

Board of Governors of the Federal Reserve System

---

# Consumer Financial Protection Bureau's Official Staff Commentary on Regulation DD

12 CFR 1030, supplement I; effective December 30, 2011



# Consumer Financial Protection Bureau's Official Staff Commentary on Regulation DD

12 CFR 1030, supplement I; effective December 30, 2011

---

**6-7010**

## INTRODUCTION

1. *Official status.* This commentary is the means by which the Bureau of Consumer Financial Protection issues official interpretations of Regulation DD.

**6-7011**

## SECTION 1030.1—Authority, Purpose, Coverage, and Effect on State Laws

### 1(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 section 1030.2(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.

- 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.

**6-7021**

## SECTION 1030.2—Definitions

### 2(a) Account

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

- i. Interest-bearing and noninterest-bearing accounts.

**6-7022**

### 2(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. For purposes of section 1030.8(b) of this part through section 1030.8(e) of this part, information given to consumers about existing accounts, such as current rates recorded on a voice-response machine or notices for automatically renewable time account sent before renewal.
- iv. Information about a particular transaction in an existing account.
- v. Disclosures required by federal or other applicable law.
- vi. A deposit account agreement.

#### 6-7027

#### 2(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.

#### 6-7028

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.

#### 6-7030

#### 2(h) Consumer

1. *Professional capacity.* Examples of accounts held by a natural person in a profes-

sional 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. Keogh accounts are not subject to the regulation.

6-7032

#### 2(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 part.

6-7033

#### 2(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)).

6-7035

#### 2(n) Interest

1. *Relation to bonuses.* Bonuses are not interest for purposes of this part.

6-7038

#### 2(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 1005.2(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 section 1030.6 if statements are sent four or more times a year.

6-7039

#### 2(q) Periodic Statement

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

- i. Additional statements provided solely upon request.
- ii. General service information such as a quarterly newsletter or other correspondence describing available services and products.

6-7042

#### 2(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.

6-7043

#### 2(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 of the Board of Governors of the Federal Reserve System (12 CFR part 204) 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).) 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 part.

6-7044

### 2(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.

6-7054

## SECTION 1030.3—General Disclosure Requirements

### 3(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.

6-7055

### 3(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.”

6-7056

### 3(c) Relation to Regulation E

1. *General rule.* Compliance with Regulation E (12 CFR part 1005) is deemed to satisfy the disclosure requirements of this part, 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 1005.7.)
- 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 part 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.

6-7058

### 3(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.

#### 6-7059

### 3(f) Rounding and Accuracy Rules for Rates and Yields

#### 3(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%.

#### 6-7060

#### 3(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.

#### 6-7070

### SECTION 1030.4—Account Disclosures

#### 4(a) Delivery of Account Disclosures

##### 4(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 renew-

able time account (*see* comment 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* comment 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* section 1030.5(a) of this part regarding advance notice requirements if terms are changed).

#### 6-7071

##### 4(a)(2) Requests

##### Paragraph 4(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, including requests made by electronic means (such as by electronic mail).

4. *Use of electronic means.* If a consumer who is not present at the institution makes a request for account disclosures, including a request made by telephone, email, or via the institution's Web site, the institution may send

the disclosures in paper form or, if the consumer agrees, may provide the disclosures electronically, such as to an email address that the consumer provides for that purpose, or on the institution's Web site, without regard to the consumer consent or other provisions of the E-Sign Act. The regulation does not require an institution to provide, nor a consumer to agree to receive, the disclosures required by section 1030.4(a)(2) in electronic form.

**6-7073***Paragraph 4(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.

**6-7074***Paragraph 4(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").

**6-7075****4(b) Content of Account Disclosures***4(b)(1) Rate Information**4(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").

**6-7076**

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.)

**6-7077***4(b)(1)(ii) Variable Rates**Paragraph 4(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.

**6-7078***Paragraph 4(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.

**6-7079***Paragraph 4(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.

**6-7081***4(b)(2) Compounding and Crediting**4(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.

**6-7083***4(b)(3) Balance Information**4(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.

**6-7084***4(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.

**6-7085***4(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 non-account holders alike, such as travelers checks and wire transfers (even if different amounts are charged to account and non-account holders).
- ii. Incidental fees, such as fees associated with state escheat laws, garnishment or attorneys fees, and fees for photocopying.

**6-7086**

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.

