FEDERAL RESERVE BANK
OF NEW YORK

[Circular No. **10693**
February 25, 1994]

REGULATION DD — TRUTH IN SAVINGS

Proposed Official Staff Commentary

Comments Requested by April 1, 1994

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 published for comment a proposed official staff commentary to its Regulation DD, Truth in Savings. Comment is requested by April 1, 1994.
>
> The commentary applies and interprets the requirements of the regulation and is a substitute for individual staff interpretations. The proposed commentary incorporates much of the guidance provided when the regulation was adopted, and addresses additional questions that have been raised about the application of its requirements.

Printed below and on the following pages is the text of the proposed official staff commentary to Regulation DD, as published in the *Federal Register* of February 7. Comments on the proposal should be submitted by April 1, and may be sent to the Board of Governors, as specified in the notice, or to our Compliance Examinations Department.

WILLIAM J. McDONOUGH,
President.

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R–0824]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed official staff interpretation.

SUMMARY: The Board is publishing for comment a proposed official staff commentary to Regulation DD (Truth in Savings). The commentary applies and interprets the requirements of Regulation DD and is a substitute for individual staff interpretations. The proposed commentary incorporates much of the guidance provided when the regulation was adopted, and addresses additional questions that have been raised about the application of its requirements.

DATES: Comments must be received on or before April 1, 1994.

ADDRESSES: Comments should refer to Docket No. R–0824, and may be mailed to 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) at any time. Comments may be inspected in Room MP–500 of the Martin Building 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, Board of Governors of the Federal Reserve System, at (202) 452–3667 or 452–2412; for the hearing impaired *only*, Dorothea Thompson, Telecommunications Device for the Deaf, at (202) 452–3544.

PRINTED IN NEW YORK, FROM *FEDERAL REGISTER*, VOL. 59, NO. 25, pp. 5536-48

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

10693

SUPPLEMENTARY INFORMATION:

(1) Background

The purpose of the Truth in Savings Act (12 U.S.C. 4301 *et seq.*) is to assist consumers in comparing deposit accounts offered by depository institutions. The act requires institutions to disclose fees, the interest rate, the annual percentage yield, and other account terms whenever a consumer requests the information and before an account is opened. Fees and other information also must be provided on any periodic statement the institution sends to the consumer. Rules are set forth for deposit account advertisements and advance notices to account holders of adverse changes in terms. The act restricts how institutions must determine the account balance on which interest is calculated. The act is implemented by the Board's Regulation DD (12 CFR part 230), which became effective on June 21, 1993. The regulation authorizes the issuance of official staff interpretations of the regulation. (See Appendix D to Regulation DD.)

The Board is publishing a proposed commentary to Regulation DD. The proposal is designed to provide guidance to depository institutions in applying the regulation to specific transactions and is a substitute for individual staff interpretations. The Board contemplates updating the commentary periodically to address significant questions that arise. It is expected that this commentary will be adopted in final form in June 1994 with a six-month time period for optional compliance until the effective date, estimated in December 1994.

(2) Proposed Commentary

The **Federal Register** documents containing the regulation that implemented the act and documents for subsequent amendments set forth a large amount of supplementary material interpreting the new regulation. (See final rule published on September 21, 1992 (57 FR 43337), correction notice published on October 5, 1992 (57 FR 46480), and amendments published on March 19, 1993 (58 FR 15077).) In large measure, the proposed commentary incorporates the supplementary material from those rulemakings, and reflects the views expressed therein without substantive change. A number of issues that have arisen since the publication of the regulation have also been addressed. Proposed interpretations of new issues are noted below.

On December 6, 1993, the Board published a proposal to amend the regulation's rules for calculating the annual percentage yield for accounts that pay interest prior to maturity (58 FR 64190). (See also the notice extending the comment period published on January 13, 1994, 59 FR 1921.) The Board has deferred proposing commentary on provisions of the regulation affected by the proposal, pending final action by the Board.

The scope of the discussion that follows is limited so that, for instance, examples listed in the commentary are not repeated below.

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

(c) Coverage

Comment 1(c)–1 clarifies that the scope of the regulation is all depository institutions (except credit unions) that offer accounts to residents of a "state," such as accounts held in the United States, even though funds may be transferred periodically into an account held at a location outside the United States. An account located outside the United States is not covered, even if the funds are held by a U.S. resident.

Section 230.2—Definitions

(a) Account

Comment 2(a)–1 provides examples of accounts subject to the regulation, including the example of a deposit account required as a condition of obtaining a credit card account (often referred to as a "secured" credit card account). The Board believes it is important for consumers to receive disclosures about the terms, monthly fees, or other charges that may apply to such accounts, since such information may not appear on disclosures given to card holders under the Truth in Lending Act and its implementing Regulation Z (12 CFR part 226).

The proposed comment also includes examples of accounts not subject to the regulation. The Board's proposed comment narrows the scope of trust accounts covered by the regulation, a difference from guidance provided in supplementary material to the September 1992 rulemaking. The comment provides that trust accounts are not subject to the regulation with the exception of individual retirement accounts (IRAs) and simplified employee pension (SEP) accounts. (See proposed commentary to paragraph 2(h) of this section.) The "trust" for which the account is established is not a natural person, even though the trustee and beneficiary might be. In addition, the law of trusts imposes duties and responsibilities upon all trustees that the Board believes distinguish trust accounts from other accounts held by one individual for another solely for personal, family or household purposes. Finally, the Board believes that requiring an institution to identify both the purpose of the trust and whether the account has been established by someone in a professional capacity would present an undue compliance burden, with minimal benefits. The Board requests comment on whether any accounts established for trusts (other than IRAs and SEP accounts) should be subject to the regulation, particularly when both the beneficiary and the trustee are natural persons.

(b) Advertisement

Comment 2(b)–1 provides examples of commercial messages considered to be advertisements, such as messages on computer screens in bank lobbies and accompanying printouts. The Board believes these messages are similar to messages in traditional advertising media such as televisions and newspapers.

The comment also provides examples of messages not considered to be advertisements, including direct oral discussions conducted in person—but not telephone conversations—regarding the negotiation of a specific account. The Board believes that the purpose of advertising disclosures—ensuring that prospective customers of consumer accounts know basic terms about the account—is adequately served by face-to-face discussions between employees of the institution and consumers seeking information about accounts. Also, this interpretation is similar to the approach taken in the Official Staff Commentary to the Board's Regulation Z (12 CFR part 226, Supp. I, 2(a)(2)–1).

(f) Bonus

Comment 2(f)–1 provides examples of bonuses. The comment also provides an example of an item that is not considered a bonus for purposes of the regulation—discount coupons offered by institutions for use at restaurants and stores.

Comment 2(f)–2 clarifies the application of the *de minimis* rule ($10 value or less) by defining the calendar year as the time frame for determining whether the bonus requirements are triggered, to ease compliance. The comment also provides that institutions must aggregate per account the value of items contemplated to be given during the calendar year, even though an item's individual value is less than $10. Thus, if an institution offers in January to give a consumer an item valued at $7.00 each calendar quarter during the year if account balances in a NOW account exceed $10,000 for each calendar

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

10683

quarter, the bonus rules would be triggered. On the other hand, if the items are given for opening separate accounts—such as a $7.00 item for renewing a time account and another for opening a savings account—the value given for each account remains within the *de minimis* exception, and the bonus rules would not be triggered.

Comment 2(f)–3 clarifies that the waiver or reduction of a fee or absorption of expenses is not a bonus. The Board solicits comment on this approach.

(h) Consumer

Comment 2(h)–3 clarifies coverage issues for retirement plans. For example, the proposed comment states that SEP accounts and IRAs are considered consumer accounts for purposes of the regulation. The Board believes that although institutions are named as trustees, SEP accounts and IRAs are equivalent to other accounts opened for consumer purposes. On the other hand, the proposed comment would exclude from coverage accounts held in a Keogh plan, which is established by a self-employed individual. The Board believes Keogh accounts are similar to accounts held by a sole proprietor, which Congress intended not to cover.

Comment 2(h)–4 provides factors to consider in determining whether an account is held by an unincorporated nonbusiness association of natural persons. Associations with paid staff are likely to be more sophisticated in their investment decisions and are not as likely to need disclosures. The Board solicits comment on whether the use of factors is appropriate for providing guidance in this area. In addition, the Board solicits comment on the proposed factors and on what additional factors might indicate an account is held by or offered to an unincorporated association of natural persons.

(p) Passbook Savings Account

Comment 2(p)–1 clarifies that institutions may consider accounts as "passbook savings," even if direct deposits such as social security payments are made to the account without the use of the passbook. The proposed comment is consistent with the requirements of Regulation E (12 CFR 205.9). Accounts that permit other electronic fund transfers—whether or not called "passbook"—and thus trigger Regulation E's requirement to send statements at least quarterly are not passbook savings accounts, and institutions must comply with the periodic statement disclosures in § 230.6 of this part.

