FEDERAL RESERVE BANK OF NEW YORK

[Circular No. **10616**
January 13, 1993]

TRUTH IN SAVINGS

Proposed Amendments to Regulation DD

Comments due February 1

To All Depository Institutions in the Second Federal Reserve District, and Others Concerned:

The following statement has been issued by the Board of Governors of the Federal Reserve System:

> The Federal Reserve Board has issued for public comment proposed amendments to Regulation DD (Truth in Savings) to carry out recent changes made to the Truth in Savings Act by the Housing and Community Development Act of 1992.
>
> The law extends the mandatory date for compliance with the requirements of the Truth in Savings Act by three months, so that institutions must comply by June 21, 1993, rather than March 21, 1993. The law also modifies the advertising rules relating to signs in an institution's lobby, and makes a technical change to the provision dealing with notices required to be given to existing account holders.
>
> The Board is seeking comment on whether an additional formula should be added to calculate the annual percentage yield (APY) earned that is provided on periodic statements.
>
> In addition, the Board is proposing to make a minor change to the regulation and to clarify and provide additional guidance on a few issues that have been raised by institutions since publication of the final regulation in September.
>
> Comment is requested by February 1, 1993.

Printed on the following pages is the text of the proposal, which has been reprinted from the *Federal Register*; comments may be sent to the Board, as specified in the notice, or to our Compliance Examinations Department.

E. GERALD CORRIGAN,
President.

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R–0791]

Truth in Savings; Proposed Regulatory Amendments

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule.

SUMMARY: The Board is publishing for comment proposed amendments to Regulation DD (Truth in Savings) to implement recent changes made to the Truth in Savings Act by the Housing and Community Development Act of 1992. The law extends the mandatory date for compliance with the requirements of the Truth in Savings Act by three months, so that institutions must comply by June 21, 1993, rather than March 21, 1993. The law also modifies the advertising rules relating to signs in an institution's lobby, and makes a technical change to the provision dealing with notices required to be given to existing account holders. In addition, the Board is proposing to make a minor change to the regulation and clarify and provide additional guidance on a few issues that have been raised by institutions since publication of the final regulation on September 21, 1992.

DATES: Comments must be received on or before February 1, 1993.

ADDRESSES: Comments should refer to Docket No. R–0791, and may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments also may be delivered to room B–2222 of the Eccles Building between 8:45 a.m. and 5:15 p.m. weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, NW (between Constitution Avenue and C Street) any time. Comments may be inspected in Room B–1122 between 9 a.m. and 5 p.m. weekdays, except as provided in 12 CFR 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT: Jane Ahrens, Kyung Cho, Kurt Schumacher, or Mary Jane Seebach, Staff Attorneys, Division of Consumer and Community Affairs, at (202) 736–5500; for the hearing impaired only contact Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

(1) Background

The Truth in Savings Act (act) (contained in the Federal Deposit Insurance Corporation Improvement Act of 1991) was enacted in December 1991. The Board published proposed rules to implement the act on April 13, 1992 (57 FR 12735), and published a final regulation, Regulation DD, on September 21, 1992 (57 FR 43337) (correction notice at 57 FR 46480, October 9, 1992).

The Housing and Community Development Act (HCDA) was enacted in October 1992 (Pub. L. 102–550, 106 Stat. 3672). The law contains three provisions that amend the Truth in Savings Act. The provisions extend the effective date for compliance with the act by three months, reduce the requirements that apply to some advertisements on the premises of a depository institution, and modify the provision that requires a notice to be given to existing account holders alerting them to the availability of account disclosures.

To implement the changes, the Board is proposing regulations for comment, and expects to adopt final amendments before March 21, 1993—the compliance date currently set forth in Regulation DD. In light of the minor nature of the

amendments and in order to ensure that amendments are adopted by March 21, the Board is providing only a 30-day comment period. In addition to proposing rules to implement the statutory changes, the Board is proposing to make one minor change to the regulation and to provide guidance on a few other issues that have been raised by institutions since adoption of the final rules. Due to a significant number of questions raised about these issues, the Board proposes to provide guidance at this time, rather than delaying until the Official Staff Commentary is proposed for comment in the fall of 1993.

