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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: Final rule; interpretation.

SUMMARY: The Board is publishing its 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 commentary incorporates much of the guidance provided when the regulation was adopted, and addresses additional questions raised since that time.

DATES: This rule is effective August 3, 1994. Compliance is optional until February 6, 1995.

FOR FURTHER INFORMATION CONTACT: Jane Ahrens, Senior Attorney, or Kyung Cho or Kurt Schumacher, 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.

SUPPLEMENTARY INFORMATION:

I. 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 (APY), 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 sent 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 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.)

II. Commentary

On February 7, 1994, the Board published for comment a proposed commentary to Regulation DD (59 FR 5536). The commentary 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 received about 150 comments, mostly from depository institutions and trade associations. Commenters generally supported the proposal.

In large measure, the commentary incorporates supplementary information accompanying prior rulemakings, and reflects the views expressed therein without substantive change. (See final rule published on September 21, 1992 (57 FR 43337), correction notice published on October 9, 1992 (57 FR 46480), and amendments published on March 19, 1993 (58 FR 15077).) The commentary also addresses issues that have arisen since the publication of the regulation and technical suggestions or concerns raised by commenters.

To avoid unnecessary detail, the discussion accompanying the final commentary does not individually mention technical amendments that clarify the proposed text but make no substantive change in meaning. Similarly, additions to the final commentary of information previously published are not separately noted. For example, the supplementary information accompanying the September 1992 rulemaking discussed deposit accounts denominated in foreign currency and held by consumers as an example of accounts covered by the regulation. Foreign currency accounts were not mentioned in the proposal. Comment 230.2(a)-1 now lists foreign currency accounts among the examples of covered accounts, but the addition is not specifically mentioned in the supplementary information accompanying paragraph 2(a). Additions such as this were added in response to commenters' requests. Many comments have been renumbered, pursuant to the Federal Register's new publication rules.

On May 11, 1994, the Board published a proposal to amend the regulation's rules regarding crediting and compounding practices (59 FR 24378). The proposal also has the effect of producing an annual percentage yield (APY) that reflects the time value of money. On July 11, 1994, the Board published a notice extending to September 6, 1994, the comment period for the May proposal (59 FR 35271). At the same time, the Board solicited comment on an alternative approach for calculating the APY. The approach would allow institutions to disclose an APY equal to the interest rate on time accounts with maturities greater than one year and that do not compound interest but pay interest at least annually. The Board has deferred adopting commentary on provisions of the regulation affected by the proposal, pending final action by the Board.

Section 230.2--Definitions

(a) Account

Comment 2(a)-1 provides examples of accounts subject to the regulation. The Board proposed to narrow the regulation's coverage of trust accounts to individual retirement accounts (IRAs) and simplified employee pension (SEP) accounts, to minimize compliance burdens for institutions.

Many commenters supported the Board's general approach, but questioned whether the regulation should exclude accounts held by individuals pursuant to informal trust arrangements such as ``Totten'' or payable on death (POD) trusts. Commenters noted the purpose of a Totten trust is to avoid probate proceedings to transfer funds remaining in an account upon a depositor's death. Commenters also noted the account's signature card is often the sole evidence of the trust relationship. These commenters believed consumers opening Totten and POD trust accounts should be afforded the act's protections. The Board concurs, and the commentary reflects this approach.

(b) Advertisement

Comment 2(b)-1 illustrates the scope of commercial messages considered to be advertisements. The Board proposed that advertisements would not include direct oral discussions conducted in person regarding a specific account. Many commenters urged the Board to expand the interpretation to include telephone conversations about specific accounts. The Board has retained the provision as proposed. The Board believes face-to-face discussions allow prospective customers to learn easily and quickly about basic terms of the account (thus, fulfilling the purpose of advertising disclosures). Also, at any time during a face-to-face conversation, consumers may request and receive written disclosures at that time. This is not the case for conversations by telephone. Thus, the commentary clarifies that except for information about an existing account, commercial messages delivered via telephone or voice response machines are advertisements.

(f) Bonus

Comment 2(f)-3 has been added to clarify the rule excluding from bonuses items of de minimis value ($10 or less). (See 26 CFR Sec. 1.6049-5(a)(2) published by the Internal Revenue Service, which discusses the fair market value of property received.) Commenters expressed concern about potential violations for failing to disclose as a bonus early in the year an individual item of de minimis value deemed to be a bonus when aggregated with another de minimis item given in a separate promotional program involving the same account later in the year. The comment provides guidance about aggregating only the market value of items offered for the same promotional program. An example illustrating the rule has been included.

(h) Consumer

An example relating to a landlord-tenant relationship in comment 2(h)-2 has been deleted as unnecessary.

The Board proposed two factors to consider in determining whether an account is held by an unincorporated nonbusiness association of natural persons, and the Board solicited comments on whether those or additional factors would be helpful. Based on the comments received and further analysis, the Board has adopted only one factor in comment 2(h)-5.

(p) Passbook Savings Account

Comment 2(p)-1 clarifies that institutions may consider accounts as ``passbook savings'' even when direct deposits are made to the account electronically. The comment tracks the requirements of Regulation E (12 CFR 205.9). But accounts that permit other electronic fund transfers--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 Sec. 230.6 of this part. Accounts that send statements are not passbook savings accounts for purposes of Regulation DD, even if consumers are provided with a booklet for their records.

(r) State

The proposal included examples of territories and possessions covered by the act. Commenters requested more examples. Upon further consideration, the Board believes a list of all the territories considered to be ``states'' is unnecessary. Thus, the comment has not been adopted.

