the account until maturity. Institutions commonly offer certificates of deposit that compound interest monthly (or quarterly) and may permit consumers to withdraw (or transfer) accrued interest periodically or to leave the interest in the account until maturity. For example, assume an institution offers the same interest rate with monthly compounding to two

consumers. Under the proposal, if one withdrew interest monthly and the other withdrew interest only at maturity, both would have received identical annual percentage yield information even though their actual earnings would differ. Some commenters recognized this problem and suggested the act's purposes would be better served if the Board revised its method of calculating annual percentage yields to require specific calculations based on the consumer's choice when the account is opened about whether to withdraw interest or leave it in the account until maturity. The Board believes, however, that such a rule requiring different annual percentage yields would significantly complicate the regulation, and possibly confuse consumers shopping for such accounts.

Upon further analysis, the Board believes the requirement adopted in the final regulation will better assist consumers. If, on a time account that compounds interest during the term, a consumer elects to withdraw accrued interest, the institution must disclose that the annual percentage yield assumes that interest remains on deposit until maturity and that a withdrawal reduces the earnings on the account. To ease compliance, this disclosure may be provided any time this option to withdraw interest is given, regardless of whether the consumer actually exercises the option or indicates any preference about withdrawals.

The Board believes it is appropriate to limit the statement to time accounts, where consumers may have a greater expectation about the effect of compounding on amounts deposited. In the unusual event an institution requires such interest withdrawals, the disclosure would not be required since the annual percentage yield would reflect the effect of the interest withdrawals. This disclosure is not required when interest may only be withdrawn on a time account due to rare circumstances, such as due to the death or incapacity of an account holder.

Paragraph (b)(6)(iv)—Renewal policies. The act requires institutions to disclose the "terms and conditions" applicable to accounts generally, but does not expressly mandate disclosure of an institution's policies about renewal of time accounts. Section 264(d) of the act, however, recognizes that the Board may wish to require information to be given regarding renewal policies for time accounts. Thus, the proposal required institutions to include a statement of whether or not the time account will automatically renew at maturity and, if the account will not automatically renew, to state whether interest will be paid on funds not withdrawn from the institution.

The Board believes it is important for consumers to be informed whether a time account will automatically renew, since time accounts limit the consumer's access to his or her funds in a way other accounts do not. The Board also believes it is important for consumers to know that the consumer must contact the institution at a later time to renew an account and whether interest will be paid on funds after maturity if the consumer does not renew the account, in the case of "non-rollover" time accounts. Thus, the regulation requires both of these disclosures. For example, an institution might disclose for a non-rollover time account that "this account will not automatically renew at maturity and the funds will be placed in a noninterest-bearing account." If funds are placed in an interest-bearing account, this disclosure does not require institutions to state the rate that may be paid. However, if interest is paid for only a limited period of time, the time period must be disclosed. (See Model Clause B-1(h)(iv)(2) in appendix B.)

Additionally, the Board solicited comment on whether institutions should be required to disclose whether an automatically renewable account has a "grace period" and the length of such a period. (See § 230.2(m), defining grace period as a period following the maturity of an automatically renewing time account during which the consumer may withdraw funds without being assessed a penalty.) Most commenters supported a disclosure of grace periods as important information for consumers.

Thus, the regulation requires institutions to inform consumers with automatically renewable time accounts whether or not a grace period exists and the length of such a period. For example, an institution might disclose, "you may withdraw the deposited funds without penalty for 10 calendar days after the maturity date of this account." This disclosure does not require institutions to state whether or not interest will be paid for the grace period if the funds are withdrawn. (Rules found in the Board's Regulation Q and other federal financial regulatory agencies' regulations relating to the payment of interest following maturity of a time account are not affected by this regulation. See 12 CFR 217.3, footnote 1, permitting institutions to pay interest for up to 10 days after maturity of a "time deposit," as that term is defined in Regulation Q, if the deposit is not renewed.)

Paragraph (b)(7)—Bonuses

The final regulation adds a new disclosure requirement relating to bonuses. (See § 230.2(f) for the definition of "bonus.") The Board believes that the language in section 262(a) of the act regarding disclosures about the terms and conditions of accounts encompasses bonuses, and that the act's purposes are furthered when consumers receive essential information about bonuses offered on an account. Thus, the regulation requires that institutions offering bonuses state the amount and type of bonus, and disclose any minimum balance or time requirement to obtain the bonus and when the bonus will be provided. If the minimum balance or time requirement is otherwise required to be disclosed, institutions need not duplicate the disclosure for purposes of this paragraph. The Board believes the additional disclosure will provide consumers with important information without significantly increasing compliance burdens.

Paragraph (c)—Notice to Existing Account Holders

Paragraph (c)(1)—Notice of availability of disclosures. Section 266(e) of the act requires institutions to include a notice on or with any regularly scheduled periodic statement sent to existing account holders "within" 180 days of issuance of the regulation. Account holders who receive periodic statements must receive the notice. Institutions are not required to provide any notice to account holders who do not receive periodic statements. (This parallels the approach taken in § 230.6, in that *if* an institution sends a periodic statement on an account, the disclosure requirements of § 230.6 are triggered.)

The act requires that the notice state both that the account holder has a right to request disclosures and that the consumer may wish to make such a request. In the proposal, and in the final regulation, the Board simply requires a statement that the account holder may wish to request the disclosures. The Board believes this adequately alerts consumers to the availability of disclosures for their account. However, some commenters were concerned that consumers might misinterpret the notice as implying that account terms had changed. Institutions may include additional information with the notice to alleviate any such concerns, or to indicate (if applicable) that the consumer has already received similar disclosures as required by state law. The notice must, however, make clear

that the consumer may request a copy of the disclosures. The notice required by this paragraph need only be provided once.

Comments received on the proposal requested guidance on: (1) The identification of consumer accounts from the existing records of the institution, (2) the need to create disclosures for accounts no longer offered to the public; and (3) the timing and format of the notice.

Existing consumer accounts. The proposal required that notice be provided to existing account holders. All individual consumer accounts are covered by this provision. However, as discussed earlier in § 230.2(a), accounts held by an unincorporated nonbusiness association of natural persons prior to March 21, 1993, are not covered by the regulation unless the association notifies the institution that it fits the "consumer" definition. If the institution is so notified, the institution must implement the requirements of the regulation (for example, beginning to accrue interest no later than required by § 230.7(c)) within a reasonable time after the notice is received. If an institution is notified before the mandatory compliance date, institutions are not required to send the notice required by this paragraph, but must treat the account as a consumer account within a reasonable time after the notification.

Currently offered accounts. The final rule requires that institutions provide disclosures only for accounts that are currently available as of March 21, 1993. (See discussion of paragraph (a)(2) of this section.) Commenters noted that many institutions continue to carry accounts that are no longer offered to the general public. For example, if an institution acquires accounts during an acquisition, it may maintain the accounts as a courtesy to customers of the acquired institution, even though the account type will not be offered thereafter. The Board does not believe it was the intent of the Congress to require tailored disclosures for each and every existing account, regardless of whether the account is still offered to customers. The Board recognizes the significant cost burden associated with designing separate disclosures for existing accounts that are no longer offered, and the limited use of such disclosures in the future (as consumers would not be able to open such an account). The Board also believes if disclosures for such accounts were required, institutions might simply change the terms of existing accounts to conform them to accounts currently offered. Thus, the regulation limits the duty to provide the notice (and disclosures) to accounts available to the public as of the mandatory compliance date of the regulation.

Timing and format requirements. In the proposal, the Board noted that if the statutory requirements were interpreted literally, institutions would have to include a notice to existing account holders prior to the mandatory compliance date of the regulation. The Board solicited comment on whether it would be preferable for all compliance duties to begin six months after the Board has adopted final regulations (when compliance becomes mandatory). Virtually all of the commenters supported a single timing rule for initiating compliance with the regulation, noting the difficulty of providing a notice and having disclosures ready prior to the mandatory compliance date of the regulation. Institutions commented on the act's relatively short time frame to implement operational changes based on the new regulatory requirements (for example, balance calculation methods), and expressed concern that the changes may not be in place until the mandatory compliance date. The final rule reflects the fact that compliance is not required until six months after the Board adopts final regulations.

Many commenters sought guidance on which periodic statement must include the notice. The final regulation clarifies that the notice required by this section may accompany either the first periodic statement sent after the mandatory compliance date or the periodic statement for the first cycle beginning after that date. The rule applies regardless of the interval between periodic statements. For example, assume an institution's statement cycle begins March 15, 1993, ends April 14, and the statement is sent April 15; the next statement cycle begins April 15, and ends May 14, and the statement is sent May 15. The institution may provide the notice on either the April 15 statement, since it is the first one mailed after the mandatory compliance date, or the May 15 statement, since it covers the first cycle beginning after the mandatory compliance date.

A number of commenters expressed interest in providing the notice before the mandatory compliance date. As a general matter, institutions may begin complying with the regulation any time after its adoption and before the mandatory compliance date. Therefore, institutions may provide the notice on a periodic statement before March 21, 1993, but only if the institution is prepared to provide account disclosures upon request as of the date the notice is sent. This will ensure that the Congressional intent regarding availability of disclosures for existing customers is met. If the institution does comply before the mandatory compliance date, it must establish procedures to ensure that consumers opening new accounts before that date, but after the notice is provided to existing customers, receive account disclosures.

The final rule tracks the statutory language by requiring that the notice be included "on or with" the periodic statement. The notice can be on an insert included with the statement, but it cannot be sent out as a separate mailing. The notice must state that consumers may request account disclosures containing terms, fees, and rate information for their account, or words of similar meaning.

If the institution provides the notice of availability to existing account holders and the consumer requests disclosures, the act does not prescribe how institutions must respond. The proposal stated that if the institution received a request, it would have to provide the account disclosures described in § 230.4, including the current interest rate and annual percentage yield for the consumer's account. The Board recognizes that it may be difficult to distinguish a request for disclosures by an existing account holder from a request by a potential customer. Thus, the final regulation allows institutions to treat an existing account holder's request under this paragraph as it would treat any consumer's request for disclosures under paragraph (a)(2) of this section.

Institutions may, but are not required to, provide a phone number or address for existing consumers to use to make the request for disclosures. If, however, the request is received in a manner other than the notice directed, the institution is still required to provide the disclosures as specified in paragraph (a)(2) of this section. The Board believes that this uniform approach to requests for disclosures will ease compliance for institutions and assure consumers of convenient access to information about their accounts whether they are existing or potential customers.

Paragraph (c)(2)—Alternative to notice. As an alternative to providing the notice of availability, the final rule permits institutions to send the account disclosures themselves, either with the periodic statement or in a separate mailing. While the proposal required the disclosures to be provided with a periodic statement, many commenters

noted operational difficulties in including a full set of account disclosures with the statement mailing. Therefore, a revision has been made to allow a separate mailing. If disclosures are provided separately from the periodic statement, however, they must be sent out no later than when the notice of availability is required to be sent after the mandatory compliance date. Further, institutions that send multiple account disclosures in lieu of sending the notice of availability need not identify which account the consumer holds, and may send account disclosures that comply with paragraph (a)(2) of this section. The Board believes this rule will ease compliance for those institutions that go beyond the strict requirements of the regulation to provide consumers with the actual disclosures about their accounts.

Section 230.5—Subsequent Disclosures

The heading for § 230.5 has been revised from the proposal. As discussed below, the Board believes that combining rules relating to disclosures required subsequent to the account opening will aid compliance. Thus, the heading is changed to identify more accurately the section's content.

Paragraph (a)—Change in Terms

The proposal contained the requirements for, and the exceptions from, the advance notice of change in terms in a single paragraph. For ease of compliance, the final regulation separately discusses when notices are and are not required.

Paragraph (a)(1)—Advance notice required. Section 266(c) of the act requires institutions to send a 30-day advance notice to the consumer of any change in the items required to be disclosed in the account disclosures if the change might reduce the annual percentage yield or adversely affect the consumer. The proposal required a written notice describing the change and its effective date to be sent 30 days before the effective date of the change. The final regulation follows the act and proposal, but establishes certain exceptions to the advance notice requirement, as discussed below.

The notice provision governs changes in terms in accounts existing when compliance with the regulation becomes mandatory, not solely accounts opened after that date. The regulation does not, however, require a 30-day advance notice for a change in terms if this would require an institution to send a notice prior to the mandatory compliance date. For example, an institution is not required to send an advance notice for a change that becomes effective March 31, 1993, since that is less than 30 days after the mandatory compliance date.

Content. The notice requirement applies only to items of the type required to be included with the account disclosures. For example, if an institution increases the minimum balance required to earn interest or to avoid imposition of a fee or increases the fee it charges for stop payment orders, an advance notice must be provided. Similarly, if the interest rate on a fixed-rate account decreases, the institution must send a notice in advance of the scheduled rate change. (An advance notice of an increase in the interest rate is not required by the regulation.) Increases in an institution's charge for services not related to an account, such as for purchasing traveler's checks, does not trigger the notice requirement, since it is not required to be disclosed under § 230.4(b). If a single document containing disclosures for two types of accounts was initially provided, and the institution later changes a term relevant to only one of the accounts, the change in terms notice need only be given to consumers holding that type of account, and not to the holders of the second type of account.

Commenters requested guidance on several issues relating to the notice requirement. Regarding the format for the disclosure, the general rules in § 230.3(a) apply. Institutions may include the change in terms disclosure on a regular periodic statement or in a special mailing, and may combine information concerning the changed term with other information on the same or separate pages. Institutions that wish to provide an entire updated account disclosure may do so as long as the changes are specifically brought to the consumer's attention. For example, institutions may state that "X" fee has been changed (including, of course, the amount of the new fee), or use an accompanying letter that alerts the customer to the new fee, or highlight the changed term in some way. To ensure that consumers understand when the change may affect their accounts, institutions must disclose the effective date, for example, "as of July 15, 1993." Words similar to "in 30 days" cannot be used unless the notice clearly indicates the starting date.

A change in terms notice is not triggered if changes are specifically identified in the account disclosures given initially. For example, if a NOW account disclosure states that the monthly service fee of $5.00 is waived for employee account holders during their employment, but will be assessed if the account holder is no longer employed at the institution, no advance notice is required to begin assessing the monthly service account fee when the consumer leaves the employment of the institution. Similarly, if an account is opened after an institution has sent a change in terms notice to its existing account holders but prior to the effective date of the change, the institution is in compliance if the change in terms notice is provided to the new customers along with the account disclosures before the account is opened.

If a change will apply during the subsequent term of a renewing rollover time account, it is not a "change in terms" requiring a notice under this paragraph. (See paragraph (b) of this section, below, for disclosure requirements for maturing time accounts.) For time deposits longer than one month, however, if terms change during the term of a time account, the 30-day notice would have to be provided.

Pursuant to § 230.3(c), if the term requiring a notice to be sent is a term that triggers a change in terms notice under Regulation E, compliance with the disclosure and timing requirements of Regulation E will satisfy the requirements of this section. (See 12 CFR 205.8, which requires change in terms notices to be sent at least 21 days before the scheduled change.)

Paragraph (a)(2)—No notice required—Paragraph (a)(2)(i)—Variable-rate changes. The Board solicited comment on whether an exception to the change in terms notice requirements should be made for rate changes that occur in variable-rate accounts. Sections 265 and 269(a)(3) of the act authorize the Board to make exceptions to the act's requirements for variable-rate accounts, and the Committee report accompanying H.R. 2654 of the House Committee on Banking, Finance and Urban Affairs, September 12, 1991, indicates the change in terms requirement was not intended to apply to changes in the interest rate (and corresponding changes in the annual percentage yield) for variable-rate accounts. (See discussion of this issue in connection with § 230.2(v), above.) In the proposal, the Board expressed concerns about the possibly burdensome nature of an advance notice requirement for variable-rate accounts, and solicited comment on the advantages and disadvantages of creating an exception to the rule for such accounts.

The Board received many responses to its request for comment and virtually all of them supported the proposed

exception. Many commenters echoed concerns raised by the Board in the proposal. Commenters stated that an advance notice requirement for changes to the interest rate in variable-rate accounts would be very burdensome to administer. They suggested that if institutions were required to send advance notices for rate changes in a declining rate environment, many institutions would lower the rate more than they otherwise might to avoid the cost of sending frequent notices. Thus, lower rates would be paid to consumers than would otherwise be the case. Others stated that such a restraint on an institution's ability to make timely adjustments to its balance sheet raised safety and soundness concerns. Commenters also contended that the regulation's disclosure requirements (see § 230.4(b)(1)(ii)) alert consumers to the potential for rate changes and their possible frequency. And for those accounts for which periodic statements are sent (such as NOW or money market accounts), information about the annual percentage yield earned that is required under § 230.6(a)(1) will reflect rate changes that have occurred.

Thus, the Board is relying on its exception authority in section 265(2) of the act to further the purposes of the act. For the reasons expressed in the proposal and discussed above, the Board finds it necessary to exempt rate changes for variable-rate accounts from the advance notice requirements of the regulation.

In the proposal the Board expressed its concern that for variable-rate accounts where periodic statements are not sent—such as passbook savings accounts—considerable time may pass before consumers learn about rate changes on their accounts. The Board solicited comment on whether institutions should be required to send a notice after the rate is decreased on a variable-rate account if periodic statements are not furnished.

Comments were divided, with some supporting and others opposing after-the-fact notices. Those who favored a notice argued that a decrease in rates is important information for consumers, and that institutions should be required to provide the information to consumers within a reasonable period after the change occurs. Those who opposed it were apprehensive about the costs and burdens involved, and suggested that institutions would pay lower rates to mitigate such costs. They also pointed out that consumers were on notice of the possibility of rate decreases and could always contact the institution for current rates.

Based on comments received and upon further analysis, the regulation does *not* require institutions to provide an after-the-fact notice of a decrease in rates for variable-rate accounts for which no periodic statements are sent. The Board believes that account disclosure adequately alert consumers to potential rate changes and that they have easy access to current rate information. Also, the Board recognizes that the cost of sending notices may cause institutions to delay or not implement rate increases in a volatile rate environment that otherwise might be passed on to consumers.

Paragraphs (a)(2)(ii)—Check printing fees. The Board is creating a limited exception to the change in terms notice requirements for one type of fee involved in accounts but assessed by third parties. The Board received many comments regarding its proposal that check printing fees be included in the account disclosures, which would cause later changes in those fees to trigger the notice requirements of this section. Commenters objected to the proposal, stating that institutions could not assure compliance with the change in terms notice provision because vendors control when price changes become effective and consumers control when the fee is imposed (that is, when the checks are ordered). In light of these problems the Board believes that, pursuant to section 269(a)(3) of the act, an exception to the advance notice requirement is necessary for fees assessed by third parties for printing checks. The exception is narrowly drawn and is created to facilitate compliance with the act. Unlike other fees strictly within the control of institutions, the amount of check printing fees is in the control of vendors, who determine the effective date of price changes, and consumers, who decide whether or not to purchase checks from the vendor associated with the institution and, if so, what style of checks will be chosen and when the checks will be ordered.

Paragraph (a)(2)(iii)—Short-term time accounts. The Board is creating an exception to the advance notice requirement for changes in terms for short-term time accounts, defined as those with maturities of one month (a period up to 31 days) or less. As discussed in paragraph (c) of this section, the Board is creating an exception to the advance notice requirements for rollover time accounts with maturities of one month or less. The Board finds a similar exception to be appropriate for the advance notice requirement for changes that occur after an account is opened and prior to the next scheduled maturity date for both rollover and nonrollover time accounts with maturities of one month or less. Requiring institutions to send a 30-day advance change in terms notice for such time accounts is impossible. It would be burdensome for institutions without providing meaningful benefits to consumers holding the time accounts. (As discussed in paragraph (c) of this section, however, institutions are required to send after maturity a disclosure of any difference in the terms of the new account as compared to the terms for the existing account.)

Paragraph (b)—Notice Before Maturity for Time Accounts Longer Than One Month That Renew Automatically

Disclosure requirements for time accounts that automatically renew without the consumer's request (for example, "rollover" certificates of deposit) were outlined in § 230.4(a)(3) of the proposal. For ease of compliance, all rules governing disclosures of pending maturities and other terms for such time accounts are contained in paragraphs (b) and (c) of this section.

For existing rollover time accounts that mature after the mandatory compliance date, institutions must start providing notices after that date, but need not send notices prior to that time. For example, if a rollover certificate of deposit opened in 1992 matures five days after the mandatory compliance date, an institution is not required to send a notice since this would require an institution to send a notice prior to the mandatory compliance date of the regulation. However, an advance notice would be required if the same account matured on April 21, 1993, a date more than 30 days after the mandatory compliance date.

The act requires account disclosures to be provided to consumers at least 30 days prior to the maturity of a time account that is renewable without notice from the consumer. The proposal required institutions to mail or deliver the account disclosures described in § 230.4(b) to such consumers at least 30 days and not more than 60 days prior to maturity. The proposal provided an exception from the advance notice requirement for rollover time accounts with maturities of three months or less (though it required disclosures to be sent after renewal in such cases). The Board requested comment on an exception from the statutory requirements based on a tiered approach: disclosures would be sent 30 days prior to maturity for time accounts with maturities over six months, 15 days for time accounts with

maturities between one and six months, and no advance disclosures for time accounts with maturities less than one month. The Board also asked for comment on an alternative approach to disclosing rate information since rates typically are not known at the time the act requires disclosures to be made.

