

Truth in Savings Act Program

EXAMINATION OBJECTIVES

To determine the institution's compliance with Regulation DD, including the requirements to provide full account disclosures (for example, fee schedules) to consumers to open an account and upon request and including the requirements covering overdraft payment disclosures and advertising.

To assess the quality of the institution's compliance risk management systems and its policies and procedures for implementing Regulation DD.

To determine the reliance that can be placed on the institution's internal controls and procedures for monitoring the institution's compliance with Regulation DD.

To direct corrective action when violations of law are identified, or when the institution's policies or internal controls are deficient.

MANAGEMENT AND POLICY-RELATED EXAMINATION PROCEDURES

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1. Review the Matters Requiring Board Attention and Corrective Actions from the three or four previous ROEs to ensure that the board and management have taken appropriate corrective action where necessary and persistent problems have not recurred.

2. Determine the types of deposit accounts offered by the institution to consumers (including accounts usually offered to commercial customers that may occasionally be offered to consumers) as well as the characteristics of each type of deposit account (for example, bonuses offered, minimum balances, balance-computation method, frequency of interest crediting, fixed or variable rates, fees imposed, and frequency of periodic statements).

3. Review relevant written policies and procedures, management's self-assessments, consumer complaints, and any compliance audit material including work papers and reports to determine whether:
 - The scope of the audit addresses all provisions as applicable.

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- Management has taken corrective actions to follow-up on previously identified deficiencies.
 - The testing includes samples covering all product types and decision centers.
 - The work performed is accurate.
 - Significant deficiencies and their causes are included in reports to management and to the Board of Directors, as appropriate.
 - The frequency of review is appropriate.
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4. Through discussions with management and review of available information, determine whether the institution's internal controls are adequate to ensure compliance in Regulation DD area under review. Consider the following:

- Organization charts
 - Process flowcharts
 - Policies and procedures
 - Account documentation
 - Checklists
 - Computer program documentation.
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5. Through a review of the institution's training materials, determine whether:

- The institution provides appropriate training to individuals responsible for Regulation DD compliance and operational procedures.
- The training is comprehensive and covers the various aspects of Regulation DD that apply to the individual institution's product offerings and operations.
- The training includes the timing requirements of section 230.4(a)(2) to provide disclosure information (e.g., terms, conditions, and fees) to a consumer upon a request, whether or not the consumer is an existing or a prospective customer. Review whether the training instructs all employees, including branch employees, to provide such disclosures at the time of the request if the

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consumer makes the request in person or within ten business days if the consumer is not present when making the request.

6. Determine the extent and adequacy of the institution's policies, procedures, and practices for ensuring compliance with the regulation. In particular, verify that:
- Account disclosure information is available to be provided to all consumers within the appropriate time frames. This requirement pertains to all consumer requesters whether or not the consumer is an existing customer or a prospective customer.
 - Advance notice is given for any changes in terms required to be disclosed under section 230.4 and that exceptions to the advance notice requirements are limited to those set forth in section 230.5(a)(2).
 - If periodic statements are given, the statements disclose the required information, including the annual percentage yield earned, the amount of interest, fees imposed, and the statement's covered time period.
 - The institution's methods of paying interest are permissible. Review the dates on which interest begins to accrue on deposits to accounts, and determine whether hold times comply with the Expedited Funds Availability Act.
 - The institution's advertising policies are consistent with the requirements of the regulation, including advertising requirements for overdraft services.
 - Evidence of compliance is retained for a minimum of two years after the date disclosures are required to be made or action is required to be taken.
 - The periodic statements separately disclose the total fees and charges for payment of items that overdraw the account and for returning items unpaid. These disclosures must be provided for the statement period and the calendar year-to-date.
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TRANSACTION-RELATED EXAMINATION PROCEDURES

If upon conclusion of the management and policy-related examination procedures, procedural weaknesses or other risks requiring further investigation are noted, conduct the transaction testing, as necessary, using the following examination procedures. Use examiner judgment in deciding the size of each sample of deposit account disclosures, notices, and advertisements. Increase the sample size until you are confident that all aspects of the institution's activities and policies that are subject to the regulation are reviewed.