(t) Tiered-rate Account

Comment 2(t)–1 clarifies that time accounts that pay different rates based solely on the amount of the initial deposit are not considered tiered-rate accounts. In this case, advertisements and account disclosures would not reflect tiered-rate disclosures for the account.

Section 230.3—General Disclosure Requirements

(b) General

Comment 3(b)–1 provides guidance on the specificity required for the disclosures of the compounding and crediting frequencies. The Board believes slight variations in cycles are consistent with the notion of "monthly" cycles, which are often not based on an actual calendar month.

(c) Relation to Regulation E

Comment 3(c)–1 provides examples of disclosures under Regulation E that also comply with this regulation.

The comment clarifies that an institution may rely on Regulation E's disclosure rules regarding fees imposed at ATMs and limitations on the frequency and amount of electronic fund transfers, including security-related exceptions. But any fees assessed for—or any limitations placed on the number or amount of—"intra-institutional transfers" from other accounts at the institution must be disclosed under this regulation, even though those transactions are exempt from Regulation E. (See § 230.4(b) of this part.)

Section 230.4—Account Disclosures

(a) Delivery of Account Disclosures

(a)(1) Account Opening

The regulation requires institutions to provide account disclosures before an account is opened. Comment 4(a)(1)–1 provides examples of events that do and do not trigger the delivery of new account disclosures. Comment 4(a)(1)–1 provides guidance to institutions that deem an account to be closed, then receive a deposit from the consumer. The circumstances under which an institution may deem an account closed is governed by state or other law. However, the Board believes that if an institution accepts a deposit from a consumer on an account the institution has deemed to be "closed" (such as with a balance of $0) opening account disclosures are required.

The proposed comment also provides that an account acquired in a merger or acquisition is not a new account. Comment is solicited on whether the rules for acquisitions involving the Resolution Trust Corporation and the Federal Deposit Insurance Corporation should be distinguished from the rules for other acquisitions, since they may involve the acquisition of deposits, not accounts.

(a)(2) Requests

Paragraph (a)(2)(i)

Comment 4(a)(2)(i)–3 clarifies that ten business days (a period consistent with other timing rules for providing disclosure to consumers that open accounts by telephone, for example) is a reasonable time for responding to requests for disclosures.

(b) Content of Account Disclosures

Paragraph (b)(1) Rate Information

Paragraph (b)(1)(i) Annual Percentage Yield and Interest Rate

Comment 4(b)(1)(i)–1 provides that no rate or yield other than the interest rate and annual percentage yield may be stated in account disclosures, with the exception of a periodic rate corresponding to the interest rate (since it is easily understood by consumers).

(b)(2) Compounding and Crediting

(b)(2)(i) Frequency

Interpretation of this paragraph is deferred pending the Board's final action on proposed amendments to Regulation DD.

(b)(2)(ii) Effect of Closing an Account

Proposed comment 4(b)(2)(ii)–1 explains that institutions may include in their contract specific consumer actions that will be considered by the institution to be a request to close the account, and that may result in the nonpayment of accrued but uncredited interest. (See § 230.7(b) of this part.) The Board solicits comment on this approach.

(b)(4) Fees

Comments 4(b)(4)–1 through –3 provide guidance for disclosing the amount of fees that may be assessed in connection with the account and the conditions under which they may be imposed. The Board believes that attempting to list in the commentary all fees imposed by institutions would produce a list that would become both lengthy and outdated.

(b)(5) Transaction Limitations

Comment 4(b)(5)–1 clarifies that institutions need not disclose their right to require seven-day advance notice for withdrawals from an account. (See 12 CFR part 204.)

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

10693

(b)(6) Features of Time Accounts

(b)(6)(i) Time Requirements

Comment 4(b)(6)(i)–1 provides that institutions offering "callable" time accounts must state the date or the circumstances under which the account may be redeemed, in addition to the maturity date. The Board believes the disclosure is a component of the maturity date—informing the consumer when the funds in the account may become available for reinvestment.

(b)(6)(ii) Early Withdrawal Penalties

Comment 4(b)(6)(ii)–2 provides examples of early withdrawal penalties, and clarifies that early withdrawal penalties include bonuses that may be reclaimed if funds are withdrawn prior to maturity.

Comment 4(b)(6)(ii)–3 clarifies that institutions are not required to disclose as early withdrawal penalties potential income taxation consequences for consumers who withdraw funds held in IRAs or similar plans.

Section 230.5—Subsequent Disclosures

(a) Change in Terms

Paragraph (a)(1) Advance Notice Required

Comment 5(a)(1)–3 provides guidance on an institution's responsibilities to provide change in terms notices when account disclosures reflect that a term may change upon the occurrence of an event, such as a fee waiver for employees during their employment.

However, the Board believes that a change in terms notice does not extend to changes in the *type* of account held. (See proposed commentary to § 230.4(a)(1) of this part, which clarifies that transferring funds held in an MMDA to open a NOW account must be treated as the opening of a new account.)

Paragraph (a)(2)(ii) Check Printing Fees

The regulation's exception to providing a change in terms notice for increases to check printing charges is based on the consumer's control over the style and quantity of checks ordered. The Board solicits comment on other products, if any, that should be similarly treated.

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

Comments 5(b)–1 through –5 address questions about notices that must be sent for automatically renewing time accounts. Comment 5(b)–1 provides guidance regarding a time account that may, in fact, have a term longer than the stated maturity date because the maturity date falls on a weekend or holiday. The Board has received questions asking whether this delay on a one-year time deposit would make the term longer than one year (thus requiring the full account disclosures under paragraph 5(b)(1) of this section prior to renewal rather than the abbreviated disclosures permitted by paragraph 5(b)(2)). The same issue arises for time accounts with a stated term of one month that may be extended beyond 31 days. The Board believes these short extensions due to the maturity date's falling on a weekend or holiday do not affect the classification of the account for purposes of the type of disclosures institutions are required to provide.

Comment 5(b)–2 clarifies that when disclosing the date when the interest rate and annual percentage yield can be determined, institutions may use general disclosures of that date if the date is easily discerned.

The Board has received many questions about "club accounts." Comment 5(b)–4 makes clear that club accounts that otherwise meet the definition of a time account (§ 230.2(u)) must follow the requirements of this section, even if the consumer withdraws funds at maturity rather than "rolling over" the principal amount for another term. The proposed comment also clarifies that if the consumer has previously agreed to make payments into the account for the next club cycle (for example, by direct deposit or by transfers from another account), the club account should be treated as an automatically renewable time account.

Comment 5(b)–5 clarifies disclosure requirements for a changed term for the subsequent renewal of a rollover time account. If the notice required by this paragraph has been provided to the consumer about the renewing time account, institutions may provide new account disclosures or a disclosure that reflects the consumer's request and the new term. The regulation states that if disclosures have previously been given and the terms remain the same, institutions need not provide the disclosures a second time. (See § 230.4(a) of this part.) Since consumers receive disclosures about their renewing time account, this approach provides consumers with essential information and eases compliance for institutions. The Board requests comment on this approach.

Paragraph (b)(1) Maturities of Longer Than One Year

Comment 5(b)(1)–1 clarifies that institutions need not highlight the new terms reflected in the disclosures.

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

Institutions have limited disclosure responsibilities for rollover time accounts with maturities of one month or less. If a term previously disclosed (other than the interest rate and annual percentage yield) is changed at renewal, institutions must send a brief notice describing the change "within a reasonable time" after the renewal of the account. Comment 5(c)–1 provides that 10 calendar days after the renewal is a reasonable time except for accounts shorter than 10 days, which should receive disclosures before any subsequent renewal.

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

Comment 5(d)–1 clarifies that institutions need not provide new account disclosures when funds are subsequently transferred following the maturity of a nonrollover time account, unless a new account is established. The Board solicits comments on how institutions treat funds held in a nonrollover time account following maturity, and whether new account disclosures are appropriate in cases where funds remain with institutions. For example, is a check sent to the consumer automatically, or within a certain number of days of maturity? Are funds transferred to an account, and if so, how long are the funds typically held in that account?

Section 230.6—Periodic Statement Disclosures

(a) General Rule

Comment 6(a)–2 provides guidance to institutions when quarterly periodic statements are normally sent for the account but a consumer's electronic fund transfer triggers the institution's duty under Regulation E to send a statement that month. Institutions need not treat interim monthly statements as periodic statements subject to the requirements of this regulation; if they choose not to do so, they must provide the disclosures (such as the interest earned and annual percentage yield earned) on subsequent quarterly statements.

Comment 6(a)–3 clarifies that institutions may include limited account information for one account (an

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

10693

MMDA, for example) on the periodic statement of another account. However, disclosing interest or rate information would trigger the duty to state the annual percentage yield and other disclosure requirements on that statement.

Comment 6(a)–4 provides guidance on additional information that may appear on periodic statements.