(2) Proposed Regulatory Provisions

Mandatory Compliance Date

The final regulation referred to March 21, 1993, as the mandatory date for complying with the requirements of the regulation. The definition of "account" under § 230.2(a) states that existing accounts held by an unincorporated nonbusiness association of natural persons prior to March 21, 1993 are not included in the term.

As discussed above, the mandatory date for compliance with the requirements of the Truth in Savings Act was extended by the HCDA for three months. (Section 957(b) of the HCDA amended section 269(a)(2) of the Truth in Savings Act.) The Board proposes to replace the reference to "March 21" with "June 21" in § 230.2(a).

In several places, the supplementary information accompanying the final regulation referred to an effective date of March 21, 1993. The proposed change to the regulation supersedes all such references.

In conjunction with the final regulation, the Board had deleted the existing advertisement and disclosure rules in Regulation Q (12 CFR part 217) as of March 21, 1993, when the requirements in Regulation DD would become mandatory. Consistent with the change to Regulation DD, the Board will make a technical amendment to Regulation Q so that the requirements in Regulation Q will remain in effect until June 21, 1993. As stated in the supplementary information accompanying the final regulation, however, institutions may begin complying solely with the advertising provisions in Regulation DD prior to the date for mandatory compliance, instead of the advertising and disclosures provisions in Regulation Q.

Section 230.4—Account Disclosures

(c) *Notice to existing account holders*—(1) *Notice of availability of disclosures.* As enacted in December 1991, section 266(e) of the act would have required institutions to include a notice of disclosure availability on or with any regularly scheduled periodic statement sent to existing consumer account holders within 180 days of adoption of the Board's final rule. In implementing this provision, the Board's regulation specified that this notice to existing account holders did not have to be sent prior to the mandatory compliance date of March 21, 1993. Instead, the notice was to be included on or with the first periodic statement sent on or after March 21, 1993 (or the first periodic statement for a statement cycle beginning on or after that date).

As stated above, section 957(b) of the HCDA extended the mandatory compliance date from 6 months to 9 months after the Board's issuance of a final rule. In addition, section 1604(e) of the HCDA amended section 266(e) of the Truth in Savings Act to require that the notice to existing account holders be sent "on or with the first regularly scheduled mailing sent after the end of the *6 month period* beginning on the date of publication" of the Board's implementing regulations (emphasis added).

If the revisions to statutory sections 957(b) and 1604(e) were taken literally, the amended act could be read to require institutions to provide the notice to existing consumer account holders on or with the first periodic statement sent after March 21, 1993. The Board believes that the Congress did not intend for institutions to have to comply with this disclosure duty prior to the new compliance data, but rather intended to grant institutions an additional three-month period to comply. Therefore, the Board is proposing to amend § 230.4(c) of Regulation DD to require the notice of account disclosure availability to be included on or with the first periodic statement sent on or after the mandatory compliance date of June 21, 1993 (or the first periodic statement for a statement cycle beginning on or after that date). The Board solicits comments on this proposal.

Section 230.5—Subsequent Disclosures

(a) *Change in terms*—(2) *No notice required*—(ii) *Check printing fees.* The act and regulation require institutions to provide a 30-day advance notice to consumers of any change in a previously disclosed term that may adversely affect the consumer. In the final rule the Board used its exception authority, pursuant to section 269(a)(3) of the act, to create a limited exception to the notice requirements for changes in check printing fees "assessed by third parties."

Since release of the final rule, the Board has received numerous inquiries about the scope of this exception. For example, institutions have asked whether they can take advantage of the exception if the check-printing vendor directly bills the institution which adds a "mark-up" and passes the fee on to the consumer. Institutions have asked whether the exception applies if the third party originates a debit to the account, but the institution is involved in determining the fee.

In order to simplify the requirement and avoid further confusion, the Board proposes to clarify the exception so that an institution does not have to provide a change in terms notice for check printing fees—regardless of whether the fee is assessed by a third party or by the depository institution itself. The Board solicits comment on whether it is necessary to broaden the current exception in this manner.

The imposition of check printing fees by a third party was referred to in the supplementary information to section 230.8(a) that accompanied the final regulation. That section prohibits institutions from advertising an account as "free" or "no cost" if a "maintenance or activity" fee might be imposed on the account. The supplementary information specified that fees imposed by a third party to print checks are not considered maintenance or activity fees imposed on the account. Consistent with the proposed amendment to the regulation and in light of the concerns discussed above, the Board proposes to clarify that check printing fees are not maintenance or activity fees, regardless of who imposes them. Thus, an institution that imposes check printing fees could state that an account is free, if no maintenance or activity fees are imposed.