GENERAL DISCLOSURE REQUIREMENTS (12 CFR 230.3)

7. Determine whether the institution makes disclosures clearly and conspicuously in writing and in a form the consumer may keep (§ 230.3(a)).

8. If the disclosures are combined with other account disclosures, determine whether it is clear which disclosures are applicable to the consumer's account (§ 230.3(a)).

9. If the institution provides a consumer disclosure in electronic form, determine whether the institution has obtained the consumer's consent, where required, and complies with the other applicable provisions of the Electronic Signatures in Global and National Commerce Act (E-Sign Act) (15 USC 7001 et seq.) (§ 230.3(a)).

10. Determine whether the disclosures reflect the legal obligation of the account agreement between the consumer and the institution (§ 230.3(b)).

11. If the institution provides disclosures in a language other than English, verify whether the disclosures are available in English upon request (§ 230.3(b)).

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12. Determine whether disclosures use consistent terminology when describing terms or features that are required to be disclosed (Staff Commentary 230.3(a)-2).

13. Determine whether the institution substitutes disclosures required by Regulation E for disclosures required by Regulation DD (§ 230.3(c)).

14. Determine whether the institution provides required disclosures to at least one account holder if there are multiple holders (§ 230.3(d)).

15. Determine whether the institution's oral response to a consumer's inquiry about interest rates payable on accounts state the annual percentage yield (APY), by reviewing the institution's policies and procedures. If the institution chooses, it may also state the interest rate, but no other rate (§ 230.3(e)).

16. Determine whether the APY, the annual percentage earned (APYE) and the interest rate are rounded to the nearest one-hundredth of one percentage point (.01%).

NOTE: For account disclosures, the interest rate may be expressed to more than two decimal places (§ 230.3(f)(1)).

17. Determine whether the APYs and APYEs are not more than one-twentieth of one percentage point (.05%) above or below the APY (and APYE) as determined in accordance with Appendix A of Regulation DD (§ 230.3(f)(2)).

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ACCOUNT DISCLOSURES (12 CFR 230.4)

Delivery of Account Disclosures

Account Opening

18. Determine whether the institution provides account disclosures to consumers before an account is opened or a service is provided, whichever is earlier (§ 230.4(a)(1)(i)).
- If the consumer is not present when the account is opened or a service is provided (and has not already received the disclosures), the institution should mail or deliver the disclosures no later than 10 business days after the account is opened or the service is provided, whichever is earlier (§ 230.4(a)(1)(i)).
 - If the consumer who is not present at the institution uses electronic means to open an account or request a service, the institution must provide the disclosures before the account is open or the service is provided (§ 230.4(a)(1)(ii)).
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Consumer Request

19. Determine whether the institution has available full account disclosures, including complete fee schedules, to provide to a consumer upon request. This requirement pertains to all consumer requests, whether or not the consumer is an existing customer or a prospective customer.
- If the request is made in person, determine whether the institution has disclosures available to provide upon the consumer's request.
 - If the consumer is not present, the institution must mail or deliver the disclosures within a reasonable period of time after it receives the request (generally no more than 10 days) (§ 230.4(a)(2)(i)).
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20. Determine whether the institution chooses one of the following options when providing rate information (§ 230.4(a)(2)(ii)(A)).
- Specifies an interest rate and APY that were offered within the most recent seven calendar days.
 - States that the rate and yield are accurate as of an identified date.
 - Provides a telephone number that consumers may call to obtain current rate information.
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21. For a time deposit account, the institution may state the maturity as a term rather than a date (§ 230.4(a)(2)(ii)(B)).
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Content of Disclosures

Rate information

22. Determine whether account disclosures include, as applicable:
- The “annual percentage yield” and the “interest rate” using those terms.
 - For fixed-rate accounts the period of time the interest rate will be in effect (§ 230.4(b)(1)(i)).
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23. For variable-rate accounts, determine whether account disclosures include all of the following information (§ 230.4(b)(1)(ii)):
- The fact that the interest rate and APY may change.
 - How the interest rate is determined.
 - The frequency with which the interest rate may change.

