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This document and any attachments are superseded by Comptroller's Handbook - Consumer Compliance - Depository Services.

# Truth in Savings Act

Regulation DD (12 CFR part 230), which implements the Truth in Savings Act (TISA), became effective in June 1993. An official staff commentary interprets the requirements of Regulation DD (12 CFR 230 (Supplement I)). Since then, several amendments have been made to Regulation DD and the Staff Commentary, including changes effective January 1, 2010, concerning disclosures of aggregate overdraft and returned item fees on periodic statements and balance disclosures provided to consumers through automated systems. In addition, effective July 6, 2010, clarifications were made to the provisions related to overdraft services (NOTE: The effective date for the clarification to section 230.11(a)(1)(i), requiring the term "Total Overdraft Fees" to be used, is October 1, 2010) (75 FR 31673).

LINKS

Program

Questionnaire

The purpose of Regulation DD is to enable consumers to make informed decisions about their accounts at depository institutions through the use of uniform disclosures. The disclosures aid comparison shopping by informing consumers about the fees, annual percentage yield, interest rate, and other terms for deposit accounts. A consumer is entitled to receive disclosures under all of the following circumstances:

- When an account is opened.
- Upon request.
- When the terms of the account are changed.
- When a periodic statement is sent.
- For most time accounts, before the account matures.

The regulation also includes requirements on the payment of interest, the methods of calculating the balance on which interest is paid, the calculation of the annual-percentage yield, and advertising.

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## COVERAGE (§ 230.1)

Regulation DD applies to all depository institutions, except credit unions, that offer deposit accounts to residents of any state. Branches of foreign institutions located in the United States are subject to Regulation DD if they offer deposit accounts to consumers. Edge Act and agreement corporations, and agencies of foreign institutions, are not depository institutions for purposes of Regulation DD.

In addition, persons who advertise accounts are subject to the advertising rules. For example, if a deposit broker places an advertisement offering consumers 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.

## DEFINITIONS (§ 230.2)

Section 230.2 defines key terms used in Regulation DD. Among those definitions are the following:

### Account (§ 230.2(a))

An **account** is a deposit account at a depository institution that is held by or offered to a consumer. It includes time, demand, savings, and negotiable order of withdrawal accounts. Regulation DD covers interest-bearing as well as noninterest-bearing accounts.

### Advertisement (§ 230.2(b))

An **advertisement** is a commercial message, appearing in any medium, that promotes directly or indirectly (a) the availability or terms of, or a deposit in, a new account, and (b) for purposes of sections 230.8(a) (misleading or inaccurate advertisements) and 230.11 (additional disclosure requirements for institutions advertising the payment of overdrafts), the terms of, or a deposit in, a new or existing account. An advertisement includes a commercial message in visual, oral, or print media that invites, offers, or otherwise announces generally to prospective customers the availability or terms of, or a deposit in, a consumer account. Examples of advertisements include telephone solicitations and messages on automated teller machine screens.

### Annual Percentage Yield (§ 230.2(c))

An **annual percentage yield** is a percentage rate reflecting the total amount of interest paid on an account, based on the interest rate and the frequency of compounding for a 365-day period, or 366-day period during leap years, and calculated according to the rules in Appendix A of Regulation DD. Interest or other earnings are not to be included in the annual percentage yield if the circumstances for determining the interest and other earnings may or may not occur in the future (see Appendix A, footnote 1).

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### Average Daily Balance Method (§ 230.2(d))

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

### Board (§ 230.2(e))

The **Board** means the Board of Governors of the Federal Reserve System.

### Bonus (§ 230.2(f))

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

### Business Day (§ 230.2(g))

A **business day** is a calendar day other than a Saturday, a Sunday, or any of the legal public holidays specified in 5 USC § 6103(a).

### Consumer (§ 230.2(h))

A **consumer** is a natural person who holds an account primarily for personal, family, or household purposes, or to whom such an account is offered. The term does not include accounts held by a natural person on behalf of another in a professional capacity or accounts held by individuals as sole proprietors.

### Daily Balance Method (§ 230.2(i))

The **daily balance method** is the application of a daily periodic rate to the full amount of principal in the account each day.

### Depository Institution (§ 230.2(j))

The terms, **depository institution** and **institution** are defined in section 19(b)(1)(A)(i)-(vi) of the Federal Reserve Act (12 USC 461). Credit unions are defined in section 19(b)(1)(A)(iv). 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.

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### Deposit Broker (§ 230.2(k))

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 section 29(g) of the Federal Deposit Insurance Act (12 USC § 1831f(g)).

### Fixed-rate Account (§ 230.2(l))

A **fixed-rate account** is an account for which the institution contracts to give at least 30 calendar days' advance written notice of decreases in the interest rate.

### Grace Period (§ 230.2(m))

A **grace period** is a period following the maturity of an automatically renewing time account during which the consumer may withdraw funds without being assessed a penalty.

### Interest (§ 230.2(n))

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

### Interest Rate (§ 230.2(o))

An **interest rate** is the annual rate of interest paid on an account and does not reflect compounding. For purposes of the account disclosures in section 230.4(b)(1)(i), the interest rate may, but need not, be referred to as the "annual percentage rate" in addition to being referred to as the "interest rate."

### Passbook Savings Account (§ 230.2(p))

A **passbook savings account** is a savings account in which the consumer retains a book or other document in which the institution records transactions on the account. Passbook savings accounts include accounts accessed by preauthorized electronic fund transfers to the account. As defined in Regulation E, a preauthorized electronic fund transfer is an electronic fund transfer authorized in advance to recur at substantially regular intervals. Examples include an account that receives direct deposit of Social Security payments. Accounts permitting access by other electronic means are not passbook savings accounts and must comply with the requirements of section 230.6 if statements are sent four or more times a year.

### Periodic Statement (§ 230.2(q))

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

### State (§ 230.2(r))

A **state** is a state, the District of Columbia, the commonwealth of Puerto Rico, and any territory or possession of the United States.

