

## **FEDERAL RESERVE SYSTEM**

### **12 CFR Part 230**

#### **[Regulation DD; Docket No. R-1044]**

#### **Truth in Savings**

**AGENCY:** Board of Governors of the Federal Reserve System.

**ACTION:** Proposed rule.

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**SUMMARY:** The Board is requesting comment on proposed revisions to Regulation DD, which implements the Truth in Savings Act (TISA). The Board previously published a proposed rule that permits depository institutions to use electronic communication (for example, communication via personal computer and modem) to provide disclosures required by the act and regulation, if the consumer agrees to such delivery. (A similar rule was also proposed under various other consumer financial services and fair lending regulations administered by the Board.) In response to comments received on the proposals, the Board is publishing for comment an alternative proposal on the electronic delivery of disclosures, together with proposed commentary that would provide further guidance on electronic communication issues.

**DATES:** Comments must be received by October 29, 1999.

**ADDRESSES:** Comments, which should refer to Docket No. R-1044, may be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, DC 20551. Comments addressed to Ms. Johnson may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m. weekdays, and to the security control room at all other times. The mail room and the security control room, both in the

Board's Eccles Building, are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, N.W. Comments may be inspected in room MP-500 between 9:00 a.m. and 5:00 p.m., pursuant to §261.12, except as provided in § 261.14 of the Board's Rules Regarding the Availability of Information, 12 CFR §§ 261.12 and 261.14.

**FOR FURTHER INFORMATION CONTACT:** Michael L. Hentrel, Staff Attorney, or Jane E. Ahrens, Senior Counsel, Division of Consumer and Community Affairs, at (202) 452-2412 or (202) 452-3667. Users of Telecommunications Device for the Deaf (TDD) only, contact Diane Jenkins at (202) 452-3544.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

The Truth in Savings Act (TISA), 12 U.S.C. 4301 et seq., requires depository institutions to disclose to consumers 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.

The TISA and Regulation DD require a number of disclosures to be provided in writing, presuming that institutions provide paper documents. Under many laws that call for information to be in writing, information in electronic form is considered to be "written."

Information produced, stored, or communicated by computer is also generally considered to be a writing, where visual text is involved.

In May 1996, the Board revised Regulation E (Electronic Fund Transfers) following a comprehensive review. During that process, the Board determined that electronic communication

for delivery of information required by federal laws governing financial services could effectively reduce compliance costs without adversely affecting consumer protections. Consequently, the Board simultaneously issued a proposed rule to permit financial institutions to use electronic communication to deliver disclosures that Regulation E requires to be given in writing. (61 FR 19696, May 2, 1996.) The 1996 proposal required that disclosures be provided in a form the consumer may retain, a requirement that institutions could satisfy by providing information in a format that may be printed or downloaded. The proposed rule also allowed consumers to request a paper copy of a disclosure for up to one year after its original delivery.

Following a review of the comments, on March 25, 1998, the Board issued an interim rule under Regulation E (the “interim rule”), 63 FR 14528. The Board also published proposals under Regulations DD (Truth in Savings), 63 FR 14533, M (Consumer Leasing), 63 FR 14538, Z (Truth in Lending), 63 FR 14548, and B (Equal Credit Opportunity), 63 FR 14552 (collectively, the “March 1998 proposed rules”). The rules would apply to financial institutions, creditors, lessors, and other entities that are required to give disclosures to consumers and others. (For ease of reference, this background section uses the terms “financial institutions,” “institutions,” and “consumers.”) The interim rule and the March 1998 proposed rules were similar to the May 1996 proposed rule; however, they did not require financial institutions to provide paper copies of disclosures to a consumer upon request if the consumer previously agreed to receive disclosures electronically. The Board believed that most institutions would accommodate consumer requests for paper copies when feasible or redeliver disclosures electronically; and the Board encouraged financial institutions to do so.

The March 1998 proposed rules and the interim rule permitted financial institutions to provide disclosures electronically if the consumer agreed, with few other requirements. The rule

was intended to provide flexibility and did not specify any particular method for obtaining a consumer's agreement. Whether the parties had an agreement would be determined by state law. The proposals and the interim rule did not preclude a financial institution and a consumer from entering into an agreement electronically, nor did they prescribe a formal mechanism for doing so.

The Board received approximately 200 written comments on the interim rule and the March 1998 proposed rules. The majority of comments were submitted by financial institutions and their trade associations. Industry commenters generally supported the use of electronic communication to deliver information required by the TISA and Regulation DD. Nevertheless, many sought specific revisions and additional guidance on how to comply with the disclosure requirements in particular transactions and circumstances.