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- Any limitations on the amount the interest rate may change.
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Compounding and crediting

24. Determine whether account disclosures describe the frequency with which interest is compounded or credited (§ 230.4(b)(2)(i)).
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25. If the consumer will forfeit interest if the consumer closes an account before accrued interest is credited, determine whether account disclosures include a statement that interest will not be paid in such cases (§ 230.4(b)(2)(ii)).
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Balance information

26. As applicable, determine whether account disclosures:
- Describe the minimum balance required to (§ 230.4(b)(3)(i)):
 - Open an account,
 - Avoid the imposition of a fee, or
 - Obtain the APY disclosed.
 - Describe how the minimum balance requirement is determined to avoid the imposition of a fee or to obtain the APY disclosed (§ 230.4(b)(3)(i)).
 - Explain the balance computation method (specified in Section 230.7) used to calculate interest on the account (§ 230.4(b)(3)(ii)).
 - State when interest begins to accrue on noncash deposits (§ 230.4(b)(3)(iii)).
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Fees

27. Determine whether account disclosures state 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 (§ 230.4(b)(4)).
- Determine whether the institution has specified the categories of transactions for which an overdraft fee may be imposed (Staff Commentary § 230.4(b)(4)-5).
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Transaction Limitations

28. Determine whether the account disclosures state any limits on the number or dollar amount of withdrawals or deposits (§ 230.4(b)(5)).
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Features of time accounts

29. For time accounts, determine whether account disclosures include, as applicable:
- The maturity date (§ 230.4(b)(6)(i)).
 - A statement that a penalty will or may be imposed for early withdrawal, how it is calculated, and the conditions for its assessment (§ 230.4(b)(6)(ii)).
 - If compounding occurs during the term and the interest may be withdrawn prior to maturity, a statement that the APY assumes interest remains on deposit until maturity and that a withdrawal will reduce earnings (§ 230.4(b)(6)(iii)).
 - A statement that interest cannot remain on deposit and that payout of interest is mandatory for accounts (§ 230.4(b)(6)(iii)):
 - With a stated maturity greater than one year,
 - That do not compound interest on an annual or more frequent basis,
 - That require interest payouts at least annually, and

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- That disclose an APY determined in accordance with section E of Appendix A of Regulation DD.
 - A statement of whether or not the account will renew automatically at maturity (§ 230.4(b)(6)(iv)):
 - If it will renew automatically at maturity, a statement whether or not a grace period will be provided and, if so, the length of the grace period.
 - If it will not renew automatically, a statement of whether interest will be paid after maturity if the consumer does not renew the account.
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Bonuses

30. Determine whether the account disclosures state the amount or type of any bonus, when the bonus will be provided, and any minimum balance and time requirements to obtain the bonus (§ 230.4(b)(7)).
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SUBSEQUENT DISCLOSURES (12 CFR 230.5)

Change in Terms Notice

31. Determine whether the institution sends out advance change in terms notices to consumers of any change in a term, required to be disclosed under section 230.4(b), that may reduce the annual percentage yield (APY) or that otherwise adversely affects consumers. Verify that the notice (§ 230.5(a)(1)):
 - Includes the effective date of the change.
 - Is mailed or delivered at least 30 days before the effective date of the change.

32. Determine whether exceptions to the notice requirements are limited to (§ 230.5(a)(2)):
 - Variable-rate changes

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- Check-printing fees
- Short-term time accounts (1 month or less).

Pre-Maturity Notices – Renewable Accounts

33. For time accounts with a maturity longer than one month and that renew automatically, determine whether the proper subsequent disclosures (§ 230.5(b)):

- Are mailed or delivered at least 30 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, if a grace period of at least five days is allowed (§ 230.5(b)).
- For accounts with maturities of more than one year, include the following information (§ 230.5(b)(1)):
 - The account disclosures required in section 230.4(b) for new accounts
 - The date the existing account matures
 - If the interest rate and APY are not known, include the following:
 - ⇒ The fact that the rates are unknown
 - ⇒ The date that the rates will be determined
 - ⇒ A telephone number to call to obtain the rates that will be paid on the new account.
- For accounts with maturities of one year or less, include the following information (§ 230.5(b)(2)):
 - The same account disclosures as required in section 230.5(b)(1) for accounts with maturities of more than one year;

Or disclose to the consumer:

- The date the existing account matures and the new maturity date if the account is renewed, and
- The interest and APY, if known.