(u) Time Account

Comment 2(u)-1 has been added to clarify when club accounts must be considered time accounts for purposes of the regulation. Although club accounts typically have one feature of a time account (a maturity date), club accounts are not time accounts unless they also require a penalty of at least seven days' interest for a withdrawal of funds during the first six days after the account is opened--subject to exceptions permitted in Regulation D (as discussed in comment 2(u)-2).

(v) Variable-Rate Account

Comment 2(v)-1 clarifies that a certificate of deposit (CD) permitting one or more rate adjustments prior to maturity at the consumer's option is a variable-rate account. The Board believes it is important for consumers to receive disclosures describing when their interest rate and APY could change, such as any time limitations on when the option may be exercised.

Section 230.3--General Disclosure Requirements

(b) General

Comment 3(b)-1 provides guidance on the specificity required when time periods are disclosed. For example, the Board believes slight variations in compounding cycles are consistent with the notion of ``monthly'' cycles, which are often not based on an actual calendar month. Many commenters generally supported the Board's approach, but expressed concern about the proposal's limitation of 28-33 days to describe a month. The Board has adopted a standard of roughly equivalent intervals occurring during a calendar year. The Board believes this standard is consistent with the act, provides flexibility, and eases compliance.

(e) Oral Responses to Inquiries

Comment 3(e)-3 has been added in response to commenters' requests. It clarifies that this paragraph does not apply to responses to requests for rate information on an existing account.

(f) Rounding and Accuracy Rules for Rates and Yields

Proposed comment 3(f)(2)-2 (regarding accuracy requirements for interest rate disclosures) was a restatement of the regulation and has been deleted as unnecessary. A comment illustrating rounding requirements for the APY has been added.

Section 230.4--Account Disclosures

(a) Delivery of Account Disclosures

(a)(1) Account Opening

Comment 4(a)(1)-1 provides examples of events that trigger the delivery of new account disclosures. The final comment differs from the proposal in several respects.

The proposed commentary discussed the effect of a consumer-initiated change in the term for an automatically renewable time account. In response to commenters' requests, the commentary clarifies that new account disclosures are required when the consumer changes any account term required to be disclosed (and not merely the duration of the CD). The clarification provides consistency with Sec. 230.5(b)-5.

Commenters expressed concern about having to give new account disclosures when funds are transferred from one account to another, such as when funds in a money market deposit account (MMDA) are transferred to a NOW account because the consumer exceeded transaction limitations on the MMDA. Some requested clarification that disclosures at the time of transfer are not required if disclosures (including change-in-term notices, if appropriate) for both accounts had previously been given. To minimize possible burdens the Board has adopted that standard in the commentary.

The Board received many comments regarding the proposed guidance for ``closed accounts.'' New account disclosures would have been required if institutions deemed an account closed and then accepted a deposit from the consumer. Commenters noted that consumers with accounts meeting an institution's criteria for a closed account--such as an account having a $0 balance--do not necessarily intend to close the account. Commenters believed consumers would be confused if new account disclosures were sent when a deposit is subsequently made. Commenters also expressed concerns about the burden of monitoring accounts to ensure compliance.

The statute allows institutions not to pay accrued but uncredited interest when a consumer closes an account. (See 12 U.S.C. 4303(c)(9).)

Based on comments received and upon further analysis, the Board believes that if an institution deems an account closed and treats accrued but uncredited interest as forfeited by the consumer, the institution must deem a new account to be opened when a deposit is subsequently accepted. This approach provides flexibility for institutions and consistent treatment for consumers regarding ``closed'' accounts.

Comment 4(a)(1)-2 clarifies that an institution acquiring accounts through a merger or acquisition is not required to provide new account disclosures. The new institution must comply with Sec. 230.5(a)(1) if it chooses to change terms of the acquired account. Private transactions are distinguishable, however, from acquisitions or mergers involving the Resolution Trust Corporation (RTC) and the Federal Deposit Insurance Corporation (FDIC). In a government-assisted acquisition, the acquiring institution receives only the consumer's funds on deposit. The deposit contract or other legal obligation--the terms and conditions of the account such as fees--stays (and ultimately terminates) with the failed institution. Thus, new account disclosures must be provided if the consumer chooses to open an account with the new institution. Also, if fees are imposed before the new account relationship is established, the fee must be disclosed prior to imposition.

(a)(2) Requests

(a)(2)(i)

Comment (a)(2)(i)-1 clarifies that institutions are not required to send disclosures for accounts no longer offered to the public.

(a)(2)(ii)(A)

Comment 4(a)(2)(ii)(A)-1 has been added to clarify that when responding to a request for disclosures by giving rates ``accurate within the most recent seven calendar days,'' institutions should calculate the time period from the date the institution sends the disclosure.

(b) Content of Account Disclosures

(b)(1)(ii) Variable rates

Comments 4(b)(1)(ii)(B)-1 and 4(b)(1)(ii)(C)-1, dealing with rate changes within the institution's discretion, have been modified. Commenters believed rates derived from formulas based on an institution's cost of funds, for example, are not ``solely'' in the institution's discretion. In response to commenters' requests, both comments have been revised for clarity and consistency.

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

Comment 4(b)(2)(ii)-1 is modified from the proposal to reflect that state or other law may affect an institution's ability to include in its contract specific consumer actions considered by the institution to be a request to close the account.