Industry commenters were especially concerned about the condition that a consumer had to "agree" to receive information by electronic communication, because the rule did not specify a method for establishing that an "agreement" was reached. These commenters believed that relying on state law created uncertainty about what constitutes an agreement and, therefore, potential liability for noncompliance. To avoid uncertainty over which state's laws apply, some commenters urged the Board to adopt a federal minimum standard for agreements or for informed consent to receive disclosures by electronic communication. These commenters believed that such a standard would avoid the compliance burden associated with tailoring legally binding "agreements" to the contract laws of all jurisdictions where electronic communications may be sent.

Consumer advocates generally opposed the March 1998 interim rule and proposed rules. Without additional safeguards, they believed, consumers may not be provided with adequate information about electronic communications before an "agreement" is reached. They also

believed that promises of lower costs could induce consumers to agree to receive disclosures electronically without a full understanding of the implications. To avoid such problems, they urged the Board, for example, either to require institutions to disclose to consumers that their account with the institution will not be adversely affected if they do not agree to receive electronic disclosures, or to permit institutions to offer electronic disclosures only to consumers who initiate contact with the institution through electronic communication. They also noted that some consumers will likely consent to electronic disclosures believing that they have the technical capability to retrieve information electronically, but might later discover that they are unable to do so. They questioned consumers' willingness and ability to access and retain disclosures posted on Internet websites, and expressed their apprehension that the goals of federally mandated disclosure laws will be lost.

Consumer advocates and others were particularly concerned about the use of electronic disclosures in connection with home-secured loans and certain other transactions that consumers typically consummate in person (citing as examples automobile loans and leases, short-term "payday" loans, or home improvement financing contracts resulting from door-to-door sales). They asserted that there is little benefit to eliminating paper disclosures in such transactions and that allowing electronic disclosures in those cases could lead to abusive practices. Accordingly, consumer advocates and others believed that paper disclosures should always accompany electronic disclosures in mortgage loans and certain other transactions, and that consumers should have the right to obtain paper copies of disclosures upon request for all types of transactions (deposit account, credit card, loan or lease, and other transactions).

A final issue raised by consumer advocates was the integrity of disclosures sent electronically. They stated that there may be instances when the consumer and the institution

disagree on the terms or conditions of an agreement and consumers may need to offer electronic disclosures as proof of the agreed-upon terms and to enforce rights under consumer protection laws. Thus, to assure that electronic documents have not been altered and that they accurately reflect the document originally sent, consumer advocates recommended that the Board require that electronic disclosures be authenticated by an independent third party.

The Board's Consumer Advisory Council considered the electronic delivery of disclosures in 1998 and again in 1999. Many Council members shared views similar to those expressed in written comment letters on the 1998 proposals. For example, some Council members expressed concern that the Board was moving too quickly in allowing electronic disclosures for certain transactions, and suggested that the Board might go forward with electronic disclosures for deposit accounts while proceeding more slowly on credit and lease transactions. Others expressed concern about consumer access and consumers' ability to retain electronic disclosures. They believed that, without specific guidance from the Board, institutions would provide electronic disclosures without knowing whether consumers could retain or access the disclosures, and without establishing procedures to address technical malfunctions or nondelivery. The Council also discussed the integrity and security of electronic documents.

## **II. Overview of Proposed Revisions**

Based on a review of the comments and further analysis, the Board is requesting comment on a modified proposed rule that is more detailed than the interim rule and the March 1998 proposed rules. It is intended to provide specific guidance for institutions that choose to use electronic communication to comply with Regulation DD's requirements to provide written disclosures, and ensure effective delivery of disclosures to consumers through this medium. Though detailed, the proposal provides flexibility for compliance with the electronic

communication rules. The modified proposal recognizes that some disclosures may warrant different treatment under the rule. Some disclosures are generally available to the public--for example, bank account fee schedules. Under the modified proposal, such disclosures could be made available electronically without obtaining a consumer's consent. Where written disclosures are made to consumers who are transacting business in person, these disclosures generally would have to be made in paper form.

The Board is soliciting comment on a modified approach that addresses both industry and consumer group concerns. Under the proposal, depository institutions would have to provide specific information about how the consumer can receive and retain electronic disclosures--through a standardized disclosure statement--before obtaining consumers' acceptance of such delivery, with some exceptions. If they satisfy these requirements and obtain consumers' affirmative consent, depository institutions would be permitted to use electronic communications. As a general rule an institution would be permitted to offer the option of receiving electronic disclosures to all consumers, whether they initially contact the institution by electronic communication or otherwise. To address concerns about potential abuses, however, the proposal provides that if a consumer contracts to open a deposit account in person, initial disclosures must be given in paper form.