Paragraph (a)(3) Fees Imposed

Comment 6(a)(3)–2 provides examples of similar types of fees that can be grouped together if they are disclosed with the same name or description. It also makes clear that all other account fees, including those related to electronic services that are not fund transfers, must be disclosed in accordance with § 230.6 of this part.

Comment 6(a)(3)–4 clarifies that institutions may comply with the requirements of Regulation E for disclosing electronic funds transfer fees on periodic statements.

Paragraph (a)(4) Length of Period

Comment 6(a)(4)–2 provides that if a consumer opens or closes an account during a period, the annual percentage yield earned and the other disclosures for the consumer's account must reflect only those days the account was open, such as when a consumer changes from an interest-bearing account to a noninterest-bearing account in the middle of a period.

(b) Special Rule for Average Daily Balance Method

When an institution uses the average daily balance method for monthly periods and provides a quarterly statement, the literal language of the regulation suggests that institutions should provide three interest figures with three corresponding annual percentage yield earned figures. Comment 6(b)–3 would permit institutions to show either separate figures for each month or a figure for the whole quarter. The Board believes consumers may receive more useful information if institutions provide one interest figure and one corresponding annual percentage yield earned figure for the period.

Section 230.7—Payment of Interest

(a) Permissible Methods

Comment 7(a)–5 clarifies that the regulation does not require institutions to pay interest after a time account matures and provides examples to illustrate the rule.

Comment 7(a)–6 addresses "dormant" accounts. The Board solicits comment on whether an institution should or should not be permitted to withhold the payment of interest for dormant accounts. (See comment 7(b)–4, regarding the forfeiture of accrued but uncredited interest for dormant accounts.) The Board also solicits comment on whether providing further guidance on the definition of a dormant account would be preferable to reliance on state or other law. And, if a uniform time period were to be adopted, what period of time would be appropriate to consider an account dormant?

Paragraph (a)(2) Determination of Minimum Balance to Earn Interest

Comment 7(a)(2)–5 clarifies that when a consumer's account has a negative balance, institutions must use zero, and not a negative number, to determine the balance on which the institution pays interest and whether any minimum balance requirement has been met. The Board believes that the regulation prohibits institutions from using negative balance amounts for these purposes, regardless of whether a daily balance or an average daily balance requirement method is used. (See commentary to Appendix A, Part II, which prohibits the use of negative balances for calculating the interest figure for the annual percentage yield earned.)

Comment 7(a)(2)–6 clarifies that for club accounts, such as "holiday" and "vacation" clubs, institutions cannot impose a minimum balance that could result in the nonpayment of interest for the entire club period. The Board believes a minimum balance that requires consumers to make the total number of payments or dollar amounts required under the club plan at the maturity of the account is tantamount to the ending balance method of calculating interest—a balance calculation method not permitted under the regulation.

(b) Compounding and Crediting Policies

Comment 7(b)–3 clarifies that institutions may, by agreement with the consumer, specify circumstances in which the institution deems an account to be closed by the consumer. If an account is closed by the consumer, Regulation DD does not require an institution to pay accrued but uncredited interest, as long as this fact is disclosed. (See § 230.4(b)(2)(ii).) For example, institutions may provide in a checking account agreement that by writing a check which reduces the account balance to $0, a consumer is deemed to have closed an account, or that the account will be deemed closed if no activity occurs within 60 days of that transaction. (See proposed comment 230.4(a)(1)–1, which requires institutions to treat the acceptance of a deposit subsequently made by the consumer to that account as the opening of a new account.)

Section 230.8—Advertising

(a) Misleading or Inaccurate Advertisements

In response to concerns expressed about the potential for misleading or inaccurate advertising on indoor signs, comment 8(a)–2 provides guidance regarding time accounts and tiered-rate accounts. The Board solicits comment on the approach taken.

The regulation prohibits institutions from using the terms "free" or "no cost" (or terms of similar meaning) to advertise accounts or account services if "maintenance and activity fees" can be imposed. The Board has received many questions about which fees trigger the prohibition. The Board believes that it is not possible to identify by name all fees that trigger this limitation. (See discussion for proposed comment 4(b)(4)–1.) Instead, comments 8(a)–3 through –7 provide general principles institutions may use, regardless of what a fee may be named. The Board solicits comment on the proposed approach to provide guidance in this area.

In defining the scope of "maintenance and activity" fees, comment 8(a)–3 addresses advertisements for "free" accounts with optional electronic services such as home banking. The Board believes many consumers consider electronic services such as ATM access to be an integral part of their accounts. Therefore, in its September 1992 rulemaking, the Board stated that institutions could not advertise an account as "free" if a fee is imposed for transactions at ATMs owned by the institution. Some institutions have questioned this approach arguing that ATM access is provided only upon a consumer's request and that consumers will receive information—including the cost of ATM access—before obtaining the service. The Board solicits comment on this approach.

The Board believes consumers are not mislead by advertisements for "free" accounts, if certain electronic services, such as home banking services, are available for a fee. The Board believes that (unlike ATM access) consumers do not have a reasonable expectation that services such as home banking would be included as part of an account advertised as free. Of course, if optional features that impose fees are advertised with a free account, the advertisement must make clear that charges are

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

10693

assessed for the optional feature. The Board solicits comment on this approach, and requests comment on whether ATM services should be distinguished from other optional electronic services, and whether consumers would be mislead by an advertisement for an account that is described as "free" even though the institution may charge for ATM activity at ATMs owned by the institution.

Comment 8(a)–4 specifies that the term "fees waived" is similar to the terms "free" or "no cost" for the purposes of this section.

(b) Permissible Rates

The Board has received many questions about advertising accounts for which institutions offer a number of versions (certificates of deposits, for example). Comment 8(b)–3 clarifies that institutions may state an annual percentage yield for each version of an account. Alternatively, the proposed comment would permit institutions to state a representative example as long as the advertisement makes clear that, for instance, the advertised yield is for a time account with a 30-day maturity and does not apply to all time accounts. Similarly, the comment illustrates that institutions could advertise selected versions of time accounts. The Board solicits comment on this approach, which the Board believes would effectively minimize compliance burdens for institutions while still providing meaningful information to consumers.

(c) When Additional Disclosures are Required

The regulation requires institutions to disclose additional information when the annual percentage yield is advertised. Comment 8(c)–1 provides examples of information that does and does not trigger the additional disclosures. In response to questions about the effect of advertising a "bonus" rate, the proposed comment illustrates that stating "bonus rates are available" does not trigger additional disclosures. However, stating a "bonus rate of 1%" over an institution's current interest rate for one-year certificates of deposit is equivalent to stating an interest rate.

Paragraph (c)(2) Time Annual Percentage Yield Is Offered

Comment 8(c)(2)–1 clarifies the regulation's disclosure requirements for advertisements that state an annual percentage yield as of a specified "recent" date. The proposed comment provides that when an advertisement is published, the specified "recent date" must be recent in relation to the publication frequency of the media used for the advertisement (taking into account established production deadlines for the media involved). For example, annual percentage yields as of the printing date of a brochure printed once for a deposit account promotion that will run for six months would be considered "recent," even though rates may be expected to change during the six-month period. Annual percentage yields published in a daily newspaper or broadcast on television must be "recent" as of the daily publishing or broadcasting deadline date, even though the advertisements may appear less frequently (such as once a month). The Board solicits comment on this approach.

Paragraph (c)(6) Features of Time Accounts

Paragraph (c)(6)(i) Time Requirements

Comment 8(c)(6)(i)–1 addresses questions regarding "club" accounts in which there is a fixed maturity date but the term of the account may vary, depending on when the account is opened. The proposed comment provides that institutions adequately disclose the term of the account by stating the established maturity date and the fact that the actual term may vary.

Appendix A—Annual Percentage Yield Calculation

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

With one exception, the interpretation of Appendix A, Part 1 is deferred pending the Board's final action on proposed amendments to Regulation DD. Proposed comment app. A.I.–1 clarifies rounding rules which may be used in calculating interest and the annual percentage yield. The Board believes that rounding to five decimals results in a more precise figure and is in accordance with industry practices. The Board requests comment on whether further guidance on rounding principles would be appropriate.

Part II. Annual Percentage Yield Earned for Periodic Statements

Comment app. A.II.A–1 clarifies when institutions should or should not include accrued but uncredited interest in the balances used to calculate the annual percentage yield earned. The Board believes that it would be misleading to include accrued interest in the balance figure when statements are sent less frequently than interest is credited.

When periodic statements are issued more frequently than interest is credited, accrued interest would be included in the balance figure in succeeding statements. This is necessary so that the beginning balance can properly reflect the principal on which interest will accrue for the succeeding statement period. The Board solicits comment on these calculation principles.

Comment app. A.II.A.–2 clarifies rounding rules for calculating interest earned and the annual percentage yield earned. The Board believes flexibility in rounding is appropriate when statements are sent more frequently than interest is compounded and credited, since the interest earned figure does not reflect the amount which will actually be paid by an institution.

