FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R-1285]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed rule; request for comments.

SUMMARY: The Board is proposing to amend Regulation DD, which implements the Truth in Savings Act, to withdraw portions of the interim final rules for the electronic delivery of disclosures issued March 30, 2001. The interim final rules address the timing and delivery of electronic disclosures, consistent with the requirements of the Electronic Signatures in Global and National Commerce Act (E-Sign Act). Compliance with the 2001 interim final rules is not mandatory. Thus, removing the interim rules from the Code of Federal Regulations would reduce confusion about the status of the provisions and simplify the regulation. The Board is also proposing to amend Regulation DD to provide that certain disclosures may be provided to a consumer in electronic form without regard to the consumer consent and other provisions of the E-Sign Act; and that, when an advertisement is accessed by the consumer in electronic form, the disclosures must be provided in electronic form on or with the advertisement. Similar rules are being proposed under other consumer fair lending and financial services regulations administered by the Board.

DATES: Comments must be received on or before **[Insert date that is 60 days after the date of publication in the Federal Register].**

ADDRESSES: You may submit comments, identified by Docket No. R-1285, by any of the following methods:

- Agency Web Site: http://www.federalreserve.gov. Follow the instructions for submitting comments at http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm.
- Federal eRulemaking Portal: http://www.regulations.gov. Follow the instructions for submitting comments.
- E-mail: regs.comments@federalreserve.gov. Include the docket number in the subject line of the message.
- FAX: (202) 452-3819 or (202) 452-3102.
- Mail: Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551.

All public comments are available from the Board's web site at www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room MP-500 of the Board's Martin Building (20th and C Streets, N.W.) between 9:00 a.m. and 5:00 p.m. on weekdays.

FOR FURTHER INFORMATION CONTACT: John C. Wood or David A. Stein, Counsels, Division of Consumer and Community Affairs, at (202) 452-2412 or (202) 452-3667. For users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Savings Act (TISA), 12 U.S.C. 4301 et seq., is to enable consumers to make informed decisions about accounts at depository institutions. The act requires depository institutions to disclose yields, fees, and other terms concerning deposit accounts to consumers at account opening, upon request, when changes in terms occur, and in periodic statements. It also includes rules about advertising for deposit accounts. The Board's Regulation DD (12 CFR part 230) implements the act. Credit unions are governed by a substantially similar regulation issued by the National Credit Union Administration. TISA and Regulation DD require a number of disclosures to be provided in writing.

Board Proposals Regarding Electronic Disclosures

On May 2, 1996, the Board proposed to amend Regulation E (Electronic Fund Transfers) to permit financial institutions to provide disclosures by sending them electronically (61 FR 19,696). Based on comments received, in 1998 the Board published an interim rule permitting the electronic delivery of disclosures under Regulation E (63 FR 14,528, March 25, 1998) and proposals under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), Z (Truth in Lending), and DD (Truth in Savings) (63 FR 14,552, 14,538, 14,548, and 14,533, respectively, March 25, 1998).

Based on comments received on the 1998 proposals, in September 1999 the Board published revised proposals under Regulations B, E, M, Z, and DD (64 FR 49,688, 49,699, 49,713, 49,722 and 49,740, respectively, September 14, 1999). At the same time, the Board published an interim rule under Regulation DD allowing depository institutions to deliver disclosures on periodic statements in electronic form if the consumer agreed (64 FR 49,846, September 14, 1999). While these rulemakings were pending, federal legislation was enacted addressing the use of electronic documents and records, including consumer disclosures.

Federal Legislation Addressing Electronic Commerce

On June 30, 2000, the President signed into law the Electronic Signatures in Global and National Commerce Act (the E-Sign Act) (15 U.S.C. 7001 et seq.). The E-Sign Act provides that electronic documents and electronic signatures have the same validity as paper documents and handwritten signatures. The E-Sign Act contains special rules for the use of electronic disclosures in consumer transactions. Under the E-Sign Act, consumer disclosures required by other laws or regulations to be provided or made available in writing may be provided or made available, as applicable, in electronic form if the consumer affirmatively consents after receiving a notice that contains certain information specified in the statute, and if certain other conditions are met.

The E-Sign Act, including the special consumer notice provisions, became effective October 1, 2000, and did not require implementing regulations. Thus, financial institutions are currently permitted to provide in electronic form any disclosures that are required to be provided or made available to the consumer in writing under Regulations B, E, M, Z, and DD if the consumer affirmatively consents to receipt of electronic disclosures in the manner required by section 101(c) of the E-Sign Act.