Most comments received by the Board on the proposed regulation discussed the implementation of the statutory requirement to provide disclosures for automatically renewable time accounts in advance of maturity and expressed considerable concern about the proposed rule. In particular, comments focused on (1) an exemption for short-term time accounts, (2) an alternative timing rule that allows institutions to provide the information closer to the scheduled maturity date, and (3) the content of disclosures, and how to disclose the annual percentage yield and interest rate if these rates are not known when the account disclosures are sent.

With regard to short-term accounts, commenters said it was impossible to send notices 30 days in advance of the first renewal of time accounts with maturities under 30 days. Further, they argued that the burden to institutions of complying exceeded whatever benefit consumers might receive from a notice received after the terms had become obsolete. Others remarked that consumers who hold such time accounts are often sophisticated investors who would find frequent reminders unnecessary.

Several hundreds of commenters urged the Board to shorten the timing of the advance notice for all time accounts. Based on their institutions' experiences, commenters stated that a lead time of 30 days was too long for an effective notice of maturity, and reported that consumers preferred to receive reminders closer to maturity so they would be less likely to forget when the time account automatically renewed.

Commenters also questioned whether consumers benefited from receiving all of the disclosures prior to maturity even if none of the terms (other than rates) had changed. Commenters expressed concern about the cost and value to consumers of sending all the disclosures, especially for short-term time accounts.

The Board finds that creating three exceptions to the statutory requirement to provide account disclosures for automatically renewable time accounts 30 days in advance of maturity is necessary to facilitate compliance, benefit consumers and carry out the purposes of the act. The final rule provides that: (1) Disclosures may be given closer to maturity rather than a full 30 days in advance as long as at least a five-day grace period is provided; (2) maturity notices for time accounts with maturities of one year or less need not provide all the information contained in an account disclosure, but only the key information and any changed terms; and (3) no advance notice is required for time accounts with maturities of one month or less. The rule adopted by the Board differs from the proposal. It addresses many of the concerns voiced in the comments and provides flexibility to institutions in designing their prematurity notices. For automatically renewable time accounts with maturities of more than one year, institutions must provide full account disclosures as the act requires. If the scheduled maturity date is one year or less but more than one month, institutions must provide key information and any terms (other than rates) that may be different on the renewing account compared to those on the existing account. If the maturity date is one month or less (a period up to 31 days), advance disclosures are impracticable to deliver, but institutions must provide a notice of any changed terms (other than rates) applicable to a renewed account within a reasonable time after renewal.

Alternative timing rule. Many commenters urged the Board to create an alternative timing rule to the act's 30-day advance notice requirement that would allow institutions to provide advance disclosures closer in time to the maturity date. Most commenters believed their existing practice of sending notices 10 to 15 days in advance of the scheduled maturity date was more beneficial to consumers than the proposed 30-day advance notice. A number of institutions reported having changed their practices from 30 days to a shorter time period in response to consumer preferences. They suggested that notices sent far in advance of maturity are ineffective as reminders and do not change consumers' tendency to begin comparison shopping much closer to the actual maturity date (or during the grace period where one is given) when the renewal rate is known. The Board agrees. Thus, the regulation provides a timing rule for advance disclosures as an alternative to the 30-day rule—one that involves a consumer advantage.

The alternative rule provides a "sliding scale" of 20 calendar days advance notice, provided at least a five calendar day grace period is given. If an institution provides a grace period of at least five days on rollover time accounts, the regulation permits institutions to provide the required disclosures 20 days before the end of the grace period. Thus, if a five-day grace period were offered, an institution must send the required disclosures at least 15 days before the maturity date. If an institution offers a 10-day grace period, the advance disclosures must be sent at least 10 days before the scheduled maturity date. (Of course, the institution could send the notice more than 10 days in advance of maturity.)

This alternative provides institutions with great flexibility in sending notices closer to maturity. Also, the rule may encourage institutions who do not offer grace periods to do so. Most important, the alternative timing rule benefits consumers, who will be able to contact the institution within the grace period and learn the actual annual percentage yield and interest rate being offered on the renewing time account before they are committed to the renewal. The alternative may be used by institutions that provide a grace period of at least five days. Institutions that do not wish to offer grace periods of at least five days must provide the 30-calendar-day advance notice.

The Board believes this alternative benefits consumers by providing them with notices that will be effective reminders of the upcoming maturity of their time accounts and useful tools for comparison shopping at a time when competing rates and yields are more likely to be known. Commenters frequently reported that they offered grace periods of 7 to 10 days following maturity and gave advance notices of 7 to 15 days before maturity. Thus, the alternative rule also provides great flexibility to many depository institutions to maintain their existing advance notice and grace period schedules. For example, institutions that currently provide notices 14 days in advance of maturity and offer a 10-day grace period could avail themselves of the alternative timing rule, without changing their practice.

Paragraph (b)(1)—Maturities of longer than one year. If an automatically renewable time account has a maturity longer than one year (more than 365 days, or more than 366 days in a leap year), the regulation tracks the statutory requirement that institutions provide consumers with all applicable account disclosures required for new accounts (see § 230.4(a)(1)), and adds a disclosure of the date the existing account matures. The Board believes consumers need to be informed of the exact date the account matures to make timely decisions about the account. Although the proposal required full account disclosures to be given to all consumers with rollover time accounts with

maturities of more than three months, many commenters urged that a cut-off of one year was more appropriate and that is used in the final regulation.

The regulation addresses the problem presented when advance disclosures are required to be sent before the interest rate and the annual percentage yield for the renewed time account are known. The Board does not believe the act requires institutions to "lock in" or guarantee the rates for an account at the time of the advance notice. In its proposal, the Board raised concerns about a consumer's ability to comparison shop effectively and the confusion that might result if consumers were given the annual percentage yield and interest rate that were in effect at the time the notice was sent, but which would not necessarily apply at maturity. Commenters shared the Board's concerns, and supported the proposal of an alternative disclosure concerning rate information. The regulation requires those institutions to state that the interest rate and the annual percentage yield for the account have not yet been determined, the date when they will be determined, and a telephone number the consumer can call to obtain the interest rate and the annual percentage yield that will be paid if the account renews. The Board believes consumers are better served by receiving the actual annual percentage yield that will apply to the renewed time account, even if they must contact the institution to do so. Furthermore, if institutions were required to provide rates as of the date of the notice, consumers would have to call the institution to determine the actual annual percentage yield at the time of renewal anyway. Therefore, the alternative of including the most recent annual percentage yield appears to be of little benefit to consumers.

Paragraph (b)(2)—Maturities of one year or less but longer than one month. Many commenters agreed that, other than for automatically renewable time accounts with very short maturities, advance notices provided consumers with a useful reminder about the upcoming maturity. However, many questioned the value of repeating full account disclosures in advance, given that the key terms of the account—the annual percentage yield and the interest rate—were likely to be unknown at the time the disclosures were given. Similarly, commenters were skeptical about the value of providing terms that remain unchanged, such as the balance computation method, and pointed out that terms of time accounts seldom change except for the rate. They argued that too much information may not be helpful to consumers, and urged the Board to consider alternative disclosures for automatically renewable time accounts with maturities that were not very long.

The regulation therefore provides an alternative to institutions offering rollover time accounts bearing maturities of one year (365 days, or 366 days in a leap year) or less but longer than one month (31 days). Institutions may give full account disclosures for these time accounts as they do for automatically renewable time accounts of longer than one year. For example, if they found it simpler to have a single procedure, institutions could provide all account disclosures plus the existing account's maturity date for all their time accounts with maturities greater than one month.

Alternatively, institutions may provide an abbreviated notice for these intermediate-length time accounts that tells the consumer the date the existing account matures and the maturity date if the account is renewed, the interest rate and the annual percentage yield if they are known (or, if they are not known, the fact that they have not yet been determined, the date when they will be determined, and a telephone number the consumer can call to obtain that information), and any change to the terms required to be disclosed under § 230.4(b) when the account was opened. (Of course, if a change occurred that would apply to the time account prior to its scheduled maturity, the change in terms rules in paragraph (a) of this section would apply.)

Thus, institutions have great flexibility in providing disclosures for rollover time accounts with maturities of longer than one month and up to one year. And, whether full or abbreviated disclosures are provided, the information may be sent either 30 calendar days before maturity, or 20 calendar days before the end of a grace period (of at least five days). Thus, if an institution wishes to offer a five-day grace period on some automatically renewable time accounts and a 10-day grace period on others, this rule permits the institution to send all notices 15 days prior to maturity, or to establish separate mailing schedules for each category.

Paragraph (c)—Notice for Time Accounts One Month or Less That Renew Automatically

The legislative history of the act recognizes that the Board may wish to establish special rules for short-term accounts. (See the Committee Report accompanying H.R. 2654, of the House Committee on Banking, Finance and Urban Affairs, September 12, 1991.) The Board finds that for automatically renewable time accounts bearing maturities of one month or less, the purposes of the legislation are not served by requiring advance disclosures to be provided for renewing accounts. In the case of very short-term time accounts such as seven-day certificates of deposit, any advance timing requirement in excess of seven days is impossible. Also, the Board is concerned that the cost of sending notices for short-term rollover time accounts might discourage institutions from continuing to offer such accounts and this could eliminate a useful investment vehicle for consumers. Finally, the Board is not persuaded that consumers benefit by constantly receiving account disclosures, particularly of terms that have not changed. Thus, the regulation does not require institutions to provide advance disclosures relating to the renewal of automatically renewable time accounts bearing maturities of one month (31 days) or less.

As proposed, institutions were required to provide full disclosures at or after maturity of short-term time accounts—no later than 10 business days after such accounts were renewed. Commenters opposed the proposal for a variety of reasons. They argued that disclosures sent after maturity do not serve as a reminder of the pending maturity nor do they aid comparison shopping since consumers likely would not receive the rates applicable to the account until after the account was renewed. Further, commenters suggested that, for automatically renewable time accounts with very short maturities such as seven days or 30 days, the delivery and receipt of 52—or even a dozen—account disclosures each year were burdensome to institutions and not useful to consumers. Many commenters suggested that an exception be created from any renewal notice requirements for automatically renewable time accounts with very short maturities. The Board agrees that full disclosures may not be necessary for these short-term accounts. However, the Board believes that consumers should be notified if terms other than rates have changed since the last renewal. If this were not required, an institution could change a feature such as compounding frequency or the length of a grace period and the consumer might never receive notice.

The final regulation therefore requires institutions to provide limited information to consumers with rollover time accounts with maturities of one month (31 days) or less. Institutions are not required to send notices in advance

of maturity. However, if a term disclosed when the account was opened (other than the interest rate and annual percentage yield) changes at renewal, institutions must send a brief notice describing the change within a reasonable time after the renewal of the new account. While this notice may rarely be sent for short-term time accounts since non-rate terms seldom change, the Board believes the provision reflects Congressional intent to provide consumers with key information while accommodating the operational concerns expressed by commenters.

Paragraph (d)—Notice Before Maturity for Time Accounts Longer Than One Year That Do Not Renew Automatically

The act requires that account disclosures be provided to consumers prior to the maturity of an automatically renewable time account, but does not address whether any notice or disclosures should be provided to consumers prior to the maturity of a time account that renews only upon the consumer's request. The proposal required that consumers holding such accounts with maturities of longer than three months receive a brief advance notice that identifies the maturity date of the time account and explains what happens to the funds after maturity if the consumer chooses not to renew the account. Consumers holding nonrenewable time accounts with maturities of three months or less would not have received advance notices under the proposal. (If they chose to reinvest the funds in another time account, however, they would receive a complete set of disclosures for a new account.) The Board solicited comment on three issues:

(1) Should an advance notice be required for any nonrollover time account:

(2) If so, should there be an exception for short-term time accounts; and

(3) If so, what is the appropriate cut-off?

The Board believes it is important for consumers with time accounts with long maturities to receive a notice of pending maturity, especially since a periodic statement or other reminder may not be provided. This view was supported by many commenters, although some objected to the proposed notice. Most commenters urged that any notice requirements for nonrollover time accounts be consistent with the notice requirements for automatically renewable time accounts so that a single procedure could be adopted for both categories of accounts. Thus, the rules adopted are based on the rules governing automatically renewable time accounts.

The regulation requires that for nonrollover time accounts with maturities of longer than one year (more than 365 days, or more than 366 in a leap year), institutions must provide a notice that states the maturity date of the time account and whether interest will be paid on the funds after maturity. The notice must be mailed at least 10 calendar days before maturity. The timing rule thus will accommodate whatever notice procedures an institution adopts for rollover time accounts. An institution, for example, that has a 10-day grace period for its rollover time accounts and sends advance disclosures 10 days before maturity can provide the notice for nonrollover time accounts using the same period. Of course, if the institution sends advance disclosures a full 30 days before a rollover time account matures, it may also send this notice 30 days in advance of maturity for nonrollover time accounts.

The proposed regulation did not require any advance notice for nonautomatically renewable time accounts bearing maturities of three months or less. In response to comments received and upon further analysis, the Board has increased the cut-off to maturities of one year or less. First, the notice is not mandated by the act. Second, consumers are informed at the time the account is opened when it matures and whether interest will be paid on their funds after maturity, and can be expected to remember this information for short- and intermediate-term time accounts. Third, the risk to the consumer who may forget a scheduled maturity date is not as great as it is for rollover time accounts; funds from a matured nonrollover time account will not be locked in for another term if the consumer does not act promptly after maturity. Finally, many commenters argued that an exemption for shorter-term accounts was desirable, but that three months was too short a time period. Thus, the regulation does not require any advance notice for nonautomatically renewable time accounts bearing maturities of one year or less. If consumers chose to reinvest the funds in another time account, however, they would receive a complete set of disclosures for the new account under the normal timing rules. (See discussion of § 230.4(a)(1).)

Institutions with existing nonrollover time accounts with maturities of longer than one year that mature after the mandatory compliance date must start providing notices after that date, but need not send notices prior to that time. (This rule parallels the transition rules for rollover time accounts.) For example, if an 18-month nonrollover certificate of deposit matures five days after the mandatory compliance date, an institution is not required to send a notice since this would require an institution to send a notice prior to the mandatory compliance date of the regulation. To ease compliance for institutions that wish to use a uniform timing rule of 30 days advance notice for maturing time accounts, the transition rule for nonrollover time account parallels the transition rule for rollover time accounts with maturities of more than one year. Thus, institutions need not send notices under this paragraph for accounts that mature before April 21, 1993. Nonrollover time accounts that mature after April 21, 1993, must receive notice at least 10 days in advance of the scheduled maturity date.

Section 230.6—Periodic Statement Disclosures

Paragraph (a)—General Rule

Section 268 of the act requires depository institutions to include specific information on or with each periodic statement provided to consumers. The act does not require periodic statements to be sent by an institution, but requires that *if* an institution sends a periodic statement certain information must be included. (See the definition of "periodic statement" in § 230.2(q) above.)

This requirement applies to periodic statements for existing consumer accounts as of the mandatory compliance date of the regulation, as well as to those for new accounts opened on or after that date. The disclosures required by this section must appear on either the first periodic statement sent on or after March 21, 1993, or the periodic statement sent for the first cycle that begins on or after that date. (See discussion under § 230.4(c).) This reflects the Board's recognition that some institutions may need to alter current practices to comply with requirements of the regulation (changing balance calculation methods, for example, from low balance to either daily balance or average daily balance) and such changes may not be in place until the mandatory compliance date of the regulation.

The disclosures in this section need be furnished only to the extent applicable; for example, a periodic statement for a noninterest-bearing account need not include either an interest figure or an annual percentage yield earned figure. Nor is an annual

percentage yield earned required to be disclosed on the periodic statement for an interest-bearing account when no interest is earned during the cycle.

This section has been revised from the proposal. A new paragraph (b) has been added to address how disclosures should be made on periodic statements where institutions use the average daily balance method and calculate interest on a period other than the statement period (for example, if a statement cycle is from the 16th of September to the 15th of October, but interest is calculated on a calendar month basis).

Paragraph (a)(1)—Annual percentage yield earned. The act requires that the annual percentage yield earned be included on the periodic statement. The annual percentage yield for advertising and opening account disclosures is calculated as an annualized rate that reflects the frequency of compounding. In the proposal, the Board presented and solicited comments on several options to determine what would be the most appropriate way of calculating the annual percentage yield for the periodic statement. Based on comments received and further analysis, the final rule requires that the annual percentage yield earned reflect the relation between the actual interest accrued during the statement period and the average daily balance for the same period.

The annual percentage yield earned incorporates all rate changes that occurred during the period. It also produces a single composite figure for tiered-rate accounts, demonstrating the effect of the institution's tiering method on total earnings. Thus, institutions that pay a lower interest rate on deposits up to a certain level and a higher rate only on amounts above the cut-off figure would show a lower annual percentage yield earned for a given balance above the cut-off than would institutions that pay the same higher rate for the entire balance in the account. (See appendix A's description of the two methods of tiering.) The annual percentage yield earned will not reflect any fees imposed or bonuses earned.

Some commenters favored other options discussed in the proposal. For example, several commenters supported use of a calculation method that would utilize the same general annual percentage yield calculation for the periodic statement as is used for advertising and initial disclosures (the third option described in the proposal). Commenters noted that this figure allowed consumers to compare the rate applied to the balance for the period with currently advertised rates. In addition, some commenters were concerned that consumers would be confused if annual percentage yields were calculated using different methods for periodic statements and for advertisements and account disclosures.

A small number of commenters favored requiring an annual percentage yield earned to represent a net earnings figure including the total interest paid during the period, adding cash bonuses paid, subtracting all fees imposed during the period and dividing the difference by the average daily balance for the period to obtain a percentage figure (the second option in the proposal). These commenters believed that this figure provided the most authentic yield figure.

The Board recognizes that the method chosen for the final rule will not provide a figure the consumer can use to directly verify earnings for the period if multiple interest rates are applied during the period. (The third option in the proposal would not have allowed such direct verification either unless additional detail regarding balances and accrual policies were also required.) The single figure will not show the actual rate fluctuations during the period, though any changes would be captured by the figure. The Board believes, however, that this method will most effectively communicate to consumers the appropriate information on earnings for the statement period. It will show in a single figure how well the consumer's account performed during the statement period, reflecting the true rate earned on tiered accounts, the impact of rate changes, and the effect of minimum balance requirements, while avoiding the difficulties that could be produced if fees and bonuses were factored in.

Some commenters stated they would like to include additional information about rates on the periodic statement. For example, some institutions may want to include a listing of the interest rates paid during the period, as well as other information the consumer could use to verify interest earnings for the period, such as the periodic interest rate and daily balances. Neither the act nor the final rule prohibits including additional information on or with the periodic statement. For example, the interest rates and the periodic interest rates applied during the period may be stated.

The Board solicited comment on whether the rate on the periodic statement should be identified as the "annual percentage yield earned" rather than the "annual percentage yield." Most commenters favored use of a distinct term to differentiate the figure from the "annual percentage yield" used for both advertisements and opening account disclosures, although some commenters argued for consistent terminology. The Board believes consumers benefit from a term that alerts them to the fact the figure on the periodic statement differs from an annual percentage yield shown in other disclosures. Thus, the final rule requires use of the term "annual percentage yield earned" on periodic statements.

Paragraph (a)(2)—Amount of interest. The act requires that the periodic statement disclose the amount of interest "earned" during the period. The proposed regulation would have required the periodic statement to include a dollar figure for the amount of interest that had been *paid* during the statement period. That figure would not have included accrued interest that had *not* been credited to the account during the period. Many commenters were concerned that the proposed disclosure would confuse consumers holding accounts where the statement cycle is shorter than the crediting cycle. For example, where consumers receive monthly statements on accounts that credit interest quarterly, the first two monthly statements in a quarter would not reflect either an interest amount or an annual percentage yield earned as no interest would yet be credited. The third statement would show interest earned for the three month period, artificially inflating the annual percentage yield earned. Commenters argued this approach would not provide useful information to consumers, as the yield figure would bear little resemblance to rates advertised or what is actually being earned during the period. The Board agrees with this view. Thus, the final rule requires institutions to show interest earned during the statement period, without regard to whether such interest has been credited to the account. (See the special rule in paragraph (b), however, dealing with institutions that use the average daily balance method and calculate interest on a period other than the statement period.)

The Board solicited comment on whether cash bonuses paid to the consumer during the statement period should be included in the total interest figure. The majority of commenters supported the proposed exclusion of bonuses from the interest figure, given that the definition of "interest" (§ 230.2(n)) specifically excludes bonuses. The final rule maintains this position. The value of a bonus (or of any *de minimis* consideration of $10 or less that is excluded from the definition of a bonus) can be shown separately on the statement as additional information, but it cannot be included in the total interest figure.

The Board solicited comment on whether the regulation should require use of the term "interest" for purposes of this disclosure. Based on comments received and upon further analysis, the final rule does not mandate use of the word "interest." The Board believes that the term is widely used in the industry; thus, requiring the term seems an unnecessary addition to the regulation. Also, the Board believes it may be desirable for institutions to describe more specifically the treatment of interest during the period. For example, if an institution credits interest at the end of the statement cycle, it could disclose the figure as the "interest earned," "interest paid," or "interest credited." If an institution shows interest that was earned during the statement cycle but which has not yet been credited (for instance, where it sends monthly statements credits quarterly), it may wish to alert the consumers to this fact so they do not believe they can access those funds.