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- If the rates are not known, include the following:
 - ⇒ The fact that the rates are unknown
 - ⇒ The date they will be determined
 - ⇒ A telephone number to call to obtain the rates that will be paid on the new account, and
- The difference in the terms of the new account, as compared to the existing account.

Pre-Maturity Notices – Nonrenewable Accounts

34. For time accounts with a maturity longer than one year and that do not renew automatically, determine whether the institution (§ 230.5(c)):
- Discloses the maturity date.
 - Discloses whether interest will be paid after maturity.
 - Mails or delivers the disclosures at least 10 calendar days before maturity of the existing account.

PERIODIC STATEMENT DISCLOSURES (12 CFR 230.6)

35. If an institution mails or delivers a periodic statement, determine whether the statements include the following (§ 230.6(a)):
- The “annual percentage yield earned” during the statement period, using that term and calculated in accordance to Appendix A of Regulation DD (§ 230.6(a)(1)).
 - The amount of interest earned during the statement period (§ 230.6(a)(2)).
 - Any debited fees required to be disclosed under section 230.4(b)(4) itemized by dollar amount and type (§ 230.6(a)(3)).

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NOTE: Except as required in section 230.11(a)(1) for overdraft payment fees, if fees of the same type are imposed more than once in a statement period, an institution may itemize fees separately or group them together and disclose a total dollar amount for all fees of the same type. Fees for paying overdrafts and for returning items unpaid are not fees of the same type and must be separately distinguished (Staff Commentary § 230.6(a)(3)-2(iv)).

- The total number of days in the statement period, or the beginning and ending dates of the period (§ 230.6(a)(4)).
 - If applicable, the total overdraft and returned item fees required to be disclosed by § 230.11(a) (§ 230.6(a)(5)).
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36. If the institution uses the average daily balance method and calculates interest for a period other than the statement period, determine whether the institution § 230.6(b):

- Calculates and disclose the APY earned and the amount of interest earned based on the other period rather than the statement period, and
 - States the information required in section 230.6(a)(4), specifying the period length for the other period as well as for the statement period.
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PAYMENT OF INTEREST (12 CFR 230.7)

37. Determine whether the institution calculates interest based on the full amount of principal in an account for each day by use of either the daily balance method or the average daily balance method § 230.7(a)(1).

38. For deposit accounts that require a minimum balance to earn interest, determine whether the institution is using the same method to determine the minimum balance as it uses to determine the balance on which interest is calculated § 230.7(a)(2).

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NOTE: An institution may use an additional method that is unequivocally beneficial to the consumer § 230.7(a)(2).

39. If an institution chooses not to pay accrued interest if the consumer closes an account prior to the date accrued interest is credited, determine whether the institution disclosed this practice in the initial account disclosures (Staff Commentary § 230.7(b)-3).

NOTE: An institution is not required to compound or credit interest at any particular frequency but, if it does, it may compound or credit interest annually, semi-annually, quarterly, monthly, daily, continuously, or on any other basis (§ 230.7(b) and Staff Commentary § 230.7(b)-1).

40. Determine whether interest begins to accrue no later than the business day on which the depository institution receives provisional credit for the funds, in accordance with section 606 of the Expedited Funds Availability Act and the implementing Regulation CC, section 229.14 (§ 230.7(c)).
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41. Determine whether interest accrues until the day funds are withdrawn (§ 230.7(c)).
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ADVERTISING (12 CFR 230.8)

General

42. Determine the types of advertising the institution uses, including visual, oral, or print, that meet the regulatory definition of an advertisement.
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43. Determine that all types of advertisements do not contain misleading or inaccurate statements, and do not misrepresent deposit contracts (§ 230.8(a)(1)).

44. Determine that advertisements of accounts do not:

- Refer to or describe an account as “free” or “no cost” (or contain a similar term) if any maintenance or activity fee is charged
 - Use the word profit to refer to interest paid on the account
 - Use the term “fees waived” if a maintenance or activity fee can be imposed (§ 230.8(a)(2) and Staff Commentary § 230.8(a)-5).
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45. If an electronic advertisement displays a triggering term, determine whether the advertisement clearly refers the consumer to the location where the additional required information begins (Staff Commentary § 230.8(a)-9).