The Interim Final Rules

On March 30, 2001, the Board published for comment interim final rules to establish uniform standards for the electronic delivery of disclosures required under Regulation DD (66 FR 17,795). Similar interim final rules for Regulations B, E, M, and Z were published on March 30, 2001 (66 FR 17,322 (M)) and April 4, 2001 (66 FR 17,779 (B), 66 FR 17,786 (E), and 66 FR 17,329 (Z)). The interim final rules incorporated most of the provisions that were part of the 1999 proposals.

Each of the interim final rules incorporated, but did not interpret, the requirements of the E-Sign Act. Depository institutions, creditors, and other persons, as applicable, generally were required to obtain consumers' affirmative consent to provide disclosures electronically, consistent with the requirements of the E-Sign Act.

The 2001 interim final rule for Regulation DD established uniform requirements for the timing and delivery of electronic disclosures. Under the interim rule, disclosures could be sent to an e-mail address designated by the consumer, or could be made available at another location, such as an Internet web site. If the disclosures were not sent by e-mail, institutions would have to provide a notice to consumers alerting them to the availability of the disclosures. Disclosures posted on a web site would have to be available for at least 90 days to allow consumers adequate time to access and retain the information. Institutions also would be required to make a good faith attempt to redeliver electronic disclosures that were returned undelivered, using the address information available in their files. Similar provisions were included in the interim final rules adopted under Regulations B, E, M, and Z.

Commenters on the interim final rules identified significant operational and information security concerns with respect to the requirement to send the disclosure or an alert notice to an e-mail address designated by the consumer. For example, commenters stated that some consumers do not have e-mail addresses or may not want personal financial information sent to them by e-mail. Commenters also noted that e-mail is not a secure medium for delivering confidential information and that consumers' e-mail addresses frequently change. The commenters also opposed the requirement for redelivery in the event a disclosure was returned undelivered. In addition, many commenters asserted that making the disclosures available for at least 90 days, as required by the interim final rule, would increase costs and would not be necessary for consumer protection.

In August 2001, in response to comments received, the Board lifted the previously established October 1, 2001 mandatory compliance date for all of the interim final rules. (66 FR 41,439, August 8, 2001.) Thus, institutions are not required to comply with the interim final rules. Since that time, the Board has not taken further action with respect to the interim final rules on electronic disclosures in order to allow electronic commerce, including electronic disclosure practices, to continue to develop without regulatory intervention and to allow the Board to gather further information about such practices.

II. The Proposed Rules

The Board is proposing to amend Regulation DD and the official staff commentary by (1) withdrawing portions of the 2001 interim final rule on electronic disclosures that restate or cross-reference provisions of the E-Sign Act and accordingly are unnecessary; (2) withdrawing other portions of the interim final rule that the Board now believes may impose undue burdens on electronic banking and commerce and may be unnecessary for consumer protection; and (3) retaining the substance of certain provisions of the interim final rule that provide regulatory relief or guidance regarding electronic disclosures. (Similar amendments are also being proposed by the Board, in today's issue of the Federal Register, under Regulations B, E, M, and Z.)

Because compliance with the 2001 interim final rules is not mandatory, removing most portions of the interim rules from the Code of Federal Regulations, while finalizing other provisions, would reduce confusion about the status of the electronic disclosure provisions and simplify the regulation. The Board is proposing to adopt certain provisions that are identical or similar to provisions in the 2001 interim final rules in order to enhance the ability of consumers to shop for deposit account products online, minimize the information-gathering burdens on consumers, and provide guidance or eliminate a substantial burden on the use of electronic disclosures, as discussed further below.

Since 2001, industry and consumers have gained considerable experience with electronic disclosures. During that period, the Board has received no indication that consumers have been harmed by the fact that compliance with the interim final rules is not mandatory. The Board also has reconsidered certain aspects of the interim final rules,

such as sending disclosures by e-mail, in light of concerns about data security, identity theft, and "phishing" (i.e., prompting consumers to reveal confidential personal or financial information through fraudulent e-mail requests that appear to originate from a financial institution, government agency, or other trusted entity) that have become more pronounced since 2001. Finally, the Board is proposing to eliminate certain aspects of the 2001 interim final rule, such as provisions regarding the availability and retention of electronic disclosures, as unnecessary in light of current industry practices.

The 2001 interim final rule allowed depository institutions to provide certain disclosures to consumers electronically without regard to the consumer consent or other provisions of the E-Sign Act. These included disclosures in connection with advertisements and disclosures about deposit accounts that are provided upon request. The Board reasoned that these disclosures, which would be available to the general public while shopping for deposit products, did not "relate to a transaction," which is a prerequisite for triggering the E-Sign consumer consent provisions, and thus were not subject to those provisions. Some commenters on the interim final rules did not agree with the Board's rationale. Upon further consideration, the Board does not believe it is necessary to determine whether or not these disclosures are related to a transaction. This proposal does not make such determinations.