Section 230.8—Advertising

(e) *Exemption for certain advertisements.* 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 HCDA amendment to section 263(c) of the advertising rules provides that if a rate is displayed on a sign (including a rate board) designed to be viewed only from the interior of an institution, the disclosure requirements of section 263 do not apply. Instead, only the annual percentage yield and a statement advising consumers to ask employees about fees and terms applicable to the

advertised account are required to be stated.

The regulation currently exempts lobby signs from some advertising disclosure requirements. The Board's proposal would amend the regulation by reorganizing § 230.8(e). A new subparagraph (2) would be added to address disclosure requirements for lobby signs.

The proposal does not define the term "lobby sign." The Board believes that lobby signs would include signs such as preprinted posters and chalk or peg boards, whether affixed to a wall or displayed on an easel or a counter. The Board also proposes that a lobby sign include any advertisement "facing inside" an institution, including computer screens and electronic media. The Board believes, however, that a lobby sign does *not* include a document that can be retained by a consumer (such as a print-out from a computer or a brochure). Thus, such a document would be subject to all of the advertising rules. The Board requests comment on whether "lobby signs" should be defined, and if so, how the term should be defined.

Under the act, the exception applies to lobby signs designed to be viewed only from the interior of a depository institution (or the premises of a deposit broker). The Board proposes to use the term "facing inside" the lobby rather than using an "intent" standard. The Board believes this will provide a simpler test for determining if a sign is exempt under section 230.8(e) or not. Since the act creates an exemption only for lobby signs designed to be viewed from inside an institution, lobby signs that do not face inside a depository institution (or the premises of a deposit broker) would remain subject to the normal disclosure requirements of this section.

Technically, the statute could be read to exempt from the disclosure rules only those lobby signs that state a rate. The Board believes the Congress intended to except these media from the disclosure provisions in section 263(a) and 263(c) regardless of whether a rate of return is stated. Lobby signs would be exempt from the disclosure requirements under paragraphs (b), (c) and (d) of § 230.8 if the signs face inside a depository institution or the premises of a deposit broker. This would exempt such lobby signs from the disclosure rules dealing with bonuses in § 230.8(d); thus, a lobby sign could state a "bonus" without stating any additional disclosures.

Section 263(c) of the act excepts lobby signs from the "disclosure provisions" of section 263. A second amendment to the act exempts lobby signs from paragraph (a) of section 263, which deals specifically with "disclosures" required when rates of earnings are mentioned in advertisements. The proposal would exempt lobby signs from the disclosure provisions of section 263, but they would remain subject to the prohibition on misleading or inaccurate advertisements. The Board believes that if a broader exemption were intended, the Congress would have exempted the lobby signs described in section 263(c) of the act from section 263 entirely. Thus, the Board believes that lobby signs facing inside an institution (or the premises of a deposit broker) are subject to the act's prohibitions against the use of misleading or inaccurate statements in advertisements, and against the description of accounts as "free" if a regular service fee is imposed. As a result, lobby signs facing inside a depository institution would be covered by paragraph (a) of § 230.8. The Board solicits comment on this proposal.

The amendment to section 263(c) of the act requires that if any rate is displayed, the annual percentage yield must also be stated (but does not expressly require that the figure be described as the "annual percentage yield"). The regulation currently provides that in all cases, if any rate of return is advertised, it must be stated as the annual percentage yield, using that term or the abbreviation "APY." The Board solicits comment on this issue.

(3) Proposed Additional Guidance

Section 230.2(q)—Periodic Statement

The regulation defines a periodic statement as one sent to a consumer "on a regular basis four or more times a year." The supplementary information accompanying the final regulation stated that if an institution provides a statement to meet other legal requirements (for example, if an electronic fund transfer takes place and the transaction is covered by the Board's Regulation E), such a statement is a periodic statement for purposes of Regulation DD.