Paragraph (a)(3)—Fees imposed. Section 268(3) of the act requires that the periodic statement disclose the amount of any fees or charges imposed on the account. The proposal would have required the periodic statement to include all fees of the type required to be disclosed under § 230.4(b)(4) that were imposed during the statement period. Many commenters noted the difficulty of including fees for services which the consumer paid for in cash at the time of the transaction. The final rule therefore requires that the institution disclose fees (of the type required to be disclosed under § 230.4(b)(4)) that have actually been debited from the account during the period. At the institution's option, fees that are not imposed in connection with the account, for example, fees paid for a cashier's check or for the lease of a safe deposit box, be included in the periodic statement as additional information.

The act does not specify whether the fees should be totaled or itemized. The Board discussed different methods for disclosing fees in the proposal, and proposed requiring an itemization of fees. Many commenters supported a flexible rule which would allow institutions to choose the method of disclosure. They pointed out, for example, that Regulation E permits institutions to disclose fees on the periodic statement as either a total dollar figure or by itemizing them in part or in full, at the institution's option. A number of commenters noted, however, that providing only a total dollar figure for fees imposed during the period without any explanation would provide little useful information to consumers.

The final regulation requires institutions to provide an itemization of fees by type. The Board believes that a single figure for all fees would not be as helpful to consumers as a listing of the types and amounts of fees imposed during the cycle. The more summary approach taken in Regulation E is not appropriate here where fees cover a much wider array of services than those solely relating to electronic funds transfers.

The regulation does not mandate a particular format for this disclosure. Institutions may group together fees of the same type that were imposed more than once in the period. For example, all fees imposed for writing checks during the period could be stated either as a single figure, or shown as separate items. An institution could not, however, group fees together that are not the same type—for example providing a single figure to represent monthly maintenance fees and excess activity fees. If fees are grouped, the description must make clear that the dollar figure represents more than a single fee, for example, "total of per-check fees this period." Institutions may continue to comply with the requirements of Regulation E for fees related to electronic fund transfers (for example, totaling all electronic funds transfer fees in a single figure), but must follow the provisions of this section with regard to disclosure of all other account fees.

There is no requirement to segregate the itemization of fees from the statement of account activity. Thus, institutions may integrate the fee disclosure with other account activity information reflected on the statement. The statement must provide sufficient detail to enable the consumer to identify the fee. Institutions may use a code to identify a particular fee on the periodic statement, if codes are explained either on the periodic statement or in documents accompanying the statement. At its option, the institution may also include the date the fee was debited from the account.

Many commenters requested guidance regarding disclosure of fees associated with "tied" or "bundled" accounts. For example, an institution may require the consumer to maintain a certain balance in Account A to avoid the imposition of a minimum balance fee on Account B (which, if imposed, is debited from Account B). Institutions should disclose the fees on the periodic statement for the account against which the fees are actually debited (Account B in this case).

The Board solicited comment on whether the regulation should also require the periodic statement to include a total fees figure or a net earnings figure—that is, the total interest earned less any fees imposed. Most commenters indicated these additional disclosures added little to the information provided to consumers, and presented an unnecessary burden to institutions. The final rule does not require either a total fees figure or a net earnings figure.

Paragraph(a)(4)—Length of period. The proposal closely tracked the statutory language and required that the total number of days in the statement period be given on the periodic statement. The Board solicited comment on whether providing the beginning and ending dates for the period would provide adequate information to consumers (assuming it is clear whether or not both of these days are included as part of the period).

Most commenters supported the flexibility of being able to choose the method of disclosing the days in the period. Many commenters noted that consumers need to know the beginning and ending dates for the period to determine whether a transaction occurred during the period, possibly making it a better disclosure than merely providing the number of days.

The final rule allows institutions to provide either the total number of days in the period, or the beginning and ending dates of the cycle, as long as it is clear whether or not both of these days are included in the period. For example, stating "April 1 through April 30" would clearly indicate that both April 30 are included in the period. Several commenters noted their current procedure is to provide the ending dates for both the current and the preceding cycle (for example, if a statement period begins May 1 and ends May 31, the disclosure would be that the preceding statement ended April 30 and the current statement ends May 31). This method would also be acceptable, since the consumer could readily determine the number of days in the period.

Paragraph (b)—Special Rule for Average Daily Balance Method

In response to requests for guidance, the final regulation contains a new paragraph addressing how the disclosures should be made on periodic statements if interest is determined by using the average daily balance method and is calculated based on a period other than the statement period. Commenters noted that in most cases interest is calculated and credited for a period that exactly coincides with the

period covered by the statement; in such cases, the calculation and disclosures are straightforward. In some cases, however, interest is calculated for a period that differs from the period covered by the statement. For example, interest may be calculated for a calendar month, whereas the statement may cover a period from the 16th of one month to the 15th of the next month. A similar case exists where the statement is provided covering a calendar month but interest is calculated on a quarterly basis. If an institution uses the daily balance method, the Board believes disclosures must be made for the statement period, since interest is earned for each day of the period, even though it may be credited on a date beyond the last day of the statement period. However, commenters that use the average daily balance method to compute interest asked how to disclose the amount of interest earned and the annual percentage yield earned if, for example, a statement period covers April 16th to May 15th, but interest is calculated on a calendar month basis.

This paragraph (and appendix A, part II) provides a special rule in these cases: the amount of interest earned for the interest calculation period and the annual percentage yield earned based on the average daily balance for that period shall be disclosed on the statement for the period in which the interest calculation period ends. For example, assume an institution uses the average daily balance method based on a calendar month period, and that $5.25 interest was earned during April, $6.00 interest was earned during May, and the institution sends a statement for the period April 16 through May 15. That statement would disclose $5.25 as the interest earned and an annual percentage yield earned based on that interest and the average daily balance in the account during the month of April. If an institution uses this alternate rule, the length of the interest calculation period must be disclosed in addition to the length of the statement period. For example, a statement could disclose the statement period of April 16 through May 15 and further state that "the interest earned and the annual percentage yield earned are based on your average daily balance for the period April 1 through April 30."

This special rule applies only if the average daily balance on which the interest is calculated is known by the end of the statement cycle. For example, an institution that sends a statement each calendar month for an account and calculates interest based on the average daily balance method for a calendar month, but credits interest quarterly, would use the rule in this paragraph. In such a case, interest earned in each of the three months would be shown on three succeeding monthly statements (since an average daily balance figure is used to calculate interest each monthly statement period); the statement for the third month of the quarter may, but is not required to, indicate the interest credited for the quarter, in addition to the interest earned during the third month. If an institution calculates interest on an average daily balance for the quarter, however, an interest figure cannot be stated on the monthly statements for either of the first two months of the period since no average daily balance is used to calculate interest for those times. Consequently, no annual percentage yield earned and no interest earned figures would be disclosed on the statements for the first two months of the quarter. In such a case, the interest earned and the annual percentage yield earned provided on the third monthly statement would be based on the entire quarterly period. (Examples have been added to appendix A, part II demonstrating these rules.)

Section 230.7—Payment of Interest

Paragraph (a)—Permissible Methods

Paragraph (a)(1)—Balance on which interest is calculated. Section 267(a) of the act provides that interest on interest-bearing accounts shall be calculated by institutions "on the *full amount of principal in the account for each day* of the stated calculation period" at the rate disclosed (emphasis added). The legislative history states that the provision is intended to prohibit institutions from using certain balance computation methods, such as the "low balance" or "investable balance" method of computing interest. Although a literal reading of this language might appear to require institutions to calculate interest by using the daily balance calculation method (also known as the day-in-day-out method or day-of-deposit-to-day-of-withdrawal method), the legislative history confirms that the Congress considered the average daily balance method an acceptable alternative to the daily balance method. The Board proposed to allow both methods, and, based on further analysis and review of the comment letters, is adopting this approach in the final rule.

The overwhelming majority of commenters urged the Board to permit institutions to use the average daily balance method as an alternative to the daily balance method. The Board believes permitting institutions to use either the daily balance method or the average daily balance method is consistent with the purpose of the legislation, which is to require that consumers be paid interest on the full amount of principal in the account each day. In addition, the act requires disclosure of the balance computation method, which would be unnecessary if only one method were allowed.

Both methods require institutions to compute interest by applying a periodic rate to the full amount of principal in the account each day. Assuming the same compounding and crediting frequency, interest calculated under either method would be identical in an account with little or no account activity in the period. As explained in detail in the supplementary information to proposed § 230.7(a), in most cases, even where there is significant account activity, both methods will produce the same or substantially the same amount of interest. In some instances the daily balance method produces a slightly higher return, and in other situations the average daily balance method produces a slightly higher return. As described in the proposal, in tiered-rate accounts, the two methods can produce more significant differences in interest, depending on account activity—in particular, depending on whether the average daily balance falls above or below the break point in the tiers. In all cases, however, under the annual percentage yield earned calculation for a periodic statement, any differences in these methods would be captured.

The final regulation permits institutions to use either the daily balance or the average daily balance method, for several reasons. First, in most cases the two methods produce the same or a substantially similar return. Second, where the results differ, neither one consistently produces a higher return. Third, the annual percentage yield earned calculation for the periodic statement will capture any differences between these methods. Fourth, institutions will be required to disclose the method they use under § 230.4(b) so that consumers who prefer one method over the other will have the necessary information on which to base their choices. Fifth, the legislative history accompanying the legislation contemplates the use of either method. Finally, requiring institutions to use the daily balance method could impose significant costs on institutions that would have to change from their current use of the average daily balance method without producing any real benefit to consumers.

"Collected" and "ledger" balances. Many commenters asked whether the

regulation would permit institutions to accrue interest (whichever balance method is used) by using a "collected" balance method, or whether a "ledger" balance method must be used. The Board believes the act does not prohibit use of a "collected" balance method of accruing interest. (Section 267(c) of the act provides that institutions must begin to accrue interest on deposits no later than the business day set forth in section 606 of the EFAA.) Thus, institutions may begin accruing interest when the funds are deposited into the account or a later date as provided by the EFAA and Regulation CC. (See § 230.4(b)(3)(iii) which requires a disclosure of this policy.)

Use of 365-day basis and leap year. In the proposal the Board stated that the act requires institutions to pay interest calculated on each day funds remain on deposit. For example, for a one-year time account, interest must be paid on a 365-day basis. Since interest must be paid each day funds remain on deposit, the Board believes a daily rate of at least 1/365 of the interest rate must be applied to the balance. A footnote has been added to this section to reflect this. Institutions may, however, apply a daily periodic rate that is greater than 1/365 of the interest rate. For example, an institution may use a daily periodic rate of 1/360 of the interest rate, as long as it is applied 365 days a year.

Some commenters inquired whether they could continue to compute interest using a "360/360" basis (that is, using a periodic rate of 1/360th of the interest rate and applying that figure to only 360 days in a one-year account). They stated that currently they use this technique to enable them to send out uniform monthly interest payments on some accounts, such as certificates of deposit. The Board believes this practice, which pays interest for only 360 days in a year and not 365 days, is not permissible because it fails to apply the disclosed rate each day of the year.

The Board solicited comment on whether institutions should be permitted to use a periodic rate of 1/365 of the annual rate and a 365-day basis in leap years that have 366 days. Numerous commenters urged the Board to adopt this approach. They argued that requiring institutions to change their systems to 1/366 of the annual rate for those accounts in which February 29 will occur would require significant modification at great expense for very little practical difference. Other commenters urged the Board to permit institutions to use a 366-day basis when appropriate. The footnote to this section clarifies that institutions are permitted to apply 1/365 of the interest rate for 365 days in a leap year, in light of the concerns raised. In addition, institutions are permitted to apply a periodic rate of 1/366 (or 1/365) of the interest rate for 366 days in a leap year, when an "extra" day of interest will be paid for the account.

Commenters raised several questions about the scope of § 230.7(a). A number of commenters asked whether § 230.7 requires institutions to pay interest during any grace period offered by an institution for an automatically renewable time account if the consumer decides during the grace period not to roll over the funds. Commenters also asked whether, for nonrollover time accounts, institutions must pay interest after the account has matured.

Institutions are not required to pay interest in either of these circumstances. The Board believes that the act does not require institutions to pay interest after the existing account relationship has ended. Thus, if a consumer with an automatically renewable time account chooses *not* to renew the deposit, the institution may pay interest for a period of time after maturity even though the time account is not renewed, or the institution may consider the account to be noninterest-bearing following maturity. Similarly, institutions may, but are not required to, pay interest following the maturity of a time account that does not automatically renew. (See footnote 1 of § 217.3 in the Board's Regulation Q which permits institutions to pay interest for up to 10 calendar days past the maturity of a time deposit if the time deposit is renewed within 10 calendar days of maturity.)

The Board also believes that institutions are not required to pay interest on any principal or interest left in an account after an account is closed. Several commenters noted that consumers may "close out" an account by mail but unintentionally leave in a small amount of funds. The Board does not believe institutions must continue to pay interest on any such amount if the account relationship has ended. Commenters also requested that the Board state that institutions are not required to send any such remaining balance to the consumer. Whether the institution must do so is a question that must be determined by reference to state or other law. This regulation does not address that issue.

Paragraph (a)(2)—Determination of minimum balance to earn interest. The Board believes the Congress did not intend for institutions to be barred from establishing minimum balance requirements that must be met for the consumer to earn interest, or to earn a specified rate for tiered balance accounts. The act expressly requires a disclosure of any minimum balance required to earn interest. This provision would be unnecessary if institutions were not permitted to establish minimum balance levels to earn interest.

Under the final regulation, an institution using a daily balance method may choose to pay interest on an account for only those days a minimum balance is maintained. (Similarly, an institution using an average daily balance method may choose to pay interest for the period only if a specified average daily balance for the period is met.) If this practice were not permitted, the Board believes significant and fundamental pricing changes would be made to accounts many of which could be adverse to the interests of consumers. For example, tiered-rate and high minimum balance accounts that typically pay a higher rate of interest might not be as available to consumers. Therefore, the regulation permits an institution that uses a daily balance method to provide that it will not pay interest on the account for those days the balance drops below the required daily minimum balance. (Similarly, a minimum average daily balance may be established for institutions using that method.)

On the other hand, the Board does not believe that the act permits an institution to provide that the consumer does not earn any interest for a given period unless the consumer maintains a minimum balance each day of the entire period. Most, though not all, commenters agreed with this position. The Board believes section 267(a) of the act prohibits use of this "low balance" type of method to determine if a consumer has met a minimum balance requirement to earn interest.[1] For example, an institution may not provide that a consumer will earn a 5.00% interest rate only if the consumer maintains a minimum balance of $500 for each day of a specified period or cycle. Such a practice, in effect, uses a low balance computation method to calculate whether interest is earned on an account at all for the whole period. Permitting such a practice would enable an institution to refuse to pay interest even if a consumer maintained a $10,000 balance for 29 days in a cycle, but

[1] The discussion of this provision addresses only the payment of interest as it relates to the minimum balance requirement. The supplementary information accompanying § 230.4(b)(4) discusses the fact that institutions are not so limited regarding the assessment of fees and minimum balance requirements.

permitted the balance to drop below $500 for one day in the same cycle.

Similarly, institutions may not refuse to pay interest on a portion of a balance once a consumer has met any required minimum balance. If an institution sets its minimum daily balance requirement to earn interest, for example, at $300 and a consumer deposits $500, the institution must pay the stated interest rate on the full $500, and may not pay interest only on $200 of that deposit. The Board believes this practice is contrary to the statutory requirement and the intent of the Congress to require payment of interest at the disclosed rate on the *full amount* of principal in the account each day.

A related issue arises regarding tiered-rate accounts that use a daily balance method to determine whether a minimum balance requirement has been met. For example, assume an institution pays and discloses a 5.00% interest rate on balances below $5,000, and a 6.00% interest rate on balances of $5,000 and above. The institution may not pay only 5.00% for the entire cycle if the balance dropped below $5,000 for a few days during the cycle—for example, if a consumer maintained a $10,000 balance for 29 days in a cycle, but permitted the balance to drop to $4,999 for two days. The Board does not believe the act permits the institution to pay only 5.00% on $10,000 for 29 days, since the full amount of principal in the account for 29 days was actually $10,000 and should earn the stated 6.00% rate.

The Board solicited comment on a number of technical points. The Board asked whether institutions should be required to use a daily balance method to determine whether a minimum balance requirement to earn interest has been met, or may an average daily balance method be used instead. Comment also was requested on whether institutions should be permitted to use both a daily balance and an average daily balance measurement in determining whether a consumer has met the minimum balance requirement to earn interest. For example, the Board asked whether an institution should be permitted to apply both a $500 daily balance and a $700 average daily balance requirement to determine whether interest is paid on an account for a particular day. The Board also asked whether institutions should be permitted to determine the balance on which they calculate interest using one method and establish the minimum balance using a different method. For example, comment was requested on whether an institution should be permitted to use the daily balance method to compute interest but to require a consumer to meet a minimum balance by averaging a month's daily balances.

Commenters expressed a wide variety of views on these questions. Many commenters urged the Board to adopt a simple, standardized rule. For example, a number of commenters requested that the Board require institutions that calculate interest using the daily balance method to use the same method to determine the minimum balance needed to earn interest. Commenters felt such an approach would provide simple and clear rules, and consumers would be able to better understand such an approach.

Other commenters urged the Board to permit greater flexibility in the final regulation, and permit any combination of methods. Commenters stated that this was beneficial to institutions and fair to consumers since the methods used would be disclosed. These commenters were concerned with the ability of institutions to structure accounts with the greatest flexibility possible.

The Board believes that the act places limits on the use of certain minimum balance methods. As noted in the proposal, the Board does not believe an institution that uses an average daily balance method to determine the balance needed to earn interest is permitted to refuse to pay interest on the average balance if the consumer fails to maintain a daily balance of, for example, $500 for each day of the cycle. This is similar to using a low balance method of computing interest.

The Board believes there are significant benefits to requiring institutions to use the same balance method to calculate interest and to determine the balance that must be met to earn interest. Consumers would find the disclosures easier to understand, and institutions would have a clear and simple rule that minimizes potential compliance errors and civil liability concerns.

On the other hand, the Board recognizes the advantages of permitting institutions to use combinations of the two methods when the combination benefits consumers. This would provide more choices to consumers and more flexibility to institutions in structuring accounts. Many commenters requested that the final regulation permit institutions to provide that interest is earned on an account if the consumer meets either a daily balance or average daily balance requirement. For example, institutions that use a daily balance method for interest calculation asked to be permitted to offer accounts that pay interest if the consumer maintains a $500 daily balance or maintains a $400 (or $600) average daily balance amount for a specified time period. They argued such an approach would always benefit the consumer. While this approach adds an additional level of complexity to the regulation, the Board believes this approach provides benefits to consumers and greater flexibility to institutions and should be adopted.

Thus, this section of the final regulation provides that an institution must use the same method to determine any minimum balance required to earn interest as it uses to determine the balance on which interest is calculated. The regulation also provides that an institution may use an additional method to determine the minimum balance to earn interest, as long as that second method is unequivocally beneficial to the consumer. This means an institution that uses a daily balance method to compute interest could require a consumer to meet either a specific daily minimum balance to earn interest or a specific average daily balance requirement to earn interest. (Similarly, an institution that uses an average daily balance method could require the consumer to meet a specific average daily balance requirement or a specific daily balance requirement.) Thus, an institution using a daily balance method could choose to pay interest only for those days the daily balance was $500 or more. In addition, the institution could agree to pay interest to the consumer for those days a consumer did not maintain a $500 daily balance, but, for example, maintained an average daily balance for a month of $400 (or $600).

However, institutions are not permitted under the regulation to require consumers to maintain both a daily minimum balance and an average daily balance to earn interest. For example, the regulation does not permit institutions to pay interest (whether they compute it using a daily balance or average daily balance method of accruing interest) only if the consumer, for example, maintains a $500 daily balance and a $400 (or $600) average daily balance. The Board believes requiring consumers to meet both requirements to earn interest is contrary to the requirement to pay interest on the full balance in the account, since an institution, in effect, would be using a low balance method to determine if interest is paid.

Paragraph (b)—Compounding and Crediting Policies

The substance of this paragraph of the regulation is unchanged from the proposal, though the Board has revised one interpretation about crediting policies, as discussed below. This section does not mandate the frequency of any compounding. Thus institutions may compound bi-annually, annually, quarterly, monthly, daily, continuously, or on any other basis. The compounding frequency is required to be disclosed under § 230.4(b)(2) and is factored into the computation of the annual percentage yield. (See the discussion of the annual percentage yield in the supplementary information accompanying appendix A.)

Section 230.7 also does not mandate a specific crediting policy. Thus, institutions may credit interest earned on the account on an annual, semi-annual, quarterly, monthly, daily or other basis. The institution's crediting policy must be disclosed under § 230.4(b)(2). An institution may credit or post interest to the account at any frequency, thus establishing the intervals at which the consumer can withdraw such interest.

In the proposal, the Board stated that establishing crediting policies does not permit an institution to treat accrued but uncredited interest as unearned. The proposal stated that because the act and proposed regulation require that interest accrue based on the full balance in the account each day, the consumer's underlying right to such interest cannot be altered. A number of commenters expressed concerns about this interpretation, and asked the Board to reconsider its interpretation, particularly for accounts that are closed by the consumer prior to a date accrued interest is credited to an account. They believed the Board was interpreting the statutory provision too broadly and stated the Board should give effect to section 264(c)(9) of the act.