Instead, pursuant to the Board's authority under section 269 of TISA, as well as under section 104(d) of the E-Sign Act,[1] the Board is proposing to specify the circumstances under which certain disclosures may be provided to a consumer in electronic form, rather than in writing as generally required by Regulation DD, without obtaining the consumer's consent under section 101(c) of the E-Sign Act. The proposed rule would also clarify, as discussed in detail below, that certain disclosures must be provided to the consumer in electronic form on or with an advertisement that is accessed by the consumer in electronic form.

The Board continues to believe that depository institutions should not be required to obtain the consumer's consent in order to provide advertising disclosures to the consumer in electronic form if the consumer accesses the advertisement containing those disclosures in electronic form, such as at an Internet web site. Similarly, the Board continues to believe that institutions should not be required to follow the E-Sign consent requirements in order to provide account disclosures upon request to consumers electronically (although under the proposal, the institution could provide the disclosures in electronic form only if the consumer agrees).

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[1] Section 269 of TISA provides that regulations prescribed by the Board under TISA "may provide for such adjustments and exceptions . . . as, in the judgment of the Board, are necessary or proper to carry out the purposes of [TISA], . . . or to facilitate compliance with the requirements of [TISA]." Section 104(d) of the E-Sign Act authorizes federal agencies to adopt exemptions for specified categories of disclosures from the E-Sign notice and consent requirements, "if such exemption is necessary to eliminate a substantial burden on electronic commerce and will not increase the material risk of harm to consumers." For the reasons stated in this Federal Register notice, the Board believes that these criteria are met in the case of the advertising disclosures and the disclosures provided to a consumer upon request. In addition, the Board believes TISA section 269 authorizes the Board to permit institutions to provide disclosures electronically, rather than in paper form, independent of the E-Sign Act.

The Board believes that consumers would not be harmed, and in fact would benefit, by having timely access to disclosures in electronic form when they are shopping for deposit account products online or viewing online deposit account advertising. The Board also believes that consumers' ability to shop for deposit accounts online and compare the terms of various offers could be substantially diminished if consumers had to consent in accordance with the E-Sign Act in order to access advertisements or obtain account disclosures. Applying the consumer consent provisions of the E-Sign Act to these disclosures could impose substantial burdens on electronic commerce and make it more difficult for consumers to gather information and shop for deposit accounts.

At the same time, the Board recognizes that consumers who shop or apply for deposit accounts online may not want to receive other disclosures electronically. Therefore, with respect to, for example, account-opening disclosures, periodic statements, and change-in-terms notices, depository institutions would be required to provide written disclosures or obtain the consumer's consent in accordance with the E-Sign Act to provide such disclosures in electronic form.

Finally, the Board is proposing to delete, as unnecessary, certain provisions that restate or cross-reference the E-Sign Act's general rules regarding electronic disclosures (including the consumer consent provisions) and electronic signatures because the E-Sign Act is a self-effectuating statute. The proposed revisions to Regulation DD and the official staff commentary are described more fully below in the Section-by-Section Analysis.

The Board solicits comment on all aspects of this proposal. Specifically, the Board seeks comment on the appropriateness of eliminating certain provisions and retaining other provisions contained in the 2001 interim final rule.

III. Section-by-Section Analysis

12 CFR Part 230 (Regulation DD)

Section 230.3 General disclosure requirements

Section 230.3(a) prescribes the form of disclosures required for deposit accounts, and generally requires depository institutions to provide the disclosures in writing and in a form that the consumer may keep. The Board proposes to revise § 230.3(a) to clarify that institutions may provide disclosures to consumers in electronic form, subject to compliance with the consumer consent and other applicable provisions of the E-Sign Act. Some institutions may provide disclosures to consumers both in paper and electronic form and rely on the paper form of the disclosures to satisfy their compliance obligations. For those institutions, the duplicate electronic form of the disclosures may be provided to consumers without regard to the consumer consent or other provisions of the E-Sign Act because the electronic form of the disclosure is not used to satisfy the regulation's disclosure requirements.

Section 230.3(a) would also be revised to provide that the disclosures required by §§ 230.4(a)(2) (disclosures provided upon request) and 230.8 (advertising) may be provided to the consumer in electronic form, under the circumstances set forth in those sections, without regard to the consumer consent or other provisions of the E-Sign Act.