### Stepped-rate Account (§ 230.2(s))

A **stepped-rate account** is an account that has two or more interest rates that take effect in succeeding periods and are known when the account is opened.

### Tiered-rate Account (§ 230.2(t))

A **tiered-rate account** is an account that has two or more interest rates that are applicable to specified balance levels. A requirement to maintain a minimum balance to earn interest does not make an account a tiered-rate account.

### Time Account (§ 230.2(u))

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

### Variable-rate Account (§ 230.2(v))

A **variable-rate account** is an account in which the interest rate may change after the account is opened, unless the institution contracts to give at least 30 calendar days' advance written notice of rate decreases.

## General Requirements (§ 230.3(a) and (b))

Section 230.3 outlines the general requirements for account disclosures and periodic-statement disclosures. Such disclosures are required to be:

- Clear and conspicuous;

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- In writing;
- In a form the consumer may keep;
- Clearly identifiable for different accounts, if disclosures for different accounts are combined;
- Reflective of the terms of the legal obligation of the account agreement between the consumer and the depository institution;
- Available in English upon request if the disclosures are made in languages other than English; and
- Consistent in terminology when describing terms or features that are required to be disclosed.

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## Payment of Interest

The "interest rate" is the annual rate of interest paid on an account which does not reflect compounding. In general, an institution pays "interest" through the application of a periodic rate to an account balance. Interest does not include the absorption of expenses, forbearance in charging fees, or the payment of bonuses. Regulation DD does not require an institution to pay consumers interest for the use of funds in an account. However, if an institution does pay interest on an account, the following rules apply:

- Interest must be paid on the full principal balance in the account each day. A daily rate of at least 1/365 (or 1/366 in a leap year) of the interest rate must be applied to the balance. An institution may apply a daily periodic rate that is greater than 1/365 of the interest rate (for example, a daily periodic rate of 1/360) as long as it is applied 365 days a year.
- Either the daily balance method or the average daily balance method must be used to calculate the balance on which interest is paid. The "daily balance method" applies a daily periodic rate to the entire principal balance every day. The "average daily balance method" applies a daily periodic rate to the average principal balance. The average principal balance is the sum of the entire principal balance for each day of the period, divided by the number of days in the period.
- Consumers may be required to maintain a minimum balance to earn interest. An institution using the daily balance method may choose not to pay interest for those days balances drop below the required daily minimum balance. An institution using the average daily balance method may choose not to pay interest if the average balance for the period falls below the minimum. If an institution imposes a minimum balance, it must use the same method to calculate whether the minimum balance is met as it uses to calculate interest. If it would benefit consumers unequivocally, an additional method can be used to determine if the minimum balance requirement is met.

- An institution may choose how often it will credit interest to interest-bearing accounts. It may also choose whether to compound interest, and if so, how often the compounding will occur. If a consumer closes an account between crediting dates, an institution may choose not to pay accrued but uncredited interest.

- Interest must begin to accrue no later than when the institution must begin accruing interest for interest-bearing accounts under section 606 of the Expedited Funds Availability Act (12 USC 4005 et seq.) and Regulation CC (12 CFR 229.14). In addition, once interest starts to accrue, it must continue to accrue until funds are withdrawn. However, an institution need not pay interest during a grace period for automatically renewable time accounts if the consumer decides during the grace period not to renew the account or after a nonautomatically renewable time account matures.

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## Electronic Disclosures

Regulation DD disclosures may be provided to the consumer in electronic form, subject to compliance with the consumer consent and other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 USC 7001 et seq.).

The E-Sign Act does not mandate that institutions or consumers use or accept electronic records or signatures. It does, however, permit institutions to satisfy any statutory or regulatory requirements that information, such as Regulation DD disclosures, be provided in writing to a consumer by providing the information electronically after obtaining the consumer's affirmative consent. But before the consumer can give consent, the institution must provide the consumer with a clear and conspicuous statement, informing the consumer of:

- Any right or option to have the information provided in paper or nonelectronic form.

- The right to withdraw the consent to receive information electronically and the consequences, including fees, of doing so.

- The scope of the consent (whether the consent applies only to a particular transaction or to identified categories of records that may be provided during the course of the parties' relationship).

- The procedures to withdraw consent and to update information needed to contact the consumer electronically.

- The methods by which a consumer may obtain, upon request, a paper copy of an electronic record after having given consent to receive the information electronically and whether any fee will be charged.

Prior to consenting, the institution must provide the consumer with a statement of the hardware and software requirements for access to and retention of the electronic information. The consumer must consent electronically or confirm consent electronically in a manner that "reasonably demonstrates that the consumer can access information in the electronic form that will be used to provide the information that is the subject of the consent."

After the consent, if an institution changes the hardware or software requirements such that a consumer may be prevented from accessing and retaining information electronically, the institution must notify the consumer of the new requirements and must allow the consumer to withdraw consent without charge.

Under section 230.10(c), the disclosures required by sections 230.4(a)(2) (Disclosures Upon Request) and 230.8 (Advertising) may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act, as set forth in those sections of Regulation DD. For example, under section 230.4(a)(2) (Disclosures Upon Request), if a consumer who is not present at the institution makes a request for disclosures, the institution may provide the disclosures electronically if the consumer agrees without regard to the consumer consent or other provisions of the E-Sign Act.

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## Relation to Regulation E (§ 230.3(c))

Disclosures required by and provided in accordance with the Electronic Fund Transfer Act (15 USC § 1693 et seq.) and its implementing Regulation E (12 CFR part 205), that are also required by Regulation DD, may be substituted for the disclosures required by this regulation. Compliance with Regulation E is deemed to satisfy the disclosure requirements of Regulation DD, such as when:

- 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.

- 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 205.7).

- 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.

- 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.