Based on comments received and upon further analysis, the Board believes the duty to pay interest on the full balance in the account does not require institutions to pay interest that has accrued but not been credited if the account is closed by the consumer between crediting dates. (See paragraph (a)(1) of this section.) Further, as discussed in § 23.4(b)(2)(ii), the Board believes that section 264(c)(9) of the act (requiring institutions to state if accrued but uncredited interest will not be paid in the event funds are withdrawn from the account), if applied narrowly, is consistent with the duty to pay interest on the full balance of the account. Thus, the Board is revising its position, and believes that institutions may reserve the right not to pay accrued but uncredited interest for an account if a consumer closes the account prior to the time accrued interest is credited to the account. However, the Board believes that institutions must pay all accrued interest to consumers even if some funds are withdrawn prior to the crediting date, as long as the consumer does not close the account. Otherwise, the effect would be substantially the same as permitting institutions to pay interest based on the low balance method, a result clearly unintended by the Congress. Although institutions may not fail to pay accrued interest on withdrawn funds if the account remains open, institutions need not post or credit the accrued interest until the established posting or crediting date, nor must they permit the consumer to withdraw interest that is earned but not yet credited. If the consumer withdraws funds before interest is credited (but does not close the account), the institution may delay payment of the accrued interest until the crediting date, but may not refuse to pay the consumer the accrued interest. This provision, of course, does not require an institution to pay interest for those days the consumer fails to meet a minimum balance requirement.

Paragraph (c)—Date Interest Begins to Accrue

Section 267(c) of the act requires that institutions must begin to accrue interest for all accounts no later than the business day specified in section 606 of the EFAA (12 U.S.C. 4005), subject to subsections 606(b) and 606(c). Thus, the Truth in Savings Act provides that the accrual of interest rules in the EFAA apply to nontransaction accounts, such as certificates of deposit, as well as to transaction accounts covered by the EFAA. The EFAA and the Board's implementing Regulation CC (12 CFR part 229) generally require an institution to begin accruing interest when the institution receives credit. The Board believes a consistent rule is essential for determining the principal balance on which interest accrues. The final rule, as did the proposal, therefore requires institutions to use the methods set forth in Regulation CC for determining the principal balance. In addition, institutions should rely on Regulation CC for determining when a deposit (for example, at an ATM) is received. If an institution accrues interest on funds represented by a deposited check that is later returned due to insufficient funds on deposit, or for another reason, the institution would not be required to pay interest for the time period the check was outstanding.

While the EFAA establishes the time institutions must begin to accrue interest, because of the general rule in section 267(a) of the act that interest must be computed on the full amount of principal in the account for each day, paragraph (c) of this section also provides that institutions must accrue interest on funds until funds are withdrawn from the account. Thus, if a check written by the consumer on an account is debited from the account by the account-holding institution on a Wednesday, the institution must accrue interest on those funds on deposit through Tuesday. (Because the check is debited on Wednesday, the balance in the account that day has been reduced. Thus, the institution need not pay interest for Wednesday.)

Section 230.8—Advertising

This section of the regulation incorporates the advertising provisions of section 263 of the act. While the act's disclosure rules apply to accounts of *all* depository institutions, section 263(a) of the act's advertising provisions dealing with general disclosure rules is phrased in terms of accounts offered by insured depository institutions. (Section 263(b) and (c) of the advertising provisions, which address special rules for broadcast media and misleading advertisements, are not limited to insured depository institutions.) The Board's final rule applies the advertising provisions to all depository institutions, whether insured or not. The Board believes that the act's purposes are furthered if advertisements for deposit accounts at all depository institutions are covered by the same rules.

As addressed in §§ 230.2(a) and 230.2(k), the advertising rules apply to deposit brokers, in addition to depository institutions. Thus, if a broker places an advertisement that offers to consumers an interest in an account at an institution, the advertisement is covered by this section, even if the account is held by or on behalf of the broker. Of course, this section also covers any advertisement placed by a broker in which the account at the institution will be held directly by the consumer.

The Board requested comment on whether certain provisions in the Board's Regulation Q (12 CFR part 217) dealing with advertising rules should be included in this regulation and removed from Regulation Q. Commenters strongly endorsed the idea of consolidating the requirements of these two regulations. Based on comments received and upon

further analysis, the Board is amending Regulation Q to eliminate its advertising provisions, effective on the mandatory compliance date of this regulation. (See Docket R-0775 elsewhere in today's **Federal Register.**) Institutions that begin compliance with this regulation prior to the mandatory compliance date may rely solely on compliance with the advertising rules of this regulation.

Paragraph (a)—Misleading or Inaccurate Advertisements

The act prohibits institutions from making misleading or inaccurate advertisements. The proposal solicited comment on whether examples of what constitute "misleading or inaccurate statements" in an advertisement should be provided with the final rule. Some commenters felt examples would be helpful, some felt otherwise, but few offered any specific examples. As discussed below, the Board is providing one example of a misleading advertisement—stating the term "profit" in conjunction with a deposit account.

Use of the term "profit" prohibited. Section 217.6(f) of the Board's Regulation Q and the deposit account advertising rules of the other federal financial regulatory agencies for some time have prohibited use of the term "profit" when advertisements refer to interest paid on deposit accounts. The Board requested comment in the proposed regulation on whether institutions should be permitted to refer to interest paid on an account as "profit," or if the use of the term in advertisements could mislead customers. The overwhelming majority of commenters agreed that the use of this term would mislead consumers, since the term implies a return on an investment—something typically associated with nondepository investments. Commenters recommended that the Board's final rule retain the prohibition. The final rule retains this prohibition, as the Board believes such a reference would be misleading.

Advertising "free" accounts. Section 263(c) of the act prohibits an institution from advertising an account as a "free" or "no-cost" account if: (1) A regular service or transaction fee may be imposed; (2) a fee may be imposed if any minimum balance requirement is not met; or (3) a fee is imposed if the consumer exceeds a specified number of transactions. The final regulation reflects these rules, though it provides a different organizational approach from that in the act.

Under the final rule, institutions are not permitted to refer to or describe any account as "free" or "no cost" (or contain a similar term) if any "maintenance or activity" fee might be imposed on the account. In response to commenters who pointed out that the act limits the prohibition to "regular" transaction or service fees, the final rule limits the scope of a maintenance or activity fee to such charges as, for example, periodic service charges and fees imposed to deposit, withdraw or transfer funds (including per check charges and fees to use the institution's ATMs). A maintenance fee also includes fees imposed if a minimum balance requirement is not met or if a transaction limit is exceeded. A maintenance or activity fee does not include fees imposed by a third party to print checks for an account; stop payment fees; fees for copies of checks; fees for checks returned for insufficient funds; or fees unrelated to the account such as a fee for purchasing a cashier's check or traveler's checks.

Many commenters expressed concerns that the Board's rule, as proposed, would unduly restrict the ability of depository institutions to advertise useful cost information to consumers because some maintenance or activity fees could be imposed. The Board is providing greater flexibility in response to concerns raised. The act prohibits a reference to an "account" as free. Under the final regulation, institutions may refer to a specific service as "free" or "no cost" (or use words of similar meaning). For example, institutions that offer free transactions at their ATMs could advertise that fact. If an account or an account service is free only for a limited time—for example, for the first year that an account is open—this limitation must be stated. The Board believes this approach reflects the requirement of the act, yet allows institutions to provide accurate and useful cost information to consumers about account features or services.

Potential loss of principal. Although the issue is not addressed in the act, the Board's proposed rule contained disclosure requirements for advertisements regarding deposits that involve the risk of loss of principal, such as those denominated in a foreign currency. As discussed in the supplementary information for § 230.4(b), the Board believes that such information is important, but that it appears the industry currently alerts consumers to the risks associated with such accounts. Thus, the final rule does not require the additional advertising disclosure.

Paragraph (b)—Permissible Rates

Section 263(a) of the act provides that a reference to a specific interest rate, yield, or rate of earnings in an advertisement triggers a duty to state certain additional information, including the annual percentage yield. The final rule, like the proposed regulation, requires that if any rate or yield is stated it must be the "annual percentage yield," using that term.

Except for the interest rate, no other rate or yield (such as an "average" or "aggregate" percentage yield) may be included in an advertisement. The Board believes that allowing institutions to state such other rates or yields would conflict with the act's stated purpose of providing uniform disclosures to enable consumers to compare accounts. Also, the Board is concerned that permitting other rates to be stated would result in advertisements with a confusing array of terms and numbers.

The Board's final rule allows the "interest rate," using that term, to appear in conjunction with (but not more conspicuously than) the annual percentage yield. In a minor change to the proposal (addition of the words "to which it relates"), the final rule makes clear that if an interest rate is stated it must be the one that corresponds to the particular annual percentage yield provided.

Special rules for tiered-rate accounts. If an institution states an annual percentage yield in an advertisement for a tiered-rate account, it must state all of the annual percentage yields for each tier, including those required to be shown as a range, as well as the corresponding minimum balance requirements. (See appendix A for annual percentage yield calculations for tiered-rate accounts.) If interest rates are stated, each interest rate must appear in conjunction with the applicable annual percentage yield.

For example, assume an institution pays a stated interest rate only on that portion of the balance within the following specified balance levels (that is, Tiering Method B described in appendix A), and compounds interest daily:

Interest rate (percent)	Deposit balance required to earn rate
5.25	Up to but not exceeding $2,500.
5.50	Above $2,500 but not exceeding $15,000.
5.75	Above $15,000 but not exceeding $100,000.

Computing the figures in accordance with appendix A, the institution would have to state the following annual percentage yields in the advertisements:

Annual percentage yield (percent)	Balance required
5.39	Up to but not exceeding $2,500.
5.39 to 5.61	Above $2,500 but not exceeding $15,000.
5.61 to 5.87	Above $15,000 but not exceeding $100,000.

Abbreviations. The Board solicited comment on whether institutions should be permitted to use the abbreviation "APY" in advertisements—especially given the space and time constraints typically involved in advertisements. Many commenters felt that abbreviations of both the annual percentage yield and the interest rate should be allowed.

The Board does not believe consumers will be familiar with the abbreviation "APY" in advertisements, without additional explanation. The Board recognizes, however, that printing or stating the full term "annual percentage yield" every time such a rate is provided in an advertisement could restrict the use of certain types of media or impose significant costs, particularly when advertising multiple accounts.

The regulation as adopted permits institutions to abbreviate the annual percentage yield as "APY" *if* the term is printed out or stated in full at least once in an advertisement. For example, if an advertisement states "we offer a 5.25%Annual Percentage Yield (APY)," it may refer to that rate as the "APY" elsewhere in the advertisement.

The final rule does not permit an abbreviation of "interest rate." Since institutions are not required to provide this rate in advertisements, the Board does not believe special rules for use of abbreviations are needed. In addition, the terminology has been shortened from "simple interest rate," as proposed, to "interest rate," which the Board believes will diminish concerns about using the full term.

Paragraph (c)—When Additional Disclosures Are Required

Section 263(a) of the act requires additional information to be provided if the advertisement refers to a specific rate of interest, yield, or rate of earnings. The act also imposes special format rules for tiered-rate accounts. As in the proposed rule, the final regulation organizes the rules in a different manner than contained in the act.

There is no requirement that deposit account advertisements state an annual percentage yield figure (unless a bonus is stated). However, the regulation provides that a reference to an annual percentage yield (or a bonus) "triggers" certain additional advertising disclosures. If a trigger term is stated, the advertisement must provide the disclosures listed in paragraph (c) of this section in a clear and conspicuous manner. The Board solicited comment on whether an institution stating other information in advertisements—such as "one, three, and five year CDs available" or "high rates available"—should trigger the duty to state the other terms of the account. Commenters stated that these types of statements should not be considered to be triggering terms, due to the lack of specific information regarding applicable rates. The Board agrees. The Board also requested comment on whether a reference to a rate such as "we pay the rate available for 90-day U.S. Treasury bills" is so closely akin to stating a specific rate that the advertising disclosures should be triggered. Commenters were nearly equally divided. Based on comments received and upon further analysis, the Board believes the better approach treats such a statement as a trigger term only when a specific margin also is stated. Thus, a reference to a specific index which is easily determinable and the margin is so closely akin to stating a rate that advertising disclosures are required.

Paragraph (c)(1)—Variable rates. The final regulation requires institutions that advertise variable-rate accounts to state that the rate may change after the account is opened. Although the act does not expressly require the statement, section 265(2) authorizes the Board to prescribe modifications for advertising rules relating to the annual percentage yield on variable-rate accounts. Thus, the Board proposed that a statement be required for variable-rate accounts advising consumers that the rate may change after the account is opened. Commenters generally agreed that such a statement would be appropriate and it is incorporated in the final regulation.

Paragraph (c)(2)—Time annual percentage yield is offered. The act and final regulation require that advertisements that state the annual percentage yield also state the period during which accounts with that annual percentage yield will be offered. For example, if an institution only guarantees a rate for a week, its advertisement might state "this annual percentage yield is available for accounts opened from June 1 through June 7." If an advertisement does not indicate a date through which the institution guarantees a specific rate, it must state that the rate is currently offered "as of" a specified recent date.

Paragraph (c)(3)—Minimum balance. The act requires that advertisements contain a statement of the applicable minimum account balance requirements to obtain the advertised annual percentage yields. Further, in the case of tiered-rate accounts, the regulation tracks the specific statutory requirement that each annual percentage yield and the associated minimum balance must be in close proximity and have equal prominence. The final rule follows the act, but in response to comments received, is revised slightly from the proposal for clarity, without any change in substance.

Paragraph (c)(4)—Minimum opening deposit. For clarity, the heading of the paragraph has been revised slightly (adding the word "opening") without any change in substance of the paragraph itself.

Paragraph (c)(5)—Effect of fees. The heading of the paragraph has been revised slightly (adding the words "effect of") to better reflect its content. The act requires deposit account advertisements to contain a statement that "fees or other conditions" could reduce the "yield" on the account. As in the proposed rule, the final regulation uses the term "earnings" rather than yield. The Board believes the term "earnings" more accurately conveys the impact of fees on the account, since the annual percentage yield does not include fees. Virtually no comments were received on the Board's proposal to limit the scope of the disclosure requirement to the imposition of maintenance and activity fees, so it is adopted as proposed. (See paragraph (a) of this section discussing "free" accounts.) Thus, for example, the statement would appear on advertisements for interest-bearing transaction accounts that impose a monthly service charge, a per-check charge, or a fee if a minimum balance is not maintained. However, if the only fees imposed on the account were fees other than a maintenance or activity fee (for example, a stop payment fee or a fee for a check returned for insufficient funds), the statement would not be required.

In response to comments solicited on the issue, the Board has determined that the phrase "or other conditions" should not be retained as part of this notice, since it appears that the "other conditions" that affect earnings are already covered by other parts of the advertising rules (for example, minimum balance and time requirements).

Paragraph (c)(6)—Features of time accounts. Paragraph (c)(6) has been revised from the proposal to group

together the rules dealing with time accounts. The final rule reflects the deletion of one proposed requirement, which dealt with time accounts with stated maturities of less than one year. The proposal required such advertisements to include a statement that the disclosed annual percentage yield assumes all funds will be on deposit for a full year at the initial interest rate. Many commenters felt that this statement is unnecessary. They argued that the assumption is implicit in the concept of an *annual* percentage yield. They also pointed out that providing such a statement for a time account but not, for example, a NOW account, could raise questions about the basis of the annual percentage yield on the latter. Given these concerns and the fact that the statement is not expressly required by the act, the Board is not adopting the proposed rule.

Paragraph (c)(6)(i)—Time requirements. The act requires that advertisements state any time requirement necessary to earn the advertised yield. Commenters agreed with the Board's proposal to limit this provision to time accounts—since time requirements to obtain a specific annual percentage yield are typical only of such accounts. The wording has been revised and simplified from the proposal to state that this provision requires a disclosure of the term of the time account. Thus, if an institution states an annual percentage yield in an advertisement for a one-year certificate of deposit, it must state that time period.

The proposal also required advertisements to state any lower annual percentage yield that would have been earned if funds are withdrawn prior to meeting the minimum time requirement. This provision is currently required by the Board's Regulation Q. Many commenters noted that the requirement would add greater complexity to the advertising rules required by the act, and urged the Board not to incorporate this rule. The Board has not added this provision to the regulation.

The Board also solicited comment on whether to incorporate the current rule contained in Regulation Q (12 CFR 217.6(d)) that addresses deposits with time requirements greater than one year. That rule requires that an advertisement must state such a time requirement in equal prominence to the interest rate, along with any lower interest rate that will apply if funds are withdrawn prior to maturity. The Board has not incorporated this requirement in the regulation. The Board believes that consumers are adequately protected when institutions clearly and conspicuously state any time requirement for an annual percentage yield; thus, drawing special attention to a time requirement in such cases is unnecessary.

Paragraph (c)(6)(ii)—Early withdrawal penalties. The act requires that advertisements include a statement that an interest penalty will be imposed for early withdrawal. The act is not limited to time accounts, and the Board requested comment on whether this statement should be required only for time accounts. Most commenters felt it should be limited to time accounts. However, some commenters felt that consumers should be alerted to the possibility of penalties for an early withdrawal from a non-time account, such as when a bonus is "reclaimed" if funds are withdrawn before an agreed-upon date, or a fee is assessed if an account is closed within 30 days of account opening. On balance, the Board believes that the early withdrawal penalty provisions should be limited to time accounts. Information on bonuses and fees is already provided pursuant to other advertising provisions; furthermore, consumers will get additional, more detailed information about bonuses and fees when they open accounts.

The regulation has been revised to refer to whether a penalty "may or will" be imposed for early withdrawal. The change responds to comments from institutions that impose early withdrawal penalties on a case-by-case basis, and permits institutions to disclose the possibility—rather than the certainty—of such a penalty. Thus, institutions may state they "may" impose a penalty if that more accurately describes the account they are offering.

The terminology referring to an early withdrawal penalty is similar to that found in the act, but does not include the word "interest" or the word "substantial." Although both terms are required in § 217.6(e) of the Board's Regulation Q, commenters pointed out that, due to recent changes in the Board's Regulation D (12 CFR part 204), penalties no longer need be "substantial." Likewise, commenters were generally in agreement that the term "interest" should not be used, given the possibility of a forfeiture of principal (for example, if funds are withdrawn a few days after an account is opened.)

Paragraph (d)—Bonuses

Although the act does not expressly require the bonus disclosures found in the regulation, the Board believes the additional information is consistent with the act's purpose to provide uniform disclosures to assist in comparing accounts, particularly when "earnings" are being advertised. Commenters were divided on the issue of whether the statement of a bonus should trigger the annual percentage yield and the other disclosures indicated. Many felt, as the Board does, that consumers may be misled if full information is included in advertisements about interest earnings while bonus "earnings" are not explained.

As in the proposal, the final regulation treats bonuses as a trigger term. However, because the definition of bonus has been revised in the final rule (see § 230.2(f)), the advertising disclosures are not "triggered" unless the consumer receives something worth over $10 for a year. This will permit institutions to offer and advertise merchandise of a nominal value without triggering the duty to state other information.

If a bonus is advertised, institutions must state any minimum balance that must be deposited initially or maintained to obtain the bonus, any time requirement and when the bonus will be paid or provided to the consumer, so that an accurate sense of the feature is conveyed. Additionally, the advertisement must state the annual percentage yield and other applicable disclosures required by paragraph (c) of this section. If no interest is paid on the account, no rate information need be stated in the advertisement. If minimum balance and time requirements for the bonus are the same as those otherwise required to be stated, the disclosures may be combined.

Paragraph (e)—Exemption for Certain Advertisements

Section 263(b) of the act authorizes the Board, if it finds the disclosures to be unnecessarily burdensome, to exempt "broadcast and electronic media and outdoor advertising" from stating any initial deposit requirement or stating that fees or other conditions could reduce the return. The Board solicited comment on whether such an exemption should be made, and, if so, whether these disclosures would place an unnecessary burden on depository institutions. The Board also solicited comment on whether there were comparable situations (such as "lobby boards" within depository institutions) that should be exempted from some of the advertising provisions and whether other disclosures could be omitted.

Virtually all commenters expressed concern that the act's exemptions were too limited. Commenters stated that

without a further relaxation of the advertising rules, institutions would be discouraged from advertising products via broadcast and electronic media, outdoor advertising, telephone response machines, and lobby boards, a result they argued was unintended by the Congress and detrimental to consumers. Many commenters noted that presenting all the required terms on broadcast media, for example, would involve significant costs that, in addition to the potential for civil liability to account holders for violations of the advertising rules, imposed a substantial burden institutions might choose to avoid. Further, commenters argued that advertisements that convey so much detail in a limited time or space are difficult to comprehend, and, thus, do not further the Congressional purpose of helping consumers use information in advertisements.

Similarly, commenters felt additional exemptions were appropriate for "lobby boards"—boards located in the lobby of an institution which state the current rates and other key terms for various deposit accounts. Commenters noted that abbreviated disclosures would not harm consumers because their presence in the lobby ensured that staff were available to answer any questions about the details of an account, and to provide written disclosures upon request. For the same reasons, commenters also requested that an exemption be made for telephone response machines, which are often used to provide up-to-date recorded rate information to customers who initiate a call for that specific purpose or who are waiting to speak with staff on unrelated matters.