Section 230.8 requires that if certain information is stated in a deposit account advertisement, or if an advertisement promotes the payment of overdrafts, the advertisement must also include specified disclosures. The Board believes that, for a deposit account advertisement accessed by the consumer in electronic form, permitting institutions to provide the required disclosures in electronic form without regard to the consumer consent and other provisions of the E-Sign Act will eliminate a potential significant burden on electronic commerce without increasing the risk of harm to consumers. This approach will facilitate shopping for deposit products by enabling consumers to receive important disclosures at the same time they access an advertisement without first having to provide consent in accordance with the requirements of the E-Sign Act. Requiring consumers to follow the consent procedures set forth in the E-Sign Act in order to access an online advertisement is potentially burdensome and could discourage consumers from shopping for deposit products online. Moreover, because these consumers are viewing the advertisement online, there appears to be little, if any, risk that the consumer will be unable to view the disclosures online as well.

Similarly, § 230.4(a)(2) requires that depository institutions provide account disclosures, containing account terms, to consumers upon request. If a consumer is not present at the depository institution and requests the account disclosures, it would appear unnecessary and burdensome to require the consumer to go through the E-Sign consent procedures before the request could be satisfied, as long as the consumer requests that the disclosures be provided electronically. Applying the E-Sign consent procedures in this context could discourage consumers from requesting account disclosures.

Section 230.3(g) in the 2001 interim final rule refers to § 230.10, the section of the interim final rule setting forth general rules for electronic disclosures. Because the Board is proposing to delete § 230.10, as discussed further below, the Board also proposes to delete § 230.3(g).

Section 230.4 Account disclosures

Depository institutions generally must provide account-opening disclosures to consumers before an account is opened or a service is provided. Depository institutions may delay delivering the disclosures if the consumer is not present at the institution when the account is opened (or service is provided). Section 230.4(a)(1) provides that in such cases, account-opening disclosures must be mailed or delivered within ten business days. The rationale underlying the ten-day delay is that the institution cannot provide written disclosures when, for example, an account is opened by telephone. The 2001 interim final rule provided that depository institutions opening accounts by electronic communication (for example, on the Internet) may not delay providing disclosures under § 230.4(a)(1). The difficulties in providing disclosures for accounts opened by mail or

telephone are not present for requests to open accounts received by electronic communication using visual text. Thus, specific disclosures must be provided before accounts are opened using electronic communication. The interim final rule added new paragraph (ii) to § 230.4(a)(1) to effectuate this requirement. The Board continues to believe that the rationale underlying § 230.4(a)(1)(ii) is valid; accordingly, the Board proposes to retain the provision as added by the interim final rule, with minor wording changes.

Depository institutions must also provide account disclosures to a consumer upon request. Section 230.4(a)(2)(i) provides that if a consumer is not present at the institution when a request for account disclosures is made, the institution must mail or deliver the disclosures within a reasonable time after the institution receives the request; ten days is deemed to be a reasonable time. The 2001 interim final rule extended these provisions to requests for disclosures made by electronic communication. Specifically, the interim final rule revised § 230.4(a)(2)(i) to allow institutions to mail or deliver disclosures in either paper form or electronically to consumers who are not present at the institution when they make their request. Under the interim final rule, to provide the requested disclosures electronically, the institution must send the disclosures to the consumer's e-mail address, or send a notice alerting the consumer to the location of the disclosures, such as on the institution's Internet web site. Comment 4(a)(2)(i)-3 was revised and comment 4(a)(2)(i)-4 was added to provide guidance.

The Board continues to believe that it is appropriate to allow institutions to respond by paper mail, or by electronic means provided the consumer agrees, if the consumer is not present at the institution when the request is made, without following the E-Sign consent provisions. Accordingly, the Board proposes to retain the changes made to § 230.4(a)(2)(i) and the accompanying commentary by the interim final rule, with some revisions for clarification and to provide greater flexibility for both institutions and consumers.

Section 230.8 Advertising

Section 230.8 contains requirements for advertisements for deposit accounts, including the requirement that if an advertisement includes certain "trigger terms" (such as a bonus or the annual percentage yield), the advertisement must also include certain disclosures. The Board proposes to add new comment 8(a)-11, to clarify that if a consumer accesses an advertisement for deposit accounts in electronic form, the disclosures required on or with the advertisement must be provided to the consumer in electronic form on or with the advertisement. A consumer accesses an advertisement in electronic form when, for example, the consumer views the advertisement on his or her home computer. On the other hand, if a consumer receives a written advertisement in the mail, the institution would <u>not</u> satisfy its obligation to provide § 230.8 disclosures at that time by including a reference in the advertisement to the web site where the disclosures are located.