Many institutions have asked whether every statement sent to meet requirements of Regulation E is considered a periodic statement for purposes of Regulation DD. For example, Regulation E requires a statement to be sent for each monthly or shorter cycle in which an electronic fund transfer has occurred, but at least quarterly if no transfer has occurred (12 CFR 205.9(b)). Institutions that provide regular quarterly statements, and only provide monthly statements if a transfer has occurred, have asked whether the monthly statement is a periodic statement for Regulation DD purposes.

The Board does not believe this monthly statement is a periodic statement for Regulation DD. The statement may or may not be sent on a monthly basis, depending on whether an electronic fund transfer actually occurs that month. Unlike a statement sent every quarter—or a policy of an institution in which it sends a statement on a monthly or other regular basis—the statement is not sent on a "regular" basis since an institution may send the statement one month but not every month. Thus, the Board believes that such a statement need not include any of the disclosures in § 230.6, since it does not meet the definition of "periodic statement."

In such a circumstance discussed above, however, the quarterly statement is a periodic statement, and the disclosures in § 230.6 would have to be provided for that statement period. The Board solicits comments on whether institutions should be exempt from disclosing fees for a quarterly statement if they have reflected those fees in the prior monthly statement, in accordance with Regulation E.

Appendix A to Part 230—Annual Percentage Yield Calculation

Proposed Alternative Formula for Certain Accounts

Part II of appendix A provides institutions with a single formula to calculate the annual percentage yield earned for periodic statements. The Board has received several inquiries from institutions about whether this formula should be used in all situations. Institutions that use the daily balance method to accrue interest have noted that if a periodic statement is sent more frequently than the period for which interest is compounded, the annual percentage yield earned may be higher than the annual percentage yield. Institutions have stated that consumers could be confused or mislead by the annual percentage yield earned figure. By way of illustration, an institution that pays a 5% interest rate and compounds annually would state an annual percentage yield of 5%. The same institution would show $4.11 of interest accrued on $1,000 of principal on a monthly periodic statement (reflecting 30 days). In such a case, the annual percentage yield earned shown on that statement would be 5.12%. Institutions have urged the Board not to require use of a formula that produces such a result.

The Board solicits comment on whether an additional formula should

be added to Appendix A, Part II, to calculate the annual percentage yield earned for those accounts in which institutions provide periodic statements more often than they compound interest. The Board also requests comment on whether use of any additional formula should be optional or required. The definitions that apply to the existing formula in Appendix A, Part II would apply to the new formula, although a definition of "compounding" would be added, where "compounding" is the frequency with which interest is compounded, expressed as a number of days. (For example, quarterly compounding would be expressed as 91.25; semi-annual compounding would be expressed as 182.5; and annual compounding would be expressed as 365.) The Board requests comment on whether the following formula should be added:

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

To illustrate, in the example discussed above, if a consumer earned $4.11 in interest for a 30-day period on a $1,000 deposit, the annual percentage yield earned under the proposed formula would be 5%.

$$\text{APY Earned} = 100\left[1+\left(\frac{4.11/1{,}000}{30}\right)\right]^{(365/365)}-1$$

$$\text{APY Earned} = 5\%$$

The Board believes that this second annual percentage yield earned formula would be used under fairly narrow circumstances. First, the additional formula could be used only by those institutions that calculate interest by using a daily balance method. (Section 230.6(b) of the regulation provides a special rule for calculating the annual percentage yield earned if institutions use the average daily balance method to calculate interest.) Second, only accounts that provide periodic statements more often than the frequency for which interest is compounded would be affected. Evidence indicates that the vast majority of NOW and money market accounts—typically accounts that provide periodic statements on a monthly or quarterly basis—compound on a daily or monthly basis. Third, given the proposed position regarding the definition of a periodic statement discussed earlier in this notice, there may be few cases in which an institution provides a periodic statement more frequently than it compounds interest. (See the discussion under § 230.2(q) above, in which the Board proposes that a statement sent on a nonregular basis, to meet Regulation E requirements, is not a periodic statement for purposes of Regulation DD.) Finally, several factors may cause the annual percentage yield earned that is disclosed on the periodic statement to be lower than the annual percentage yield, such as the failure to meet a daily minimum balance requirement, a decrease in the interest rate, and use of a collected balance method of accruing interest.