Based on issues raised by the commenters and upon further analysis, the Board is exercising its exception authority under section 269(a)(3) of the act to establish a limited exemption from several of the advertising provisions for broadcast or electronic media, such as television or radio; outdoor media, such as billboards; telephone response machines; and lobby boards facing inside an institution or the offices of a deposit broker. The Board recognizes the inherent limitations of time or space in certain media, and believes the purposes of the act would be frustrated if burdensome disclosure requirements caused institutions to place fewer advertisements that consumers may use to comparison shop.

The final rule provides that advertisements made by the use of these media will remain subject to the prohibition regarding misleading or inaccurate advertisements. Rate information must be disclosed as an annual percentage yield. In addition, if an annual percentage yield is stated, these advertisements must state any minimum balances required to earn that yield. For time accounts, the term must also be stated. Although space constraints may limit the likelihood that bonuses are mentioned, any advertisement in these media that states a bonus triggers the disclosures required by this paragraph, as well as a statement regarding the conditions under which the bonus will be paid and the time it will be paid. With these rules, consumers will have the key information about accounts in all advertisements.

Finally, in the case of lobby boards inside a depository institution or a deposit broker's office, a notice must also appear on the board advising consumers that they can obtain further information about those accounts. For example, the statement could read "ask us for further information about these accounts," or words of similar meaning. Lobby boards placed primarily for viewing by the general public rather than consumers inside the institution or deposit broker's office are not exempt from the advertising provisions of this section, since consumers are less likely to receive details about the account from customer service representatives.

Section 230.9—Enforcement and Record Retention

Paragraph (c)—Record Retention

The Board has left unchanged from the proposal the language in the regulation dealing with record retention, but is clarifying a number of issues raised by commenters. The regulation requires institutions to retain records regarding compliance with their responsibilities for a minimum of two years after disclosures are required to be made or actions are required to be taken. While the act does not specify a time period, two years is the period commonly used under the Board's other consumer regulations (for example, Regulations Z and E). Furthermore, given the frequency of examinations by the enforcement agencies, a record retention requirement of this length should allow examiners adequate review of pertinent documentation during periodic examinations. The record retention requirements apply to all aspects of compliance, including advertising provisions. In light of the fact that institutions are subject to civil liability for violations of the advertising rules the Board believes it is essential for the agencies to be able to examine advertisements as well as disclosures for compliance.

A number of commenters requested additional guidance on the record retention requirements. Institutions must keep evidence that disclosures were provided. They may meet this duty by demonstrating that they have established and maintained procedures for providing disclosures to every consumer entitled to them under the timing rules set forth in the regulation; in such cases, they must retain sample disclosures for each account offered to consumers. (And, of course, a sample notice of any change to the terms of an account would have to be retained.) Institutions following these procedures are not required to keep a copy of each disclosure provided to every consumer. The Board believes that evidence that an institution has established procedures for providing disclosures, has followed them, and has retained sample disclosures will establish compliance with this section.

A number of commenters asked whether institutions were required to keep a list of consumer requests for information. The Board is not requiring institutions to keep a "log" of each consumer request made for disclosures to comply with the recordkeeping rules Again, maintenance of procedures for providing disclosures upon request and retention of copies of sample disclosures will be sufficient.

Institutions must keep copies of printed advertisements and of the text of advertisements that are conveyed by electronic or broadcast media.

Institutions need not retain a copy of each periodic statement, as long as the specific information on each statement (such as the fees, interest and annual percentage yield earned) can be retrieved. Sufficient rate and balance information must be retained to enable examiners to verify the interest paid on an account. For periodic statements and other disclosures, records may be stored by use of microfiche, microfilm, magnetic tape, or other methods capable of accurately retaining and reproducing information (for example, from a computer file). The institution need not retain disclosures in hard copy, as long as it retains enough information to reconstruct the required disclosures or other records.

Appendix A—Annual Percentage Yield Calculation

Appendix A establishes the rules that institutions must use to calculate the annual percentage yield. The appendix contains two main parts: Part I discusses the calculations for account disclosures and advertisements, and Part II deals with periodic statement

calculations. Part I contains only two annual percentage yield formulas: A "general" formula that can be used for all types of accounts and a "simple" formula that can be used for those accounts that have a maturity of one year, or that have an unstated maturity. The appendix provides several examples to illustrate how these formulas work. The appendix explains the general rules and describes how they should be applied in more complicated accounts, such as stepped-rate and tiered-rate accounts. If an account has two types of features, such as variable and tiered rates, all applicable rules must be followed. Part II contains a single formula for calculating the annual percentage yield earned on periodic statements, with no special rules for multiple rate accounts.

The formulas that appeared in the proposed appendix provided that the annual percentage yield reflected only interest, and did not include the value of any bonuses. The majority of commenters supported the proposal, particularly the exclusion of bonuses from the formulas. Many commenters felt that adding bonuses to the formulas would significantly increase the complexity of the annual percentage yield calculation. They were concerned about determining the value of bonuses to be used in the calculation, and the potential for liability if the value was later disputed.

However, some commenters felt bonuses should be included in the calculation of the annual percentage yield. They believed an annual percentage yield that included bonuses would help consumers compare accounts offering bonuses and those that do not. They felt institutions offering bonuses as part of their marketing strategy would be placed at a competitive disadvantage if the annual percentage yield could not be used to distinguish the institution from an institution that does not offer bonuses.

Based on comments received and upon further analysis, the Board is adopting the position reflected in the proposal. The Board believes that excluding the value of any bonuses from the calculation of the annual percentage yield and the annual percentage yield earned is the better approach. The Board believes the difficulty of determining the value of bonuses for calculating the yields, especially in light of the potential liability for violations of the regulation, would significantly complicate compliance with the regulation.

As in the proposal, footnote 1 of the appendix excludes from the calculation of the annual percentage yield any amounts that are determined by circumstances that may or may not occur. For example, if an institution chooses to pay .01% additional interest for each point scored in a future sporting event, that potential is not reflected in the annual percentage yield in advertisements and account disclosures. (Of course, if the higher rate is in fact later paid that would be taken into account in the annual percentage yield earned on a periodic statement.) Similarly, earnings on an account based on changes in a stock market indicator (from the date an account is opened to the date it matures or is closed, for example) or in foreign currency exchange rates would not be reflected in the annual percentage yield.

The Board proposed that the annual percentage yield would be calculated by rounding the figure to the nearest one-hundredth of one percentage point, and showing it to two decimal places. The Board solicited comment on whether a tolerance should be provided for calculating the annual percentage yield. These provisions were supported by commenters and have been moved to a new section. (See § 230.3(f) and its accompanying explanation.)

Part I. Annual Percentage Yield for Account Disclosures and Advertising Purposes

A. *General rules.* Commenters who addressed this part of the proposed appendix generally agreed with the approach taken, and the final version is adopted very much as proposed, with revisions as noted below. A few special cases were described by commenters and guidance was requested on how they should be handled.

Many institutions permit consumers to withdraw accrued interest from time accounts, for example, on a monthly basis. The Board believes that requiring different annual percentage yield calculations based on specific consumer decisions about whether to withdraw interest or leave it in the account until maturity would significantly complicate compliance with the regulation. Thus, if consumers are permitted but not required to withdraw accrued interest from time accounts, institutions must calculate the annual percentage yield assuming the interest is *not* withdrawn from the account. (See § 230.4(b)(6)(iii) for a disclosure of this policy.) If accrued interest *must* be withdrawn from an account that compounds interest (that is, if an institution does not permit a consumer to leave accrued interest in the account) the annual percentage yield calculation must reflect such a requirement. This is reflected in new footnote 3.

As proposed, the final version provides an accommodation for annual percentage yield calculations for time accounts that are offered in multiples of months. Institutions may base the number of days on either the actual numbers of days during the applicable period, or the number that would occur in any actual sequence of that many calendar months. For example, if an institution offers a six-month certificate of deposit, the institution may calculate the annual percentage yield based on the number of days in a particular six-month period, or in any six-month period. This rule is intended to minimize the need of institutions to recalculate the annual percentage yield on an ongoing basis. The regulation requires institutions that choose to use this permissive rule to use the same number of days to calculate the dollar amount of interest that will be earned on the account in the annual percentage yield formula (where "Interest" is divided by "Principal"). Thus, the institution with the six-month certificate of deposit above may base the annual percentage yield calculation on any number of days from 181 to 184, since various six-month periods could contain that range of days. If the institution chose to use 181 days as the "Days in term," it must also use 181 days to compute the "Interest" figure used in the formula. An institution may not use 181 as the "Days in Term" and use an "Interest" figure based on 183 days. (The amount of interest paid by the institution must be based on the actual number of days in the account due to the requirement to pay interest on the principal in the account each day. (See § 230.7(a) of the regulation.))

B. *Stepped-rate accounts (different rates apply in succeeding periods).* Several commenters suggested that the rules regarding stepped-rate accounts should apply only to time accounts. For example, they questioned whether the rules should apply to an interest rate on a transaction account opened by a consumer but will decrease at some definite future date. While a stepped-rate feature typically is offered for time accounts, the Board believes a consistent rule should apply to any account with a stepped-rate feature.

C. *Variable-rate accounts.* The Board proposed that variable-rate accounts with an introductory premium or discount rate must be treated like stepped-rate accounts. This is, the calculation of the annual percentage yield must reflect the introductory interest rate for the length of time provided for in the deposit contract, and the variable interest rate that (but for the introductory rate) would have been

in effect when the account was opened or advertised for the remainder of the 365-day year.

Several commenters asked for guidance on how to compute the annual percentage yield for an introductory premium or discount rate where the variable interest rate "that would have been in effect" but for the premium or discount is not tied to an index, or is not otherwise known by the institution at the time the account is advertised or offered to a consumer.

The final rule addressed this situation. If, after the introductory rate ends, the succeeding variable rate will be tied to an index, the index-based rate in effect at the time the disclosure is made must be used for the remainder of the year. If the succeeding rate is not tied to an index, the rate currently in effect for existing consumers holding the same account who are not receiving the introductory interest rate must be used as the assumed rate for the remainder of the year. If the succeeding rate is not tied to an index and the "introductory" rate is offered to both new and existing consumer account holders with the same account, the account is simply a variable-rate account, and the stepped-rate rules would not apply.

D. *Tiered-rate accounts (different rates apply to specified balance levels).* As in the proposal, the final rule contains special rules for tiered-rate accounts (in which two or more interest rates are applicable to specified balance levels) to enable consumers to compare annual percentage yields for such accounts. The appendix sets out the two basic methods of tiering used by institutions to calculate the interest they will pay on such accounts.

Tiering Method A. In the first method (shown in the appendix as "Tiering Method A"), an institution pays the applicable "tiered" interest rate on the entire amount of the deposit. For accounts of this type, institutions must state the annual percentage yield that applies to each balance tier. In the example given in the appendix, this results in disclosure of three separate annual percentage yields—one for each tier. Although multiple annual percentage yields must be stated for these types of accounts, each annual percentage yield is calculated according to the general rule in the appendix.

When annual percentage yields are computed on this type of tiered-rate account, only one annual percentage yield figure will apply to any single tier. Several commenters requested clarification regarding the amount of the account balance that institutions should assume in computing the annual percentage yield on these types of accounts. As stated in the final regulation, within each tier, the annual percentage yield will not vary within the amount of principal assumed to have been deposited. Therefore, for these types of tiered-rate accounts, institutions may use any balance amount within a particular tier in order to determine the interest amount that would be paid on balances within that tier.

Tiering Method B In the second method of calculating interest on tiered-rate accounts (shown in the appendix as "Tiering Method B"), institutions pay the applicable tiered interest rate only on the portion of the deposit balance that falls within each specified tier, rather than on the entire amount of the deposit. For institutions that compute interest in this manner, a range of annual percentage yields must be provided for each tier, other than for the first tier—to accurately reflect how interest is paid. The low end of each range is figured on the lowest balance in the tier and the high end is figured on the highest balance in the tier.

This approach requires an institution to use a maximum balance amount that would apply in order to figure the high end of the annual percentage yield range for the highest tier. If the account has no maximum balance amount, an assumed balance is required.

The proposed appendix was written with an assumed high balance of $100,000 for accounts not otherwise having a maximum balance amount. The Board solicited comment on the best approach for determining the maximum balance amount of the highest tier, and suggested the following alternatives:

(1) $100,000, which is the current amount for which accounts are federally insured;

(2) Any amount, unless the account agreement sets a maximum limit; or

(3) Any maximum limit set forth in the account agreement.

Many commenters favored a uniform rule assuming $100,000 as the maximum balance. Some commenters expressed concern that in the absence of a uniform standard, comparisons of accounts among institutions would be more difficult and consumers could be misled by annual percentage yields for the highest tier that assume a very high maximum balance that consumers are unlikely to maintain. However, others felt that an artificial ceiling placed institutions allowing higher maximum balances at a competitive disadvantage, since the higher annual percentage yield based on the higher maximum balance could not be disclosed.

Based on the comments received and upon further analysis, the final regulation provides that if an institution limits the maximum balance on an account, that figure should be used as the highest balance in the highest tier. Thus, if the maximum balance that can be on deposit in a tiered-rate account is $100,000, institutions would use that number to figure the annual percentage yield for the high end of the top tier. If the tiered account has no maximum balance, however, the institution may assume any amount as the maximum balance amount. The Board believes that, while there may be some value in uniformity for the maximum balance figure of a tiered-rate account, limiting the maximum balance to a single figure might not be helpful to consumers. Since an institution may choose not to limit the amount of a deposit, requiring the use of a single figure could be misleading.

Part II. Annual Percentage Yield Earned for Periodic Statements

The calculation for the annual percentage yield earned that appears on a periodic statement is similar to the calculation for the annual percentage yield that appears in advertisements and account disclosures. The difference between the two formulas in that the annual percentage yield earned is tied directly to the interest and account balance for the period reflected on the statement; the annual percentage yield in account disclosures and advertisements is not tied to the consumer's exact account balance.

In the Board's proposal, the annual percentage yield earned reflected "the relationship between the interest actually paid and credited to the consumer's account during the period and the average daily balance in the account for the period" (emphasis added). Commenters urged the Board to modify this language. They were concerned that such a rule would confuse consumers whose accounts provide periodic statements more frequently than they credit interest (for example, monthly statements with interest credited quarterly). (See the discussion accompanying § 230.6.) They believed that the Congress did not intend for consumers with such accounts to receive two monthly statements during the quarter showing no interest earnings, and a final monthly statement showing the interest for all three months, and an annual percentage yield earned that reflects three months' worth of interest paid during the month.

In light of these concerns, the Board has modified the language in this part of the appendix (as well as that in § 230.6). Under the final rule, the annual

percentage yield earned is an annualized rate that reflects the relationship between the amount of interest earned on the consumer's account during the statement period and the average balance in the account for the statement period.

Several commenters requested clarification regarding the proposal's requirement that the annual percentage yield earned relates the amount of interest earned on a consumer's account during the statement period to the "*average daily balance* in the account for the period" (emphasis added). Commenters were concerned that, despite the choice of calculation methods offered in § 230.7(a), the regulation required the use of the average daily balance method to comply with § 230.6. The calculation required by Part II does not impair an institution's choice of balance calculation methods for the payment of interest. The interest figure used in the calculation may be derived from the daily balance method or the average daily balance method. The balance used in the annual percentage yield earned formula is the sum of the balances for each day in the period divided by the number of days in the period.

A number of commenters raised the problems presented when the statement period does not coincide exactly with the interest accrual period. Several commenters stated that they calculate interest using a calendar month rather than the period covered by the statement cycle. This poses a particular problem when the average daily balance method is used. For example, a periodic statement might cover the period from June 16 through July 15, and reflect transactions that occurred during that period. The institution, however, accrues interest based on the average daily balance in the account during the month of June. The final rule provides that institutions that use an average daily balance method and calculate interest for a period other than the statement period must reflect on the statement (for the period during which the interest calculation period ends) the interest earned on the account during that other period (and not during the statement period). Furthermore, they must base the annual percentage yield earned on the balance information that corresponds to the interest earned. For example, if a 3.50% interest rate (with daily compounding) is paid on an average daily balance of $500 in June, interest of $1.44 is earned in June. The annual percentage yield earned would be 3.56%, based on the average daily balance in the account during June ($500). If the periodic statement covers June 16 through July 15, the institution would show the interest earned and the annual percentage yield earned in June on that periodic statement. (See discussion of § 230.6(b).)

Commenters also asked the Board to address the situation in which a monthly statement is issued, but interest is calculated on a quarterly basis. For institutions that use the daily balance method, the final regulation requires institutions to calculate the annual percentage yield earned based on interest earned for the monthly period, even if the interest is calculated or credited in a different period. If, however, an institution calculates interest on the average daily balance for the quarter, the average daily balance cannot be determined when statements are prepared for the first two months of the quarter. Therefore, no interest earned or annual percentage yield earned would be disclosed on the first or second monthly statements. The interest earned for the quarter would be shown on the statement for the third month and the annual percentage yield earned would be figured on the basis of the quarter. The third example in Part II of the appendix shows this annual percentage yield earned calculation.

Appendix B—Model Clauses and Sample Forms.

The model clauses and sample forms in appendix B are intended for optional use by depository institutions to aid compliance with the disclosure requirements of §§ 230.4 (account disclosures), 230.5 (subsequent disclosures), and 230.8 (advertisements). Section 269(b) of the act provides that institutions that use these clauses will be in compliance with the disclosure provisions of the act. In addition, use of any modified version of a model clause will also be considered in compliance as long as the institution does not delete information required by the act or rearrange the format so as to affect the substance, clarity, or meaningful sequence of the disclosure.

As discussed in the supplementary information to § 230.3(a), the final rule provides for flexibility in designing the format of the disclosures Institutions can choose to prepare a single document or brochure that incorporates disclosures for all accounts offered, or prepare different documents for each type of account. Institutions may also use inserts to a document (see Sample Form B–4) or fill in blanks (see Sample Forms B–5, B–6 and B–7 which use double underlining to indicate terms that have been filled in) to show current rates, fees or other terms.

The sample forms included in appendix B illustrate the information that must be provided to a consumer when an account is opened under § 230.4(a)(1). Institutions are given even greater flexibility in disclosing the annual percentage yield, the interest rate, and the maturity of a time account in responding to a consumer's request under § 230.4(a)(2). For disclosures sent in response to a request, the disclosure may identify the date when the rate and yield were accurate and provide a telephone number for consumers to call to obtain current rate information. In addition, the maturity of a time account can be stated as a term, rather than a date. (See Model Clause B–1 (h)(i).)

The regulation allows institutions to satisfy their requirements under Regulation DD with disclosures that meet the requirements of Regulation E (see § 230.3(c)). The model clauses and sample forms do not include examples of disclosures which would be covered by both this regulation and Regulation E (for example, disclosing the amount of a fee for ATM usage). Depository institutions should consult appendix A to Regulation E for appropriate model clauses.

The Board requested comment on what additional model clauses and sample forms should be included in appendix B. Although a number of commenters requested that the Board provide a model periodic statement, the majority of commenters did not believe including a statement was either necessary or desirable. Most commenters encouraged the Board to allow institutions to independently develop a periodic statement that meets the needs of their customers, so long as it also meets the requirements of the regulation. The final rule does not contain model clauses for a periodic statement.

The Board also requested comment on whether sample advertisements should be included in the final rule and whether the samples provided in the proposal were useful. Commenters were divided on whether sample advertisements should be included. Some supported including the samples to provide guidance to institutions on exactly how to comply with the advertising requirements of the regulation. These commenters believed including the sample advertisements would help to insulate institutions from civil liability. Other commenters urged the Board to delete the sample advertisements. They believed that providing advertisements would open institutions up to challenge by both regulators and consumers when

an advertisement does not match the sample form.

The Board believes that since civil liability may occur due to violations of the advertising requirements, many institutions will benefit from including the samples in the final rule. Other sample advertisements have not been added, however.

In the model clauses, italicized words indicate the type of disclosure an institution should insert in the space provided (for example, an institution might insert "March 25, 1993" in the blank for a "(date)" disclosure). Brackets and "/" indicate an institution must choose the alternative that describes its practice (for example, [daily balance/average daily balance]).

1. B-1 Model Clauses

Clause (a)(i) contains the model clause describing fixed-rate accounts. While the proposal required institutions to disclose the period of time the interest rate would be in effect for both fixed- and variable-rate accounts, the final rule clarifies such a disclosure is only necessary for fixed-rate accounts. (See § 230.4(b)(1)(i).)

Clause (a)(ii) contains models for disclosing a variable-rate account. The proposal included a model clause that described changing rates based on "market or other factors." Many commenters questioned the usefulness of such a model as many institutions determine rate changes internally. Accordingly, the final rule includes language describing rate changes made at the institution's discretion.

Clause (a)(iii) provides a model clause to describe a stepped-rate account. If a stepped-rate account is also a variable-rate account, the institution must provide the variable-rate disclosures, as applicable. (See Clause (a)(ii).)

Clause (a)(iv) contains alternative language for describing tiered-rate accounts. As explained in appendix A, there are two types of tiered-rate accounts. The first type (Tiering Method A) pays the stated interest rate that corresponds to the applicable deposit tier on the full balance in the account. The second type of tiered-rate account (Tiering Method B) pays the stated interest rate only on that portion of the balance within the specified tier. An institution must provide the disclosure that describes its method of calculating interest.