Comment 8(a)-9, as added by the interim final rule, provides that in an electronic advertisement, the required disclosures need not be shown on each page where a "trigger term" appears, as long as each such page includes a cross-reference to the page where the required disclosures appear. For example, if a "trigger term" appears on a particular web page, the additional disclosures may appear in a table or schedule on another web page if there is a clear reference to the page or location where the table or schedule begins (which may be accomplished, for example, by including a link). The Board proposes to retain comment 8(a)-9, allowing the use of links or other cross-references in electronic deposit account advertisements, with minor wording changes.

The Board proposes to add new comment 8(a)-12 to clarify that the rules regarding advertising disclosures provided in electronic form also apply to the disclosures described in § 230.11(b), which are incorporated by reference in § 230.8(f).

Section 230.8(b) permits institutions to state an interest rate in addition to the APY, as long as the rate is stated in conjunction with, but not more conspicuously than, the APY. In the 2001 interim final rule, comment 8(b)-4 was added to state that in an advertisement using electronic communication, the consumer must be able to view both rates simultaneously, and that this requirement is not satisfied if the consumer can view the APY only by use of a link that takes the consumer to another web location. The Board proposes to delete comment 8(b)-4 as unnecessary. The requirement to state the simple annual rate or periodic rate in conjunction with, and not more conspicuously than, the APY, continues to apply to electronic advertisements no less than to advertisements in other media. Requiring the consumer to scroll to another part of the page, or access a link, in order to view the APY would likely not satisfy this requirement.

Section 230.8(e) exempts from some disclosure requirements advertisements made through broadcast or electronic media, such as television and radio or outdoor billboards. The interim final rule added comment 8(e)(1)(i)-1 to provide that this exemption would not apply to advertisements using electronic communication, such as Internet advertisements, which do not have the same time and space constraints as radio or television advertisements. The Board continues to believe that space constraints for advertisements on Internet web sites are not significantly different than those for a print advertisement (a newspaper, for example). Thus, requiring advertisements provided by electronic means to comply with the regulation's advertising requirements is not overly burdensome. Accordingly, the Board proposes to retain comment 8(e)(1)(i)-1 with minor wording changes.

Section 230.10 Electronic communication

Section 230.10 was added by the 2001 interim final rule to address the general requirements for electronic communications. The Board proposes to delete § 230.10 from Regulation DD and the accompanying sections of the staff commentary.

In the interim rule, § 230.10(a) defines the term "electronic communication" to mean a message transmitted electronically that can be displayed on equipment as visual

text, such as a message displayed on a personal computer monitor screen. The deletion of § 230.10(a) would not change applicable legal requirements under the E-Sign Act.

Sections 230.10(b) and (c) incorporate by reference provisions of the E-Sign Act, such as the provision allowing disclosures to be provided in electronic form and the requirement to obtain the consumer's affirmative consent before providing disclosures in electronic form. The deletion of these provisions will have no impact on the general applicability of the E-Sign Act to Regulation DD disclosures. Section 230.10(f) was added in the interim final rule to clarify that persons, other than depository institutions, that are required to comply with Regulation DD may use electronic disclosures. This provision is unnecessary because the E-Sign Act is a self-effectuating statute and permits any person to use electronic records subject to the conditions set forth in the Act.

Sections 230.10(d) and (e) address specific timing and delivery requirements for electronic disclosures under Regulation DD, such as the requirement to send disclosures to a consumer's e-mail address (or post the disclosures on a website and send a notice alerting the consumer to the disclosures), and to make a good faith attempt to redeliver an e-mailed disclosure or notice returned undelivered. The Board no longer believes that these additional provisions are necessary or appropriate. Electronic disclosures have evolved since 2001, as industry and consumers have gained experience with them. Although many institutions offer e-mail alert notices to consumers in connection with online services, some consumers may choose not to receive notifications by e-mail and the Board sees no reason to require e-mail alert notices in all cases. In addition, the Board has reconsidered certain aspects of the interim final rules, such as sending disclosures by e-mail, in light of concerns about data security, identity theft, and phishing that have become more pronounced since 2001.

With regard to the requirement to attempt to redeliver returned electronic disclosures, as the commenters noted, institutions would be required to search their files for an additional e-mail address to use, and might be required to use a postal mail address for redelivery if no additional e-mail address was available. The Board believes that both requirements would likely be unduly burdensome. In addition, the concerns that have been raised about the requirement to use e-mail for the initial delivery of a disclosure or notice apply equally to the use of e-mail for an attempted redelivery.