Depository institutions would have the option of delivering disclosures to an e-mail address designated by the consumer or making disclosures available at another location such as the institution's website, for printing or downloading. If the disclosures are posted at a website location, depository institutions generally must notify consumers at an e-mail address

about the availability of the information. (Depository institutions may offer consumers the option of receiving alert notices at a postal address.) The disclosures must remain available at that site for 90 days.

Disclosures provided electronically would be subject to the “clear and conspicuous” standard, and the existing format, timing, and retainability rules in Regulation DD. For example, to satisfy the timing requirement, if disclosures are due at the time a deposit account is being opened electronically, the disclosure would have to appear on the screen before the consumer could complete the process.

Depository institutions generally must provide a means for consumers to confirm the availability of equipment to receive and retain electronic disclosure documents. A depository institution would not otherwise have a duty to verify consumers’ actual ability to receive, print or download the disclosures. Some commenters suggested that institutions should be required to verify delivery by return receipt. The Board solicits comment on the need for such a requirement and the feasibility of that approach.

As previously mentioned, consumer advocates and others have expressed concerns that electronic documents can be altered more easily than paper documents. The issue of the integrity and security of electronic documents affects electronic commerce in general and is not unique to the written disclosures required under the consumer protection laws administered by the Board. Consumers' ability to enforce rights under the consumer protection laws could be impaired in some cases, however, if the authenticity of disclosures that they retain cannot be demonstrated. Signatures, notary seals, and other established verification procedures are used to detect alterations for transactions memorialized in paper form. The development of similar devices for

electronic communications should reduce uncertainty over time about the ability to use electronic documents for resolving disputes.

The Board's rules require institutions to retain evidence of compliance with Regulation DD. Specific comment is solicited on the feasibility of complying with a requirement that institutions provide disclosures in a format that cannot be altered without detection, or have systems in place capable of detecting whether or not information has been altered, as well as the feasibility of requiring use of independent certification authorities to verify disclosure documents.

Elsewhere in today's Federal Register, the Board is publishing similar proposals for comment under Regulations B, E, M, and Z. In a separate notice the Board is publishing an interim rule under Regulation DD, to permit depository institutions to use electronic communication to deliver disclosures on periodic statements. For ease of reference, the Board has assigned new docket numbers to the modified proposals published today.

### **III. Section-by-Section Analysis**

Pursuant to its authority under section 269 of the TISA, the Board proposes to amend Regulation DD to permit institutions to use electronic communication to provide the disclosures required by this regulation to be in writing. Below is a section-by-section analysis of the rules for providing disclosures by electronic communication, including references to proposed commentary provisions.

#### **Section 230.2 Definitions**

##### (q) Periodic Statement

The interim rule under Regulation DD permits institutions to use electronic communication to deliver disclosures on periodic statements. Comment 230.2(q)-1(ii), which addresses information provided by computer through home banking services, would be deleted as obsolete.

### **Section 230.3 General Disclosure Requirements**

#### 3(g) Electronic Communication

##### 3(g)(1) Definition

The definition of the term "electronic communication" in the March 1998 proposed rule remains unchanged. Section 230.3(g)(1) limits the term to a message transmitted electronically that can be displayed on equipment as visual text, such as a message that is displayed on a computer monitor screen. Most commenters supported the term as defined in the March 1998 proposed rule. Some commenters favored a more expansive definition that would encompass communications such as audio and voice response telephone systems. Because the proposal is intended to permit electronic communication to satisfy the statutory requirement for written disclosures, the Board believes visual text is an essential element of the definition.

Commenters asked the Board to clarify the coverage of certain types of communications. A few commenters asked about communication by facsimile. Facsimiles are initially transmitted electronically; the information may be received either in paper form or electronically through software that allows a consumer to capture the facsimile, display it on a monitor, and store it on a computer diskette or drive. Thus, information sent by facsimile may be subject to the provisions governing electronic communication. When disclosures are sent by facsimile, a depository institution should comply with the requirements for electronic communication unless it knows that

the disclosures will be received in paper form. Proposed comment 3(g)(1)-1 contains this guidance.

### 3(g)(2) Electronic Communication between Depository Institution and Consumer

Section 230.3(g)(2) would permit depository institutions to provide disclosures using electronic communication, if the institution complies with provisions in new § 230.3(g)(3), discussed below.

#### 1. Presenting Disclosures in a Clear and Conspicuous Format

The Board does not intend to discourage or encourage specific types of technologies. Regardless of the technology, however, disclosures provided electronically must be presented in a clear and conspicuous format as is the case for all written disclosures under the act and regulation. See § 230.3(a).