Institutions must also disclose whether a tiered-rate account is a fixed-rate or variable-rate account. For example, if it is a fixed-rate account, the disclosure must include the time period the rates will be in effect. (See Clause (a)(i).) If the tiered-rate account is a variable-rate account, the institution must also provide the variable-rate disclosures. (See Clause (a)(ii).)

Clause (b)(ii) has been added to address the situation where the institution will not pay accrued interest when the consumer closes the account before that interest has been credited to the account.

Clauses (c) (i)–(iii) contain models for disclosing any minimum balance requirements associated with the account. The regulation requires that the disclosures state any minimum balance that is required to open the account, avoid the imposition of fees or obtain the annual percentage yield disclosed. If a fee is incurred for not maintaining a minimum balance, it may be stated either with this disclosure or with other fees (or both). The clauses related to the minimum balance to avoid the imposition of a fee provide examples based on the daily balance and the average daily balance methods. Institutions are not limited, however, to those two methods when determining the minimum balance for imposing a fee.

The disclosure describing the minimum balance to avoid the imposition of a fee should specify the frequency with which the fee may be assessed. For example, a minimum balance fee might be assessed monthly, even if the institution looks at whether the consumer maintained a certain balance each day of the month. In such a case, the disclosure must state the fee is imposed on a monthly basis.

Clauses (d) (i) and (ii) track the definitions for daily balance method (§ 230.2(i)) and average daily balance method (§ 230.2(d)), respectively.

Clause (e) contains models for disclosing when interest begins to accrue on noncash deposits. Section 230.7(c) requires institutions to accrue interest no later than the business day specified for interest-bearing accounts in the EFAA and Regulation CC. Institutions may, however, begin to accrue interest on the day an item is deposited (or at some time before being required to by Regulation CC). The institution may also disclose additional information, for example, that deposits received after 2 p.m. will be credited on the next business day.

Clause (f) contains a model format for use in disclosing fees. Section 230.4(b)(4) requires institutions to disclose either the amount of any fee that may be imposed in connection with the account or provide an explanation of how the fee will be determined. In addition, the disclosure must state the conditions under which the fee may be imposed if that is not clear from the name and description of the fee. (See discussion of § 230.4(b)(4) regarding examples of fees that may be assessed in connection with the account.)

Clause (h) contains model language for the additional disclosures required by § 230.4(b)(6) for time accounts. Clause (h)(i) contains alternative disclosures for describing the maturity date of a time account. The first alternative (stating a specific date) is appropriate for a disclosure when an account is opened. The second can be used only when providing disclosures in response to a consumer's request.

The model disclosure in clause (h)(iii) may be used if an institution compounds interest and allows consumers to withdraw interest during the term of the time account. As discussed in § 230.4(b)(6)(iii), this disclosure alerts consumers that the annual percentage yield assumes interest remains on deposit until maturity and that if interest is withdrawn, earnings will be reduced.

The proposal did not require disclosures for bonuses paid on accounts. The final rule requires that institutions offering bonuses state the bonus and disclose any minimum balance or time requirement to obtain the bonus and when the bonus will be paid. Clause (i) contains the model clauses for the disclosure requirements relating to bonuses. The clauses may be used for both cash and merchandise bonuses.

2. B-2 Model Clauses

Model clauses for change in terms notices are found in B-2. The second clause, describing a future decrease in the interest rate and annual percentage yield, is only applicable to fixed-rate accounts.

3. B-3 Model Clauses

Commenters requested that model clauses for the pre-maturity notices for time accounts be added to the final rule. The model clauses illustrate the requirements in § 230.5(b)(2) and 230.5(d). Institutions should refer to model clauses in B-1 and B-2 for other applicable disclosures.

4. B-4 Sample Form

This sample form illustrates use of a disclosure form for multiple accounts. The form has been marked with an "X" to indicate it is for a NOW account. The sample form includes both a fee schedule insert and a rate sheet insert. The sample thus shows that institutions may provide current rates on an insert sheet when the disclosure is given to the consumer.

The fees shown in this sample (as well as in B-5 and B-6) where chosen at

random and are not intended to represent any required pricing standards.

In the rate sheet insert, the calculations of the annual percentage yield for the 3-month and 6-month certificates are based on 92 days and 181 days, respectively.

5. B–6 Sample Form

The proposal did not contain a sample form for a tiered-rate account. Sample Form B–6 illustrates a tiered-rate account which uses Tiering Method A (discussed in appendix A and Clause (a)(iv)) to calculate interest. The form uses a narrative description of a tiered-rate account. Institutions can use a different format (for example, a chart similar to the one in B–4), so long as all of the necessary information for each tier is clearly presented. The form does not contain a separate disclosure of the minimum balance required to obtain the annual percentage yield, as the tiered-rate disclosure itself provides that information.

6. Sample Forms B–8 and B–9

These samples illustrate the requirements for advertisements found in § 230.8(c) of the regulation. Specifically, the samples demonstrate how certificates of deposit and money market accounts could be advertised in compliance with the regulation. The advertisement for the money market account (B–9) is for a tiered-rate account that uses Tiering Method A. This advertisement does not contain the disclosure related to a minimum deposit to open the account (§ 230.8(c)(4)). This indicates the opening deposit is not greater than the minimum balance necessary to obtain the advertised annual percentage yield.

The final rule does not require as many advertising disclosures as the proposal did and the sample advertisements reflect such changes (see § 230.8(c)). In addition, the final rule allows institutions to use the abbreviation "APY" if the term is printed out or stated in full at least once in an advertisement (see § 230.8(b)). Finally, while the proposal required that an advertisement state the period of time the annual percentage yield is in effect, the final rule allows the institution the alternative of providing a statement that the annual percentage yield is accurate as of a specified date. (See § 230.8(c)(2) and Sample Form B–9.)

Appendix C—Effect on State Laws

This appendix outlines the standards and process used for state law determinations. It has been revised to reflect the fact that the final regulation applies the inconsistency standard to state laws requiring actions (for example, use of particular balance calculation methods) as well as to state disclosure laws. (See discussion in § 230.1(d).)

Appendix D—Issuance of Staff Interpretations

The regulation retains the same method of providing official staff interpretations to the regulation as is used for Regulations B, E, and Z—that is, through a commentary. The Board proposed to follow the schedule established for updating several of its consumer regulation commentaries: publish changes for public comment in the autumn, with final rules effective the following spring, but compliance optional until the next October. The Board solicited comment on whether this approach would be helpful, or whether issuance of so many proposals at the same time would be difficult to deal with, so as to make a different schedule for this regulation preferable. Few comments were received on the issue. The Board therefore plans to follow its established pattern for other staff commentaries. An official staff commentary is expected to be issued in proposed form in the fall of 1993, and adopted in final form in the spring of 1994, after an opportunity for public comment. Thereafter, yearly updates of the commentary, as needed, would be contemplated.

Transition Rules

The effective date of the regulation is September 21, 1992, and the mandatory compliance date is March 21, 1993. Institutions will have to provide disclosures to any consumer who opens an account on or after March 21, 1993. Institutions also will have to provide disclosures for time accounts renewed thereafter, including automatically-renewable accounts that were opened prior to that date. Similarly, periodic statement disclosures and change in term notices would have to be provided thereafter, as applicable, for consumer accounts—including those accounts opened prior to the mandatory compliance date. Finally, the substantive provisions regarding the payment of interest will apply to consumer accounts existing as of the mandatory compliance date; they are not limited to new account holders.

Commenters raised a number of concerns about the mandatory compliance date of the regulation, and particularly about the need for transition rules for certain existing accounts. To ensure an orderly introduction of the protections intended by the Congress without undue disruption of existing relationships, the Board is providing a number of special rules.

Commenters raised concerns about time accounts opened prior to the mandatory compliance date. A number of commenters stated that their existing practice is to calculate interest based on a 360-day year (1/360 of the annual rate paid for 360 days a year). For time accounts opened prior to the mandatory compliance date, institutions are not required to change to a 365-day year during the remaining term of the account. Of course, if an account is renewed on or after the mandatory compliance date (including automatically renewable time accounts), all aspects of the regulation will apply at that point.

Sections 230.5(b), 230.5(c) and 230.5(d) require institutions to send notices prior to maturity for rollover and nonrollover time accounts, but institutions need not send any notice prior to the mandatory compliance date. Thus, institutions do not have to send the prematurity notice for any existing time account (rollover or nonrollover) that will automatically renew within 30 days after the mandatory compliance date.

Section 230.4(c) requires a notice about the availability of disclosures to be given to existing consumer account holders who receive periodic statements. Special transition rules dealing with this section are set forth in the supplementary information accompanying that section.

Special transition rules dealing with accounts held by unincorporated nonbusiness associations on the mandatory compliance date and the duty to provide information on periodic statements are discussed in the supplementary information accompanying §§ 230.2(a) and 230.6, respectively.

(3) Economic impact statement

The Board's Division of Research and Statistics has prepared an economic impact statement on the proposed regulation. A copy of the analysis may be obtained from Publications Services, Board of Governors of the Federal Reserve System, Washington, DC. 20551, or by telephone at (202) 452–3245.

(4) Paperwork Reduction Act

In accordance with section 3507 of the Paperwork Reduction Act of 1980 (44 U.S.C. 35; 5 CFR 1320.13), the information collection was reviewed by the Board under the authority delegated to the Board by the Office of Management and Budget after

considering comments received during the public comment period.

A number of commenters believed that complying with Regulation DD would place significant paperwork burdens on institutions, particularly small institutions. They questioned whether consumers wanted to receive such detailed information and stated that the expense of providing the disclosures would be passed on to consumers through decreased interest rates.

A few commenters reacted to the specific burden estimates that appeared in the **Federal Register** notice for proposed Regulation DD. They generally believed that the estimates under-reported the burden, particularly the time associated with providing complete disclosures to consumers who are opening new accounts, and explaining those disclosures.

The Board recognizes that Regulation DD will require institutions to perform annual percentage yield calculations for the various products offered, calculations that the institutions otherwise may not make. In addition, institutions will have to prepare updated disclosures as frequently as needed to incorporate any movement of interest rates. To more fully reflect these responsibilities, the Board has increased the burden estimates for providing complete disclosures, whether as part of opening a new account or in response to a consumer request.

A detailed description of the disclosure and recordkeeping requirements (including the reasons for them, the institutions that would be subject to them, and how frequently disclosures my be required) is contained elsewhere in this notice.

The information collection is mandatory (105 Stat. 2236, 2334). The requirements will apply to both large and small institutions. The impact on small institutions will depend on the extent and variety of their product offerings and their choice of the various compliance options offered by the regulations. Model disclosure forms in the regulation should somewhat ease compliance burdens on these institutions.

The following information about paperwork burden relates only to the effect of the regulation on state member banks. Institutions that will be subject to Regulation DD other than state member banks are supervised by other federal agencies: the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision. For purposes of the Paperwork Reduction Act, these agencies will report their own estimates of the paperwork burden imposed by the Truth in Savings requirements.

The Board estimates that the disclosure requirement will result in a one-time reporting burden of approximately 200,000 hours and an annual reporting burden of approximately 1.7 million hours for state member banks.

Information Collection

Report title: Recordkeeping and Disclosure Requirements in Connection with Regulation DD (Truth in Savings)
Report number: n/a
OMB docket number: 7100–0255
Frequency: As needed (or on occasion)
Reporters: State member banks

	No. of records subject to requirement	×	Estimated time per response	=	Estimated total No. of hours of annual reporting burden
Notice to existing account holders (one-time burden)	8,240,000		1.5 min.		206,000
Complete disclosures (Upon request and new accounts)	3,657,000		5 min.		304,750
Rollover CDs	800,000		1 min.		13,334
Notice for nonrollover CDs	267,000		1 min.		4,450
Change in terms	1,100,000		1 min.		18,334
Periodic statements	82,500,000		1 min.		1,375,000
Advertising	12,000		60 min.		12,000

List of Subjects in 12 CFR Part 230

Advertising, Banks, banking, Consumer protection, Federal Reserve System, Reporting and recordkeeping requirements, Truth in savings.

For the reasons set forth in the preamble and pursuant to authority granted in section 269 of the Truth in Savings Act (12 U.S.C. 4301 et seq.; Public Law 102–242; 105 Stat. 2236), the Board is amending 12 CFR chapter II by adding part 230 to read as follows:

PART 230—TRUTH IN SAVINGS (REGULATION DD)

Sec.
230.1 Authority, purpose, coverage, and effect on state laws.
230.2 Definitions.
230.3 General disclosure requirements.
230.4 Account disclosures.
230.5 Subsequent disclosures.
230.6 Periodic statement disclosures.
230.7 Payment of interest.
230.8 Advertising.
230.9 Enforcement and record retention.

Appendix A to Part 230—Annual Percentage Yield Calculation

Appendix B to Part 230—Model Clauses and Sample Forms

Appendix C to Part 230—Effect on State Laws

Appendix D to Part 230—Issuance of Staff Interpretations

Authority: 12 U.S.C. 4301 *et seq.*

§ 230.1 Authority, purpose, coverage, and effect on state laws.

(a) *Authority.* This part, known as Regulation DD, is issued by the Board of Governors of the Federal Reserve System to implement the Truth in Savings Act of 1991 (the act), contained in the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4301 et seq., Pub. L. 102–242, 105 Stat. 2236). Information collection requirements contained in this part have been approved by the Office of Management and Budget under the provisions of 44 U.S.C. 3501 et seq. and have been assigned OMB No. 7100–0255.

(b) *Purpose.* The purpose of this part is to enable consumers to make informed decisions about accounts at depository institutions. This part requires depository institutions to provide disclosures so that consumers can make meaningful comparisons among depository institutions.

(c) *Coverage.* This part applies to depository institutions except for credit unions. In addition, the advertising rules in § 230.8 of this part apply to any person who advertises an account offered by a depository institution, including deposit brokers.

(d) *Effect on state laws.* State law requirements that are inconsistent with the requirements of the act and this part are preempted to the extent of the inconsistency. Additional information on inconsistent state laws and the procedures for requesting a preemption determination from the Board are set forth in appendix C of this part.

§ 230.2 Definitions.

For purposes of this part, the following definitions apply:

(a) *Account* means a deposit account at a depository institution that is held by or offered to a consumer. It includes time, demand, savings, and negotiable order of withdrawal accounts. For purposes of the advertising requirements in § 230.8 of this part, the term also includes an account at a depository institution that is held by or on behalf of a deposit broker, if any interest in the account is held by or offered to a consumer. The term does not include an existing account held by an unincorporated nonbusiness association of natural persons prior to March 21, 1993, unless the association notifies the institution that it meets the definition of "consumer."

(b) *Advertisement* means a commercial message, appearing in any medium, that promotes directly or indirectly the availability of, or a deposit in, an account.

(c) *Annual percentage yield* means a percentage rate reflecting the total amount of interest paid on an account, based on the interest rate and the frequency of compounding for a 365-day period and calculated according to the rules in appendix A of this part.

(d) *Average daily balance method* means the application of a periodic rate to the average daily balance in the account for the period. The average daily balance is determined by adding the full amount of principal in the account for each day of the period and dividing that figure by the number of days in the period.

(e) *Board* means the Board of Governors of the Federal Reserve System.

(f) *Bonus* means a premium, gift, award, or other consideration worth more than $10 (whether in the form of cash, credit, merchandise, or any equivalent) given or offered to a consumer during a year in exchange for opening, maintaining, renewing, or increasing an account balance. The term does not include interest, other consideration worth $10 or less given during a year, the waiver or reduction of a fee, or the absorption of expenses.

(g) *Business day* means a calendar day other than a Saturday, a Sunday, or any of the legal public holidays specified in 5 U.S.C. 6103(a).

(h) *Consumer* means a natural person who holds an account primarily for personal, family, or household purposes, or to whom such an account is offered. The term also includes an unincorporated nonbusiness association of natural persons. The term does not include a natural person who holds an account for another in a professional capacity.

(i) *Daily balance method* means the application of a daily periodic rate to the full amount of principal in the account each day.

(j) *Depository institution* and *institution* mean an institution defined in section 19(b)(1)(A)(i)-(vi) of the Federal Reserve Act (12 U.S.C. 461), except credit unions defined in section 19(b)(1)(A)(iv).

(k) *Deposit broker* means any person who is a deposit broker as defined in section 29(g) of the Federal Deposit Insurance Act (12 U.S.C. 1831f(g)).

(l) *Fixed-rate account* means an account for which the institution contracts to give at least 30 calendar days advance written notice of decreases in the interest rate.

(m) *Grace period* means a period following the maturity of an automatically renewing time account during which the consumer may withdraw funds without being assessed a penalty.

(n) *Interest* means any payment to a consumer or to an account for the use of funds in an account, calculated by application of a periodic rate to the balance. The term does not include the payment of a bonus or other consideration worth $10 or less given during a year, the waiver or reduction of a fee, or the absorption of expenses.

(o) *Interest rate* means the annual rate of interest paid on an account which does not reflect compounding. For the purposes of the account disclosures in § 230.4(b)(1)(i) of this part, the interest rate may, but need not, be referred to as the "annual percentage rate" in addition to being referred to as the "interest rate."

(p) *Passbook savings account* means a savings account in which the consumer retains a book or other document in which the institution records transactions on the account.

(q) *Periodic statement* means a statement setting forth information about an account (other than a time account or passbook savings account) that is provided to a consumer on a regular basis four or more times a year.

(r) *State* means a state, the District of Columbia, the commonwealth of Puerto Rico, and any territory or possession of the United States.

(s) *Stepped-rate account* means an account that has two or more interest rates that take effect in succeeding periods and are known when the account is opened.

(t) *Tiered-rate account* means an account that has two or more interest rates that are applicable to specified balance levels.

(u) *Time account* means an account with a maturity of at least seven days in which the consumer generally does not have a right to make withdrawals for six days after the account is opened, unless the deposit is subject to an early withdrawal penalty of at least seven days' interest on amounts withdrawn.

(v) *Variable-rate account* means an account in which the interest rate may change after the account is opened, unless the institution contracts to give at least 30 calendar days advance written notice of rate decreases.

§ 230.3 General disclosure requirements.

(a) *Form.* Depository institutions shall make the disclosures required by §§ 230.4 through 230.6 of this part, as applicable, clearly and conspicuously in writing and in a form the consumer may keep. Disclosures for each account offered by an institution may be presented separately or combined with disclosures for the institution's other accounts, as long as it is clear which disclosures are applicable to the consumer's account.

(b) *General.* The disclosures shall reflect the terms of the legal obligation of the account agreement between the consumer and the depository institution. Disclosures may be made in languages other than English, provided the disclosures are available in English upon request.

(c) *Relation to Regulation E (12 CFR part 205).* Disclosures required by and provided in accordance with the Electronic Fund Transfer Act (15 U.S.C. 1601) and its implementing Regulation E (12 CFR part 205) that are also required by this part may be substituted for the disclosures required by this part.

(d) *Multiple consumers.* If an account is held by more than one consumer, disclosures may be made to any one of the consumers.

(e) *Oral response to inquiries.* In an oral response to a consumer's inquiry about interest rates payable on its accounts, the depository institution shall state the annual percentage yield. The interest rate may be stated in addition to the annual percentage yield. No other rate may be stated.

(f) *Rounding and accuracy rules for rates and yields*—(1) *Rounding.* The annual percentage yield, the annual percentage yield earned, and the interest rate shall be rounded to the nearest one-hundredth of one percentage point (.01%) and expressed to two decimal places. For account disclosures, the interest rate may be expressed to more than two decimal places.

(2) *Accuracy.* The annual percentage yield (and the annual percentage yield earned) will be considered accurate if not more that one-twentieth of one percentage point (.05%) above or below the annual percentage yield (and the annual percentage yield earned) determined in accordance with the rules in appendix A of this part.

§ 230.4 Account disclosures.

(a) *Delivery of account disclosures*—(1) *Account opening.* A depository institution shall provide account disclosures to a consumer before an account is opened or a service is provided, whichever is earlier. An institution is deemed to have provided a service when a fee required to be disclosed is assessed. If the consumer is not present at the institution when the account is opened or the service is provided and has not already received the disclosures, the institution shall mail or deliver the disclosures no later than 10 business days after the account is opened or the service is provided, whichever is earlier.

(2) *Requests.* (i) A depository institution shall provide account disclosures to a consumer upon request. If the consumer is not present at the institution when a request is made, the institution shall mail or deliver the disclosures within a reasonable time after it receives the request.

(ii) In providing disclosures upon request, the institution may:

(A) Specify an interest rate and annual percentage yield that were offered within the most recent seven calendar days; state that the rate and yield are accurate as of an identified date; and provide a telephone number consumers may call to obtain current rate information.

(B) State the maturity of a time account as a term rather than a date.

(b) *Content of account disclosures.* Account disclosures shall include the following, as applicable:

(1) *Rate information*—(i) *Annual percentage yield and interest rate.* The "annual percentage yield" and the "interest rate," using those terms, and for fixed-rate accounts the period of time the interest rate will be in effect.

(ii) *Variable rates.* For variable-rate accounts:

(A) The fact that the interest rate and annual percentage yield may change;

(B) How the interest rate is determined;

(C) The frequency with which the interest rate may change; and

(D) Any limitation on the amount the interest rate may change.

(2) *Compounding and crediting*—(i) *Frequency.* The frequency with which interest is compounded and credited.