B. Special Formula for Use Where Periodic Statements Are Sent More Often Than the Period for Which Interest Is Compounded

Comment app. A.II.B.–1 provides guidance to institutions that issue quarterly periodic statements but are required by Regulation E to send a monthly statement during the quarter. (See proposed comment 230.6(a)–2, which discusses an institution's option to comply with the disclosure requirements for such monthly statements.) The comment clarifies that institutions complying with § 230.6 for monthly statements triggered by Regulation E must use the special formula in part II.B. of this appendix. Institutions could use this formula for a quarterly statement whether or not a monthly statement is triggered by Regulation E during the quarter. The Board believes such a rule would significantly reduce compliance burdens for institutions. However, in some cases, the use of the special formula may result in an understated annual percentage yield earned. The Board solicits comment on whether the purposes of the act are best served by this approach.

Comment app. A.II.B.–2 clarifies that the special formula requires institutions to use the actual number of days in the compounding period in calculating the annual percentage yield earned. In the supplementary material that accompanied the March 19, 1993 amendments to the regulation (58 FR 15077), the calculation used average numbers of days in the compounding period to calculate the annual percentage yield earned for a statement period. The Board believes that using actual days in a compounding period is more appropriate and corresponds to the annual percentage yield earned for a specific consumer's account. The Board solicits comment on the proposed comment.

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

10693

(3) Form of Comment Letters

Comment letters should refer to Docket No. R–0824, and, when possible, should use 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.

List of Subjects in 12 CFR Part 230

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

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 230 as follows:

PART 230—TRUTH IN SAVINGS (REGULATION DD)

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

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

2. Part 230 would be amended by adding a new Supplement I at the end of the appendixes to the Part to read as follows:

Supplement I to Part 230—Official Staff Interpretations

INTRODUCTION

1. *Official status.* This commentary is the vehicle by which the staff of the Division of Consumer and Community Affairs of the Federal Reserve Board issues official staff interpretations of Regulation DD. Good faith compliance with this commentary affords protection from liability under section 271(f) of the Truth in Savings Act.

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

(c) Coverage

1. *Foreign applicability.* Regulation DD applies to all depository institutions, except credit unions, that offer deposit accounts to residents (including resident aliens) of any state as defined in § 230.2(r).

2. *Persons who advertise accounts.* Persons who advertise accounts are subject to the advertising rules. For example, if a deposit broker places an advertisement that offers consumers an interest in an account at a depository institution, the advertising rules apply to the advertisement, whether the account is held by the broker or directly by the consumer.

Section 230.2—Definitions

(a) Account

1. *Covered accounts.* Examples of accounts subject to the regulation are:

• Interest-bearing and noninterest-bearing accounts

• Accounts opened as a condition of obtaining a credit card

Examples of accounts not subject to the regulation are:

• Mortgage escrow accounts for collecting taxes and property insurance premiums

• Accounts established to make periodic disbursements on construction loans

• Trust accounts other than individual retirement accounts (IRAs) and simplified employee pension (SEP) accounts

• Accounts opened by an executor in the name of a decedent's estate

• Accounts of individuals operating businesses as sole proprietors

2. *Other investments.* The term "account" does not apply to all products of a depository institution. Examples of products not covered are:

• Government securities

• Mutual funds

• Annuities

• Securities or obligations of a depository institution

• Contractual arrangements such as repurchase agreements, interest rate swaps, and bankers acceptances

(b) Advertisement

1. *Coverage.* Advertisements include commercial messages in visual, oral, or print media that invite, offer, or otherwise announce generally to prospective customers the availability of consumer accounts such as:

• Telephone solicitations

• Messages on automated teller machine (ATM) screens

• Messages on a computer screen in an institution's lobby (including any printout)

• Messages in a newspaper, magazine, or promotional flyer or on radio

• Messages promoting an account that are provided along with information about the consumer's existing account at an institution

Examples of messages that are not advertisements are:

• Rate sheets published in newspapers, periodicals, or trade journals provided the depository institution (or deposit broker that offers accounts at the institution) does not pay a fee to have the information included

• An in-person discussion with a consumer about the terms for a specific account

• Information provided to consumers about their existing accounts, such as on IRA disbursements or notices for automatically renewable time accounts sent before renewal

(f) Bonus

1. *Examples.* Bonuses include items of value, other than interest, offered as incentives to consumers, such as an offer to pay the final installment deposit for a holiday club account.

The following is an example of an item that is not a bonus:

• Discount coupons distributed by institutions for use at restaurants or stores

2. *De minimis rule.* Items with a *de minimis* value of $10 or less are not bonuses. Institutions may rely on the valuation standard used by the Internal Revenue Service (IRS) to determine if the value of the item is *de minimus.* (See 26 CFR § 1.6049–5(a)(2), which discusses the fair market value of property received.) Items required to be reported by the institution under IRS rules are bonuses under this regulation. Examples of items that are not bonuses are:

• Disability insurance premiums paid by the institution in an amount less than $10 per year

• Coffee mugs, T-shirts or other merchandise with a market value of less than $10 per year

Institutions must aggregate per account per calendar year any items given to a consumer that are individually valued at less than $10 and must consider them to be a bonus if their aggregate value exceeds $10.

3. *Waiver or reduction of a fee or absorption of expenses.* Bonuses do not include value received by consumers through the waiver or reduction of fees for banking-related services (even if the fees waived exceed $10), such as the following:

• Waiving a safe deposit box rental fee for one year for consumers who open a new account

• Waiving fees for travelers checks for account holders

• Discounts on interest rates charged for loans at the institution

(h) Consumer

1. *Professional capacity.* Examples of accounts held by a natural person in a professional capacity for another are:

• Attorney-client trust accounts

• Landlord-tenant security accounts

2. *Nonprofessional capacity.* Examples of accounts not held in a professional capacity are:

• Accounts held by parents for a child under the Uniform Gifts to Minors Act

• Accounts established by a tenant for apartment lease payments pending resolution of a landlord-tenant dispute

3. *Retirement plans.* Individual retirement accounts (IRAs) and simplified employee pension (SEP) accounts are consumer accounts to the extent that funds are invested in accounts subject to the regulation. Keogh accounts, like sole proprietor accounts, are not subject to the regulation.

4. *Unincorporated associations.* An account held by or offered to an unincorporated association of natural persons is a consumer account if the account is primarily for a nonbusiness purpose.

The following factors may be considered:

• The institution may rely on the declaration of the person representing the association as to whether the account is held for a business or nonbusiness purpose.

• Whether the association has paid employees, which would indicate a business purpose for the account. For example, an account held by a religious organization that has payroll obligations is not covered by the regulation.

(j) Depository Institution and Institution

1. *Foreign institutions.* Branches of foreign institutions located in the United States are subject to the regulation if they offer consumer accounts. Edge Act and Agreement corporations, and agencies of foreign institutions, are not depository institutions.

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

10693

(k) Deposit Broker

1. *General.* A deposit broker is any person in the business of placing or facilitating the placement of deposits in an institution, as defined by the Federal Deposit Insurance Act (12 U.S.C. 29(g)).

(n) Interest

1. *Relation to Regulation Q.* While bonuses are not interest for purposes of this regulation, other regulations may require that bonuses be treated as the equivalent of interest. For example, Regulation Q identifies payments of cash or merchandise that violate the prohibition against paying interest on demand accounts. (See 12 CFR § 217.2(d).)

(p) Passbook Savings Account

1. *Relation to Regulation E.* Passbook savings accounts include accounts accessed by preauthorized electronic fund transfers to the account (as defined in 12 CFR 205.2(j)), such as an account credited by direct deposit of social security payments. Accounts that permit access by other electronic means are not "passbook saving accounts," and any statements that are sent four or more times a year must comply with the requirements of § 230.6.

(q) Periodic Statement

1. *Examples.* Periodic statements do not include:

- Additional statements provided solely upon request
- Information provided by computer through home banking services
- General service information such as a quarterly newsletter or other correspondence that describes available services and products

(r) State

1. *General.* Territories and possessions include Guam, the Mariana Islands, and the Marshall Islands.

(t) Tiered-rate Account

1. *Time accounts.* Time accounts that pay different rates based solely on the amount of the initial deposit are not tiered-rate accounts.

(u) Time Account

1. *Relation to Regulation D.* Regulation D permits in limited circumstances the withdrawal of funds without penalty during the first six days after a "time deposit" is opened. (See 12 CFR § 204.2(c)(1)(i).) Withdrawals without penalty from a time account made in accordance with Regulation D do not disqualify the account from being a time account for purposes of this regulation.

(v) Variable-rate Account

1. *General.* A certificate of deposit that permits one or more rate adjustments prior to maturity at the consumer's option is a variable-rate account.