5. *Fees for overdrawing an account.* Under section 1030.4(b)(4) of this part, institutions must disclose the conditions under which a fee may be imposed. In satisfying this requirement institutions must specify the categories of transactions for which an overdraft fee may be imposed. An exhaustive list of transactions is not required. It is sufficient for an institution to state that the fee applies to overdrafts “created by check, in-person withdrawal, ATM withdrawal, or other electronic means,” as applicable. Disclosing a fee “for overdraft items” would not be sufficient.

**6-7087***4(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 of the Board of Governors of the Federal Reserve System (12 CFR part 204) 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.

**6-7088***4(b)(6) Features of Time Accounts**4(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).

**6-7089***4(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.

**6-7090**

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 part.

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.

**6-7092***4(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).)

**6-7102**

## SECTION 1030.5—Subsequent Disclosures

## 5(a) Change in Terms

*5(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.”

**6-7103**

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.”

**6-7104**

5(a)(2) *No Notice Required*

5(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.

**6-7105**

5(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.

**6-7106**

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 1030.5(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 section 1030.4(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.

**6-7107***5(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.

**6-7109****5(c) 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.

**6-7119****SECTION 1030.6—Periodic Statement Disclosures****6(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 1005.9(b).)

**6-7120**

3. *Combined statements.* Institutions may provide information about an account (such as a 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.

**6-7121***6(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.

**6-7122***6(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).

**6-7123***6(a)(3) Fees Imposed*

1. *General.* Periodic statements must state fees disclosed under section 1030.4(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. (See section 1030.11(a)(1) of this part regarding certain fees that are required to be grouped.) When fees of the same type are grouped together, 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.
- iv. Fees for paying overdrafts and fees for returning checks or other items unpaid.

#### 6-7124

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).

#### 6-7125

##### 6(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.

#### 6-7126

##### 6(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.

#### 6-7136

##### SECTION 1030.7—Payment of Interest

*7(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).

**6-7137**

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, Regulation Q of the Board of Governors of the Federal Reserve System, for limitations on duration of interest payments.)\* Examples include:

- i. During a grace period offered for an automatically renewable time account, if con-

sumers 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.

**6-7138***7(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.

**6-7139**

4. *Paying on full balance.* Institutions must pay interest on the full balance in the account

\* This reference to 12 CFR 217 refers to the Board's Regulation Q: Prohibition Against Payment of Interest on Demand Deposits, repealed effective July 21, 2011 (76 FR 42015, July 18, 2011).

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.

#### 6-7140

#### 7(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.

#### 6-7141

#### 7(c) Date Interest Begins to Accrue

1. *Relation to Regulation CC.* Institutions may rely on the Expedited Funds Availability Act (EFAA) and Regulation CC of the Board of Governors of the Federal Reserve System (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.

#### 6-7151

#### SECTION 1030.8—Advertising

#### 8(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.



**6-7152**

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 section 1030.4(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.

**6-7153**

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.

9. *Electronic advertising.* If an electronic advertisement (such as an advertisement appearing on an Internet Web site) displays a triggering term (such as a bonus or annual percentage yield) the advertisement must clearly refer the consumer to the location where the additional required information begins. For example, an advertisement that includes a bonus or annual percentage yield may be accompanied by a link that directly takes the consumer to the additional information.

**6-7153.1**

10. *Examples.* Examples of advertisements that would ordinarily be misleading, inaccurate, or misrepresent the deposit contract are:

- i. Representing an overdraft service as a "line of credit," unless the service is subject to Regulation Z, 12 CFR part 1026.
- ii. Representing that the institution will honor all checks or authorize payment of all transactions that overdraw an account, with or without a specified dollar limit, when the institution retains discretion at any time not to honor checks or authorize transactions.
- iii. Representing that consumers with an overdrawn account are allowed to maintain a negative balance when the terms of the account's overdraft service require consumers promptly to return the deposit account to a positive balance.
- iv. Describing an institution's overdraft service solely as protection against bounced checks when the institution also permits overdrafts for a fee for overdrawing their accounts by other means, such as ATM



withdrawals, debit card transactions, or other electronic fund transfers.

v. Advertising an account-related service for which the institution charges a fee in an advertisement that also uses the word “free” or “no cost” (or a similar term) to describe the account, unless the advertisement clearly and conspicuously indicates that there is a cost associated with the service. If the fee is a maintenance or activity fee under section 1030.8(a)(2) of this part, however, an advertisement may not describe the account as “free” or “no cost” (or contain a similar term) even if the fee is disclosed in the advertisement.