When consumers consent to receive disclosures electronically and they confirm that they have the equipment to do so, depository institutions generally would have no further duty to determine that consumers are able to receive the disclosures. Institutions do have the responsibility of ensuring sure the proper equipment is in place in instances where the institution controls the equipment. Proposed comment 3(g)(2)-1 contains this guidance.

#### 2. Providing Disclosures in a Form the Consumer May Keep

As with other written disclosures, information provided by electronic communication must be in a form the consumer can retain. Under the March 1998 proposals and the interim rule, a depository institution would satisfy this requirement by providing information that can be printed or downloaded. The modified proposal adopts the same approach but also provides that the information must be sent to a specified location to ensure that consumers have an adequate opportunity to retain the information.

Consumers communicate electronically with depository institutions through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), a consumer may not have the ability at a given time to preserve TISA disclosures presented on-screen. Therefore, when a depository institution provides disclosures by electronic communication, to satisfy the retention requirements, the institution must send the disclosures to a consumer's e-mail address or other location where information may be retrieved at a later date. Proposed comment 3(g)(2)-2 contains this guidance; see also the discussion under § 230.3(g)(4), below. In instances where an institution controls an electronic terminal used to provide electronic disclosures, an institution may provide equipment for the consumer to print a paper copy in lieu of sending the information to the consumer's e-mail address or posting the information at another location such as the institution's website. See proposed comment 3(g)(2)-1.

### 3. Timing

Institutions must ensure that electronic disclosures comply with all relevant timing requirements of the regulation. For example, account-opening disclosures must be provided before an account is opened or a service is provided. The rule ensures that consumers have an opportunity to read important information about costs and other terms before opening an account or agreeing to have a service provided.

To illustrate the timing requirements for electronic communication, assume that a consumer is interested in opening a checking account and uses a personal computer at home to access a bank's website on the Internet. The institution provides disclosures to the consumer about the use of electronic communication (the § 230.3(g)(3) disclosures discussed below) and the consumer responds affirmatively. If the institution's procedures permit the consumer to open

the account at that time, disclosures required under § 230.4 would have to be provided. Thus, the disclosures must automatically appear on the screen or the consumer must be required to access the information before the account is opened (or before the consumer pays any fees). The timing requirements for providing account-opening disclosures would not be met if, in this example, the bank permitted the consumer to open a deposit account and sent disclosures to an e-mail address thereafter. Proposed comment 3(g)(2)-3 contains this guidance.

On the other hand, assume that a consumer desires to open an account and the institution delays processing of the consumer's request to open the account until the required disclosures have been delivered by e-mail. In that case the information would not have to also appear on the screen; delivery to the consumer's e-mail address would be sufficient. In either case, the consumer must be given the opportunity to receive the disclosures before opening the account.

#### 3(g)(2)(ii) In-Person Exception

The proposal contains an exception to the general rule allowing information required by Regulation DD to be provided by electronic communication; where the exception applies, paper disclosures would be required. The exception, contained in § 230.3(g)(2)(ii), seeks to address concerns about potential abuses where consumers are transacting business in person but are offered disclosures in electronic form. In such transactions, there is a general expectation that consumers would be given paper copies of disclosures along with paper copies of other documents evidencing the transaction.

Under § 230.3(g)(2)(ii), if a consumer opens an account in person, the depository institution must provide account-opening disclosures in paper form. For example, if a consumer opens a deposit account at a depository institution and is provided with TISA account disclosures at that time, the institution would be required to provide those disclosures in paper form; directing

the consumer to disclosures posted on the institution's website would not be sufficient. An institution also complies if a consumer opens an account on the Internet and is sent disclosures electronically at or around that time, even though the institution's procedures require the consumer to visit the institution at a later time to complete the transaction (for example, to complete a signature card). Proposed comment 3(g)(2)(ii)-1 contains this guidance. If a consumer makes a request in person for account disclosures pursuant to § 230.4(a)(2), the disclosures also must be provided in paper form.

### 3(g)(3) Disclosure Notice

Section 230.3(g)(3) would identify the specific steps required before an institution can use electronic communication to satisfy the regulation's disclosure requirements. Proposed Model Forms B-10 and B-11 and proposed Sample Forms B-13 and B-14, are published to aid compliance with these requirements.