Section 230.3—General Disclosure Requirements

(a) Form

1. *Design requirements.* Disclosures must be presented in a format that allows consumers to readily understand the terms of their account. Disclosures may be made:

- In any order
- In combination with other disclosures or account terms
- On more than one page and on the front and reverse sides
- By using inserts to a document or filling in blanks
- On more than one document, as long as the documents are provided at the same time

2. *Multiple account disclosures.* Institutions may prepare combined disclosures for all accounts offered, or prepare different documents for different types of accounts. If an institution provides one document for several types of accounts, consumers must be able to understand clearly which disclosures apply to their account.

3. *Consistent terminology.* An institution must use the same terminology to describe terms or features that are required to be disclosed. For example, if an institution describes a monthly fee (regardless of account activity) as a "monthly service fee" in account-opening disclosures, the same terminology must be used in its periodic statements and change-in-term notices.

(b) General

1. *Specificity of legal obligation.* An institution may use the term "monthly" to describe its compounding or crediting policy when interest is compounded or paid at the end of each calendar month or for twelve periods during the year even if the actual days in each period vary between 28 and 33 days.

(c) Relation to Regulation E

1. *General rule.* Compliance with Regulation E (12 CFR part 205) is deemed to satisfy the disclosure requirements of this regulation, such as when:

- An institution changes a term that triggers a notice under Regulation E, and the timing and disclosure rules of Regulation E are used for sending change-in-term notices.
- A consumer adds an ATM access feature to an account, and the institution provides disclosures pursuant to Regulation E, including disclosure of fees before the consumer receives ATM access. (See 12 CFR § 205.7.) If the institution complies with the timing rules of Regulation E, fees related to electronic services (such as balance inquiry fees imposed if the inquiry is made at an ATM) that are required to be disclosed by this regulation but not by Regulation E may also be provided at that time.
- An institution relies on Regulation E's disclosure rules regarding limitations on the frequency and amount of electronic fund transfers, including security-related exceptions. But any limitation on the number of "intra-institutional transfers" from other accounts at the institution during a given time period must be disclosed, even though those transfers are exempt from Regulation E.

(e) Oral Response to Inquiries

1. *Application of rule.* Institutions need not provide rate information orally.

2. *Relation to advertising.* An oral response to a question about rates is not covered by the advertising rules.

(f) Rounding and Accuracy Rules for Rates and Yields (f)(2) Accuracy

1. *Annual percentage yield and annual percentage yield earned.* The tolerance for annual percentage yield and annual percentage yield earned calculations is designed to accommodate inadvertent errors. Institutions may not purposely incorporate the tolerance into their calculation of yields.

2. *Interest rate.* There is no tolerance for an inaccuracy in the interest rate.

Section 230.4—Account Disclosures

(a) Delivery of Account Disclosures

(a)(1) Account Opening

1. *New accounts.* New account disclosures must be provided when:

- A time account that does not automatically rollover is renewed by a consumer
- A consumer changes the term for a renewable time account (from a one-year time account to a six-month time account, for instance)
- Funds in an MMDA account are transferred by an institution to open a new account for the consumer, such as a NOW account, because the consumer exceeded transaction limitations on the MMDA account
- An institution accepts a deposit from a consumer to an account the institution previously deemed to be "closed" by the consumer

New account disclosures are not required when an institution acquires an account through an acquisition of or merger with another institution (but see § 230.5(a) regarding advance notice requirements if terms are changed).

(a)(2) Requests

(a)(2)(i)

1. *Inquiries versus requests.* A response to an oral inquiry (by telephone or in person) about rates and yields or fees does not trigger the duty to provide account disclosures. However, when a consumer asks for written information about an account (whether by telephone, in person, or by other means), the institution must provide disclosures.

2. *General requests.* When a consumer generally asks for information about a type of account (a NOW account, for example), an institution that offers several variations may provide disclosures for any one of them.

3. *Timing for response.* Ten business days is a reasonable time for responding to a request for account information that a consumer does not make in person.

(a)(2)(ii)(B)

1. *Term.* Describing the maturity of a time account as "1 year" or "6 months," for example, illustrates a response stating the maturity of a time account as a term rather than a date ("January 10, 1995").

(b) Content of Account Disclosures

(b)(1) Rate information

(b)(1)(i) Annual Percentage Yield and Interest Rate

1. *Rate disclosures.* In addition to the interest rate and annual percentage yield, a

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

10693

periodic rate corresponding to the interest rate may be disclosed. No other rate or yield (such as "tax effective yield") is permitted. If the annual percentage yield is the same as the interest rate, institutions may disclose a single figure but must use both terms.

2. *Fixed-rate accounts.* To disclose the period of time the interest rate will be in effect, institutions may state the maturity date for fixed-rate time accounts that pay the opening rate until maturity. (See Appendix B, B–7—Sample Form.) For other fixed-rate accounts, institutions may disclose a date (such as "This rate will be in effect through June 30, 1994") or a period (such as "This rate will be in effect for at least 30 days").

3. *Tiered-rate accounts.* Each interest rate, along with the corresponding annual percentage yield for each specified balance level (or range of annual percentage yields, if appropriate), must be disclosed for tiered-rate accounts. (See Appendix A, Part I, Paragraph D.)

4. *Stepped-rate accounts.* A single annual percentage yield must be disclosed for stepped-rate accounts. (See Appendix A, Part I, Paragraph B.) However, the interest rates and the period of time each will be in effect also must be provided. When the initial rate offered on a variable-rate account is higher or lower than the rate that would otherwise be paid on the account, the calculation of the annual percentage yield must be made as if for a stepped-rate account. (See Appendix A, Part I, Paragraph C.)

(b)(1)(ii) Variable Rates

(b)(1)(ii)(B)

1. *Determining interest rates.* To disclose how the interest rate is determined, institutions must:

- Identify the index and specific margin, if the interest rate is tied to an index
- State that rate changes are solely within the institution's discretion, if the institution does not tie changes to an index

(b)(1)(ii)(C)

1. *Frequency of rate changes.* Institutions that reserve the right to change rates at any time must state that fact.

(b)(1)(ii)(D)

1. *Limitations.* A floor or ceiling on rates or on the amount the rate may decrease or increase during any time period must be disclosed. Institutions need not disclose the absence of limitations on rate changes.

(b)(2) Compounding and Crediting

(b)(2)(ii) Effect of Closing an Account

1. *Deeming an account closed.* Institutions may provide in their deposit contract the actions by consumers that the institution will treat as closing the account and that will result in the forfeiture of accrued but uncredited interest, such as when a consumer withdraws all funds from the account prior to the date interest is credited.

(b)(3) Balance Information

(b)(3)(ii) Balance Computation Method

1. *Methods and periods.* Institutions may use different methods or periods to calculate minimum balances for purposes of imposing a fee (daily balance for a calendar month, for example) and accruing interest (average daily balance for a statement period, for example). Each method and period must be disclosed.

(b)(3)(iii) When Interest Begins to Accrue

1. *Additional information.* Institutions may disclose additional information such as the time of day after which deposits are treated as having been received the following business day, and may use additional descriptive terms such as "ledger" or "collected" balances to disclose when interest begins to accrue.

(b)(4) Fees

1. *Types of fees.* The following are types of fees that must be disclosed in connection with an account:

- Maintenance fees, such as monthly service fees
- Fees related to deposits or withdrawals, such as fees for use of the institution's ATMs
- Fees for special services, such as stop payment fees, fees for balance inquiries or verification of deposits, and fees associated with checks returned unpaid
- Fees to open or to close accounts

Institutions need not disclose fees such as the following:

- Fees assessed for services offered to account and nonaccount holders alike, such as fees for travelers checks and wire transfers (even if different for nonaccount holders)
- Incidental fees, such as fees associated with state escheat laws, garnishment or attorneys fees, and fees for photocopying forms

2. *Amount of fees.* Institutions must state the amount and conditions under which a fee may be imposed. Naming and describing the fee typically satisfies this requirement. Some examples are:

- "$4.00 monthly service fee"
- "$7.00 and up" or "fee depend on style of checks ordered" for check printing fees

3. *Tied-accounts.* Institutions must state if fees that may be assessed against an account are tied to other accounts at the institution. For example, if an institution ties the fees payable on a NOW account to balances held in the NOW account and in a savings account, the NOW account disclosures must state that fact and explain how the fee is determined.

(b)(5) Transaction Limitations

1. *General rule.* Examples of limitations on the number or dollar amount of deposits or withdrawals that institutions must disclose are:

- Limits on the number of checks that may be written on an account for a given time period
- Limits on withdrawals or deposits during the term of a time account
- Limitations required by Regulation D, such as the number of withdrawals permitted from money market deposit accounts by check to third parties each month (but they need not disclose that the institution reserves the right to require a seven-day notice for a withdrawal from an account).

(b)(6) Features of Time Accounts

(b)(6)(i) Time Requirements

1. *"Callable" time accounts.* In addition to the maturity date, institutions must state the date or the circumstances under which the institution may redeem a time account at the institution's option (a "callable" time account).