(b)(4) Fees

The Board has provided additional guidance in comment 4(b)(4)-1 for fees imposed for sending to consumers checks that otherwise would be held by the institution. Comment 4(b)(4)-2 clarifies that photocopying fees are incidental fees not required to be disclosed. An example in comment 4(b)(4)-3 was deleted as unnecessary.

(b)(6) Features of Time Accounts
(b)(6)(ii) Early Withdrawal Penalties
Comment 4(b)(6)(ii)-4 has been added in response to commenters requesting guidance for disclosing an early withdrawal penalty.

Section 230.5--Subsequent Disclosures

(a) Change in Terms
Comment 5(a)(1)-3 provides guidance on an institution's responsibility to provide change-in-term notices when account disclosures reflect a term that will change upon the occurrence of an event. An example relating to student accounts has been deleted as unnecessary, and an example about terms in effect for a limited time has been added to comment 5(a)(1)-4 in response to commenters' requests.
Paragraph (a)(2)(ii) Check Printing Fees
In response to comments received, comment 5(a)(2)(ii)-1 has been expanded to exclude increases in fees for printing deposit and withdrawal slips from change-in-term notice requirements, although the Board believes that separate charges for deposit or withdrawal slips, which are typically provided along with checks, are seldom imposed. Many commenters stated that, like check printing fees, fees for printing deposit and withdrawal slips are not within the institution's control, since the consumer determines the quantity ordered.
(b) Notice Before Maturity for Time Accounts Longer than One Month that Renew Automatically
Comment 5(b)-2 provides guidance for disclosing the date when consumers can ascertain applicable rates for a renewing CD. The proposed comment required institutions to indicate when the rate will be available if the date falls on a nonbusiness day. Based on comments received and upon further analysis, the comment has been modified to delete the requirement.

Section 230.6--Periodic Statement Disclosures

(a) General Rule
Comment 6(a)-1 clarifies that if zero interest is earned during the period, institutions may disclose $0 for interest earned (and the annual percentage yield earned) or omit the disclosure, at their option.
(a)(2) Amount of Interest
Comment 6(a)(2)-2 clarifies that institutions may use a variety of terms to disclose interest earned, and that the regulation does not mandate use of the examples.

Section 230.7--Payment of Interest

(a)(1) Permissible Methods
Comment 7(a)(1)-1 has been expanded to reflect the act's legislative history, which cites the ``low balance'' method as an example of a prohibited interest calculation method.

Proposed comment 7(a)(1)-6 addressed ``dormant'' accounts, and the Board solicited comment on whether an institution should be permitted to withhold the payment of interest for dormant accounts. Proposed comment 7(b)-4 raised a similar issue for dormant accounts. Many comments were received. Some commenters believed institutions should be permitted to withhold the payment of interest for dormant accounts, if authorized by state or other law and the deposit contract. Other commenters noted that what constitutes a ``dormant'' account varies widely among the states and institutions. These commenters expressed concern about the impact of the rule if any period of inactivity--however brief--could transform an account to dormant status. Still others raised concerns whether the act, which requires that interest be paid on the full amount of principal in the account each day, permitted such an interpretation. (12 U.S.C. 4306(a).) Based on the comments received and further analysis, the Board believes that account inactivity does not affect an institution's duty to pay interest. (See comment 7(c)-3, which provides that institutions must accrue interest on funds until the funds are withdrawn from the account.) The Board believes this position--reflected in comment 7(a)(1)-6--is consistent with the purposes of the act and the rule that interest must be calculated for funds in accounts meeting minimum balance requirements for as long as funds remain in the account.

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

Comment 7(a)(2)-6 clarifies limitations on minimum balance requirements to earn interest for club accounts--such as ``holiday'' or ``vacation'' club. The rule does not apply to a club account's minimum balance requirements for earning bonuses.

(b) Compounding and Crediting Policies

Comment 7(b)-3 has been revised to clarify that the circumstances under which an institution may deem an account closed, and whether accrued but uncredited interest may be deemed forfeited, is subject to state or other law, if any (and to any limitations therein).

Comment 7(b)-4, dealing with the forfeiture of accrued but uncredited interest for dormant accounts, has been withdrawn for the reasons discussed in comment (a)(1)-6 above.

Section 230.8--Advertising

(a) Misleading or Inaccurate Advertisements

Comment 8(a)-2 would have required institutions using indoor signs advertising APYs for tiered-rate accounts to state both the lower and higher dollar amount for the tier corresponding to the advertised APY. Many commenters believed stating both dollar amounts is unnecessary. The Board concurs. Thus, the comment provides that a sign is not misleading or inaccurate if it states the lower dollar amount of the tier corresponding to the advertised annual percentage yield.

Institutions cannot advertise accounts as ``free'' or ``no cost'' (or terms of similar meaning) if maintenance and activity fees can be imposed. Comments 8(a)-3 and 8(a)-4 address the scope of ``maintenance and activity'' fees and addresses advertisements for ``free'' accounts with optional electronic services. Commenters were divided on whether fees for electronic services such as ATM access should preclude institutions from advertising accounts as free. Based on the comments received and further analysis, the Board believes that ATM services are not different from other optional services such as home banking.

The Board believes that because ATM access is provided only upon a consumer's request and consumers receive information--including the cost of ATM access--before obtaining the service, the imposition of fees for ATM access (including annual fees) does not preclude institutions from advertising accounts as free or no-cost.