(ii) *Effect of closing an account.* If consumers will forfeit interest if they close the account before accrued interest is credited, a statement that interest will not be paid in such cases.

(3) *Balance information*—(i) *Minimum balance requirements.* Any minimum balance required to:

(A) Open the account;

(B) Avoid the imposition of a fee; or

(C) Obtain the annual percentage yield disclosed.

Except for the balance to open the account, the disclosure shall state how the balance is determined for these purposes.

(ii) *Balance computation method.* An explanation of the balance computation method specified in § 230.7 of this part used to calculate interest on the account.

(iii) *When interest begins to accrue.* A statement of when interest begins to accrue on noncash deposits.

(4) *Fees.* The amount of any fee that may be imposed in connection with the account (or an explanation of how the fee will be determined) and the conditions under which the fee may be imposed.

(5) *Transaction limitations.* Any limitations on the number or dollar amount of withdrawals or deposits.

(6) *Features of time accounts.* For time accounts:

(i) *Time requirements.* The maturity date.

(ii) *Early withdrawal penalties.* A statement that a penalty will or may be imposed for early withdrawal, how it is calculated, and the conditions for its assessment.

(iii) *Withdrawal of interest prior to maturity.* If compounding occurs during the term and interest may be withdrawn prior to maturity, a statement that the annual percentage yield assumes interest remains on deposit until maturity and that a withdrawal will reduce earnings.

(iv) *Renewal policies.* A statement of whether or not the account will renew automatically at maturity. If it will, a statement of whether or not a grace period will be provided and, if so, the length of that period must be stated. If the account will not renew automatically, a statement of whether interest will be paid after maturity if the consumer does not renew the account must be stated.

(7) *Bonuses.* The amount or type of any bonus, when the bonus will be provided, and any minimum balance and time requirements to obtain the bonus.

(c) *Notice to existing account holders*—(1) *Notice of availability of disclosures.* Depository institutions shall provide a notice to consumers who receive periodic statements and who hold existing accounts of the type offered by the institution on March 21, 1993. The notice shall be included on or with the first periodic statement sent on or after March 21, 1993 (or on or with the first periodic statement for a statement cycle beginning on or after that date). The notice shall state that consumers may request account disclosures containing terms, fees, and rate information for their account. In responding to such a request, institutions shall provide disclosures in accordance with paragraph (a)(2) of this section.

(2) *Alternative to notice.* As an alternative to the notice described in paragraph (c)(1) of this section, institutions may provide account disclosures to consumers. The disclosures may be provided either with a periodic statement or separately, but must be sent no later than when the periodic statement described in paragraph (c)(1) is sent.

§ 230.5 Subsequent disclosures.

(a) *Change in terms*—(1) *Advance notice required.* A depository institution shall give advance notice to affected consumers of any change in a term required to be disclosed under § 230.4(b) of this part if the change may reduce the annual percentage yield or adversely affect the consumer. The notice shall include the effective date of the change. The notice shall be mailed or delivered at least 30 calendar days before the effective date of the change.

(2) *No notice required.* No notice under this section is required for:

(i) *Variable-rate changes.* Changes in the interest rate and corresponding changes in the annual percentage yield in variable-rate accounts.

(ii) *Check printing fees.* Changes in fees assessed by third parties for check printing.

(iii) *Short-term time accounts.* Changes in any term for time accounts with maturities of one month or less.

(b) *Notice before maturity for time accounts longer than one month that renew automatically.* For time accounts

with a maturity longer than one month that renew automatically at maturity, institutions shall provide the disclosures described below before maturity. The disclosures shall be mailed or delivered at least 30 calendar days before maturity of the existing account. Alternatively, the disclosures may be mailed or delivered at least 20 calendar days before the end of the grace period on the existing account, provided a grace period of at least five calendar days is allowed.

(1) *Maturities of longer than one year.* If the maturity is longer than one year, the institution shall provide account disclosures set forth in § 230.4(b) of this part for the new account, along with the date the existing account matures. If the interest rate and annual percentage yield that will be paid for the new account are unknown when disclosures are provided, the institution shall state that those rates have not yet been determined, the date when they will be determined, and a telephone number consumers may call to obtain the interest rate and the annual percentage yield that will be paid for the new account.

(2) *Maturities of one year or less but longer than one month.* If the maturity is one year or less but longer than one month, the institution shall either:

(i) Provide disclosures as set forth in paragraph (b)(1) of this section; 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 the 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 the annual percentage yield that will be paid for the new account); and

(C) Any difference in the terms of the new account as compared to the terms required to be disclosed under § 230.4(b) of this part for the existing account.

(c) *Notice for time accounts one month or less that renew automatically.* For time accounts with a maturity one month or less that renew automatically at maturity, institutions shall disclose any difference in the terms of the new account as compared to the terms required to be disclosed under § 230.4(b) of this part for the existing account, other than a change in the interest rate and corresponding change in the annual percentage yield. The notice shall be mailed or delivered within a reasonable time after the renewal.

(d) *Notice before maturity for time accounts longer than one year that do not renew automatically.* For time accounts with a maturity longer than one year that do not renew automatically at maturity, institutions shall disclose to consumers the maturity date and whether interest will be paid after maturity. The disclosures shall be mailed or delivered at least 10 calendar days before maturity of the existing account.

§ 230.6 Periodic statement disclosures.

(a) *General rule.* If a depository institution mails or delivers a periodic statement, the statement shall include the following disclosures:

(1) *Annual percentage yield earned.* The "annual percentage yield earned" during the statement period, using that term, calculated according to the rules in Appendix A of this part.

(2) *Amount of interest.* The dollar amount of interest earned during the statement period.

(3) *Fees imposed.* Fees required to be disclosed under § 230.4(b)(4) of this part that were debited to the account during the statement period. The dollar amounts of the fees shall be itemized by type and dollar amounts.

(4) *Length of period.* The total number of days in the statement period, or the beginning and ending dates of the period.

(b) *Special rule for average daily balance method.* In making the disclosures described in paragraph (a) of this section, institutions that use the average daily balance method and that calculate interest for a period other than the statement period shall calculate and disclose the annual percentage yield earned and amount of interest earned based on that period rather than the statement period. The information in paragraph (a)(4) of this section shall be stated for that period as well as for the statement period.

§ 230.7 Payment of interest.

(a) *Permissible methods*—(1) *Balance on which interest is calculated.* Institutions shall calculate interest on the full amount of principal in an account for each day by use of either the daily balance method or the average daily balance method.[1]

(2) *Determination of minimum balance to earn interest.* An institution shall use the same method to determine any minimum balance required to earn interest as it uses to determine the balance on which interest is calculated. An institution may use an additional method that is unequivocally beneficial to the consumer.

(b) *Compounding and crediting policies.* This section does not require institutions to compound or credit interest at any particular frequency.

(c) *Date interest begins to accrue.* Interest shall begin to accrue not later than the business day specified for interest-bearing accounts in section 606 of the Expedited Funds Availability Act (12 U.S.C. 4005 *et seq.*) and implementing Regulation CC (12 CFR part 229). Interest shall accrue until the day funds are withdrawn.

§ 230.8 Advertising.

(a) *Misleading or inaccurate advertisements.* An advertisement shall not be misleading or inaccurate and shall not misrepresent a depository institution's deposit contract. An advertisement shall not refer to or describe an account as "free" or "no cost" (or contain a similar term) if any maintenance or activity fee may be imposed on the account. The word "profit" shall not be used in referring to interest paid on an account.

(b) *Permissible rates.* If an advertisement states a rate of return, it shall state the rate as an "annual percentage yield" using that term. (The abbreviation "APY" may be used provided the term "annual percentage yield" is stated at least once in the advertisement.) The advertisement shall not state any other rate, except that the "interest rate," using that term, may be stated in conjunction with, but not more conspicuously than, the annual percentage yield to which it relates.

(c) *When additional disclosures are required.* Except as provided in paragraph (e) of this section, if the annual percentage yield is stated in an advertisement, the advertisement shall state the following information, to the extent applicable, clearly and conspicuously:

(1) *Variable rates.* For variable-rate accounts, a statement that the rate may change after the account is opened.

(2) *Time annual percentage yield is offered.* The period of time the annual percentage yield will be offered, or a statement that the annual percentage yield is accurate as of a specified date.

(3) *Minimum balance.* The minimum balance required to obtain the advertised annual percentage yield. For tiered-rate accounts, the minimum balance required for each tier shall be stated in close proximity and with equal prominence to the applicable annual percentage yield.

(4) *Minimum opening deposit.* The minimum deposit required to open the

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[1] Institutions shall calculate interest by use of a daily rate of at least 1/365 of the interest rate. In a leap year a daily rate of 1/366 of the interest rate may be used.

account, if it is greater than the minimum balance necessary to obtain the advertised annual percentage yield.

(5) *Effect of fees.* A statement that fees could reduce the earnings on the account.

(6) *Features of time accounts.* For time accounts:

(i) *Time requirements.* The term of the account.

(ii) *Early withdrawal penalties:* A statement that a penalty will or may be imposed for early withdrawal.

(d) *Bonuses.* Except as provided in paragraph (e) of this section, if a bonus is stated in an advertisement, the advertisement shall state the following information, to the extent applicable, clearly and conspicuously:

(1) The "annual percentage yield," using that term;

(2) The time requirement to obtain the bonus;

(3) The minimum balance required to obtain the bonus;

(4) The minimum balance required to open the account, if it is greater than the minimum balance necessary to obtain the bonus; and

(5) When the bonus will be provided.

(e) *Exemption for certain advertisements.* If an advertisement is made through one of the following media, it need not contain the information in paragraphs (c)(1), (c)(2), (c)(4), (c)(5), (c)(6)(ii), (d)(4), and (d)(5) of this section:

(1) Broadcast or electronic media, such as television or radio;

(2) Outdoor media, such as billboards;

(3) Telephone response machines; or

(4) Lobby boards inside a depository institution or deposit broker (provided they contain a notice advising consumers to contact an employee for further information).

§ 230.9 Enforcement and record retention.

(a) *Administrative enforcement.* Section 270 of the act contains the provisions relating to administrative sanctions for failure to comply with the requirements of the act and this part. Compliance is enforced by the agencies listed in that section.

(b) *Civil liability.* Section 271 of the act contains the provisions relating to civil liability for failure to comply with the requirements of the act and this part.

(c) *Record retention.* A depository institution shall retain evidence of compliance with this part for a minimum of two years after the date disclosures are required to be made or action is required to be taken. The administrative agencies responsible for enforcing this part may require depository institutions under their jurisdiction to retain records for a longer period if necessary to carry out their enforcement responsibilities under section 270 of the act.

Appendix A to Part 230—Annual Percentage Yield Calculation

The annual percentage yield measures the total amount of interest paid on an account based on the interest rate and the frequency of compounding.[1] The annual percentage yield is expressed as an annualized rate, based on a 365-day year.[2] Part I of this appendix discusses the annual percentage yield calculations for account disclosures and advertisements, while Part II discusses annual percentages yield earned calculations for periodic statements.

Part I. Annual Percentage Yield for Account Disclosures and Advertising Purposes

In general, the annual percentage yield for account disclosures under §§ 230.4 and 230.5 and for advertising under § 230.8 is an annualized rate that reflects the relationship between the amount of interest that would be earned by the consumer for the term of the account and the amount of principal used to calculate that interest. Special rules apply to accounts with tiered and stepped interest rates.

A. General Rules

The annual percentage yield shall be calculated by the formula shown below. Institutions shall calculate the annual percentage yield based on the actual number of days in the term of the account. For accounts without a stated maturity date (such as a typical savings or transaction account), the calculation shall be based on an assumed term of 365 days. In determining the total interest figure to be used in the formula, institutions shall assume that all principal and interest remain on deposit for the entire term and that no other transactions (deposits or withdrawals) occur during the term.[3] For time accounts that are offered in multiples of months, institutions may base the number of days on either the actual number of days during the applicable period, or the number of days that would occur for any actual sequence of that many calendar months. If institutions choose to use the latter rule, they must use the same number of days to calculate the dollar amount of interest earned on the account that is used in the annual percentage yield formula (where "Interest" is divided by "Principal").

The annual percentage yield is calculated by use of the following general formula ("APY" is used for convenience in the formulas):

$$APY=100\,[(1+\text{Interest}/\text{Principal})^{(365/\text{Days in term})}-1]$$

"Principal" is the amount of funds assumed to have been deposited at the beginning of the account.

"Interest" is the total dollar amount of interest earned on the Principal for the term of the account.

"Days in term" is the actual number of days in the term of the account. When the "days in term" is 365 (that is, where the stated maturity is 365 days or where the account does not have a stated maturity), the annual percentage yield can be calculated by use of the following simple formula:

$$APY=100\,(\text{Interest}/\text{Principal})$$

Examples

(1) If an institution pays $61.68 in interest for a 365-day year on $1,000 deposited into a NOW account, using the general formula above, the annual percentage yield is 6.17%:

$$APY=100[(1+61.68/1{,}000)^{(365/365)}-1]$$
$$APY=6.17\%$$

Or, using the simple formula above (since, as an account without a stated term, the term is deemed to be 365 days):

$$APY=100(61.68/1{,}000)$$
$$APY=6.17\%$$

(2) If an institution pays $30.37 in interest on a $1,000 six-month certificate of deposit (where the six-month period used by the institution contains 182 days), using the general formula above, the annual percentage yield is 6.18%:

$$APY=100[(1+30.37/1{,}000)^{(365/182)}-1]$$
$$APY=6.18\%$$

B. Stepped-Rate Accounts (Different Rates Apply in Succeeding Periods)

For accounts with two or more interest rates applied in succeeding periods (where the rates are known at the time the account is opened), an institution shall assume each interest rate is in effect for the length of time provided for in the deposit contract.

Examples

(1) If an institution offers a $1,000 6-month certificate of deposit on which it pays a 5% interest rate, compounded daily, for the first three months (which contain 91 days), and a 5.5% interest rate, compounded daily, for the next three months (which contain 92 days), the total interest for six months is $26.68 and, using the general formula above, the annual percentage yield is 5.39%:

$$APY=100[(1+26.68/1{,}000)^{(365/183)}-1]$$
$$APY=5.39\%$$

(2) If an institution offers a $1,000 two-year certificate of deposit on which it pays a 6% interest rate, compounded daily, for the first year, and a 6.5% interest rate, compounded daily, for the next year, the total interest for two years is $133.13, and, using the general formula above, the annual percentage yield is 6.45%:

$$APY=100[(1+133.13/1{,}000)^{(365/730)}-1]$$
$$APY=6.45\%$$

---

[1] The annual percentage yield reflects only interest and does not include the value of any bonus (or other consideration worth $10 or less) that may be provided to the consumer to open, maintain, increase or renew an account. Interest or other earnings are not to be included in the annual percentage yield if such amounts are determined by circumstances that may or may not occur in the future.

[2] Institutions may calculate the annual percentage yield based on a 365–day or a 366–day year in a leap year.

[3] This assumption shall not be used if an institution requires, as a condition of the account, that consumers withdraw interest during the term. In such a case, the interest (and annual percentage yield calculation) shall reflect that requirement.

C. Variable-Rate Accounts

For variable-rate accounts without an introductory premium or discounted rate, an institution must base the calculation only on the initial interest rate in effect when the account is opened (or advertised), and assume that this rate will not change during the year.

Variable-rate accounts with an introductory premium (or discount) rate must be calculated like a stepped-rate account. Thus, an institution shall assume that: (1) The introductory interest rate is in effect for the length of time provided for in the deposit contract; and (2) the variable interest rate that would have been in effect when the account is opened or advertised (but for the introductory rate) is in effect for the remainder of the year. If the variable rate is tied to an index, the index-based rate in effect at the time of disclosure must be used for the remainder of the year. If the rate is not tied to an index, the rate in effect for existing consumers holding the same account (who are not receiving the introductory interest rate) must be used for the remainder of the year.

For example, if an institution offers an account on which it pays a 7% interest rate, compounded daily, for the first three months (which, for example, contain 91 days), while the variable interest rate that would have been in effect when the account was opened was 5%, the total interest for a 365-day year for a $1,000 deposit is $56.52 (based on 91 days at 7% followed by 274 days at 5%). Using the simple formula, the annual percentage yield is 5.65%:

APY=100(56.52/1,000)
APY=5.65%

D. Tiered-Rate Accounts (Different Rates Apply to Specified Balance Levels)

For accounts in which two or more interest rates paid on the account are applicable to specified balance levels, the institution must calculate the annual percentage yield in accordance with the method described below that it uses to calculate interest. In all cases, an annual percentage yield (or a range of annual percentage yields, if appropriate) must be disclosed for each balance tier.

For purposes of the examples discussed below, assume the following:

Interest rate (percent)	Deposit balance required to earn rate
5.25	Up to but not exceeding $2,500.
5.50	Above $2,500 but not exceeding $15,000.
5.75	Above $15,000.

Tiering Method A. Under this method, an institution pays on the full balance in the account the stated interest rate that corresponds to the applicable deposit tier. For example, if a consumer deposits $8,000, the institution pays the 5.50% interest rate on the entire $8,000.

When this method is used to determine interest, only one annual percentage yield will apply to each tier. Within each tier, the annual percentage yield will not vary with the amount of principal assumed to have been deposited.

For the interest rates and deposit balances assumed above, the institution will state three annual percentage yields—one corresponding to each balance tier. Calculation of each annual percentage yield is similar for this type of account as for accounts with a single interest rate. Thus, the calculation is based on the total amount of interest that would be received by the consumer for each tier of the account for a year and the principal assumed to have been deposited to earn that amount of interest.

First tier. Assuming daily compounding, the institution will pay $53.90 in interest on a $1,000 deposit. Using the general formula, for the first tier, the annual percentage yield is 5.39%:

$APY=100[(1+53.90/1,000)^{(365/365)}-1]$
APY=5.39%

Using the simple formula:

APY=100(53.90/1,000)
APY=5.39%

Second tier. The institution will pay $452.29 in interest on an $8,000 deposit. Thus, using the simple formula, the annual percentage yield for the second tier is 5.65%:

APY=100(452.29/8,000)
APY=5.65%

Third tier. The institution will pay $1,183.61 in interest on a $20,000 deposit. Thus, using the simple formula, the annual percentage yield for the third tier is 5.92%:

APY=100(1,183.61/20,000)
APY=5.92%

Tiering Method B. Under this method, an institution pays the stated interest rate only on that portion of the balance within the specified tier. For example, if a consumer deposits $8,000, the institution pays 5.25% on $2,500 and 5.50% on $5,500 (the difference between $8,000 and the first tier cut-off of $2,500).

The institution that computes interest in this manner must provide a range that shows the lowest and the highest annual percentage yields for each tier (other than for the first tier, which, like the tiers in Method A, has the same annual percentage yield throughout). The low figure for an annual percentage yield range is calculated based on the total amount of interest earned for a year assuming the minimum principal required to earn the interest rate for that tier. The high figure for an annual percentage yield range is based on the amount of interest the institution would pay on the highest principal that could be deposited to earn that same interest rate. If the account does not have a limit on the maximum amount that can be deposited, the institution may assume any amount.

For the tiering structure assumed above, the institution would state a total of five annual percentage yields—one figure for the first tier and two figures stated as a range for the other two tiers.

First tier. Assuming daily compounding, the institution would pay $53.90 in interest on a $1,000 deposit. For this first tier, using the simple formula, the annual percentage yield is 5.39%:

APY=100(53.90/1,000)
APY=5.39%

Second tier. For the second tier, the institution would pay between $134.75 and $841.45 in interest, based on assumed balances of $2,500.01 and $15,000, respectively. For $2,500.01, interest would be figured on $2,500 at 5.25% interest rate plus interest on $.01 at 5.50%. For the low end of the second tier, therefore, the annual percentage yield is 5.39%, using the simple formula:

APY=100(134.75/2,500)
APY=5.39%

For $15,000, interest is figured on $2,500 at 5.25% interest rate plus interest on $12,500 at 5.50% interest rate. For the high end of the second tier, the annual percentage yield, using the simple formula, is 5.61%:

APY=100(841.45/15,000)
APY=5.61%

Thus, the annual percentage yield range for the second tier is 5.39% to 5.61%.

Third tier. For the third tier, the institution would pay $841.45 in interest on the low end of the third tier (a balance of $15,000.01). For $15,000.01, interest would be figured on $2,500 at 5.25% interest rate, plus interest on $12,500 at 5.50% interest rate, plus interest on $.01 at 5.75% interest rate. For the low end of the third tier, therefore, the annual percentage yield (using the simple formula) is 5.61%:

APY=100 (841.45/15,000)
APY=5.61%

Since the institution does not limit the account balance, it may assume any maximum amount for the purposes of computing the annual percentage yield for the high end of the third tier. For an assumed maximum balance amount of $100,000, interest would be figured on $2,500 at 5.25% interest rate, plus interest on $12,500 at 5.50% interest rate, plus interest on $85,000 at 5.75% interest rate. For the high end of the third tier, therefore, the annual percentage yield, using the simple formula, is 5.87%.

APY=100 (5,871.79/100,000)
APY=5.87%

Thus, the annual percentage yield range that would be stated for the third tier is 5.61% to 5.87%.

If the assumed maximum balance amount is $1,000,000 instead of $100,000, the institution would use $985,000 rather than $85,000 in the last calculation. In that case, for the high end of the third tier the annual percentage yield, using the simple formula, is 5.91%:

APY=100 (59134.22/1,000,000)
APY=5.91%

Thus, the annual percentage yield range that would be stated for the third tier is 5.61% to 5.91%.