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## OTHER REQUIREMENTS (§ 230.3(D) – (F))

Other general disclosure requirements include the following:

### Multiple Consumers (§ 230.3(d))

If an account is held by more than one consumer, the institution may make disclosures to any one of the consumers.

### Oral Response to Inquiries (§ 230.3(e))

If an institution chooses to provide rate information orally, it must state the annual percentage yield and may state the interest rate. However, the institution may not state any other rate. The advertising rules do not cover an oral response to a rate inquiry.

### Rounding and Accuracy Rules for Rates and Yields (§ 230.3(f))

The rounding and accuracy requirements are as follows:

- **Rounding** – The annual percentage yield, the annual percentage yield earned, and the interest rate must be rounded to the nearest one-hundredth of one percentage point (.01%) and expressed to two decimal places. (For account disclosures, the interest rate may be expressed to more than two decimal places.) For example, if an annual percentage yield is calculated at 5.644 percent, it must be rounded down and disclosed as 5.64 percent, or if annual percentage yield is calculated at 5.645 percent, it must be rounded up and disclosed as 5.65 percent.

- **Accuracy** – The annual percentage yield (and the annual percentage yield earned) will be considered accurate if it is not more that one-twentieth of one percentage point (.05 percent) above or below the annual percentage yield (and the annual percentage yield earned) that are calculated in accordance with Appendix A of Regulation DD.

## ACCOUNT DISCLOSURES (§ 230.4)

Section 230.4 covers the delivery and content of account disclosures both at the time an account is open and when requested by a consumer.

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## Delivery of Account Disclosures (§ 230.4(a))

### *Disclosures at Account Opening (§ 230.4(a)(1))*

A depository institution must provide account disclosures to a consumer before an account is opened or a service is provided, whichever is earlier. (An institution is deemed to have provided a service when a fee, required to be disclosed, is assessed.) An institution must mail or deliver the account opening disclosures no later than ten business days after the account is opened or the service is provided, whichever is earlier, if the consumer:

- Is not present when the account is opened or the service is provided, and
- Has not received the disclosures.

If a consumer who is not present at the institution uses electronic means (for example, an Internet website) to apply to open an account or to request a service, the institutions must provide the disclosures before opening the account or providing the service.

### *Disclosures Upon Request (§ 230.4(a)(2))*

A depository institution must provide full account disclosures, including complete fee schedules, to a consumer upon request. Institutions must comply with all requests for this information, whether or not the requester is an existing customer or a prospective customer. A response to an oral inquiry (by telephone or in person) about rates and yields or fees does not trigger the duty to provide account disclosures. However, when 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.

If the consumer makes the request in person, the institution must provide the disclosures at that time. If a consumer is not present when the request is made, the institution must mail or deliver the disclosures within a reasonable time after it receives the request. Ten business days is considered a reasonable time for responding to requests for account information that a consumer does not make in person, including requests made by electronic means (such as by electronic mail).

If a consumer who is not present at the institution makes a request for account disclosures, including a request made by telephone, e-mail, or via the institution's website, the institution may send the disclosures in paper form, or if the consumer agrees, may provide the disclosures electronically, such as to an e-mail address that the consumer provides for that purpose, or on the institution's website, without regard to the consumer consent or other provisions of the E-Sign Act. The institution is not required to provide, nor is the consumer required to agree to receive, the disclosures required by section 230.4(a)(2) in electronic form.

When providing disclosures upon the request of a consumer, the institution has several choices of how to specify the interest rate and annual percentage yield. The institution may disclose the rate and yield offered:

- Within the most recent seven calendar days,
- As of an identified date, or
- Currently by providing a telephone number for consumers to call.

Further, when providing disclosures upon the request of a consumer, the institution may state the maturity of a time account as a term rather than a date. Describing the maturity of a time account as "1 year" or "6 months," for example, illustrates a statement of the maturity as a term rather than a date ("January 10, 2010").

### Content of Account Disclosures (§ 230.4(b))

Account disclosures must include, as applicable, information on the following (see Appendix A and B of Regulation DD for information on the annual percentage yield calculation and for model clauses for account disclosures and sample forms):

#### *Rate Information (§ 230.4(b)(1))*

An institution must disclose both the "annual percentage yield" and the "interest rate," using those terms.

For fixed-rate accounts, an institution must disclose the period of time that the interest rate will be in effect.

For variable-rate accounts, an institution must disclose all of the following:

- The fact that the interest rate and annual percentage yield may change.
- How the interest rate is determined.
- The frequency with which the interest rate may change.
- Any limitation on the amount the interest rate may change.

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### *Compounding and Crediting (§ 230.4(b)(2))*

An institution must disclose the frequency with which interest is compounded and credited. In cases where consumers will forfeit interest if they close an account before accrued interest is credited, an institution must state that interest will not be paid.

### *Balance Information (§ 230.4(b)(3))*

An institution must disclose the following information about account balances:

- **Minimum balance requirements** – An institution must disclose any minimum balance requirement to:

  — Open the account,

  — Avoid the imposition of a fee, or

  — Obtain the annual percentage yield disclosed.

  In addition, the institution must disclose how the balance is determined to avoid the imposition of a fee or to obtain the annual percentage yield.

- **Balance computation method** – An explanation of the balance-computation method, specified in section 230.7 of Regulation DD, that is used to calculate interest on the account. An institution may use different methods or periods to calculate minimum balances for purposes of imposing a fee and accruing interest. The institution must disclose each method and corresponding period.

- **When interest begins to accrue** – An institution must state when interest begins to accrue on noncash deposits.

### *Fees (§ 230.4(b)(4))*

An institution must disclose the amount of any fee that may be imposed in connection with the account (or an explanation of how the fee will be determined) and the conditions under which the fee may be imposed. Examples of fees that must be disclosed are:

- Maintenance fees, such as monthly service fees.
- Fees to open or to close an account.
- Fees related to deposits or withdrawals, such as fees for use of the institution's ATMs.

- Fees for special services, such as stop-payment fees.