(b)(6)(ii) Early Withdrawal Penalties

1. *General.* The term "penalty" need not be used to describe the loss that may be incurred by consumers for early withdrawal of funds from time accounts.

2. *Examples.* Examples of early withdrawal penalties are:

- Monetary penalties, such as "$10.00" or "seven days' interest plus accrued but uncredited interest"
- Adverse changes to terms such as the interest rate, annual percentage yield, or compounding frequency for funds remaining on deposit
- Reclamation of bonuses

3. *Relation to rules for IRAs or similar plans.* Penalties imposed by the Internal Revenue Code for certain withdrawals from IRAs or similar pension or savings plans are not early withdrawal penalties.

(b)(6)(iv) Renewal Policies

1. *Rollover time accounts.* Institutions offering a grace period on rollover time accounts that automatically renew need not state whether interest will be paid if the funds are withdrawn during the grace period.

2. *Nonrollover time accounts.* Institutions that pay interest on funds following the maturity of time accounts that do not renew automatically need not state the rate (or annual percentage yield) that may be paid.

Section 230.5—Subsequent Disclosures

(a) Change in Terms

(a)(1) Advance Notice Required

1. *Form of notice.* Institutions may provide a change-in-term notice on or with a regular periodic statement or in another mailing. If an institution provides notice through revised account disclosures, the changed term must be highlighted in some manner. For example, institutions may state that a particular fee has been changed (also specifying the new amount) or use an accompanying letter that refers to the changed term.

2. *Effective date.* An example of a disclosure that complies is:

- "As of May 11, 1994"

3. *Terms that change upon the occurrence of an event.* Institutions that offer terms such as a fee waiver for employee account holders during their employment or for students enrolled at a local university need not send advance notice of a change resulting from termination of employment or enrollment if:

- The account-opening disclosures given (to the employee, for example) describe the term and the event that would cause the term to change (such as the consumer's leaving the institution's employment), and
- Notices are sent when the term is changed for other account holders, even though the term remains unchanged for the

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

10693

consumer while employment or enrollment continues.

(a)(2) No Notice Required

(a)(2)(ii) Check Printing Fees

1. *Increase in fees.* A notice is not required even if an increase in check printing fees includes an amount added by the institution to the price charged by a vendor.

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

1. *Maturity dates on nonbusiness days.* For determining the term, institutions may ignore the fact that the disclosed maturity falls on a nonbusiness day and the term is extended beyond the disclosed number of days. For example, a holiday or weekend may cause a "one-year" time account to extend beyond 365 days (or 366, in a leap year), or a "one-month" time account to extend beyond 31 days.

2. *Disclosing when rates will be determined.* Disclosures that illustrate when the annual percentage yield will be available include:

- A specific date, such as "October 28"
- A date that is easily discernable, such as "the Tuesday prior to the maturity date stated on the notice" or "as of the maturity date stated on this notice"

Institutions must indicate when the rate will be available if the date falls on a nonbusiness day.

3. *Alternative timing rule.* To illustrate the alternative timing rule: An institution that offers a 10-day grace period must provide the disclosures at least 10 days prior to the scheduled maturity date.

4. *Club accounts.* Club accounts that are time accounts are covered by this paragraph, even though funds may be withdrawn at the end of the current club period. For example, if the consumer has agreed to the transfer of payments from another account to the time account for the next club period, the institution must comply with the requirements for automatically renewable time accounts.

5. *Renewal of a time account.* The following applies to a change in a term that becomes effective if a rollover time account is subsequently renewed:

- If the change is initiated by the institution, the disclosure requirements of this paragraph. (Paragraph 5(a) applies if the change becomes effective prior to the maturity of the existing time account.)
- If initiated by the consumer, the account-opening disclosure requirements of § 230.4(b). (If the notice required by this paragraph has been provided, institutions may give new account disclosures or disclosures that reflect the new term.)

For example, if a consumer who receives a prematurity notice on a one-year time account requests a rollover to a six-month account, the institution must provide either account-opening disclosures that reflect the new maturity date or, if all other terms previously disclosed in the prematurity notice remain the same, only the new maturity date.

(b)(1) Maturities of Longer Than One Year

1. *Highlighting changed terms.* Institutions need not highlight terms that have changed since the last account disclosures were provided.

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

1. *Providing disclosures within a reasonable time.* Generally, 10 calendar days after an account renews is a reasonable time for providing disclosures. For time accounts shorter than 10 days, disclosures should be given prior to the next-scheduled renewal date.

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

1. *Subsequent account.* When funds are transferred following maturity of a nonrollover time account, institutions need not provide account disclosures unless a new account is established.

Section 230.6—Periodic Statement Disclosures

(a) General Rule

1. *General.* Institutions are not required to provide periodic statements. If they provide periodic statements, disclosures need only be furnished to the extent applicable. For example, if no interest is earned for a statement period, institutions need not disclose "$0" interest earned and "0%" annual percentage yield earned.

2. *Regulation E interim statements.* When an institution provides regular quarterly statements, and in addition provides a monthly interim statement to comply with Regulation E, the interim statement need not comply with this section unless it states interest or rate information. (See 12 CFR 205.9.)

3. *Combined statements.* Institutions may provide certain information about an account (such as an MMDA) on the periodic statement for another account (such as a NOW account) without triggering the disclosures required by this section, as long as:

- The information is limited to the account number, the type of account, or balance information, and
- The institution also provides consumers a periodic statement that complies with this section for the account (the MMDA, in the example).

4. *Other information.* Institutions may include additional information on or with a periodic statement, such as:

- Interest rates and periodic rates corresponding to the interest rate applied to balances during the statement period
- The dollar amount of interest earned year-to-date
- Bonuses paid (or any *de minimis* consideration of $10 or less)
- Fees for other products, such as safe deposit boxes

(a)(1) Annual Percentage Yield Earned

1. *Ledger and collected balances.* Institutions that accrue interest using the collected balance method may use either the ledger or the collected balance in determining the annual percentage yield earned.

(a)(2) Amount of Interest

1. *Accrued interest.* Institutions must state the amount of interest that accrued during the statement period, even if it was not credited. For interest not credited, institutions may disclose when funds will become available for the consumer's use.

2. *Terminology.* In disclosing interest earned for the period, institutions must use the term "interest" or terminology such as:

- "Interest paid," to describe interest that has been credited
- "Interest accrued" or "interest earned," to indicate that interest is not yet credited

3. *Closed accounts.* If a consumer closes an account between crediting periods and forfeits accrued interest, the institution may not show any figures for "interest earned" or annual percentage yield earned for the period.

(a)(3) Fees Imposed

1. *General.* Periodic statements must state fees debited to the account during the statement period even if assessed for an earlier period.

2. *Itemizing fees by type.* In itemizing fees by type, institutions may group together fees of the same type that are imposed more than once in the period. If fees are grouped, the description must make clear that the dollar figure represents more than a single fee, for example, "total fees for checks written this period." Examples of fees that may not be grouped together are:

- Monthly maintenance and excess activity fees
- "Transfer" fees, if different dollar amounts are imposed—such as $.50 for deposits and $1.00 for withdrawals
- Fees for electronic fund transfers and fees for other services, such as balance inquiry or maintenance fees

3. *Identifying fees.* Statement details must enable the consumer to identify the specific fee. For example:

- Institutions may use a code to identify a particular fee if the code is explained on the periodic statement or in documents accompanying the statement.
- Institutions using debit slips may disclose the date the fee was debited on the periodic statement and show the amount and type of fee on the dated debit slip.

4. *Relation to Regulation E.* Compliance with Regulation E complies with this section for the disclosure of fees related to electronic fund transfers on periodic statements (for example, totaling all electronic funds transfer fees in a single figure).

(a)(4) Length of Period

1. *General.* Institutions that provide the beginning and ending dates of the period must make clear whether both dates are included in the period.

2. *Opening or closing an account mid-cycle.* If an account is opened or closed during the period for which a statement is sent, institutions must calculate the annual percentage yield earned based on account balances for each day the account was open.

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

10693

(b) Special Rule for Average Daily Balance Method

1. *General.* To illustrate, this rule applies when an institution calculates interest on a quarterly average daily balance and sends monthly statements. The first two monthly statements may not state annual percentage yield earned and interest earned figures; the third "monthly" statement will reflect the interest earned and the annual percentage yield earned for the entire quarter.

2. *Length of the period.* Institutions must disclose the length of both the interest calculation period and the statement period. For example, a statement could disclose a 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."

3. *Quarterly statements and monthly compounding.* Institutions that use the average daily balance method to calculate interest on a monthly basis, but send statements on a quarterly basis, may disclose a single interest (and annual percentage yield earned) figure. Alternatively, an institution may disclose three interest earned and three annual percentage earned figures, one for each month in the quarter, as long as the institution states the number of days (or beginning and ending date) in the interest period if it is different from the statement period.