### 3(g)(3)(i) Notice by Depository Institution

Section 230.3(g)(3)(i) outlines the information that depository institutions must provide before electronic disclosures can be given. The depository institution must: (1) describe the information to be provided electronically and specify whether the information is also available in paper form or whether the account is offered only with electronic disclosures; (2) identify the address or location where the information will be provided electronically; and if it will be available at a location other than the consumer's e-mail address, specify for how long and where it can be obtained once that period ends; (3) specify any technical requirements for receiving and retaining information sent electronically, and provide a means for the consumer to confirm the availability of equipment meeting those requirements; and (4) provide a toll-free telephone number and, at the institution's option, an electronic or a postal address for questions about receiving electronic

disclosures, or for updating consumers' electronic addresses, and for seeking assistance with technical or other difficulties (see proposed comments to 3(g)(3)(i)). The Board requests comment on whether other information should be disclosed regarding the use of electronic communication and on any format changes that might improve the usefulness of the notice for consumers.

The Board also solicits comment on the benefits of requiring an annual notice in paper form to consumers who receive disclosures by electronic communication. The notice would contain general information about receiving electronic disclosures including, for example, a reminder of the toll-free telephone number where consumers may contact the institution if they have questions regarding their electronic disclosures. The Board solicits comment on whether an annual notice is feasible for all types of accounts covered by Regulation DD.

Under the proposal, the § 230.3(g)(i) disclosures must be provided, as applicable, before the depository institution uses electronic communication to deliver any information required by the regulation. The approach of requiring a standardized disclosure statement addresses, in several ways, the concern that consumers may be steered into using electronic communication without fully understanding the implications. Under this approach, the specific disclosures that would be delivered electronically must be identified, and consumers must be informed whether there is also an option to receive the information in paper form. Consumers must provide an e-mail address where one is required. Technical requirements must also be stated, and consumers must affirm that their equipment meets the requirements, and that they have the capability of retaining electronic disclosures by downloading or printing them (see proposed comment 3(g)(3)-1). Thus, the § 230.3(g)(3)(i) disclosures should allow consumers to make informed judgments about receiving electronic disclosures.

Some commenters requested clarification of whether a depository institution may use electronic communication to provide some required disclosures while using paper for others. The proposed rule would permit institutions to do so; the disclosure given under § 230.3(g)(3)(i) must specify which TISA disclosures will be provided electronically.

Commenters requested further guidance on a depository institution's obligation under the regulation if the consumer chooses not to receive information by electronic communication. A depository institution could offer a consumer the option of receiving disclosures in paper form, but it would not be required to do so. A depository institution could establish accounts or services for which disclosures are given only by electronic communication. Section 230.3(g)(3)(i)(A) would require institutions to tell consumers whether or not they have the option to receive disclosures in paper form. Section 230.3(g)(i)(D) would require depository institutions to provide a toll-free number that consumers could use to inform institutions if they wish to discontinue receiving electronic disclosures. In such cases, the institution must inform the consumer whether the deposit account is also available with disclosures in paper form. Proposed sample disclosure statements in which the consumer has an option to receive electronic or paper disclosures (Form B-13) or electronic disclosures only (Form B-14) are contained in appendix B.

#### 3(g)(3)(ii) Response by Consumer

Proposed § 230.3(g)(3)(ii) would require a means for the consumer to affirmatively indicate that disclosures may be provided electronically. Examples include a signature (for requests made in paper form) or a "check box" on a computer screen or a signature line (for requests made in paper form). The requirement is intended to ensure that consumers' consent is established knowingly and voluntarily, and that consent to receive electronic disclosures is not

inferred from consumers' use of the account or acceptance of general account terms. See proposed comment 3(g)(3)(ii)-1.

### 3(g)(3)(iii) Changes

Depository institutions would be required to notify consumers about changes to the information provided in the notice required by § 230.3(g)(3)(i)--for example, if technical upgrades to software are required. Proposed comment 3(g)(3)(iii)-1 contains this guidance.

The notice must include the effective date of the change and be provided before that date. Proposed comment 3(g)(3)(iii)-2 would provide that the notice must be sent a reasonable period of time before the effective date of the change. Although the number of days that constitutes reasonable notice may vary, depending on the type of change involved, the comment would provide institutions with a safe harbor: fifteen days' advance notice would be considered a reasonable time in all cases. The same time period is stated in similar proposals under Regulations B, Z, and E published in today's Federal Register. Comment is requested on whether a safe harbor of 15 days is an appropriate time period, and whether a uniform period for changes involving electronic communication is desirable. An alternative approach would adopt notice requirements that are consistent with change-in-terms requirements under the respective regulations. Under this approach, for example, the safe harbor would be 21 days under § 205.8 for Regulation E, 15 days under § 226.9 for Regulation Z, and 30 days under § 230.5 for Regulation DD. Proposed comment 3(g)(3)(iii)-3 contains guidance on delivery requirements for the notice of change.