The Board received numerous comments on its proposal to consider the term ``fees waived'' as similar to the terms ``free'' or ``no cost.'' Many commenters opposed the proposed comment. They stated that the term ``fees waived'' necessarily implies the existence of charges, and thus is distinguishable from the terms ``free'' or ``no cost.'' These commenters believed consumers would be unnecessarily disadvantaged if advertising fee waivers were restricted as proposed. Others believed most consumers would not distinguish between the terms and that advertising accounts with ``waived fees'' raised the concerns the Congress had in mind when prohibiting the advertisement of accounts as free or no-cost or ``words of similar meaning.'' The Board believes that ``fees waived'' is a term similar to ``free'' or ``no cost;'' thus, the commentary (now 8(a)-5) has been retained as proposed.

Comment 8(a)-6 has been modified for clarity.

(b) Permissible Rates

Comment 8(b)-3 provides guidance on advertising accounts for which institutions offer a number of versions (CDs, for example). The Board has revised the comment for clarity without any intended change in meaning.

(c) When Additional Disclosures Are Required

The regulation requires institutions to disclose additional information when the APY is advertised. Comment 8(c)-1 provides examples of account descriptions that do not trigger the additional disclosures.

The Board has eliminated the reference to a bonus of 1% over an institution's current rate for one-year certificates of deposit as an example of a trigger term. Based on comments received and upon further analysis, the Board believes a reference to an institution's own rates (to which a ``bonus'' rate or margin will be applied) is not a trigger term if those rates are not readily determinable from the advertisement itself. This position is consistent with the rules regarding trigger terms in advertisements under the Board's Regulation Z (12 CFR part 226).

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

Comment 8(c)(2)-2 has been added in response to commenters' requests. It specifies that an advertisement may refer to the APY as being accurate as of the date of publication, if the date is on the publication itself.

Appendix A--Annual Percentage Yield Calculation

Part II. Annual Percentage Yield Earned for Periodic Statements

Comment app. A.II.A.-1 provides guidance about the treatment of accrued but uncredited interest in the balances used to calculate the APYE. The Board believes an inaccurate APYE would result if institutions include accrued interest in the balance figure when statements are sent less frequently than interest is credited. But when periodic statements are issued more frequently than interest is credited, accrued interest must be included in the balance figure for APYE computation purposes.

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 has been adopted as proposed. Institutions may use the special formula to calculate an APYE on a quarterly statement whether or not a monthly statement is triggered by Regulation E during the quarter. Commenters supported this rule as significantly reducing compliance burdens for institutions.

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 APYE. The Board believes using the actual number of days in a compounding period is necessary to produce an accurate APYE for a specific consumer's account.

Appendix B--Model Clauses and Sample Forms

Proposed comments app. B-6, B-4-1 and B-9-1 have been deleted as unnecessary.

List of Subjects in 12 CFR Part 230

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

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

PART 230--TRUTH IN SAVINGS (REGULATION DD)

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

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

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

Supplement I to Part 230--Official Staff Interpretations

Introduction

1. Official status. This commentary is the means by which 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 Sec. 230.2(r). Accounts held in an institution located in a state are covered, even if funds are transferred periodically to a location outside the United States. Accounts held in an institution located outside the United States are not covered, even if held by a U.S. resident.

2. Persons who advertise accounts. Persons who advertise accounts are subject to the advertising rules. For example, if a deposit broker places an advertisement offering consumers an interest in an account at a depository institution, the advertising rules apply to the advertisement, whether the account is to be 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:

i. Interest-bearing and noninterest-bearing accounts
ii. Deposit accounts opened as a condition of obtaining a credit card
iii. Accounts denominated in a foreign currency
iv. Individual retirement accounts (IRAs) and simplified employee pension (SEP) accounts
v. Payable on death (POD) or ``Totten trust'' accounts

2. Other accounts. Examples of accounts not subject to the regulation are:

i. Mortgage escrow accounts for collecting taxes and property insurance premiums
ii. Accounts established to make periodic disbursements on construction loans
iii. Trust accounts opened by a trustee pursuant to a formal written trust agreement (not merely declarations of trust on a signature card such as a ``Totten trust,'' or an IRA and SEP account)
iv. Accounts opened by an executor in the name of a decedent's estate

3. Other investments. The term ``account'' does not apply to all products of a depository institution. Examples of products not covered are:

i. Government securities
ii. Mutual funds

iii. Annuities
iv. Securities or obligations of a depository institution
v. Contractual arrangements such as repurchase agreements, interest rate swaps, and bankers acceptances

(b) Advertisement

1. Covered messages. 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:

i. Telephone solicitations
ii. Messages on automated teller machine (ATM) screens
iii. Messages on a computer screen in an institution's lobby (including any printout) other than a screen viewed solely by the institution's employee
iv. Messages in a newspaper, magazine, or promotional flyer or on radio
v. Messages that are provided along with information about the consumer's existing account and that promote another account at the institution

2. Other messages. Examples of messages that are not advertisements are:

i. Rate sheets in a newspaper, periodical, or trade journal (unless the depository institution, or a deposit broker offering accounts at the institution, pays a fee for or otherwise controls publication)
ii. In-person discussions with consumers about the terms for a specific account
iii. Information given to consumers about existing accounts, such as current rates recorded on a voice response machine 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. Items that are not a bonus include discount coupons for goods or services 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 to determine if the value of the item is de minimis. Examples of items of de minimis value are:

i. Disability insurance premiums valued at an amount of $10 or less per year
ii. Coffee mugs, T-shirts or other merchandise with a market value of $10 or less

3. Aggregation. In determining if an item valued at $10 or less

is a bonus, institutions must aggregate per account per calendar year items that may be given to consumers. In making this determination, institutions aggregate per account only the market value of items that may be given for a specific promotion. To illustrate, assume an institution offers in January to give consumers an item valued at $7 for each calendar quarter during the year that the average account balance in a negotiable order of withdrawal (NOW) account exceeds $10,000. The bonus rules are triggered, since consumers are eligible under the promotion to receive up to $28 during the year. However, the bonus rules are not triggered if an item valued at $7 is offered to consumers opening a NOW account during the month of January, even though in November the institution introduces a new promotion that includes, for example, an offer to existing NOW account holders for an item valued at $8 for maintaining an average balance of $5,000 for the month.