Use of "Ledger" and "Collected" Balance To Calculate the Annual Percentage Yield Earned

The Board proposes to address a second issue in Part II of Appendix A. The supplementary information accompanying the final regulation state that the annual percentage yield earned reflects the relation between the amount of interest and the "*account balance for the period reflected on the statement.*" (Emphasis added.) The Board has received numerous questions regarding how the balance figure is determined when an institution uses a "collected" balance method of accruing interest. (As was stated in the supplementary information accompanying the final regulation, institutions may accrue interest using either the collected or ledger balance method.) Regardless of which method is used to accrue interest, the Board intends for institutions to use the ledger balance in the account, for the period reflected on the statement, for calculating the annual percentage yield earned.

The Board believes using the ledger balance for the periodic statement cycle provides a more accurate yield figure since it demonstrates the difference between institutions that accrue interest using a collected balance compared to those that use a ledger balance. (Assuming that the interest rate and other conditions remain the same, an institution using the ledger balance method of accruing interest would disclose a higher annual percentage yield earned on the periodic statement than an institution using a collected balance method.) The Board believes it is essential that the annual percentage yield earned be calculated in a standardized way to ensure that consumers are able to compare returns on deposit accounts. In addition, the Board believes requiring use of a ledger balance to calculate the annual percentage yield earned will minimize compliance costs and burdens on institutions.

(4) Form of Comment Letters

As discussed above, comment letters should refer to Docket No. R–0791. The Board requests that, when possible, comments be prepared using a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text into machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may also be submitted on 3½ inch or 5¼ inch computer diskettes in any IBM-compatible DOS-based format, if accompanied by an original document in paper form.

(5) Economic Impact Statement

The proposed change to the regulation is not likely to have a significant impact on institutions' costs, including those of small institutions.

List of Subjects in 12 CFR Part 230

Advertising, Banks, Banking, Consumer protection, Deposit accounts, Interest, Interest rates, Federal Reserve System, Truth in savings.

Certain conventions have been used to highlight the proposed revisions to the regulation. New language is shown inside bold-faced arrows, while language that would be deleted is set off with bold-faced brackets.

For the reasons set forth in the preamble, 12 CFR part 230 is proposed to be amended as follows:

PART 230—TRUTH IN SAVINGS

1. The authority citation for part 230 continues to read as follows:

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

2. Section 230.2 would be amended by revising the last sentence of paragraph (a) to read as follows:

§ 230.2 Definitions.

* * * * *

(a) *Account* * * * The term does not include an existing account held by an unincorporated nonbusiness association of natural persons prior to [March 21] ↑June 21↑, 1993, unless the association notifies the institution that it meets the definition of "consumer."

* * * * *

3. Section 230.4 would be amended by revising the first and second sentences of paragraph (c)(1) to read as follows:

§ 230.4 Account disclosures.

* * * * *

(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] ♦June 21♦, 1993. The notice shall be included on or with the first periodic statement sent on or after [March 21] ♦June 21♦, 1993 (or on or with the first periodic statement for a statement cycle beginning on or after that date). * * *

* * * * *

4. Section 230.5 would be amended by revising paragraph (a)(2)(ii) to read as follows:

§ 230.5 Subsequent disclosures.

* * * * *

(a) * * *

(2) * * *

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

* * * * *

5. Section 230.8 would be amended by revising paragraph (e) and by adding a new paragraph (e)(2) to read as follows:

§ 230.8 Advertising.

* * * * *

(e) *Exemption for certain advertisements.* ♦(1) *Certain media.*♦ 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:

♦(i)♦ [(1)] Broadcast or electronic media, such as television or radio;

♦(ii)♦ [(2)] Outdoor media, such as billboards; ♦or♦

♦(iii)♦ [(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).]

♦(2) *Lobby signs.* Lobby signs facing inside a depository institution (or facing inside the premises of a deposit broker) are not subject to paragraphs (b), (c), or (d) of this section. If a lobby sign states a rate of return, it shall:

(i) State the rate as an "annual percentage yield," using that term or the term "APY." The advertisement shall not state any other rate, except that the interest rate may be stated in conjunction with the annual percentage yield to which it relates.

(ii) Contain a statement advising consumers to contact an employee for further information about applicable fees and terms.♦

By order of the Board of Governors of the Federal Reserve System, December 29, 1992.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–54 Filed 1–4–93; 8:45 am]

BILLING CODE 6210–01–M