Section 230.7—Payment of Interest

(a) Permissible Methods

1. *Prohibited calculation methods.* Calculation methods that do not comply with the requirement to pay interest on the full amount of principal in the account each day include:

- The "ending balance" method, where institutions pay interest on the balance in the account at the end of the period
- The "investable balance" method, where institutions pay interest on a percentage of the balance, excluding an amount institutions set aside for reserve requirements

2. *Use of 365-day basis.* Institutions may apply a daily periodic rate that is greater than 1/365 of the interest rate—such as 1/360 of the interest rate—as long as it is applied 365 days a year.

3. *Periodic interest payments.* An institution can pay interest each day on the account and still make uniform interest payments. For example, for a one-year certificate of deposit an institution could make monthly interest payments that are equal to 1/12 of the amount of interest that will be earned for a 365-day period, or 11 uniform monthly payments and a final payment that accounts for the total interest earned for the period.

4. *Leap year.* Institutions may apply a daily rate of 1/366 or 1/365 of the interest rate for 366 days in a leap year, if the account will earn interest for February 29.

5. *Maturity of time accounts.* Institutions are not required to pay interest after time accounts mature, such as:

- During any grace period offered by an institution for an automatically renewable time account, if the consumer decides during that period not to renew the account
- Following the maturity of nonrollover time accounts
- When the maturity date falls on a holiday, and the consumer must wait until the next business day to obtain the funds (See 12 CFR part 217, the Board's Regulation Q, for limitations on duration of interest payments.)

6. *Dormant accounts.* Institutions may contract with a consumer not to pay interest if the account becomes "dormant," as defined by applicable state or other law.

(a)(2) Determination of Minimum Balance To Earn Interest

1. *Daily balance accounts.* Institutions that use the daily balance method to calculate interest and require a minimum balance to earn interest may choose not to pay interest for days when the balance drops below the required daily minimum balance.

2. *Average daily balance accounts.* Institutions that use the average daily balance method to calculate interest and require a minimum balance to earn interest may choose not to pay interest for the period in which the average daily balance does not meet the required minimum.

3. *Beneficial method.* Institutions may not require consumers to maintain both a minimum daily balance and a minimum average daily balance to earn interest, such as by requiring the consumer to maintain a $500 daily balance and an average daily balance that is higher or lower. But an institution could determine the minimum balance to earn interest by using a method that is "unequivocally beneficial" to the consumer such as the following: An institution using the daily balance method to calculate interest and requiring a $500 minimum daily balance could choose to pay interest on the account (for those days the minimum balance is not met) as long as the consumer maintained an average daily balance throughout the month of $400.

4. *Paying on full balance.* Institutions must pay interest on the full balance in the account once a consumer has met the required minimum balance. For example, if an institution sets $300 as its minimum daily balance requirement to earn interest, and a consumer deposits $500, the institution must pay the stated interest rate on the full $500 and not just on $200.

5. *Negative balances prohibited.* Institutions must treat a negative account balance as zero to determine:

- The daily or average daily balance on which interest will be paid
- Whether any minimum balance to earn interest is met (See commentary to Appendix A, Part II, which prohibits institutions from using negative balances in calculating the interest figure for the annual percentage yield earned.)

6. *Club accounts.* Institutions offering club accounts (such as a "holiday" or "vacation" club) cannot impose a minimum balance that is based on the total number or dollar amount of payments required under the club plan. For example, if a plan calls for $10 weekly payments for 50 weeks, the institution cannot set a $500 minimum balance and then pay only if the consumer makes all 50 payments.

7. *Minimum balances not affecting interest.* Institutions may use the daily balance, average daily balance, or other computation method to calculate minimum balance requirements not involving the payment of interest—such as to compute minimum balances for assessing fees.

(b) Compounding and Crediting Policies

1. *General.* Institutions that choose to compound interest may compound or credit interest annually, semi-annually, quarterly, monthly, daily, continuously, or on any other basis.

2. *Withdrawals prior to crediting date.* If consumers withdraw funds, without closing the account, prior to a scheduled crediting date, institutions may delay paying the accrued interest on the withdrawn amount until the scheduled crediting date, but may not avoid paying interest.

3. *Closed accounts.* If consumers close accounts prior to the date accrued interest is credited, institutions may choose not to pay accrued interest as long as they have disclosed that fact to the consumer. Whether (and the conditions under which) institutions are permitted to deem an account closed by a consumer is determined by state or other law, if any.

4. *Dormant accounts.* Subject to state or other law defining when an account becomes dormant, an institution may contract with a consumer not to pay accrued but uncredited interest if the account becomes dormant prior to the regular interest crediting date.

(c) Date Interest Begins To Accrue

1. *Relation to Regulation CC.* Institutions may rely on the Expedited Funds Availability Act (EFAA) and Regulation CC (12 CFR part 229) to determine, for example, when a deposit is considered made for purposes of interest accrual, or when interest need not be paid on funds because a deposited check is later returned unpaid.

2. *Ledger and collected balances.* Institutions may calculate interest by using a "ledger" balance or "collected" balance method, as long as the crediting requirements of the EFAA are met.

3. *Withdrawal of principal.* Institutions must accrue interest on funds until the funds are withdrawn from the account. For example, if a check is debited to an account on a Tuesday, the institution must accrue interest on those funds through Monday.

Section 230.8—Advertising

(a) Misleading or Inaccurate Advertisements

1. *General.* All advertisements must comply with the rule against misleading or inaccurate advertisements, even though the disclosures applicable to various media differ.

2. *Indoor signs.* An indoor sign advertising an annual percentage yield is not misleading or inaccurate if:

- For a tiered-rate account, it also provides the upper and lower dollar amounts of the advertised tier corresponding to the annual percentage yield
- For a time account, it also provides the term required to obtain the advertised yield

3. *"Free" or "no cost" accounts.* For purposes of determining whether an account can be advertised as "free" or "no cost," maintenance and activity fees include:

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

10693

• Any fee imposed if a minimum balance requirement is not met, or if the consumer exceeds a specified number of transactions
• Transaction and service fees that consumers reasonably expect to be regularly imposed on an account

Examples of maintenance and activity fees include:
• A flat fee, such as a monthly service fee
• Fees imposed to deposit, withdraw or transfer funds, including per-check or per-transaction charges (for example, $.25 for each withdrawal, whether by check, in person or at an ATM owned by the institution)

Examples of fees that are not maintenance or activity fees include:
• Fees that are not required to be disclosed under § 230.4(b)(4)
• Check printing fees of any type
• Fees for obtaining copies of checks, whether the original checks have been truncated or returned to the consumer periodically
• Balance inquiry fees
• Fees assessed against a dormant account
• Fees for using an ATM not owned by the account-issuing institution
• Fees for electronic transfer services that are not required to obtain an account, such as preauthorized transfers or home banking services

4. *Similar terms.* An advertisement may not use a term such as "fees waived" if a maintenance or activity fee may be imposed because it is similar to the terms "free" or "no cost."

5. *Specific account services.* Institutions may advertise a specific account service or feature as free as long as no fee is imposed for that service or feature. For example, institutions that provide free access to their ATMs could advertise that fact.

6. *Free for limited time.* If an account or a specific account service is free only for a limited period of time—for example, for one year following the account opening—the account or service may be advertised as free as long as the time period is stated.

7. *Conditions not related to deposit accounts.* Institutions may advertise accounts as "free" for consumers that meet conditions not related to deposit accounts such as age. For example, institutions may advertise a NOW account as "free for persons over 65 years old," even though a maintenance or activity fee may be assessed on accounts held by consumers that are 65 or younger.

(b) Permissible Rates

1. *Tiered-rate accounts.* An advertisement for a tiered-rate account that states an annual percentage yield must also state the annual percentage yield for each tier, along with corresponding minimum balance requirements. Any interest rates stated must appear in conjunction with the annual percentage yields for the applicable tier.

2. *Stepped-rate accounts.* An advertisement that states an interest rate for a stepped-rate account must state each interest rate and the time period each rate is in effect.

3. *Representative examples.* An advertisement that states an annual percentage yield for a type of account (such as a time account) need not state the annual percentage yield applicable to every variation offered by the institution. For example, if rates vary depending on the amount of the initial deposit and term of a time account, institutions need not list each balance level and term offered. Instead, the advertisement may:
• Provide a representative example of the annual percentage yields offered, clearly described as such. For example, if an institution offers a $25 bonus on all time accounts and the annual percentage yield will vary depending on the term selected, the institution may provide a disclosure of the annual percentage yield as follows: "For example, our 6-month certificate of deposit currently pays a 3.15% annual percentage yield."
• Indicate that various rates are available, such as by stating short-term and longer-term maturities along with the applicable annual percentage yields: "We offer certificates of deposit with annual percentage yields that depend on the maturity you choose. For example, our one-month CD earns a 2.75% APY. Or, earn a 5.25% APY for a three-year CD."