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

i. A safe deposit box rental fee for consumers who open a new account
ii. Fees for travelers checks for account holders
iii. 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 and landlord-tenant security accounts.

2. Other accounts. Accounts not held in a professional capacity include accounts held by an individual for a child under the Uniform Gifts to Minors Act.

3. Sole proprietors. Accounts held by individuals as sole proprietors are not covered.

4. Retirement plans. IRAs and SEP accounts are consumer accounts to the extent that funds are invested in covered accounts. But Keogh accounts are not subject to the regulation.

5. Unincorporated associations. An institution may rely on the declaration of the person representing an unincorporated association as to whether the account is held for a business or nonbusiness purpose.

(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 deposit accounts to consumers. Edge Act and Agreement corporations, and agencies of foreign institutions, are not depository institutions for purposes of this regulation.

(k) Deposit broker

1. General. A deposit broker is a person who is 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 treat them 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 Sec. 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 Sec. 205.2(j)), such as an account that receives direct deposit of social security payments. Accounts permitting access by other electronic means are not ``passbook saving accounts'' and must comply with the requirements of Sec. 230.6 if statements are sent four or more times a year.

(q) Periodic statement

1. Examples. Periodic statements do not include:

i. Additional statements provided solely upon request
ii. Information provided by computer through home banking services
iii. General service information such as a quarterly newsletter or other correspondence describing available services and products

(t) Tiered-rate account

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

2. Minimum balance requirements. A requirement to maintain a minimum balance to earn interest does not make an account a tiered-rate account.

(u) Time account

1. Club accounts. Although club accounts typically have a maturity date, they are not time accounts unless they also require a penalty of at least seven days' interest for withdrawals during the first six days after the account is opened.

2. 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 Sec. 204.2(c)(1)(i).) But the fact that a consumer makes a withdrawal as permitted by Regulation D does not disqualify the account from being a time account for purposes of this regulation.

(v) Variable-rate account

1. General. A certificate of deposit permitting 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. Institutions are not required to use a particular type size or typeface, nor are institutions required to state any term more conspicuously than any other term. Disclosures may be made:

i. In any order
ii. In combination with other disclosures or account terms
iii. In combination with disclosures for other types of accounts, as long as it is clear to consumers which disclosures apply to their account
iv. On more than one page and on the front and reverse sides
v. By using inserts to a document or filling in blanks
vi. On more than one document, as long as the documents are provided at the same time

2. Consistent terminology. Institutions must use consistent terminology to describe terms or features 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 periodic statement and change-in-term notices must use the same terminology so that consumers can readily identify the fee.

(b) General

1. Specificity of legal obligation. Institutions may refer to the calendar month or to roughly equivalent intervals during a calendar year as a ``month.''

(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:

i. An institution changes a term that triggers a notice under Regulation E, and uses the timing and disclosure rules of Regulation E for sending change-in-term notices
ii. Consumers add an ATM access feature to an account, and the institution provides disclosures pursuant to Regulation E, including disclosure of fees (See 12 CFR Sec. 205.7.)
iii. An institution complying with the timing rules of Regulation E discloses at the same time fees for electronic services (such as for balance inquiry fees at ATMs) required to be disclosed by this regulation but not by Regulation E
iv. An institution relies on Regulation E's rules regarding disclosure of limitations on the frequency and amount of electronic fund transfers, including security-related exceptions. But any limitations on ``intra-institutional transfers'' to or from the consumer's other accounts during a given time period must be disclosed, even though intra-institutional transfers are exempt from Regulation E.

(e) Oral response to inquiries

1. Application of rule. Institutions are not required to provide

rate information orally.

2. Relation to advertising. The advertising rules do not cover an oral response to a question about rates.

3. Existing accounts. This paragraph does not apply to oral responses about rate information for existing accounts. For example, if a consumer holding a one-year certificate of deposit (CD) requests interest rate information about the CD during the term, the institution need not disclose the annual percentage yield.

(f) Rounding and accuracy rules for rates and yields

(f)(1) Rounding

1. Permissible rounding. Examples of permissible rounding are an annual percentage yield calculated to be 5.644%, rounded down and disclosed as 5.64%; 5.645% rounded up and disclosed as 5.65%.

(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.

Section 230.4 Account disclosures.

(a) Delivery of account disclosures

(a)(1) Account opening

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

i. A time account that does not automatically rollover is renewed by a consumer

ii. A consumer changes a term for a renewable time account (see Sec. 230.5(b)-5 regarding disclosure alternatives)

iii. An institution transfers funds from an account to open a new account not at the consumer's request, unless the institution previously gave account disclosures and any change-in-term notices for the new account

iv. An institution accepts a deposit from a consumer to an account that the institution had deemed closed for the purpose of treating accrued but uncredited interest as forfeited interest (see Sec. 230.7(b)-3)

2. Acquired accounts. New account disclosures need not be given when an institution acquires an account through an acquisition of or merger with another institution (but see Sec. 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. But when consumers ask for written information about an account (whether by telephone, in person, or by other means), the institution must provide

disclosures unless the account is no longer offered to the public.