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.

An institution must specify the categories of transactions for which an overdraft fee may be imposed. For example, it is sufficient to state that the fee applies to overdrafts "created by check, in-person withdrawal, ATM withdrawal, or other electronic means." However, it is insufficient to state that a fee applies "for overdraft items."

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### *Transaction Limitations (§ 230.4(b)(5))*

An institution must disclose any limitations on the number or dollar amount of withdrawals or deposits. Examples of such limitations include:

- Limits on the number of checks that may be written on an account within a given time period.
- Limits on withdrawals or deposits during the term of a time account.
- Limits under Regulation D (Reserve Requirements on Depository Institutions) on the number of withdrawals permitted from money market deposit accounts by check to third parties each month.

### *Features of Time Accounts (§ 230.4(b)(6))*

For time accounts, an institution must disclose information about the following features:

- **Time requirements** – An institution must state the maturity date and, for "callable" time accounts, the date or circumstances under which an institution may redeem a time account at the institution's option.
- **Early withdrawal penalties** – An institution must state the following:
  - If a penalty will or may be imposed for early withdrawal.
  - How it is calculated.
  - The conditions for its assessment.

  An institution may, but does not need to, use the term "penalty" to describe the loss of interest that consumers may incur for early withdrawal of funds from an account.

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Examples of early withdrawal penalties include:

— Monetary penalties, such as "$10.00" or "seven days' interest plus accrued but uncredited interest."

— Adverse changes to terms such as a lowering of the interest rate, annual percentage yield, or compounding frequency for funds remaining on deposit.

— Reclamation of bonuses.

- **Withdrawal of interest prior to maturity** – An institution must disclose the following, as applicable:

— A statement that the annual percentage yield assumes interest remains on deposit until maturity and that a withdrawal will reduce earnings for accounts where

⇒ Compounding occurs during the term, and

⇒ Interest may be withdrawn prior to maturity, or

— A statement that interest cannot remain on deposit and that payout of interest is mandatory for accounts where:

⇒ The stated maturity is greater than one year,

⇒ Interest is not compounded on an annual or more frequent basis,

⇒ Interest is required to be paid out at least annually, and

⇒ The annual percentage yield is determined in accordance with section E of Appendix A of Regulation DD.

- **Renewal policies** – An institution must state whether an account will, or will not, renew automatically at maturity. If it will, the statement must indicate whether a grace period will be provided and, if so, must indicate the length of that period. For accounts that do not renew automatically, the statement must indicate whether interest will be paid after maturity if the consumer does not renew the account.

### *Bonuses (§ 230.4(b)(7))*

For bonuses, an institution must disclose:

- The amount or type of any bonus.

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- When the bonus will be provided.
- Any minimum balance and time requirements to obtain the bonus.

## SUBSEQUENT DISCLOSURES (§ 230.5)

Section 230.5 covers the required disclosures when the terms of an account change, resulting in a negative effect on the consumer. In addition, this section covers the required disclosures for both time accounts that automatically renew and have a maturity longer than one month and time accounts that do not renew automatically and have a maturity of longer than one year.

### Change in Terms (§ 230.5(a))

#### *Advance Notice Required (§ 230.5(a)(1))*

An institution must give advance notice to affected consumers of any change in a term that is required to be disclosed if the change may reduce the annual percentage yield or adversely affect the consumer. The notice must include the effective date of the change and must be mailed or delivered at least 30 calendar days before the effective date of the change.

#### *No Notice Required (§ 230.5(a)(2))*

An institution is not required to provide a notice for any of the following changes:

- For variable-rate accounts, any change in the interest rate and corresponding changes in the annual percentage yield.
- Any changes in fees assessed for check printing.
- For short-term time accounts, any changes in any term for accounts with maturities of one month or less.
- The imposition of account maintenance or activity fees that previously had been waived for a consumer when the consumer was employed by the depository institution, but who is no longer employed there.
- The expiration of a one-year period that was part of a promotion, described in the account opening disclosures, for example, to "waive $4.00 monthly service charges for one year."

### Notice for Time Accounts Longer Than One Month That Renew Automatically (§ 230.5(b))

For automatically renewing time accounts with maturities longer than one month, an institution must provide different disclosures depending on whether the maturity is longer than one year or whether the maturity is one year or less. The institution must provide all disclosures before maturity. We summarize the requirements in Table 1.

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### Table 1

| SUBSEQUENT NOTICE REQUIREMENTS FOR TIME ACCOUNTS | | |
|---|---|---|
| **Maturity** | **Automatically Renewable (Rollover)** | **Non-automatically Renewable (Non-rollover)** |
| | | |
| > One Year | *Timing*<br>(a) 30 calendar days before maturity,<br>or<br>(b) 20 calendar days before end of grace period, if a grace period is at least 5 calendar days<br>*Content*<br>(a) Date existing account matures<br>(b) Disclosures for a new account (§ 230.4(b))<br>If terms have not been determined, indicate this fact, state the date when they will be determined, and provide a telephone number to obtain the terms (§ 230.5(b)(1)). | *Timing*<br>10 calendar days before maturity<br>*Content*<br>Maturity date, and whether or not interest will be paid after maturity (§ 230.5(c)) |
| | | |
| > One Month<br>and<br>< One Year | *Timing*<br>(a) 30 calendar days before maturity,<br>or<br>(b) 20 calendar days before end of grace period, if a grace period is at least 5 calendar days<br>*Content*<br>(a) Disclosures required under § 230.5(b)(1),<br>or<br>(b) Date of maturities of existing and new account, any change in terms, and a difference in terms between new account and ones of existing account.<br>If terms have not been determined, indicate this fact, state the date when they will be determined, and provide a telephone number to obtain the terms (§ 230.5(b)(2)). | No subsequent notice required |

### Maturities Longer Than One Year (§ 230.5(b)(1))

If the maturity is longer than one year, the institution must provide the date the existing account matures and the required account disclosures for a new account, as described in section 230.4(b). If the interest rate and annual percentage yield that will be paid for the new account are unknown when disclosures are provided, the institution must state the following:

- That those rates have not yet been determined.
- The date when they will be determined.
- A telephone number for consumers to call to obtain the interest rate and the annual percentage yield for the new account.