46. For institutions that promote the payment of overdrafts in an advertisement, determine whether the advertisement includes the disclosures required by section 230.11(b) (§ 230.8(f)).

Permissible Advertisement Rates

47. For advertisements that state a rate of return, determine whether (§ 230.8(b)):

- The rate is stated as an “annual percentage yield” using that term and that no other rate is stated except “interest rate.”
- If the advertisement uses the abbreviation “APY,” the term “annual percentage yield” is stated at least once in the advertisement.

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- If the advertisement states the interest rate, it uses the term “interest rate” in conjunction with, but not be more conspicuous than, the annual percentage yield to which it relates.
- Rates are rounded to the nearest one-hundredth of one percentage point (.01%) and expressed to two decimal places.

48. For tiered-rate accounts, determine whether an annual percentage yield is stated for each tier, along with corresponding minimum balance requirements (Staff Commentary § 230.8(b)-1).

49. For stepped-rate accounts, determine whether all interest rates and the time period that each rate is in effect are stated (Staff Commentary § 230.8(b)-2).

Required Additional Disclosures

50. With the exception of broadcast, electronic, or outdoor media, telephone-response machines, and indoor signs, if the annual percentage yield is stated in the advertisement, determine whether it includes the following information, as applicable, clearly and conspicuously:

- For a variable rate account, that the rate may change after account opening (§ 230.8(c)(1)).
- The time period that the annual percentage yield will be offered, or a statement that it is accurate as of a specified date (§ 230.8(c)(2)).
- The minimum balance required to earn the advertised annual percentage yield (§ 230.8(c)(3)).
- For tiered accounts, the minimum balance required for each tier stated in close proximity and with equal prominence to the applicable APY, if applicable (§ 230.8(c)(3)).

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- The minimum deposit to open the account, if it is greater than the minimum balance necessary to obtain the advertised annual percentage yield (§ 230.8(c)(4)).
- A statement that maintenance or activity fees could reduce the earnings on the account (§ 230.8(c)(5) and Staff Commentary § 230.8(c)(5)-1).
- For time accounts:
 - Term of the account (§ 230.8(c)(6)(i)).
 - A statement that a penalty will or may be imposed for early withdrawal (§ 230.8(c)(6)(ii)).
 - A statement that interest cannot remain on deposit and that payout of interest is mandatory for noncompounding time accounts with the following features (§ 230.8(c)(6)(iii)):
 - ⇒ Stated maturity greater than one year.
 - ⇒ Interest is not compounded annually or more frequently.
 - ⇒ Interest is required to be paid out at least annually.
 - ⇒ The APY is determined in accordance with section E of Appendix A of Regulation DD.

Bonuses

51. For advertisements that state a bonus (a premium, gift, award or other consideration worth more than \$10), determine whether they state all of the following:
- The “annual percentage yield,” using that term (§ 230.8(d)(1)).
 - The time requirement to obtain the bonus (§ 230.8(d)(2)).
 - The minimum balance required to obtain the bonus (§ 230.8(d)(3)).
 - The minimum balance required to open the account, if it is greater than the minimum balance required to obtain the bonus (§ 230.8(d)(4)).
 - When the bonus will be provided (§ 230.8(d)(5)).

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Exemptions for certain advertisements

52. Advertisements made through broadcast, electronic, or outdoor media, and telephone-response machines are exempted from some of the Regulation DD advertising requirements and are only required to contain certain information. (This exemption does not apply to Internet or e-mail advertisements.) Determine whether advertisements made in these media contain the following information as applicable, clearly and conspicuously (§ 230.8(e)(1) and Staff Commentary § 230.8(e)(1)(i)-1):