Under the proposed rule, the Board would not require depository institutions to maintain disclosures posted on a web site for at least 90 days as provided in the 2001 interim final rule for several reasons. First, based on a review of industry practices, it appears that many institutions maintain disclosures posted on an Internet web site for several months, and, in a number of cases, for more than a year. For example, it appears that institutions that offer online periodic statements to consumers typically make those statements available without charge for six months or longer in electronic form. This practice has developed even though Regulation DD does not currently require institutions to maintain disclosures for any specific period of time. Second, the Board believes that an appropriate time period consumers may want electronic disclosures to be available may vary depending upon the type of disclosure, and is reluctant to establish specific

time periods depending on the disclosures. Nevertheless, while the Board is not proposing to require disclosures to be maintained on an Internet web site for any specific time period, the general requirements of Regulation DD continue to apply to electronic disclosures, such as the requirement to provide disclosures to consumers at certain specified times and in a form that the consumer may keep. Although these general requirements apply to electronic disclosures, the Board does not believe that the 90-day time period set out in § 230.10(d) of the 2001 interim final rule is needed to ensure that institutions satisfy these requirements when they provide electronic disclosures. The Board, however, will monitor institutions' electronic disclosure practices with regard to the ability of consumer to retain Regulation DD disclosures and will consider further regulatory action if it appears necessary.

The official staff commentary to § 230.10 of the interim final rule provides guidance on the provisions set forth in § 230.10 such as delivery of disclosures or alert notices by e-mail, redelivery if disclosures or a notice is returned undelivered, and retention of disclosures on a web site for 90 days. As noted above, because the Board is proposing to delete § 230.10 of the regulation, the Board also proposes to delete the accompanying provisions of the official staff commentary.

IV. Solicitation of Comments Regarding the Use of "Plain Language"

Section 722 of the Gramm-Leach-Bliley Act of 1999 requires the Board to use "plain language" in all proposed and final rules published after January 1, 2000. The Board invites comments on whether the proposed rules are clearly stated and effectively organized, and how the Board might make the proposed text easier to understand.

V. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601 et seq.) (RFA) generally requires an agency to perform an assessment of the impact a rule is expected to have on small entities.

However, under section 605(b) of the RFA, 5 U.S.C. 605(b), the regulatory flexibility analysis otherwise required under section 604 of the RFA is not required if an agency certifies, along with a statement providing the factual basis for such certification, that the rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis and for the reasons stated below, the Board believes that this proposed rule will not have a significant economic impact on a substantial number of small entities. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

1. Statement of the objectives of the proposal. The Board is proposing revisions to Regulation DD to withdraw the 2001 interim final rule on electronic communication and to allow depository institutions to provide certain disclosures to consumers in electronic form on or with an advertisement that is accessed by the consumer in electronic form, or if the consumer requests the disclosure, without regard to the

consumer consent and other provisions of the E-Sign Act. The Board is also proposing to clarify that other Regulation DD disclosures may be provided to consumers in electronic form in accordance with the consumer consent and other applicable provisions of the E-Sign Act.

TISA was enacted to enhance economic stabilization, improve competition between depository institutions, and strengthen the ability of consumers to make informed decisions regarding deposit accounts. 12 U.S.C. 4301. It is the purpose of TISA to require the clear and uniform disclosure of rates of interest payable on deposit accounts and the fees that are assessable against deposit accounts, so that consumers can make a meaningful comparison between the competing claims of institutions. TISA authorizes the Board to prescribe regulations to carry out the purposes of the statute. 12 U.S.C. 4308. The Act expressly states that the Board's regulations may contain "such classifications, differentiations, or other provisions, . . . , as in the judgment of the Board, are necessary or proper to carry out the purposes of [the Act], to prevent circumvention or evasion of [the Act], or to facilitate compliance with [the Act]." 12 U.S.C. 4308(a). The Board believes that the revisions to Regulation DD discussed above are within Congress's broad grant of authority to the Board to adopt provisions that carry out the purposes of the statute. These revisions facilitate informed decisions about deposit accounts by consumers in circumstances where a consumer accesses a deposit account advertisement, or requests deposit account disclosures, in electronic form.

2. Small entities affected by the proposal. The ability to provide advertising disclosures in electronic form on or with an advertisement that is accessed by the consumer in electronic form, or to provide disclosures in electronic form if requested to do so by the consumer, applies to all depository institutions, regardless of their size. Accordingly, the proposed revisions would reduce burden and compliance costs for small entities by providing relief, to the extent the E-Sign Act applies in these circumstances. The number of small entities affected by this proposal is unknown.

3. Other federal rules. The Board believes no federal rules duplicate, overlap, or conflict with the proposed revisions to Regulation DD.