The notice of a change must also include a toll-free telephone number or, at the institution's option, an address for questions about receiving electronic disclosures. For example, a consumer may call regarding problems related to a change, such as an upgrade to computer

software that is not provided to the institution. Consumers may also use the toll-free number if they wish to discontinue receiving electronic disclosures. In such cases, the institution must inform consumers whether the account is also available with disclosures in paper form. (See proposed comments 3(g)(3)(iii)-4 through -6.)

If the change involves providing additional disclosures by electronic communication, institutions generally would be required to provide the notice in § 230.3(g)(3)(i) and obtain the consumer's consent. That notice would not be required if the institution previously obtained the consumer's consent to the additional disclosures in its initial notice by disclosing the possibility and specifying which disclosures might be provided electronically in the future. Comment is specifically requested on this approach. A list of additional disclosures may be necessary to ensure that consumers' consent is informed and knowing (provided it does not cause confusion).

#### 3(g)(4) Address or Location to Receive Electronic Communication

Proposed § 230.3(g)(4) identifies addresses and locations where institutions using electronic communication may send information to the consumer. Institutions may send information to a consumer's electronic address, which is defined in proposed comment 3(g)(4)(i)-1 as an e-mail address that the consumer also may use for receiving communications from parties other than the depository institution. For periodic statements, for example, a depository institution's responsibility to provide disclosures by electronic communication will be satisfied when the information is sent to the consumer's e-mail address in accordance with the applicable proposed rules concerning delivery of disclosures by electronic communication.

Guidance accompanying the March 1998 proposed rule provided that an institution would not meet delivery requirements by simply posting information to an Internet site such as the institution's "home page" without appropriate notice on how consumers can access the

information. Industry commenters wanted to retain the flexibility of posting disclosures on an Internet website. They did not object to providing a separate notice alerting consumers about the disclosures' availability but requested more guidance on the issue. Consumer advocates and others expressed concern that the mere posting of information inappropriately places the responsibility to obtain disclosures on consumers, and undermines the purpose of the delivery requirements of the regulation.

The Board recognizes that currently, because of security and privacy concerns associated with data transmissions, a number of institutions may choose to provide disclosures at their websites, where the consumer may retrieve them under secure conditions. Under § 230.3(g)(4), a depository institution may make disclosures available to a consumer at a location other than the consumer's electronic address. The institution must notify the consumer when the information becomes available and identify the account involved. The notice must be sent to the electronic mail address designated by the consumer; the depository institution may, at its option, permit the consumer to designate a postal address. A proposed model form (Model Form B-12) is published below; see also proposed comment 3(g)(4)(ii)-1.

The Board believes it would be inconsistent with the TISA to require a consumer to initiate a search--for example, to search the website of each institution with which an account is held--to determine whether a disclosure has been provided. The proposed approach ensures that a consumer would not be required to check an institution's website repeatedly, for example, to learn whether the institution posted a change in a term that affects a deposit account held by the consumer.

The requirements of the regulation would be met only if the required disclosure is posted on the website and the consumer is notified of its availability in a timely fashion. For example,

depository institutions must provide a change-in-terms notice to consumers at least 30 days in advance of the change. (12 CFR 230.5(a).) For a change-in-terms notice posted on the Internet, an institution must both post the notice and notify consumers of its availability at least 30 days in advance of the change.

Commenters sought guidance on how long disclosures posted at a particular location must be available to consumers. There is a variety of circumstances when a consumer may not be able immediately to access the information due to illness, travel, or computer malfunction, for example. Under § 230.3(g)(4), institutions must post information that is sent to a location other than the consumer's e-mail address for 90 days. Proposed comment 3(g)(4)(ii)-2 contains this guidance.

Under the modified proposal, institutions that post information at a location other than the consumer's e-mail address are required--after the 90 day period--to make disclosures available to consumers upon request for a period of not less than two years from the date disclosures are required to be made, consistent with the record retention requirements under § 230.9(c). The Board requests comment on this approach, including suggestions for alternative means for providing consumers continuing access to disclosures.

#### **Section 230.4 Account Disclosures**

##### 4(a) Delivery of Account Disclosures--(1) Account Opening.

Account-opening disclosures required under § 230.4(a) set forth the terms and conditions of the account. These disclosures inform the consumers of the types and amount of any fees that may be imposed and the interest rate and annual percentage yield that will be paid on the account. Section 230.4(a)(1) requires that account disclosures be provided before an account is opened or

a service is provided, whichever is earlier; § 230.4(a)(2) requires that account disclosures be provided upon request.