### Maturities Longer Than One Month but No More Than One Year (§ 230.5(b)(2))

If the maturity is longer than one month but less than or equal to one year, the institution must either:

- Provide the disclosures required in section 230.5(b)(1) for accounts longer than one year; or
- Disclose to the consumer:
  - — The date the existing account matures and the new maturity date if the account is renewed;
  - — The interest rate and the annual percentage yield for the new account if they are known. If the rates have not yet been determined, the institution must disclose:
    - ⇒ The date when they will be determined, and
    - ⇒ A telephone number the consumer may call to obtain the interest rate and the annual percentage yield for the new account; and
  - — Any difference in the terms of the new account as compared to the terms required to be disclosed for the existing account.

### Delivery (§ 230.5(b))

The institution must mail or deliver all disclosures at least 30 calendar days before maturity of the existing account. Alternatively, the institution may mail or deliver the disclosures at least 20 calendar days before the end of the grace period on the existing account, provided a grace period of at least five calendar days is allowed.

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### Notice for Time Accounts Longer Than One Year That Do Not Renew Automatically (§ 230.5(c))

For time accounts with maturity longer than one year that do not renew automatically at maturity, an institution must disclose to consumers the maturity date and whether interest will be paid after maturity. The institution must mail or deliver the disclosures at least 10 calendar days before maturity of the existing account. The requirements are summarized in Table 1.

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## PERIODIC STATEMENT DISCLOSURES (§ 230.6)

Regulation DD does not require institutions to provide periodic statements. However, for institutions that mail or deliver periodic statements, section 230.6 sets forth specific information that must be included in a periodic statement.

### General Requirements (§ 230.6(a))

The statement must include the following disclosures:

#### *Annual Percentage Yield Earned (§ 230.6(a)(1))*

An institution must state the *annual percentage yield* earned during the statement period, using that term, and calculated according to Appendix A of Regulation DD.

#### *Amount of Interest (§ 230.6(a)(2))*

An institution must state the dollar amount of interest earned during the statement period, whether or not it was credited. In disclosing interest earned for the period, an institution must use the term "interest" or terminology such as:

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

#### *Fees Imposed (§ 230.6(a)(3))*

An institution must report any fees that are required to be disclosed and that were debited to the account during the statement period, even if assessed for an earlier period. The fees must be itemized by type and dollar amounts. When fees of the same type are imposed more than once in a statement period, an institution may itemize each fee separately or group the fees together and disclose a total dollar amount for all fees of that type. 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." The Staff Commentary provides examples of fees that may not be grouped together. For example, an institution must separately identify whether a fee was for the payment of an overdraft or for returning the item unpaid.

Total overdraft and returned item fees, if any, must also be disclosed on the periodic statement. An institution must provide totals for fees for the payment of overdrafts and totals for items returned unpaid, both for the statement period and for the calendar year to date. See section 230.11(a)(1) and (2). (The institution may, however, continue to itemize overdraft and returned item fees.)

### *Length of Period (§ 230.6(a)(4))*

An institution must indicate the total number of days in the statement period, or the beginning and ending dates of the period. Institutions providing the beginning and ending dates of the period must make clear whether both dates are included in the period.

### *Combined Statements (Staff Commentary § 230.6(a)-3)*

Institutions may provide information about an account (for example, a Money Market Deposit Account) on the periodic statement for another account (such as a Negotiable Order of Withdrawal account) without triggering the disclosures required by this section, as long as:

- The information is limited to the account number, the type of account, or balance information, and

- The institution also provides a periodic statement complying with this section for each account.

### *Aggregate Fee Disclosure (§ 230.6(a)(5))*

- If an institution charges a consumer overdraft and returned item fees, it must disclose them on the consumer's periodic statement as required by section 230.11(a).

## Special Rule for Average Daily Balance Method (§ 230.6(b))

Section 230.6 has special periodic statement requirements for an institution using the average daily balance method and calculating interest for a period other than the statement period. In these situations, an institution must calculate and disclose the annual percentage yield earned and amount of interest earned based on the time period used rather than the statement period. In addition, when disclosing the length of period requirement on the periodic statement, an institution must state this information for the statement period as well as the interest-calculation period. See Staff Commentary for examples.

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## PAYMENT OF INTEREST (§ 230.7)

Section 230.7 covers the payment of interest, including how to determine the balance on which to pay interest, the daily periodic rate to use, and the date interest begins to accrue.

### Permissible Methods to Determine Balance to Calculate Interest (§ 230.7(a)(1))

An institution must calculate interest on the full amount of principal in an account for each day by using one of the following methods:

- **Daily balance method**, where the daily periodic rate is applied to the full amount of principal in the account each day.

- **Average daily balance method**, where a periodic rate is applied to the average daily balance in the account for the period. The average daily balance is determined by adding the full amount of principal in the account for each day of the period and dividing that figure by the number of days in the period.

The following are prohibited calculation methods:

- **Ending-balance method**, where interest is paid on the balance in the account at the end of the period.

- **Low-balance method**, where interest is paid based on the lowest balance in the account for any day in that period.

- **Investable-balance method**, where interest is paid on a percentage of the balance, excluding the amount set aside for reserve requirements.

#### *Use of 365-day basis (Staff Commentary § 230.7(a)(1)-2)*

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.

#### *Leap Year (Staff Commentary § 230.7(a)(1)-4)*

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.

#### *Maturity of Time Accounts (Staff Commentary § 230.7(a)(1)-5)*

Institutions are not required to pay interest after time accounts mature.

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#### *Dormant Accounts (Staff Commentary § 230.7(a)(1)-6)*

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, other laws, or the account contract.