2. General requests. When responding to a consumer's general request for disclosures 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 requests for account information that consumers do not make in person.

(a)(2)(ii)(A)

1. Recent rates. Institutions comply with this paragraph if they disclose an interest rate and annual percentage yield accurate within the seven calendar days preceding the date they send the disclosures.

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

1. Term. Describing the maturity of a time account as ``1 year'' or ``6 months,'' for example, illustrates a statement of 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, institutions may disclose a periodic rate corresponding to the interest rate. 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. For fixed-rate time accounts paying the opening rate until maturity, institutions may disclose the period of time the interest rate will be in effect by stating the maturity date. (See Appendix B, B-7--Sample Form.) For other fixed-rate accounts, institutions may use a date (``This rate will be in effect through May 4, 1995'') or a period (``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 composite annual percentage yield must be disclosed for stepped-rate accounts. (See Appendix A, Part I, Paragraph B.) The interest rates and the period of time each will be in effect also must be provided. When the initial rate offered for a specified time 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:

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

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

1. Frequency of rate changes. An institution reserving the right to change rates at its discretion must state the fact that rates may change at any time.

(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. An institution may, subject to state or other law, provide in its deposit contracts the actions by consumers that will be treated as closing the account and that will result in the forfeiture of accrued but uncredited interest. An example is the withdrawal of all funds from the account prior to the date that 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 (the daily balance for a calendar month, for example) and accruing interest (the average daily balance for a statement period, for example). Each method and corresponding 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. Covered fees. The following are types of fees that must be disclosed:

i. Maintenance fees, such as monthly service fees
ii. Fees to open or to close an account
iii. Fees related to deposits or withdrawals, such as fees for use of the institution's ATMs
iv. Fees for special services, such as stop-payment fees, fees for balance inquiries or verification of deposits, fees associated with checks returned unpaid, and fees for regularly sending to consumers checks that otherwise would be held by the institution

2. Other fees. Institutions need not disclose fees such as the following:

i. Fees for services offered to account and nonaccount holders alike, such as travelers checks and wire transfers (even if different amounts are charged to account and nonaccount holders)
ii. Incidental fees, such as fees associated with state escheat laws, garnishment or attorneys fees, and fees for photocopying

3. Amount of fees. Institutions must state the amount and conditions under which a fee may be imposed. Naming and describing the fee (such as ``$4.00 monthly service fee'') will typically satisfy these requirements.

4. 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 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:

i. Limits on the number of checks that may be written on an account within a given time period
ii. Limits on withdrawals or deposits during the term of a time account
iii. Limitations required by Regulation D on the number of withdrawals permitted from money market deposit accounts by check to third parties each month. Institutions need not disclose reservations of right to require notices for withdrawals from accounts required by federal or state law.

(b)(6) Features of time accounts

(b)(6)(i) Time requirements

1. ``Callable'' time accounts. In addition to the maturity date, an institution must state the date or the circumstances under which it 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'' may but need not be used to describe the loss of interest that consumers may incur for early withdrawal of funds from time accounts.

2. Examples. Examples of early withdrawal penalties are:

i. Monetary penalties, such as ``$10.00'' or ``seven days' interest plus accrued but uncredited interest''
ii. Adverse changes to terms such as a lowering of the interest rate, annual percentage yield, or compounding frequency for funds remaining on deposit
iii. 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 for purposes of this regulation.

4. Disclosing penalties. Penalties may be stated in months, whether institutions assess the penalty using the actual number of days during the period or using another method such as a number of days that occurs in any actual sequence of the total calendar months involved. For example, stating ``one month's interest'' is permissible, whether the institution assesses 30 days' interest during the month of April, or selects a time period between 28 and 31 days for calculating the interest for all early withdrawals regardless of when the penalty is assessed.

(b)(6)(iv) Renewal policies

1. Rollover time accounts. Institutions offering a grace period on 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 paying 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. (See Appendix B, Model Clause B-1(h)(iv)(2).)

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 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 note 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 language for disclosing the effective date of a change is ``As of November 21, 1994.''

3. Terms that change upon the occurrence of an event. An institution offering terms that will automatically change upon the occurrence of a stated event need not send an advance notice of the change provided the institution fully describes the conditions of the change in the account opening disclosures (and sends any change-in-term notices regardless of whether the changed term affects that consumer's account at that time).

4. Examples. Examples of changes not requiring an advance change-in-terms notice are:

i. The termination of employment for consumers for whom account maintenance or activity fees were waived during their employment by the depository institution

ii. The expiration of one year in a promotion described in the account opening disclosures to ``waive $4.00 monthly service charges for one year''

(a)(2) No notice required
(a)(2)(ii) Check printing fees

1. Increase in fees. A notice is not required for an increase in fees for printing checks (or deposit and withdrawal slips) even if the institution adds some amount to the price charged by the vendor.

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

1. Maturity dates on nonbusiness days. In determining the term of a time account, institutions may disregard the fact that the term will be extended beyond the disclosed number of days because the disclosed maturity falls on a nonbusiness day. 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. Ways to disclose when the annual percentage yield will be available include the use of:

i. A specific date, such as ``October 28''
ii. A date that is easily determinable, such as ``the Tuesday before the maturity date stated on this notice'' or ``as of the maturity date stated on this notice''

3. Alternative timing rule. Under the alternative timing rule, an institution offering a 10-day grace period would have to provide the disclosures at least 10 days prior to the scheduled maturity date.