4. Significant alternatives to the proposed revisions. The Board solicits comment on any significant alternatives that may provide additional ways to reduce regulatory burden associated with this proposed rule.

VI. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1995 (PRA) (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the rule under the authority delegated to the Board by the Office of Management and Budget (OMB). The collection of information that is required by this proposed rule is found in 12 CFR 230. The Federal Reserve may not conduct or sponsor, and an organization is not required to respond to, this information collection unless it displays a currently valid OMB control number. The OMB control number is 7100-0271.

Section 269 of the Truth in Savings Act (TISA)(12 U.S.C. 4308) authorizes the Board to issue regulations to carry out the provisions of TISA. TISA and Regulation DD require depository institutions to disclose yields, fees, and other terms concerning deposit accounts to consumers at account opening, upon request, and when changes in terms occur. Depository institutions that provide periodic statements are required to include information about fees imposed, interest earned, and the annual percentage yield earned during those statement periods. The act and regulation mandate the methods by which institutions determine the account balance on which interest is calculated. They also contain rules about advertising deposit accounts. To ease the compliance cost (particularly for small entities), model clauses and sample forms are appended to the regulation. Depository institutions are required to retain evidence of compliance for twenty-four months, but the regulation does not specify types of records that must be retained. This information collection is mandatory. Since the Federal Reserve does not collect any information, no issue of confidentiality arises.

Regulation DD applies to all depository institutions except credit unions. Credit unions are covered by a substantially similar rule issued by the National Credit Union Administration. The Federal Reserve accounts for the paperwork burden associated with Regulation DD only for Federal Reserve-regulated institutions. Federal Reserve-regulated institutions are defined by Regulation DD as: State member banks, branches and agencies of foreign banks (other than federal branches, federal agencies, and insured state branches of foreign banks), commercial lending companies owned or controlled by foreign banks, and organizations operating under section 25 or 25A of the Federal Reserve Act. Other federal agencies account for the paperwork burden imposed on the depository institutions for which they have administrative enforcement authority. The annual burden is estimated to be 232,443 hours for 1,172 Federal Reserve-regulated institutions that are deemed respondents for purposes of the PRA.

As mentioned in the Preamble, §§ 230.4 and 230.8 would be revised to clarify the disclosure requirements. The Federal Reserve estimates that 1,172 respondents would take approximately 1.5 minutes per transaction to comply with the existing disclosure requirements in § 230.4 and estimates the annual burden to be 14,650 hours. The Federal Reserve estimates that 1,172 respondents would take approximately 30 minutes per month to comply with the existing disclosure requirements in § 230.8 and estimates the annual burden to be 7,032 hours. The Federal Reserve requests specific comment on whether the revisions in this proposed rule would change the burden on respondents.

Comments are invited on: a. whether the collection of information is necessary for the proper performance of the Federal Reserve's functions; including whether the information has practical utility; b. the accuracy of the Federal Reserve's estimate of the burden of the information collection, including the cost of compliance; c. ways to enhance the quality, utility, and clarity of the information to be collected; and d. ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology. Comments on the collections of information should be sent to Secretary, Board of Governors of the

Federal Reserve System, Washington, DC 20551, with copies of such comments to be sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0271), Washington, DC 20503.

List of Subjects in 12 CFR Part 230

Advertising, Banks, banking, Consumer protection, Federal Reserve System, Reporting and record keeping requirements, Truth in Savings.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed changes to Regulation DD. New language is shown inside bold-faced arrows, while language that would be removed is set off with bold-faced brackets.

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

PART 230 — TRUTH IN SAVINGS (REGULATION DD)

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

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

2. Section 230.3 would be amended by revising paragraph (a) and removing paragraph (g), to read as follows:

§ 230.3 General disclosure requirements

(a) Form. Depository institutions shall make the disclosures required by §§ 230.4 through 230.6 and § 230.10 of this part, as applicable, clearly and conspicuously, in writing, and in a form the consumer may keep. ►The disclosures required by this part 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 U.S.C. §7001 et seq.). The disclosures required by §§ 230.4(a)(2) and 230.8 may be provided to the consumer in electronic form without regard to the consumer consent or other provisions of the E-Sign Act in the circumstances set forth in those sections.◄ Disclosures for each account offered by an institution may be presented separately or combined with disclosures for the institution's other accounts, as long as it is clear which disclosures are applicable to the consumer's account.

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[(g) Electronic communication. For rules governing the electronic delivery of disclosures, including the definition of electronic communication, see § 230.10.**]**

3. Section 230.4 would be amended by revising paragraphs (a)(1)(ii) and (a)(2)(i), to read as follows:

§ 230.4 Account disclosures.