### Permissible Methods to Determine Minimum Balance to Earn Interest (§ 230.7(a)(2))

If an institution requires a minimum balance to earn interest, it must use the same method to determine the required minimum balance as it uses to determine the balance on which interest is calculated. For example, if an institution requires a $300 minimum balance that would be determined by using the average daily balance method, then it must calculate interest based on the average daily balance method. Further, an institution may use an additional method that is unequivocally beneficial to the consumer.

#### *Balances Below the Minimum (Staff Commentary § 230.7(a)(2)-1 and 2)*

An institution that requires a minimum balance may choose not to pay interest for days or period when the balance drops below the required minimum, whether they use the daily-balance method or the average daily balance method to calculate interest.

#### *Paying on Full Balance (Staff Commentary § 230.7(a)(2)-4)*

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.

#### *Minimum Balance Not Affecting Interest (Staff Commentary § 230.7(a)(2)-7)*

Institutions may use the daily balance, average daily balance, or any other computation method to calculate minimum-balance requirements that do not involve the payment of interest. For example, an institution may use any computation method to compute minimum balances for assessing fees.

### Compounding and Crediting Policies (§ 230.7(b))

This section does not require institutions to compound or credit interest at any particular frequency. Institutions choosing to compound interest may compound or credit interest annually, semi-annually, quarterly, monthly, daily, continuously, or on any other basis.

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 this practice in the initial account disclosures.

### Date Interest Begins to Accrue (§ 230.7(c))

Interest shall begin to accrue not later than the business day specified for interest-bearing accounts in section 606 of the Expedited Funds Availability Act, which states:

> "… interest shall accrue on funds deposited in an interest-bearing account at a depository institution beginning not later than the business day on which the depository institution receives provisional credit for such funds."

Interest shall accrue until the day funds are withdrawn.

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## ADVERTISING (§ 230.8)

Section 230.8 contains account advertising requirements, including overall general rules and rules for special account features. In addition, the section describes advertising involving certain types of media and in-house posters that are exempt from Regulation DD's advertising requirements.

### General Advertising Rules (§ 230.8(a) and (b))

#### *Misleading or Inaccurate Advertising (§ 230.8(a))*

An institution may not advertise in a way that is misleading or inaccurate or misrepresents its deposit contract. In addition, an advertisement may not use the word "profit" in referring to interest paid on an account.

An institution's advertisement may not refer to or describe an account as "free" or "no cost" (or contain a similar term such as "fees waived") if a maintenance or activity fee may be imposed on the account. Examples of such maintenance or activity fees include:

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

Examples of fees that are not maintenance or activity fees include:

- Fees not required to be disclosed under section 230.4(b)(4).

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- Check-printing fees.
- Balance-inquiry fees.
- Stop-payment fees and fees associated with checks returned unpaid.
- Fees assessed against a dormant account.
- Fees for ATM or electronic transfer services (such as preauthorized transfers or home banking services) not required to obtain an account.

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.

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), described elsewhere in section 230.8, 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. As discussed in section 230.3(a), electronic advertising disclosures may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act.

The Staff Commentary provides the following examples of advertisements that would ordinarily be misleading, inaccurate, or misrepresent the deposit contract:

- Representing an overdraft service as a "line of credit," unless the service is subject to the Board's Regulation Z, 12 part CFR 226.
- 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.
- 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.
- Describing an institution's overdraft service solely as protection against bounced checks when the institution also permits overdrafts for a fee for overdrawing accounts by other means, such as ATM withdrawals, debit card transactions, or other electronic fund transfers.

- 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 230.8(a)(2), 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.

### *Advertising Rate Information (§ 230.8(b))*

When an institution states a rate of return in an advertisement it must do the following:

- State the rate as an "annual percentage yield," using that term.
- If the advertisement uses the abbreviation "APY," state the term "annual percentage yield" at least once in the advertisement.
- If the advertisement uses the term "interest rate," use the term in conjunction with, but not more conspicuously than, the related annual percentage yield.
- It may not state any other rate except "annual percentage yield" or "interest rate".
- Round the annual percentage yield, the annual percentage yield earned, and the interest rate to the nearest one-hundredth of one percentage point (.01%) and express them to two decimal places.

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.

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

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## Required Advertising for Special Account Features (§ 230.8(c))

If an institution advertises an annual percentage yield for a product and the product includes one of the features listed in sections 230.8(c)(1)-(6), then the institution must clearly and conspicuously disclose the information outlined in sections 230.8(c)(1)-(6) as noted below. However, these requirements do not necessarily apply if the situation falls under the exemptions of section 230.8(e).

### *Variable Rates (§ 230.8(c)(1))*

For variable-rate accounts, the advertisement must state that the rate may change after the account is opened.

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### Time Annual Percentage Yield (APY) is Offered (§ 230.8(c)(2))

The advertisement must include the period of time during which the annual percentage yield will be offered. Alternatively, the advertisement may state that the annual percentage yield is accurate as of a specified date. The date must be recent in relation to the publication or media broadcast used for the advertisement, taking into account the particular circumstances or production deadlines involved. 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.

### Minimum Balance (§ 230.8(c)(3))

For accounts that have a required minimum balance, the advertisement must state the minimum balance required to obtain the advertised annual percentage yield. For tiered-rate accounts, the advertisement must state the minimum balance required for each tier in close proximity and with equal prominence to the applicable annual percentage yield.

### Minimum Opening Deposit (§ 230.8(c)(4))

For an account that requires a minimum deposit to open the account, the advertisement must state the minimum deposit required to open the account, if it is greater than the minimum balance necessary to obtain the advertised annual percentage yield.

### Effect of Fees (§ 230.8(c)(5))

An advertisement must state that fees could reduce the earnings on the account. This requirement only applies to maintenance or activity fees.