4. Club accounts. If consumers have agreed to the transfer of payments from another account to a club time account for the next club period, the institution must comply with the requirements for automatically renewable time accounts--even though consumers may withdraw funds from the club account at the end of the current club period.

5. Renewal of a time account. In the case of a change in terms that becomes effective if a rollover time account is subsequently renewed:

i. If the change is initiated by the institution, the disclosure requirements of this paragraph apply. (Paragraph 230.5(a) applies if the change becomes effective prior to the maturity of the existing time account.)
ii. If the change is initiated by the consumer, the account opening disclosure requirements of Sec. 230.4(b) apply. (If the notice required by this paragraph has been provided, institutions may give new account disclosures or disclosures highlighting only the new term.)

6. Example. If a consumer receives a prematurity notice on a

one-year time account and requests a rollover to a six-month account, the institution must provide either account opening disclosures including 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 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 renewal date. For example, if a time account automatically renews every seven days, disclosures about an account that renews on Wednesday, December 7, 1994, should be given prior to Wednesday, December 14.

(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 do provide statements, disclosures need only be furnished to the extent applicable. For example, if no interest is earned for a statement period, institutions need not state that fact. Or, institutions may 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 Sec. 205.9(b).)

3. Combined statements. Institutions may provide 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:

i. The information is limited to the account number, the type of account, or balance information, and
ii. The institution also provides a periodic statement complying with this section for each account.

4. Other information. Additional information that may be given on or with a periodic statement includes:

i. Interest rates and corresponding periodic rates applied to balances during the statement period
ii. The dollar amount of interest earned year-to-date
iii. Bonuses paid (or any de minimis consideration of $10 or less)
iv. Fees for 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.

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

i. ``Interest paid,'' to describe interest that has been credited
ii. ``Interest accrued'' or ``interest earned,'' to indicate that interest is not yet credited

3. Closed accounts. If consumers close 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 (other than zero, at the institution's option).

(a)(3) Fees imposed

1. General. Periodic statements must state fees disclosed under Sec. 230.4(b) that were debited to the account during the statement period, even if assessed for an earlier period.

2. Itemizing fees by type. In itemizing fees imposed more than once in the period, institutions may group fees if they are the same type. But 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:

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

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

i. 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.
ii. 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. Disclosure of fees in compliance with Regulation E complies with this section for fees related to electronic fund transfers (for example, totaling all electronic funds transfer fees in a single figure).

(a)(4) Length of period

1. General. Institutions providing 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.

(b) Special rule for average daily balance method

1. Monthly statements and quarterly compounding. This rule applies, for example, when an institution calculates interest on a quarterly average daily balance and sends monthly statements. In this case, the first two monthly statements would omit annual percentage yield earned and interest earned figures; the third monthly statement would 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 and that send statements on a quarterly basis may disclose a single interest (and annual percentage yield earned) figure. Alternatively, an institution may disclose three interest and three annual percentage yield earned figures, one for each month in the quarter, as long as the institution states the number of days (or beginning and ending dates) in the interest period if different from the statement period.

Section 230.7 Payment of interest.

(a)(1) 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:

i. Paying interest on the balance in the account at the end of the period (the ``ending balance'' method)
ii. Paying interest for the period based on the lowest balance in the account for any day in that period (the ``low balance'' method)

iii. Paying interest on a percentage of the balance, excluding the amount set aside for reserve requirements (the ``investable balance'' method)

2. Use of 365-day basis. Institutions may apply a daily periodic rate 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 equal to 1/12 of the amount of interest that will be earned for a 365-day period (or 11 uniform monthly payments--each equal to roughly 1/12 of the total amount of interest--and one payment that accounts for the remainder of the total amount of 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. (See 12 CFR part 217, the Board's Regulation Q, for limitations on duration of interest payments.) Examples include:

i. During a grace period offered for an automatically renewable time account, if consumers decide during that period not to renew the account
ii. Following the maturity of nonrollover time accounts
iii. When the maturity date falls on a holiday, and consumers must wait until the next business day to obtain the funds

6. Dormant accounts. Institutions must pay interest on funds in an account, even if inactivity or the infrequency of transactions would permit the institution to consider the account to be ``inactive'' or ``dormant'' (or similar status) as defined by state or other law or the account contract.

(a)(2) Determination of minimum balance to earn interest

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

2. Average daily balance accounts. Institutions that require a minimum balance may choose not to pay interest for the period in which the balance drops below the required minimum, if they use the average daily balance method to calculate interest.

3. Beneficial method. Institutions may not require that consumers maintain both a minimum daily balance and a minimum average daily balance to earn interest, such as by requiring consumers to maintain a $500 daily balance and a prescribed average daily balance (whether higher or lower). But an institution could offer a minimum balance to earn interest that includes an additional method that is ``unequivocally beneficial'' to consumers such as the

following: An institution using the daily balance method to calculate interest and requiring a $500 minimum daily balance could offer to pay interest on the account for those days the minimum balance is not met as long as consumers maintain 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 that meets the required minimum balance. For example, if $300 is the minimum daily balance required 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:

i. The daily or average daily balance on which interest will be paid
ii. Whether any minimum balance to earn interest is met

6. Club accounts. Institutions offering club accounts (such as a ``holiday'' or ``vacation'' club) cannot impose a minimum balance requirement for interest 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 interest only if the consumer has made all 50 payments.