(a) Delivery of account disclosures—(1) Account opening. (i) General. A depository institution shall 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. Except as provided in paragraph (a)(1)(ii) of this section, if the consumer is not present at the institution when the account is opened or the service is provided and has not already received the disclosures, the institution shall mail or deliver the disclosures no later than 10 business days after the account is opened or the service is provided, whichever is earlier.

(ii) ►Timing of disclosures where electronic means are used◄**[**Electronic communication**]**. If a consumer who is not present at the institution uses ►electronic means (for example, an Internet web site)◄**[**electronic communication (as defined in § 230.10)**]** to open an account or request a service, the disclosures required under paragraph (a)(1) of this section must be provided before ►the◄ **[**an**]** account is opened or ►the◄ **[**a**]** service is provided.

(2) Requests. (i) A depository institution shall provide account disclosures to a consumer upon request. If a consumer who is not present at the institution makes a request, the institution shall mail or deliver the disclosures within a reasonable time after it receives the request and may provide the disclosures in paper form, or electronically if the consumer ►agrees◄ **[**provides an electronic mail address**]**.

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4. Section 230.10 would be removed and reserved.

5. In Supplement I to Part 230, the following amendments would be made:

a. In Section 230.4—Account disclosures, under (4)(a)(2)(i), paragraphs 3. and 4. would be revised.

b. In Section 230.8—Advertising, under 8(a) Misleading or inaccurate advertisements, paragraph 9. would be revised and new paragraphs 11. and 12. would be added.

c. In Section 230.8—Advertising, under 8(b) Permissible rates, paragraph 4. would be removed.

d. In Section 230.8—Advertising, under (e)(1)(i), paragraph 1. would be revised.

e. Section 230.10 would be removed and reserved.

The amendments read as follows:

SUPPLEMENT I TO PART 230—OFFICIAL STAFF INTERPRETATIONS

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Section 230.4—Account disclosures

4(a) Delivery of account disclosures

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4(a)(2) Requests

4(a)(2)(i)

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3. Timing for response. Ten business days is a reasonable time for responding to requests for account information that consumers do not make in person, including requests made by electronic **[**communication**]** ►means (such as by electronic mail)◄.

4. **[**Requests by electronic communication**]** ►Use of electronic means◄. **[**Posting disclosures on a depository institution's web site generally does not relieve the institution's duty to provide disclosures upon request. If the consumer provides an e-mail address, the institution may provide the disclosures electronically, but the institution must either send the disclosures by e-mail or send a notice to the consumer's e-mail address pursuant to § 230.10(d)(2)(i) to inform the consumer where the disclosures are posted.**]** ►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 web site, the institution may send the disclosures in paper form or, if the consumer agrees, may provide the disclosures electronically, such as to an e-mail address that the consumer provides for that purpose, or on the institution's web site, without regard to the consumer consent or other provisions of the E-Sign Act. The regulation does not require an institution to provide, nor a consumer to agree to receive, disclosures in electronic form.◄

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Section 230.8—Advertising

8(a) Misleading or inaccurate advertisements

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

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►11. Electronic form of disclosures. For an advertisement that is accessed by the consumer in electronic form, the disclosures required under this section must be provided to the consumer in electronic form on or with the advertisement. Providing the disclosures at a different time or place, or in paper form, would not comply. Conversely, if a consumer views a paper advertisement, the required disclosures must be provided in paper form on or with the advertisement. For example, if a consumer receives an advertisement in the mail, the creditor would not satisfy its obligation to provide the disclosures at that time by including a reference in the advertisement to the web site where the disclosures are located.

12. Additional disclosures in connection with the payment of overdrafts. The rule in § 230.3(a), providing that disclosures required by § 230.8 may be provided to the consumer in electronic form without regard to E-Sign Act requirements, applies to the disclosures described in § 230.11(b), which are incorporated by reference in § 230.8(f).◄

8(b) Permissible rates

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[4. Electronic communication. An interest rate may be stated only if it is provided in conjunction with, but not more conspicuously than, the annual percentage yield to which it relates. In an advertisement using electronic communication, the consumer must be able to view both rates simultaneously. This requirement is not satisfied if the consumer can view the annual percentage yield only by use of a link that connects the consumer to information appearing at another location.**]**

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8(e)(1) Certain media

(e)(1)(i)

1. Internet advertisements. The exemption for advertisements made through broadcast or electronic media does not extend to **[**advertisements made by electronic communication, such as**]** advertisements posted on the Internet or sent by e-mail.

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By order of the Board of Governors of the Federal Reserve System, April 20, 2007.

Jennifer J. Johnson (signed)
Jennifer J. Johnson,
Secretary of the Board