### Features of Time Accounts (§ 230.8(c)(6))

For time accounts, the advertisement must include:

- Term of the account.
- Early withdrawal penalties – a statement that a penalty will or may be imposed for early withdrawal.
- Required interest payouts – a statement that interest cannot remain on deposit and that payout of interest is mandatory for noncompounding time accounts with the following features:
  - — The stated maturity is greater than one year.
  - — Interest is not compounded on an annual or more frequent basis.

- Interest is required to be paid out at least annually.
- The annual percentage yield is determined in accordance with section E of Appendix A of Regulation DD.

## Bonuses (§ 230.8(d))

If an institution states a bonus in an advertisement, the advertisement must state clearly and conspicuously the following information, if applicable to the advertised product:

- "Annual percentage yield," using that term.
- Time requirement to obtain the bonus.
- Minimum balance required to obtain the bonus.
- Minimum balance required to open the account, if it is greater than the minimum balance necessary to obtain the bonus.
- Time when the bonus will be provided.

However, these requirements do not necessarily apply if the situation falls under the exemptions of section 230.8(e). In addition, general statements such as "bonus checking" or "get a bonus when you open a checking account" do not trigger the bonus disclosures.

## Exemption for Certain Advertisements (§ 230.8(e))

Section 230.8(e) exempts certain types of media and certain indoor signs from some of the section's advertising rules.

### *Media Exemptions (§ 230.8(e)(1))*

If an institution advertises through one of the following media, the advertisement does not need to include information required under certain section 230.8 rules, as outlined below:

- Exempted media
  - Broadcast or electronic media, such as television or radio. However, the exemption does not extend to Internet and email advertisements.
  - Outdoor media, such as billboards.

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- Telephone response machines. However, 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.

- Exempted advertising requirements

    - Information required for special account features involving variable rates, time an annual percentage yield is offered, minimum opening deposit, effect of fees, and early withdrawal penalties for time accounts.

    - When bonuses are advertised, information required related to a minimum balance to open an account (if it is greater than the minimum balance necessary to obtain the bonus) and related to when a time the bonus will be provided.

### *Indoor Signs (§ 230.8(e)(2))*

If an institution posts account information on signs inside its premises (or the premises of a deposit broker), the postings are exempt from the advertising requirements for:

- Permissible rates
- When additional disclosures are required
- Bonuses
- Certain media exemption

If a sign, falling under this exemption, states a rate of return, it must:

- State the rate as an "annual percentage yield," using that term or the term "APY." The sign must not state any other rate, although the related interest rate may be stated.

- Contain a statement advising consumers to contact an employee for further information about applicable fees and terms.

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.

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### Additional Disclosures in Connection With the Payment of Overdrafts (§ 230.8(f))

In addition to the general requirement that advertisements not be misleading, an institution that promotes the payment of overdrafts in an advertisement must also include in the advertisement the disclosures required under section 230.11(b).

## RECORD RETENTION (§ 230.9(c))

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Section 230.9(c) covers the record retention requirements in order for an institution to demonstrate compliance with Regulation DD, including rate information, advertising, and providing disclosures to consumers at the appropriate time (including upon a consumer's request).

### Timing

Under Regulation DD, an institution must retain records that evidence compliance for a minimum of two years after the date that disclosures are required to be made or an action is required to be taken. In addition, OTS requires all savings associations, affiliates, and service corporations to retain records until the saving association has two regular examinations and has resolved any supervisory matters raised in the examination Evidence of Required Actions

An institution may demonstrate its compliance by:

- Establishing and maintaining procedures for paying interest and providing timely disclosures.
- Retaining 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.

### Methods of Retaining Evidence

An institution must be able to reconstruct the required disclosures and other required actions, but does not need to maintain hard copies of disclosures and other records. It may keep records evidencing compliance in microfilm, microfiche, or other methods that reproduce records accurately (including computer files).

### Payment of Interest

An institution 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.

## SECTION 230.10 – [RESERVED]

## ADDITIONAL DISCLOSURE REQUIREMENTS FOR OVERDRAFT SERVICES (§ 230.11)

Section 230.11 contains periodic statement and advertising requirements for certain discretionary overdraft services. The requirements address concerns about the uniformity and adequacy of information provided to consumers when they overdraw their deposit accounts. Specifically, they address certain types of services – sometimes referred to as "bounced-check protection" or "courtesy overdraft protection" – which institutions offer to pay consumers' checks and other items when there are insufficient funds in the account. The requirements apply to all depository institutions, regardless of whether they promote their overdraft services.

### Periodic Statement Disclosures (§ 230.11(a))

#### *Disclosure of Total Fees (§ 230.11(a)(1))*

The institution must disclose on its periodic statements (if it provides periodic statements) separate totals for the statement period and for the calendar year to date for:

- The total dollar amount for all fees or charges imposed on the account for paying checks or other items when there are insufficient or unavailable funds and the account becomes overdrawn, using the term "Total Overdraft Fees" (the requirement to use the term "Total Overdraft Fees" is effective October 1, 2010), and

- The total dollar amount for all fees or charges imposed on the account for returning items unpaid.

The aggregate fee disclosures must be placed in close proximity to the disclosure of any fee(s) that may be imposed in connection with the account and must use a substantially similar format as shown below: (see Appendix B of the regulation). The table must contain lines (or similar markings such as asterisks) inside the table to divide the columns and rows.

| | Total for this period | Total year-to-date |
|---|---|---|
| Total Overdraft Fees | $60.00 | $150.00 |
| Total Returned Item Fees | 0.00 | 30.00 |

The total dollar amount for paying overdrafts 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 other transaction type. It also includes fees charged

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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 226.

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.

In the case of waived fees, 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 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.

The disclosures under this section must be included on periodic statements provided by an institution starting the first statement period that began 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 this section on subsequent periodic statements for that consumer beginning with the statement reflecting the period from January 16, 2010 to February 15, 2010.