Section 266(b) of TISA and § 230.4(a)(1) of the regulation provide that if the consumer is not physically present at the institution when an initial deposit is accepted (and the disclosures have not been furnished previously) the institution shall mail or deliver the disclosures no later than ten days after the account is opened or the service is provided. The rationale underlying the ten-day delay is that the institution cannot provide written disclosures before an account is opened in some instances (such as when an account is opened by telephone). Similarly, § 230.4(a)(2) provides that if the consumer is not present at the institution when the request for account disclosures is made, the institution must mail or deliver the disclosures within a reasonable time after the institution receives the request; comment 4(a)(2)(i)-3 clarifies that ten days is a reasonable time.

The Board indicated in the March 1998 proposed rule that the ten-day delay did not apply to accounts opened by electronic communication, such as on the Internet. The difficulties associated with an account opening by telephone, for example, do not exist for accounts opened electronically; thus, depository institutions would be required to provide account-opening disclosures before the account is opened or a service is provided, when an account is opened using electronic communication.

Views were mixed on the Board's interpretation that the ten-day delay in providing disclosures would not apply to accounts opened electronically. Many commenters were opposed to the Board's position. These commenters believed that it would be difficult to furnish transaction-specific disclosures before the account is opened. For example, interest rates may change after the consumer submits account information but before the account is opened in

accord with the institution's procedures. Other commenters supported the Board's position. They believed that all of the information that would be available to a consumer present in a depository institution is available to a consumer via a website controlled by the depository institution. A few commenters stated that it would not be overly burdensome to provide required disclosures on a website.

Based on the comments received and further analysis, the modified proposals address an institution's duties when a consumer is not physically present at the institution and uses electronic communication to open an account or request a service, or to request account disclosures. Section 230.4(a)(1)(ii) is proposed under the Board's exception authority in section 269(a)(3) of the act and would require institutions to provide account disclosures before an account is opened or a service is provided; the ten-day delay would not apply. Proposed § 230.4(a)(2)(i) would provide that institutions must respond to requests within a reasonable period after receiving the request and may provide account disclosures electronically to a consumer's electronic mail address or in paper form. The requirements of § 230.3(g)(3) would not apply to such requests. Comment is also requested on whether, in the context of electronic communication, the ten-day time period provided in comment 4(a)(2)(i)-3 for responding to requests for account disclosures is reasonable.

## **Section 230.8 Advertising**

### **8(a) Misleading or Inaccurate Advertisements**

Section 230.8 provides that advertising certain terms triggers the disclosure of other account terms. Although Regulation DD does not address multi-page advertisements, Regulations Z (Truth in Lending) and M (Consumer Leasing) permit creditors to provide required advertising disclosures on more than one page, if certain conditions are met. Elsewhere in today's

Federal Register, the Board is proposing guidance to creditors and lessors on how to comply with rules on multi-page advertising in the context of electronic advertisements. Consistent with the approach taken for Regulations Z and M, the Board believes that a depository institution that advertises electronically can comply with the regulation's advertising requirements if the required terms are disclosed at more than one location, under certain conditions. If a triggering term (such as a bonus or an annual percentage yield) appears at a location that does not contain other required disclosures, the location with the triggering term must clearly refer the consumer to the page or location that sets forth clearly and conspicuously all additional required disclosures. Proposed comment 8(a)-9 contains this guidance.

#### 8(b) Permissible Rates

Section 230.8(b) provides that an advertisement may state an interest rate, as long as the interest rate is stated in conjunction with, but not more conspicuously than, the annual percentage yield to which it relates. Proposed comment 8(b)-4 contains guidance on how this rule applies to rates stated in an electronic advertisement.

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

Section 230.8(e) exempts advertisements made through broadcast or electronic media, such as television and radio, from several of the advertising disclosures. The Board provided guidance on the scope of the exemption in the supplementary information to the March 1998 proposed rule. The Board stated that the "electronic media" exemption would not apply to advertisements made electronically, such as those posted on the Internet.

The rationale for the broadcast and electronic media exemption is that these media have time or space constraints that make it extremely burdensome to provide the required disclosures.

The Board believes that advertisements posted on the Internet generally do not have these

constraints. A few commenters disagreed. They stated that there are space constraints on “non-proprietary” websites and urged the Board to apply the exemption to third-party websites. The Board believes, however, that space constraints on a non-proprietary website are not significantly different than those for a print advertisement. Thus, advertisements made electronically such as advertisements posted on the Internet are subject to Regulation DD’s general advertising rules. Proposed comment 8(e)(1)(i)-1 contains this guidance.