11. *Additional disclosures in connection with the payment of overdrafts.* The rule in section 1030.3(a), providing that disclosures required by section 1030.8 may be provided to the consumer in electronic form without regard to E-Sign Act requirements, applies to the disclosures described in section 1030.11(b), which are incorporated by reference in section 1030.8(f).

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.”

#### 6-7154

#### 8(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.

#### 6-7155

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

#### 6-7156

#### 8(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.

#### 6-7158

#### 8(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.

6-7161

*8(c)(5) Effect of Fees*

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

6-7162

*8(c)(6) Features of Time Accounts*

*8(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.”

6-7163

*8(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.

6-7164

**8(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.

6-7165

**8(e) Exemption for Certain Advertisements**

*8(e)(1) Certain Media*

*Paragraph 8(e)(1)(i)*

1. *Internet advertisements.* The exemption for advertisements made through broadcast or electronic media does not extend to advertisements posted on the Internet or sent by email.

*Paragraph 8(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.

6-7166

*8(e)(2) Indoor Signs*

*Paragraph 8(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.

6-7176

**SECTION 1030.9—Enforcement and Record Retention**

**9(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.

**6-7177**

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.

stitution must disclose separate totals for the statement period and for the calendar year-to-date. The total dollar amount for each of these periods includes per-item fees as well as interest charges, daily or other periodic fees, or fees charged for maintaining an account in overdraft status, whether the overdraft is by check, debit card transaction, or by any other transaction type. It also includes fees charged when there are insufficient funds because previously deposited funds are subject to a hold or are uncollected. It does not include fees for transferring funds from another account of the consumer to avoid an overdraft, or fees charged under a service subject to Regulation Z (12 CFR part 1026). *See also* comment 11(c)-2. Under section 1030.11(a)(1)(i), the disclosure must describe the total dollar amount for all fees or charges imposed on the account for the statement period and calendar year-to-date for paying overdrafts using the term “Total Overdraft Fees.” This requirement applies notwithstanding comment 3(a)-2.

3. *Fees for returning items unpaid.* The total dollar amount for all fees for returning items unpaid must include all fees charged to the account for dishonoring or returning checks or other items drawn on the account. The institution must disclose separate totals for the statement period and for the calendar year-to-date. Fees imposed when deposited items are returned are not included. Institutions may use terminology such as “returned item fee” or “NSF fee” to describe fees for returning items unpaid.

4. *Waived fees.* In some cases, an institution may provide a statement for the current period reflecting that fees imposed during a previous period were waived and credited to the account. Institutions may, but are not required to, reflect the adjustment in the total for the calendar year-to-date and in the applicable statement period. For example, if an institution assesses a fee in January and refunds the fee in February, the institution could disclose a year-to-date total reflecting the amount credited, but it should not affect the total disclosed for the February statement period, because the fee was not assessed in the February statement period. If an institution assesses and then waives and credits a fee within the same

**6-7178**

SECTION 1030.10—[Reserved]

**6-7185**

SECTION 1030.11—Additional Disclosures Regarding the Payment of Overdrafts

11(a) Disclosure of Total Fees on Periodic Statements

*11(a)(1) General*

1. *Transfer services.* The overdraft services covered by section 1030.11(a)(1) of this part do not include a service providing for the transfer of funds from another deposit account of the consumer to permit the payment of items without creating an overdraft, even if a fee is charged for the transfer.

2. *Fees for paying overdrafts.* Institutions must disclose on periodic statements a total dollar amount for all fees or charges imposed on the account for paying overdrafts. The in-

cycle, the institution may, at its option, reflect the adjustment in the total disclosed for fees imposed during the current statement period and for the total for the calendar year-to-date. Thus, if the institution assesses and waives the fee in the February statement period, the February fee total could reflect a total net of the waived fee.

5. *Totals for the calendar year to date.* Some institutions' statement periods do not coincide with the calendar month. In such cases, the institution may disclose a calendar year-to-date total by aggregating fees for 12 monthly cycles, starting with the period that begins during January and finishing with the period that begins during December. For example, if statement periods begin on the 10th day of each month, the statement covering December 10, 2006 through January 9, 2007 may disclose the year-to-date total for fees imposed from January 10, 2006 through January 9, 2007. Alternatively, the institution could provide a statement for the cycle ending January 9, 2007 showing the year-to-date total for fees imposed January 1, 2006 through December 31, 2006.