7. Minimum balances not affecting interest. Institutions may use the daily balance, average daily balance, or any 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 choosing 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. Subject to state or other law, an institution may choose not to pay accrued interest if consumers close an account prior to the date accrued interest is credited, as long as the institution has disclosed that fact.

(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'' or ``collected'' balance method, as long as the crediting requirements of the EFAA are met (12 CFR 229.14).

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 are subject to 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 when:

i. For a tiered-rate account, it also provides the lower dollar amount of the tier corresponding to the advertised annual percentage yield
ii. For a time account, it also provides the term required to obtain the advertised annual percentage yield

3. Fees affecting ``free'' accounts. For purposes of determining whether an account can be advertised as ``free'' or ``no cost,'' maintenance and activity fees include:

i. Any fee imposed when a minimum balance requirement is not met, or when consumers exceed a specified number of transactions
ii. Transaction and service fees that consumers reasonably expect to be imposed on a regular basis
iii. A flat fee, such as a monthly service fee
iv. Fees imposed to deposit, withdraw, or transfer funds, including per-check or per-transaction charges (for example, $.25 for each withdrawal, whether by check or in person)

4. Other fees. Examples of fees that are not maintenance or activity fees include:

i. Fees not required to be disclosed under Sec. 230.4(b)(4)
ii. Check printing fees
iii. Balance inquiry fees
iv. Stop-payment fees and fees associated with checks returned unpaid
v. Fees assessed against a dormant account
vi. Fees for ATM or electronic transfer services (such as preauthorized transfers or home banking services) not required to obtain an account

5. Similar terms. An advertisement may not use the term ``fees waived'' if a maintenance or activity fee may be imposed because it is similar to the terms ``free'' or ``no cost.''

6. Specific account services. Institutions may advertise a

specific account service or feature as free if no fee is imposed for that service or feature. For example, institutions offering an account that is free of deposit or withdrawal fees could advertise that fact, as long as the advertisement does not mislead consumers by implying that the account is free and that no other fee (a monthly service fee, for example) may be charged.

7. 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 if the time period is also stated.

8. Conditions not related to deposit accounts. Institutions may advertise accounts as ``free'' for consumers meeting conditions not related to deposit accounts, such as the consumer's age. For example, institutions may advertise a NOW account as ``free for persons over 65 years old,'' even though a maintenance or activity fee is assessed on accounts held by consumers 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 applicable annual percentage yields for each tier.

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

3. Representative examples. An advertisement that states an annual percentage yield for a given type of account (such as a time account for a specified term) need not state the annual percentage yield applicable to other time accounts offered by the institution or indicate that other maturity terms are available. In an advertisement stating that rates for an account may vary depending on the amount of the initial deposit or the term of a time account, institutions need not list each balance level and term offered. Instead, the advertisement may:

i. 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.''

ii. 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. The following are examples of information stated in advertisements that are not ``trigger'' terms:

i. ``One, three, and five year CDs available''
ii. ``Bonus rates available''
iii. ``1% over our current rates,'' so long as the rates are not determinable from the advertisement

(c)(2) Time annual percentage yield is offered

1. Specified 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, taking into account the particular circumstances or production deadlines involved. 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 reflect rates offered shortly before (or on) the date the rates are published or broadcast.

2. Reference to date of publication. An advertisement may refer to the annual percentage yield as being accurate as of the date of publication, if the date is on the publication itself. For instance, an advertisement in a periodical may state that a rate is ``current through the date of this issue,'' if the periodical shows the date.

(c)(5) Effect of fees

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

(c)(6) Features of time accounts

(c)(6)(i) Time requirements

1. Club accounts. If a club account has a maturity date but the term may vary depending on when the account is opened, institutions may use a phrase such as: ``The maturity date of this club account is November 15; its term varies depending on when the account is opened.''

(c)(6)(ii) Early withdrawal penalties

1. Discretionary penalties. Institutions imposing early withdrawal penalties on a case-by-case basis may disclose that they ``may'' (rather than ``will'') impose a penalty if such a disclosure 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 a tiered-rate account made through telephone response machines must provide the 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 is readable by passersby.

Section 230.9 Enforcement and record retention.

(c) Record retention

1. Evidence of required actions. Institutions comply with the regulation by demonstrating that they have done the following:

i. Established and maintained procedures for paying interest and providing timely disclosures as required by the regulation, and
ii. Retained sample disclosures for each type of 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 be able 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. Institutions must retain sufficient rate and balance information 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 for calculating interest and the annual percentage yield:

i. The daily rate applied to a balance carried to five or more decimal places
ii. The daily interest earned carried to five or more decimal places

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 formula for the annual percentage yield earned 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 Sec. 230.7(a)(2).)

A. General Formula

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

i. May not be included in the balance for statements 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.
ii. Must 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 and 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 paying interest based on the daily balance method that 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 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. But institutions must use this formula for accounts that compound and credit interest quarterly and receive monthly statements that, while triggered by Regulation E, comply with the provisions of Sec. 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 required information or rearrange the format in a way that affects 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 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 consumers when an account is opened, as required by Sec. 230.4(a)(1). (See Sec. 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 Sec. 230.3(c).) For disclosures covered by both this regulation and Regulation E (such as the amount of fees 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. Sample forms. The sample forms (B-4 through B-8) serve a purpose different from the model clauses. They illustrate 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. 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. All calculations in the insert assume daily compounding.

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 different formats (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.

By order of the Board of Governors of the Federal Reserve System, August 2, 1994.
William W. Wiles,
Secretary of the Board.
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