(c) When Additional Disclosures Are Required

1. *Trigger terms.* Disclosures are triggered by statements such as "We will pay a bonus of 1% over our current rate for one-year certificates of deposit opened before April 15, 1995." The following are examples of information stated in advertisements that are not "trigger" terms:
• "One, three, and five year CDs available"
• "Bonus rates available"

(c)(2) Time Annual Percentage Yield Is Offered

1. *Specified recent date.* If an advertisement discloses an annual percentage yield as of a specified date, that date must be recent in relation to the publication or broadcast frequency of the media used. For example, the printing date of a brochure printed once for a deposit account promotion that will be in effect for six months would be considered "recent," even though rates change during the six-month period. Rates published in a daily newspaper or on television must be a rate offered shortly before (or on) the date the rates are published or broadcast.

(c)(5) Effect of Fees

1. *Scope.* This requirement applies only to maintenance or activity fees as described in paragraph 8(a).

(c)(6) Features of Time Accounts

(c)(6)(i) Time Requirements

1. *Club accounts.* If the maturity date of a club account is set but the term may vary depending on when the account is opened, institutions may use a phrase such as: "The term of the account varies depending on when the account is opened. However, the maturity date is November 15."

(c)(6)(ii) Early Withdrawal Penalties

1. *Discretionary penalties.* Institutions that impose early withdrawal penalties on a case-by-case basis may disclose that they "may" (rather than "will") impose a penalty if that accurately describes the account terms.

(d) Bonuses

1. *General reference to "bonus."* General statements such as "bonus checking" or "get a bonus when you open a checking account" do not trigger the bonus disclosures.

(e) Exemption for Certain Advertisements

(e)(1) Certain Media

(e)(1)(iii)

1. *Tiered-rate accounts.* Solicitations for tiered-rate accounts made through telephone response machines must provide all annual percentage yields and the balance requirements applicable to each tier.

(e)(2) Indoor Signs

(e)(2)(i)

1. *General.* Indoor signs include advertisements displayed on computer screens, banners, preprinted posters, and chalk or peg boards. Any advertisement inside the premises that can be retained by a consumer (such as a brochure or a printout from a computer) is not an indoor sign.

2. *Consumers outside the premises.* Advertisements may be "indoor signs" even though they may be viewed by consumers from outside. An example is a banner in an institution's glass-enclosed branch office, that is located behind a teller facing customers but also may be seen by passersby.

Section 230.9—Enforcement and Record Retention

(c) Record Retention

1. *Evidence of required actions.* Institutions comply with the regulation by demonstrating they have done the following:
• Established and maintained procedures for paying interest and providing timely disclosures as required by the regulation, and
• Retained sample disclosures for each type account offered to consumers, such as account-opening disclosures, copies of advertisements, and change-in-term notices; and information regarding the interest rates and annual percentage yields offered.

2. *Methods of retaining evidence.* Institutions must retain information needed to reconstruct the required disclosures or other actions. They need not keep disclosures or other business records in hard copy. Records evidencing compliance may be retained on microfilm, microfiche, or by other methods that reproduce records accurately (including computer files).

3. *Payment of interest.* Sufficient rate and balance information must be retained to permit the verification of interest paid on an account, including the payment of interest on the full principal balance.

Appendix A to Part 230—Annual Percentage Yield Calculation

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

1. *Rounding for calculations.* The following are examples of permissible rounding rules for calculating interest and the annual percentage yield:

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis

10693

- The daily rate applied to a balance rounded to five or more decimals
- The daily interest earned rounded to five or more decimals

Part II. Annual Percentage Yield Earned for Periodic Statements

1. *Balance method.* The interest figure used in the calculation of the annual percentage yield earned 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.

2. *Negative balances prohibited.* Institutions must treat a negative account balance as zero to determine the balance on which the annual percentage yield earned is calculated. (See commentary to § 230.7(a)(2).)

A. General Formula

1. *Accrued but uncredited interest.* To calculate the annual percentage yield earned, accrued but uncredited interest:

- Shall not be included in the balance for statements that are issued at the same time or less frequently than the account's compounding and crediting frequency. For example, if monthly statements are sent for an account that compounds interest daily and credits interest monthly, the balance may not be increased each day to reflect the effect of daily compounding.
- Shall be included in the balance for succeeding statements if a statement is issued more frequently than compounded interest is credited on an account. For example, if monthly statements are sent for an account that compounds interest daily and credits interest quarterly, the balance for the second monthly statement would include interest that had accrued for the prior month.

2. *Rounding.* The interest earned figure used to calculate the annual percentage yield earned must be rounded to two decimals to reflect the amount actually paid. For example, if the interest earned for a statement period is $20.074 and the institution pays the consumer $20.07, the institution must use $20.07 (not $20.074) to calculate the annual percentage yield earned. For accounts that pay interest based on the daily balance method, compound and credit interest quarterly, and send monthly statements, the institution may, but need not, round accrued interest to two decimals for calculating the annual percentage yield earned on the first two monthly statements issued during the quarter. However, on the quarterly statement the interest earned figure must reflect the amount actually paid.

B. Special Formula for Use Where Periodic Statement Is Sent More Often Than the Period for Which Interest Is Compounded

1. *Statements triggered by Regulation E.* Institutions may, but need not, use this formula to calculate the annual percentage yield earned for accounts that receive quarterly statements and that are subject to Regulation E's rule calling for monthly statements when an electronic fund transfer has occurred. They may do so even though no monthly statement was issued during a specific quarter. This formula must be used for accounts that compound and credit interest quarterly and that receive monthly statements, triggered by Regulation E, which comply with the provisions of § 230.6.

2. *Days in compounding period.* Institutions using the special annual percentage yield earned formula must use the actual number of days in the compounding period.

Appendix B to Part 230—Model Clauses and Sample Forms

1. *Modifications.* Institutions that modify the model clauses will be deemed in compliance as long as they do not delete information required by the act or regulation or rearrange the format so as to affect the substance or clarity of the disclosures.

2. *Format.* Institutions may 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.

3. *Disclosures for opening accounts.* The sample forms illustrate the information that must be provided to a consumer when an account is opened, as required by § 230.4(a)(1). (See § 230.4(a)(2), which states the requirements for disclosing the annual percentage yield, the interest rate, and the maturity of a time account in responding to a consumer's request.)

4. *Compliance with Regulation E.* Institutions may satisfy certain 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 give examples of disclosures that would be covered by both this regulation and Regulation E (such as disclosing the amount of a fee for ATM usage). Institutions should consult appendix A to Regulation E for appropriate model clauses.

5. *Duplicate disclosures.* If a requirement such as a minimum balance applies to more than one account term (to obtain a bonus and determine the annual percentage yield, for example), institutions need not repeat the requirement for each term, as long as it is clear which terms the requirement applies to.

6. *Guide to model clauses.* 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 "(date)" disclosure). Brackets and diagonals ("/") indicate an institution must choose the alternative that describes its practice (for example, [daily balance/average daily balance]).

7. *Sample forms.* The sample forms (B–4 through B–8) serve a purpose different from the model clauses. They illustrate various ways of adapting the model clauses to specific accounts. The clauses shown relate only to the specific transactions described.

B–1 Model Clauses for Account Disclosures

B–1(h) Disclosures Relating to Time Accounts

1. *Maturity.* The disclosure in Clause (h)(i) stating a specific date may be used in all cases. The statement describing a time period is appropriate only when providing disclosures in response to a consumer's request.

B–2 Model Clauses for Change in Terms

1. *General.* The second clause, describing a future decrease in the interest rate and annual percentage yield, applies to fixed-rate accounts only.

B–4 Sample Form (Multiple Accounts)

1. *Format.* The sample form has been marked with an "X" to indicate it is for a NOW account and provides for both a fee schedule insert and a rate sheet insert.

2. *Rate sheet insert.* In the rate sheet insert, the calculations of the annual percentage yield for the three-month and six-month certificates are based on 92 days and 181 days respectively.

B–6 Sample Form (Tiered-Rate Money Market Account)

1. *General.* Sample Form B–6 uses Tiering Method A (discussed in Appendix A and Clause (a)(iv)) to calculate interest. It gives a narrative description of a tiered-rate account; institutions may use a different format (for example, a chart similar to the one in Sample Form B–4), as long as all required 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; the tiered-rate disclosure provides that information.

B–9 Sample Form (Money Market Account Advertisement)

1. *General.* The advertisement is for a tiered-rate money market account that uses Tiering Method A.

By order of the Board of Governors of the Federal Reserve System, January 28, 1994.

William W. Wiles,

Secretary of the Board.

[FR Doc. 94–2505 Filed 2–4–94; 8:45 am]

BILLING CODE 6210–01–P

Digitized for FRASER
http://fraser.stlouisfed.org/
Federal Reserve Bank of St. Louis