6. *Itemization of fees.* An institution may itemize each fee in addition to providing the disclosures required by section 1030.11(a)(1) of this part.

#### 6-7185.2

##### 11(a)(3) Format Requirements

1. *Time period covered by periodic statement disclosures.* The disclosures under section 1030.11(a) must be included on periodic statements provided by an institution starting the first statement period that begins after January 1, 2010. For example, if a consumer's statement period typically closes on the 15th of each month, an institution must provide the disclosures required by section 1030.11(a)(1) on subsequent periodic statements for that consumer beginning with the statement reflecting the period from January 16, 2010 to February 15, 2010.

#### 6-7185.5

##### 11(b) Advertising Disclosures for Overdraft Services

1. *Examples of institutions promoting the payment of overdrafts.* A depository institution would be required to include the advertising disclosures in section 1030.11(b)(1) of this part if the institution:

- i. Promotes the institution's policy or practice of paying overdrafts (unless the service would be subject to Regulation Z (12 CFR part 1026)). This includes advertisements using print media such as newspapers or brochures, telephone solicitations, electronic mail, or messages posted on an Internet site. (But *see* section 1030.11(b)(2) of this part for communications that are not subject to the additional advertising disclosures.)
- ii. Includes a message on a periodic statement informing the consumer of an overdraft limit or the amount of funds available for overdrafts. For example, an institution that includes a message on a periodic statement informing the consumer of a \$500 overdraft limit or that the consumer has \$300 remaining on the overdraft limit, is promoting an overdraft service.
- iii. Discloses an overdraft limit or includes the dollar amount of an overdraft limit in a balance disclosed on an automated system, such as a telephone response machine, ATM screen or the institution's Internet site. (*See*, however, section 1030.11(b)(3) of this part.)

2. *Transfer services.* The overdraft services covered by section 1030.11(b)(1) of this part do not include a service providing for the transfer of funds from another deposit account of the consumer to permit the payment of items without creating an overdraft, even if a fee is charged for the transfer.

3. *Electronic media.* The exception for advertisements made through broadcast or electronic media, such as television or radio, does not apply to advertisements posted on an institution's Internet site, on an ATM screen, provided on telephone response machines, or sent by electronic mail.

4. *Fees.* The fees that must be disclosed under section 1030.11(b)(1) of this part include

per-item fees as well as interest charges, daily or other periodic fees, and fees charged for maintaining an account in overdraft status, whether the overdraft is by check or by other means. The fees also include fees charged when there are insufficient funds because previously deposited funds are subject to a hold or are uncollected. The fees do not include fees for transferring funds from another account to avoid an overdraft, or fees charged when the institution has previously agreed in writing to pay items that overdraw the account and the service is subject to Regulation Z, 12 CFR part 1026.

5. *Categories of transactions.* An exhaustive list of transactions is not required. Disclosing that a fee may be imposed for covering overdrafts “created by check, in-person withdrawal, ATM withdrawal, or other electronic means” would satisfy the requirements of section 1030.11(b)(1)(ii) of this part where the fee may be imposed in these circumstances. See comment 4(b)(4)-5 of this part.

6. *Time period to repay.* If a depository institution reserves the right to require a consumer to pay an overdraft immediately or on demand instead of affording consumers a specific time period to establish a positive balance in the account, an institution may comply with section 1030.11(b)(1)(iii) of this part by disclosing this fact.

7. *Circumstances for nonpayment.* An institution must describe the circumstances under which it will not pay an overdraft. It is sufficient to state, as applicable: “Whether your overdrafts will be paid is discretionary and we reserve the right not to pay. For example, we typically do not pay overdrafts if your account is not in good standing, or you are not making regular deposits, or you have too many overdrafts.”

8. *Advertising an account as “free.”* If the advertised account-related service is an overdraft service subject to the requirements of section 1030.11(b)(1) of this part, institutions must disclose the fee or fees for the payment of each overdraft, not merely that a cost is associated with the overdraft service, as well as other required information. Compliance with comment 8(a)-10.v. is not sufficient.