Part II. Annual Percentage Yield Earned for Periodic Statements

The annual percentage yield earned for periodic statements under § 230.6(a) is an annualized rate that reflects the relationship between the amount of interest actually earned on the consumer's account during the statement period and the average daily balance in the account for the statement period. Pursuant to § 230.6(b), however, if an institution uses the average daily balance

method and calculates interest for a period other than the statement period, the annual percentage yield earned shall reflect the relationship between the amount of interest earned and the average daily balance in the account for that other period.

The annual percentage yield earned shall be calculated by using the following formula ("APY Earned" is used for convenience in the formulas):

$$\text{APY Earned} = 100\ [(1+\text{Interest earned}/\text{Balance})^{(365/\text{Days in period})} - 1]$$

"Balance" is the average daily balance in the account for the period.

"Interest earned" is the actual amount of interest earned on the account for the period.

"Days in period" is the actual number of days for the period.

Examples

(1) Assume an institution calculates interest for the statement period (and uses either the daily balance or the average daily balance method), and the account has a balance of $1,500 for 15 days and a balance of $500 for the remaining 15 days of a 30-day statement period. The average daily balance for the period is $1,000. The interest earned (under either balance computation method) is $5.25 during the period. The annual percentage yield earned (using the formula above) is 6.58%:

$$\text{APY Earned} = 100\ [(1+5.25/1{,}000)^{(365/30)} - 1]$$
$$\text{APY Earned} = 6.58\%$$

(2) Assume an institution calculates interest on the average daily balance for the calendar month and provides periodic statements that cover the period from the 16th of one month to the 15th of the next month. The account has a balance of $2,000 September 1 through September 15 and a balance of $1,000 for the remaining 15 days of September. The average daily balance for the month of September is $1,500, which results in $6.50 in interest earned for the month.The annual percentage yield earned for the month of September would be shown on the periodic statement covering September 16 through October 15. The annual percentage yield earned (using the formula above) is 6.69%:

$$\text{APY Earned} = 100\ [(6.50/1{,}500)^{(365/30)} - 1]$$
$$\text{APY Earned} = 6.69\%$$

(3) Assume an institution calculates interest on the average daily balance for a quarter (for example, the calendar months of September through November), and provides monthly periodic statements covering calendar months. The account has a balance of $1,000 throughout the 30 days of September, a balance of $2,000 throughout the 31 days of October, and a balance of $3,000 throughout the 30 days of November. The average daily balance for the quarter is $2,000, which results in $21 in interest earned for the quarter. The annual percentage yield earned would be shown on the periodic statement for November. The annual percentage yield earned (using the formula above) is 4.28%:

$$\text{APY Earned} = 100\ [(1+21/2{,}000)^{(365/91)} - 1]$$
$$\text{APY Earned} = 4.28\%$$

Appendix B to Part 230—Model Clauses and Sample Forms

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B–1—Model Clauses for Account Disclosures

(a) Rate information

(i) Fixed-rate accounts

The interest rate on your account is ___% with an annual percentage yield of ___%. You will be paid this rate [for (time period)/until (date)/ for at least 30 calendar days].

(ii) Variable-rate accounts

The interest rate on your account is ___% with an annual percentage yield of ___%. Your interest rate and annual percentage yield may change.

Determination of Rate

The interest rate on your account is based on (name of index) [plus/minus a margin of ___].

or

At our discretion, we may change the interest rate on your account.

Frequency of Rate Changes

We may change the interest rate on your account [every (time period)/at any time].

Limitations on Rate Changes

The interest rate for your account will never change by more than ___% each (time period).

The interest rate will never by [less/more] than ___%.

or

The interest rate will never [exceed___% above/drop more than ___% below] the interest rate initially disclosed to you.

(iii) Stepped-rate accounts

The initial interest rate for your account is ___%. You will be paid this rate [for (time period)/until (date)]. After that time, the interest rate for your account will be ___%, and you will be paid this rate [for (time period)/until (date)]. The annual percentage yield for your account is ___%.

(iv) *Tiered-rate accounts*

Tiering Method A

- If your [daily balance/average daily balance] is $___ or more, the interest rate paid on the entire balance in your account will be ___% with an annual percentage yield of ___%.
- If your [daily balance/average daily balance] is more than $___, but less than $___, the interest rate paid on the entire balance in your account will be ___% with an annual percentage yield of ___%.
- If your [daily balance/average daily balance] is $___ or less, the interest rate paid on the entire balance will be ___% with an annual percentage yield of ___%.

Tiering Method B

- An interest rate of ___% will be paid only for that portion of your [daily balance/average daily balance] that is greater than $___. The annual percentage yield for this tier will range from ___% to ___%, depending on the balance in the account.
- An interest rate of ___% will be paid only for that portion of your [daily balance/average daily balance] that is greater than $___, but less than $___. The annual percentage yield for this tier will range from ___% to ___%, depending on the balance in the account.
- If your [daily balance/average daily balance] is $___ or less, the interest rate paid on the entire balance will be ___% with an annual percentage yield of ___%.

(b) Compounding and crediting

(i) Frequency

Interest will be compounded [on a ___ basis/every (time period)]. Interest will be credited to your account [on a ___ basis/ every (time period)].

(ii) Effect of closing an account

If you close your account before interest is credited, you will not receive the accrued interest.

(c) Minimum balance requirements

(i) To open the account

You must deposit $___ to open this account.

(ii) To avoid imposition of fees

A minimum balance fee of $___ will be imposed every (time period) if the balance in the account falls below $___ any day of the (time period).

A minimum balance fee of $___ will be imposed every (time period) if the average daily balance for the (time period) falls below $___. The average daily balance is calculated by adding the principal in the account for each day of the period and dividing that figure by the number of days in the period.

(iii) To obtain the annual percentage yield disclosed

You must maintain a minimum balance of $___ in the account each day to obtain the disclosed annual percentage yield.

You must maintain a minimum average daily balance of $___ to obtain the disclosed annual percentage yield. The average daily balance is calculated by adding the principal in the account for each day of the period and dividing that figure by the number of days in the period.

(d) Balance computation method

(i) Daily balance method

We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account each day.

(ii) Average daily balance method

We use the average daily balance method to calculate interest on your account. This method applies a periodic rate to the average daily balance in the account for the period.

The average daily balance is calculated by adding the principal in the account for each day of the period and dividing that figure by the number of days in the period.

(e) Accrual of interest on noncash deposits

Interest begins to accrue no later than the business day we receive credit for the deposit of noncash items (for example, checks).

or

Interest begins to accrue on the business day you deposit noncash items (for example, checks).

(f) Fees

The following fees may be assessed against your account:

____

$ ____________________

____

$ ____________________

____

$ ____________________

____

(conditions for imposing fee)

$ ____________________

____

___% of ______

(g) Transaction limitations

The minimum amount you may [withdraw/write a check for] is $_____.

You may make ______ [deposits into/withdrawals from] your account each (time period).

You may not make [deposits into/withdrawals from] your account until the maturity date.

(h) Disclosures relating to time accounts

(i) Time requirements

Your account will mature on (date).

Your account will mature in (time period).

(ii) Early withdrawal penalties

We [will/may] impose a penalty if you withdraw [any/all] of the [deposited funds/principal] before the maturity date. The fee imposed will equal _____ days/week[s]/month[s] of interest.

or

We [will/may] impose a penalty of $_____ if you withdraw [any/all] of the [deposited funds/principal] before the maturity date.

If you withdraw some of your funds before maturity, the interest rate for the remaining funds in your account will be _____% with an annual percentage yield of _____%.

(iii) Withdrawal of interest prior to maturity

The annual percentage yield assumes interest will remain on deposit until maturity. A withdrawal will reduce earnings.

(iv) Renewal policies

(1) Automatically renewable time accounts

This account will automatically renew at maturity.

You will have [_____ calendar/business] days after the maturity date to withdraw funds without penalty.

or

There is no grace period following the maturity of this account to withdraw funds without penalty.

(2) Non-automatically renewable time accounts

This account will not renew automatically at maturity. If you do not renew the account, your deposit will be placed in [an interest-bearing/a noninterest-bearing] account.

(i) Bonuses

You will [be paid/receive] [$_____ / (description of item)] as a bonus [when you open the account/on (date) _____].

You must maintain a minimum [daily balance/average daily balance] of $_____ to obtain the bonus.

To earn the bonus, [$_____ /your entire principal] must remain on deposit [for (time period)/until (date)_____].

B-2—Model Clauses for Change in Terms

On (date), the cost of (type of fee) will increase to $_____.

On (date), the interest rate on your account will decrease to _____% with an annual percentage yield of _____%.

On (date), the minimum [daily balance/average daily balance] required to avoid imposition of a fee will increase to $_____.

B-3—Model Clauses for Pre-Maturity Notices for Time Accounts

(a) Automatically renewable time accounts with maturities of one year or less but longer than one month

Your account will mature on (date).

If the account renews, the new maturity date will be (date).

The interest rate for the renewed account will be _____% with an annual percentage yield of _____%.

or

The interest rate and annual percentage yield have not yet been determined. They will be available on (date). Please call (phone number) to learn the interest rate and annual percentage yield for your new account.

(b) Non-automatically renewable time accounts with maturities longer than one year

Your account will mature on (date).

If you do not renew the account, interest [will/will not] be paid after maturity.

BILLING CODE 6210-01-M

B-4 – SAMPLE FORM (MULTIPLE ACCOUNTS)

BANK ABC

DISCLOSURE OF ACCOUNT TERMS

This disclosure contains information about your:

X NOW Account

- Your interest rate and annual percentage yield may change.
  At our discretion, we may change the interest rate on your account daily.
  The interest rate for your account will never be less than 2.00%.
- Interest begins to accrue on the business day you deposit noncash items (for example, checks).
- Interest is compounded daily and credited on the last day of each month.
  If you close your account before interest is credited, you will not receive the accrued interest.
- We use the daily balance method to calculate the interest on your account.
  This method applies a daily periodic rate to the principal in the account each day.

___ Passbook Savings Account

- The interest rate on your account will be paid for at least 30 days.
- Interest begins to accrue on the business day you deposit noncash items (for example, checks).
- Interest is compounded daily and credited on the last day of each month.
  If you close your account before interest is credited, you will not receive the accrued interest.
- We use the daily balance method to calculate the interest on your account.
  This method applies a daily periodic rate to the principal in the account each day.

Additional disclosures for your account are included on the attached sheets.

__ Money Market Account

- Your interest rate and annual percentage yield may change.
  At our discretion, we may change the interest rate on your account daily.
  The interest rate on your account will never be less than 3.00%.
- You may make six (6) transfers from your account, but only three (3) may be payments by check to third parties.
- Interest begins to accrue on the business day you deposit noncash items (for example, checks).
- Interest is compounded daily and credited on the last day of each month.
  If you close your account before interest is credited, you will not receive the accrued interest.
- We use the daily balance method to calculate the interest on your account.
  This method applies a daily periodic rate to the principal in the account each day.

___ Certificates of Deposit

- The interest rate for your account will be paid until the maturity date of your certificate (________________).
- Interest is compounded daily and will be credited to your account monthly.
- Interest begins to accrue on the business day you deposit noncash items (for example, checks).
- This account will automatically renew at maturity. You will have ten (10) calendar days from the maturity date to withdraw your funds without being charged a penalty.
- After the account is opened, you may not make deposits into or withdrawals from this account until the maturity date.
- We use the daily balance method to calculate the interest on your account.
  This method applies a daily periodic rate to the principal in the account each day.
- If any of the deposit is withdrawn before the maturity date, a penalty as shown below will be imposed:

Term	Early Withdrawal Penalty
3-month CD	30 days interest
6-month CD	90 days interest
1-year CD	120 days interest
2-year CD	180 days interest

Additional disclosures for your account are included on the attached sheets.

(Fee Schedule Insert)

BANK ABC
FEE SCHEDULE

NOW Account

- Monthly minimum balance fee if the daily balance drops below $ 500 any day of the month . . . . $ 7.50

Passbook Savings Account

- Monthly minimum balance fee if the daily balance drops below $ 100 any day of the month . . . . $ 6.00
- You may make three (3) withdrawals per quarter Each subsequent withdrawal . . . . $ 2.00

Money Market Account

- Monthly minimum balance fee if the daily balance drops below $ 1,000 any day of the month . . . . $ 5.00

Other Account Fees

- Deposited checks returned . . . . $ 5.00
- Balance inquiries (at a branch or at an ATM) . . . . $ 1.00
- Check printing ♦ . . . . (Fee depends on style of check ordered)
- Your check returned for insufficient funds (per check) ♦ . . . . $ 16.00
- Stop payment request (per request) ♦ . . . . $ 12.50
- Certified check (per check) ♦ . . . . $ 10.00

♦ Fee does not apply to Passbook Savings Accounts or Certificates of Deposit.

Additional disclosures for your account are included on the attached sheet.

(Rate Sheet Insert)

BANK ABC
RATE SHEET

ACCOUNT TYPE	MINIMUM DEPOSIT TO OPEN ACCOUNT	MINIMUM BALANCE* TO OBTAIN ANNUAL PERCENTAGE YIELD	INTEREST RATE	ANNUAL PERCENTAGE YIELD
NOW	$ 500	$ 2,500	4.00%	4.08%
PASSBOOK SAVINGS	$ 100	$ 500	3.50%	3.56%
MONEY MARKET	$ 1,000	$ 1,000	4.15%	4.24%
3-MONTH CD	$ 1,000	$ 1,000	4.20%	4.29%
6-MONTH CD	$ 1,000	$ 1,000	4.25%	4.34%
1-YEAR CD	$ 1,000	$ 1,000	5.20%	5.34%
2-YEAR CD	$ 1,000	$ 1,000	5.80%	5.97%

* Daily balance (the amount of principal in the account each day)

B-5 – SAMPLE FORM (NOW ACCOUNT)

BANK XYZ

DISCLOSURE OF INTEREST, FEES AND ACCOUNT TERMS

NOW ACCOUNT

Fee schedule

- **Monthly minimum balance fee if the daily balance drops below $1,000 any day of the month . . . . $ 7.00**
- **Fee to stop payment of a check . . . . $ 12.50**
- **Fee for check returns (insufficient funds – per check) . . . . $ 16.00**
- **Certified check (per check) . . . . $ 10.00**
- **Fee for initial check printing (per 200) . . . . $ 12.00**
  (Cost for check printing varies depending on the style of checks ordered.)

Rate information

- The interest rate for your account is 4.00 % with an annual percentage yield of 4.08 %. Your interest rate and annual percentage yield may change. At our discretion, we may change the interest rate for your account at any time. The interest rate for your account will never be less than 2% each year.

Minimum balance requirements

- You must deposit $500 to open this account.

- You must maintain a minimum balance of $2,500 in the account each day to obtain the annual percentage yield listed above.

Balance computation method

- We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account each day.

Compounding and crediting

- Interest for your account will be compounded daily and credited to your account on the last day of each month.

Accrual of interest on deposits other than cash

- Interest begins to accrue on the business day you deposit noncash items (for example, checks).

B-6 – SAMPLE FORM (TIERED-RATE MONEY MARKET ACCOUNT)

BANK ABC

DISCLOSURE OF INTEREST, FEES AND ACCOUNT TERMS

MONEY MARKET ACCOUNT

Fee schedule

- Check returned for insufficient funds (per check) $16.00
- Stop payment request (per request) $12.50
- Certified check (per check) $10.00
- Check printing .... (Fee depends on style of checks ordered)

Rate information

- If your daily balance is $15,000 or more, the interest rate paid on the entire balance in your account will be 5.75 % with an annual percentage yield of 5.92 %.
- If your daily balance is more than $2,500, but less than $15,000, the interest rate paid on the entire balance in your account will be 5.50 % with an annual percentage yield of 5.65 %.
- If your daily balance is $2,500 or less, the interest rate paid on the entire balance will be 5.25 % with an annual percentage yield of 5.39 %.
- Your interest rate and annual percentage yield may change. At our discretion, we may change the interest rate for your account at any time. The interest rate for your account will never be less than 2.00%.
- Interest begins to accrue on the business day you deposit noncash items (for example, checks).
- Interest is compounded daily and credited on the last day of each month.

Minimum balance requirements

- You must deposit $1,000 to open this account.

- A minimum balance fee of $5.00 will be imposed every month if the balance in your account falls below $1,000 any day of the month.

Balance computation method

- We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account each day.

Transaction limitations

- You may make six (6) transfers from your account, but only three (3) may be payments by check to third parties.

B-7 – SAMPLE FORM (CERTIFICATE OF DEPOSIT)

XYZ SAVINGS BANK
1 YEAR CERTIFICATE OF DEPOSIT

Rate information

The interest rate for your account is _5.20_ % with an annual percentage yield of _5.34_ %. You will be paid this rate until the maturity date of the certificate. Your certificate will mature on _September 30, 1993_. The annual percentage yield assumes interest remains on deposit until maturity. A withdrawal will reduce earnings.

Interest for your account will be compounded daily and credited to your account on the last day of each month.

Interest begins to accrue on the business day you deposit any noncash item (for example, checks).

Minimum balance requirements

You must deposit $1,000 to open this account.

You must maintain a minimum balance of $1,000 in your account every day to obtain the annual percentage yield listed above.

Balance computation method

We use the daily balance method to calculate the interest on your account. This method applies a daily periodic rate to the principal in the account each day.

Transaction limitations

After the account is opened, you may not make deposits into or withdrawals from the account until the maturity date.

Early withdrawal penalty

If you withdraw any principal before the maturity date, a penalty equal to three montns interest will be charged to your account.

Renewal policy

This account will be automatically renewed at maturity. You have a grace period of ten (10) calendar days after the maturity date to withdraw the funds without being charged a penalty.

B-8 -- SAMPLE FORM (CERTIFICATE OF DEPOSIT ADVERTISEMENT)

BANK XYZ

ALWAYS OFFERS YOU COMPETITIVE CD RATES!!

CERTIFICATES OF DEPOSIT	ANNUAL PERCENTAGE YIELD (APY)
5 YEAR	6.31%
4 YEAR	6.07%
3 YEAR	5.72%
2 YEAR	5.52%
1 YEAR	4.54%
6 MONTH	4.34%
90 DAY	4.21%
	APYs are offered on accounts opened from 5/9/93 through 5/18/93.

The minimum balance to open an account and obtain the APY is $1,000.
A penalty may be imposed for early withdrawal.

For more information call:

202-123-1234

B-9 -- SAMPLE FORM (MONEY MARKET ACCOUNT ADVERTISEMENT)

BANK XYZ

ALWAYS OFFERS YOU COMPETITIVE RATES!!

MONEY MARKET ACCOUNTS	ANNUAL PERCENTAGE YIELD (APY)
Accounts with a balance of $5,000 or less	5.07%*
Accounts with a balance over $5,000	5.57%*
APYs are accurate as of April 30, 1993	*The rates may change after the account is opened.

Fees could reduce the earnings on the account.

For more information call:

202-123-1234

BILLING CODE 6210-01-C

Appendix C to Part 230—Effect on State Laws

(a) Inconsistent Requirements

State law requirements that are inconsistent with the requirements of the act and this part are preempted to the extent of the inconsistency. A state law is inconsistent if it requires a depository institution to make disclosures or take actions that contradict the requirements of the federal law. A state law is also contradictory if it requires the use of the same term to represent a different amount or a different meaning than the federal law, requires the use of a term different from that required in the federal law to describe the same item, or permits a method of calculating interest on an account different from that required in the federal law.

(b) Preemption Determinations

A depository institution, state, or other interested party may request the Board to determine whether a state law requirement is inconsistent with the federal requirements. A request for a determination shall be in writing and addressed to the Secretary, Board of Governors of the Federal Reserve System, Washington, DC 20551. Notice that the Board intends to make a determination (either on request or on its own motion) will be published in the **Federal Register**, with an opportunity for public comment unless the Board finds that notice and opportunity for comment would be impracticable, unnecessary, or contrary to the public interest and publishes its reasons for such decision. Notice of a final determination will be published in the **Federal Register** and furnished to the party who made the request and to the appropriate state official.

(c) Effect of Preemption Determinations

After the Board determines that a state law is inconsistent, a depository institution may not make disclosures using the inconsistent term or take actions relying on the inconsistent law.

(d) Reversal of Determination

The Board reserves the right to reverse a determination for any reason bearing on the coverage or effect of state or federal law. Notice of reversal of a determination will be published in the **Federal Register** and a copy furnished to the appropriate state official.

Appendix D to Part 230—Issuance of Staff Interpretations

Officials in the Board's Division of Consumer and Community Affairs are authorized to issue official staff interpretations of this part. These interpretations provide the protections afforded under section 271(f) of the act. Except in unusual circumstances, interpretations will not be issued separately but will be incorporated in an official commentary to this part, which will be amended periodically. No staff interpretations will be issued approving depository institutions' forms, statements, or calculation tools or methods.

By order of the Board of Governors of the Federal Reserve System, September 11, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 92-22478 Filed 9-18-92; 8:45 am]

BILLING CODE 6210-01-M

FEDERAL RESERVE BANK OF DALLAS
STATION K
DALLAS, TEXAS 75222

ADDRESS CORRECTION REQUESTED

BULK RATE
U.S. POSTAGE
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DALLAS, TEXAS
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