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## Advertising Disclosures for Overdraft Services (§ 230.11(b))

### *Disclosures (§ 230.11(b)(1))*

Unless an exception in section 230.11(b)(2)-(4) applies, any advertisement promoting the payment of overdrafts must disclose in a clear and conspicuous manner all of the following:

- The fee(s) for the payment of each overdraft.
- The categories of transactions for which a fee may be imposed for paying an overdraft.
- The time period by which the consumer must repay or cover any overdraft.
- The circumstances under which the institution 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."

### *Communications Not Subject to Additional Advertising Disclosures (§ 230.11(b)(2))*

The advertising disclosure rules for overdraft services do not apply in the following circumstances:

- An advertisement promoting a service where the institution's payment of overdrafts would be agreed upon in writing and subject to Regulation Z (12 CFR part 226).
- A communication by an institution about the payment of overdrafts in response to a consumer-initiated inquiry about deposit accounts or overdrafts. However, providing information about the payment of overdrafts in response to a balance inquiry made through an automated system, such as a telephone response machine, ATM, or an institution's Internet site, is not a response to a consumer-initiated inquiry that is exempt from the advertising disclosures.
- An advertisement made through broadcast or electronic media, such as television or radio. However, this exception 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.
- An advertisement made on outdoor media, such as billboards.
- An ATM receipt.
- An in-person discussion with a consumer.
- Disclosures required by federal or other applicable law.
- Information included on a periodic statement or on a notice informing a consumer about a specific overdrawn item or the amount the account is overdrawn.
- A term in a deposit account agreement discussing the institution's right to pay overdrafts.
- A notice provided to a consumer, such as at an ATM, that completing a requested transaction may trigger a fee for overdrawing an account, or a general notice that items overdrawing an account may trigger a fee.
- Informational or educational materials concerning the payment of overdrafts if the materials do not specifically describe the institution's overdraft service.

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- An opt-out or opt-in notice regarding the institution's payment of overdrafts or provision of discretionary overdraft services.

### *Exception for ATM Screens and Telephone Response Machines (§ 230.11(b)(3))*

Any advertisement made on an ATM screen or using a telephone response machine is not required to include the following:

- The categories of transactions for which a fee may be imposed for paying an overdraft.
- The circumstances under which the institution will not pay an overdraft.

### *Exception for Indoor Signs (§ 230.11(b)(4))*

The advertising requirement to disclose fees for the payment of each overdraft does not apply to advertisements for the payment of overdrafts on indoor signs, if the indoor sign contains a clear and conspicuous statement that:

- Fees may apply, and
- Consumers should contact an employee for further information about applicable fees and terms.

An indoor sign covered under this exception is one described in section 230.8(e)(2) and the accompanying Staff Commentary. In addition to the Staff Commentary's examples of advertisements that are not considered indoor signs, an ATM screen is not considered an indoor sign for purposes of the overdraft disclosure requirements.

### *Account Balance Disclosures (§ 230.11(c))*

In general, Section 230.11(c) covers how an institution displays a consumer's account balance information on automated systems, such as an ATM, when the institution will advance additional funds to cover insufficient or unavailable funds in a consumer's account. Specifically, if an institution discloses balance information to a consumer through an automated system, the disclosed balance may not include additional amounts that the institution may provide to cover an item when there are insufficient or unavailable funds in the consumer's account. This requirement covers additional funds that an institution may provide under a service provided at the institution's own discretion, a service subject to Regulation Z (12 CFR 226), or a service to transfer funds from another account of the consumer. However, the institution may, at its option, disclose an additional, second account balance that would include funds provided by the institution, if the institution prominently states that any such second balance includes funds that the institution may provide to cover insufficient or unavailable

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funds in the consumer's account and, if applicable, that additional funds are not available for all transactions.

**Additional amounts that may be included in balance.** 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 (12 CFR 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).

**Retail sweep programs.** When disclosing a transaction account balance, an institution is not required to exclude funds from the consumer's balance that may be transferred from another account pursuant to a retail sweep account. In a retail sweep program, an institution establishes two legally distinct subaccounts, a transaction subaccount and a savings subaccount. These two accounts together make up the consumer's account. Retail sweep account programs typically:

- Comply with Regulation D,
- Prevent direct access by the consumer to the nontransaction subaccount that is part of the retail sweep program, and
- Document on the consumer's periodic statements the account balance as the combined balance in the subaccounts.

**Disclosure of second balance.** If an institution discloses additional balances that include funds that may be provided to cover an overdraft, the institution must prominently state that the additional balance(s) includes additional overdraft funds. 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 funds that the institution may provide to cover insufficient or unavailable funds. 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 funds from its discretionary overdraft service in the 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 debit card transactions. Similarly, if funds are not available for all transactions pursuant to a service subject to the Board's Regulation Z (12 CFR 226) or a service that transfers funds from another account, a second balance that includes such funds should also indicate this fact.

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**Automated systems.** The balance disclosure requirement 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.

## EFFECT ON STATE LAWS (REGULATION DD - APPENDIX C)

Regulation DD preempts state law requirements that are inconsistent with the requirements of the Truth in Savings Act (TISA) or Regulation DD. A state law is inconsistent if it contradicts the definitions, disclosure requirements, or interest-calculation methods outlined in the act or the regulation. The regulation also provides that interested parties may request the Board to determine whether a state law is inconsistent with the TISA.

## REFERENCES

### United States Code

| | |
|---|---|
| 12 USC 4301 et seq. | Truth in Savings Act |
| 12 USC 4005 et seq. | Expedited Funds Availability Act |
| 15 USC 7001 et seq. | Electronic Signatures in Global and National Commerce Act (E-Sign Act) |

### Code of Federal Regulations

| | |
|---|---|
| 12 CFR Part 205 | Electronic Fund Transfer (Regulation E) |
| 12 CFR Part 229 | Availability of Funds and Collection of Checks (Regulation CC) |
| 12 CFR Part 230 | Truth in Savings (Regulation DD) |