6-7186

### 11(c) Disclosure of Account Balances

1. *Balance that does not include additional amounts.* For purposes of the balance disclosure requirement in section 1030.11(c), if an institution discloses balance information to a consumer through an automated system, it must disclose a balance that excludes any funds that the institution may provide to cover an overdraft pursuant to a discretionary overdraft service, that will be paid by the institution under a service subject to Regulation Z (12 CFR part 1026), or that will be transferred from another account held individually or jointly by a consumer. The balance may, but need not, include funds that are deposited in the consumer’s account, such as from a check, that are not yet made available for withdrawal in accordance with the funds availability rules under Regulation CC of the Board of Governors of the Federal Reserve System (12 CFR part 229). In addition, the balance may, but need not, include funds that are held by the institution to satisfy a prior obligation of the consumer (for example, to cover a hold for an ATM or debit card transaction that has been authorized but for which the bank has not settled).

2. *Retail sweep programs.* In a retail sweep program, an institution establishes two legally distinct subaccounts, a transaction subaccount and a savings subaccount, which together make up the consumer’s account. The institution allocates and transfers funds between the two subaccounts in order to maximize the balance in the savings account while complying with the monthly limitations on transfers out of savings accounts under Regulation D of the Board of Governors of the Federal Reserve System (12 CFR 204.2(d)(2)). Retail sweep programs are generally not established for the purpose of covering overdrafts. Rather, institutions typically establish retail sweep programs by agreement with the consumer, in order for the institution to minimize its transaction account reserve requirements and, in some cases, to provide a higher interest rate than the consumer would earn on a transaction account alone. Section 1030.11(c) does not require an institution to exclude from the con-

sumer's balance funds that may be transferred from another account pursuant to a retail sweep program that is established for such purposes and that has the following characteristics:

- i. The account involved complies with Regulation D of the Board of Governors of the Federal Reserve System (12 CFR 204.2(d)(2));
- ii. The consumer does not have direct access to the non-transaction subaccount that is part of the retail sweep program; and
- iii. The consumer's periodic statements show the account balance as the combined balance in the subaccounts.

3. *Additional balance.* The institution may disclose additional balances supplemented by funds that may be provided by the institution to cover an overdraft, whether pursuant to a discretionary overdraft service, a service subject to Regulation Z (12 CFR part 1026), or a service that transfers funds from another account held individually or jointly by the consumer, so long as the institution prominently states that any additional balance includes these additional overdraft amounts. The institution may not simply state, for instance, that the second balance is the consumer's "available balance," or contains "available funds." Rather, the institution should provide enough information to convey that the second balance includes these amounts. For example, the institution may state that the balance includes "overdraft funds." Where a consumer has not opted into, or as applicable, has opted out of the institution's discretionary overdraft service, any additional balance disclosed should not include funds that otherwise might be available under that service. Where a consumer has not opted into, or as applicable, has opted out of, the institution's discretionary overdraft service for some, but not all transactions (e.g., the consumer has not opted into overdraft services for ATM and one-time debit card transactions), an institution that includes these additional overdraft funds in the second balance should convey that the overdraft funds are not available for all transactions. For example, the institution could state that overdraft funds are not available for ATM and one-time (or everyday) debit card transactions. Similarly, if

funds are not available for all transactions pursuant to a service subject to Regulation Z (12 CFR part 1026) or a service that transfers funds from another account, a second balance that includes such funds should also indicate this fact.

4. *Automated systems.* The balance disclosure requirement in section 1030.11(c) applies to any automated system through which the consumer requests a balance, including, but not limited to, a telephone response system, the institution's Internet site, or an ATM. The requirement applies whether the institution discloses a balance through an ATM owned or operated by the institution or through an ATM not owned or operated by the institution (including an ATM operated by a non-depository institution). If the balance is obtained at an ATM, the requirement also applies whether the balance is disclosed on the ATM screen or on a paper receipt.

6-7187

#### APPENDIX A to Part 1030—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

6-7197

##### 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 section 1030.7(a)(2).)

#### 6-7198

##### 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.

#### 6-7199

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.

#### 6-7200

##### 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 section 1030.6.

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.

#### 6-7210

##### APPENDIX B to Part 1030—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 section 1030.4(a)(1). (See section 1030.4(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.)



**6-7211**

4. *Compliance with Regulation E.* Institutions may satisfy certain requirements under Regulation DD with disclosures that meet the requirements of Regulation E. (See section 1030.3(c).) For disclosures covered by both this part 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.

**6-7213****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.

**6-7214****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.

**6-7216****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.

**6-7218****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.