- The minimum balance required to earn the advertised annual percentage yield. For tiered accounts, the minimum balance required for each tier stated in close proximity and with equal prominence to the applicable APY, if applicable (§ 230.8(c)(3)).
 - For time accounts:
 - Term of the account (§ 230.8(c)(6)(i)).
 - A statement that interest cannot remain on deposit and that payout of interest is mandatory for noncompounding time accounts with the following features (§ 230.8(c)(6)(iii)):
 - ⇒ Stated maturity greater than one year.
 - ⇒ Interest is not compounded annually or more frequently.
 - ⇒ Interest is required to be paid out at least annually.
 - ⇒ The APY is determined in accordance with section E of Appendix A of Regulation DD.
 - For advertisements that state a bonus (a premium, gift, award or other consideration worth more than \$10):
 - ⇒ The “annual percentage yield,” using that term § 230.8(d)(1)).
 - ⇒ The time requirement to obtain the bonus (§ 230.8(d)(2)).
 - ⇒ The minimum balance required to obtain the bonus (§ 230.8(d)(3)).
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53. Indoor signs are exempted from most of the Regulation DD advertising requirements. Determine that indoor signs:
- Do not:
 - Contain misleading or inaccurate statements, and do not misrepresent deposit contracts (§ 230.8(a)(1)).
 - Refer to or describe an account as “free” or “no cost” (or contain a similar term) if any maintenance or activity fee is charged (§ 230.8(a)).
 - Use the word profit to refer to interest paid on the account (§ 230.8(a)(2)).
 - Use the term “fees waived” if a maintenance or activity fee can be imposed (Staff Commentary § 230.8(a)-5).
 - If a rate of return is stated, determine whether the indoor sign:
 - States the rate as “annual percentage yield” or “APY.” No other rate may be stated except for the interest rate in conjunction with the APY to which it relates (§ 230.8(b)(2)(i)).
 - Contains a statement advising consumers to contact an employee for further information about applicable fees and terms (§ 230.8(e)(2)(ii)).
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RECORD RETENTION REQUIREMENTS (12 CFR 230.9)

54. Determine whether the institution has maintained evidence of compliance with Regulation DD, including rate information, advertising, and providing consumers disclosures at the appropriate time (including upon a consumer’s request), for a minimum of two years after disclosures are required to be made or action is required to be taken. For example, review samples of advertising and disclosures, policies and procedures, and training activities, as appropriate (§ 230.9(c)).
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SECTION 230.10 - [RESERVED]

ADDITIONAL DISCLOSURE REQUIREMENTS FOR OVERDRAFT SERVICES (12 CFR 230.11)

Periodic Statement Disclosures

55. Determine whether the institution discloses on each periodic statement (if a statement is provided) separate totals, for both the statement period and for the calendar year-to-date, for both of the following (§ 230.11(a)(1) and (a)(2)):
- The total 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) (§ 230.11(a)(1)(i));
 - The total amount for all fees or charges imposed on the account for returning items unpaid (§ 230.11(a)(1)(ii)).
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56. Determine if the aggregate fee disclosures are in a format that is substantially similar to the sample form in Appendix B of Regulation DD and that the disclosures are in close proximity to any fee identified in section 230.6(a)(3) (§ 230.11(a)(3)). NOTE: The table must contain lines (or similar markings such as asterisks) inside the table to divide the columns and rows.
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Advertisement Requirements

57. Unless an exception under section 230.11(b)(2)-(4) applies, when an institution advertises the payment of overdrafts, determine whether the institution clearly and conspicuously discloses in advertisements all of the following:
- The fee(s) for the payment of each overdraft (§ 230.11(b)(1)(i)).

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- The categories of transactions for which a fee may be imposed for paying an overdraft (§ 230.11(b)(1)(ii)).
 - The time period by which the consumer must repay or cover any overdraft (§ 230.11(b)(1)(iii)).
 - The circumstances under which the institution will not pay an overdraft (§ 230.11(b)(1)(iv)).
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58. Disclosure of Account Balances

- If the institution discloses account balance information through automated systems, determine whether:
 - The balance excludes additional amounts that the institution may provide to cover items when there are insufficient or unavailable funds (§ 230.11(c)).
 - The institution, if it discloses at its option additional account balances that include additional amounts, prominently states that any such balance includes additional amounts and, if applicable, that those additional amounts are not available for all transactions (§ 230.11(c)).

NOTE: Regulation DD does not require an institution to exclude funds from the consumer's balance that may be transferred from another account pursuant to a retail sweep program (Staff Commentary § 230.11(c)-2).

EXAMINER'S SUMMARY, RECOMMENDATIONS, AND COMMENTS

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