### **Appendix B to Part 230 -- Model Clauses and Sample Forms**

The Board solicits comment on three proposed model forms and two sample forms for use by depository institutions to aid compliance with the disclosure requirements of §§ 230.3(g)(3) and (g)(4). Model Forms B-10 and B-11 would implement § 230.3(g)(3), regarding the notice that depository institutions must give prior to using electronic communication to provide required disclosures. Model Form B-12 would implement § 230.3(g)(4), regarding notices to consumers about the availability of electronic disclosures at locations such as the depository institution’s website. Use of any modified version of these forms would be in compliance as long as the institution does not delete information required by the regulation or rearrange the format so as to affect the substance, clarity, or meaningful sequence of the disclosure. For example, institutions that combine Regulation E and Regulation DD disclosures on a deposit account can modify the model form to provide a single disclosure statement about electronic delivery of those disclosures.

Sample Form B-13 illustrates the disclosures under § 230.3(g)(3) for a deposit account. The sample assumes that the institution also offers paper disclosures for consumers who choose

not to receive electronic disclosures. Sample Form B-14 assumes that consumers must accept electronic disclosures if they want to open the deposit account.

#### Additional Issues Raised by Electronic Communication

##### Preemption

A few commenters suggested that any final rule issued by the Board permitting electronic disclosures should explicitly preempt any state law requiring paper disclosures. Under Appendix C of the regulation, state laws are preempted if they are inconsistent with the act and regulation and only to the extent of the inconsistency. The proposed rule would provide depository institutions with the option of giving required disclosures by electronic communication as an alternative to paper. There is no apparent inconsistency with the act and regulation if state laws require paper disclosures. The Board, however, will review preemption issues that are brought to the Board's attention. Appendix C outlines the Board's procedures for determining whether a specific law is preempted, which will guide the Board in any determination requested by a state, depository institution, or other interested party following publication of a final rule regarding electronic communication.

#### **IV. Form of Comment Letters**

Comment letters should refer to Docket No. R-1044, and, when possible, should use a standard typeface with a type size of 10 or 12 characters per inch. This will enable the Board to convert the text to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Also, if accompanied by an original document in paper form, comments may be submitted on 3½ inch computer diskettes in any IBM-compatible DOS- or Windows-based format.

#### **V. Initial Regulatory Flexibility Analysis**

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation DD. Although the proposal would add disclosure requirements with respect to electronic communication, overall, the proposed amendments are not expected to have any significant impact on small entities. A depository institution's use of electronic communication to provide disclosures required by the regulation is optional. The proposed rule would give depository institutions flexibility in providing disclosures. A final regulatory flexibility analysis will be conducted after consideration of comments received during the public comment period.

## **VI. Paperwork Reduction Act**

In accordance with the Paperwork Reduction Act of 1995 (44 U.S.C. 3506; 5 CFR 1320 Appendix A.1), the Board reviewed the proposed rule under the authority delegated to the Board by the Office of Management and Budget (OMB). 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 number. The OMB control number is 7100-0271.

The collection of information requirements relevant to this proposed rulemaking are in 12 CFR Part 230. This information is mandatory (12 U.S.C. 4301 et seq.) to evidence compliance with the requirements of the Regulation DD and the Truth in Savings Act (TISA). The revised requirements would be used to ensure adequate disclosure of basic terms, costs, and rights relating to services affecting consumers holding deposit accounts and receiving certain disclosures by electronic communication. The respondents/recordkeepers are for-profit depository institutions, including small businesses. Institutions are also required to retain records for 24 months. This regulation applies to all types of depository institutions, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions would allow institutions the option of using electronic communication (for example, via personal computer and modem) to provide disclosures required by the regulation. Although the proposal would add disclosure requirements with respect to electronic communication, the optional use of electronic communication would likely reduce the paperwork burden of depository institutions. With respect to state member banks, it is estimated

that there are 988 respondents/recordkeepers and an average frequency of 87,071 responses per respondent each year. Therefore, the current amount of annual burden is estimated to be 1,464,216 hours. There is estimated to be no additional annual cost burden and no capital or start-up cost.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises; however, any information obtained by the Federal Reserve may be protected from disclosure under exemptions (b)(4), (6), and (8) of the Freedom of Information Act (5 U.S.C. 522(b)(4), (6) and (8)). The disclosures and information about error allegations are confidential between institutions and the customer.

The Federal Reserve requests comments from institutions, especially state member banks, that will help to estimate the number and burden of the various disclosures that would be made in the first year this proposed regulation would be effective. Comments are invited on: (a) the cost of compliance; (b) ways to enhance the quality, utility, and clarity of the information to be disclosed; and (c) ways to minimize the burden of disclosure on respondents, including through the use of automated disclosure techniques or other forms of information technology. Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0271), Washington, DC 20503, with copies of such comments sent to Mary M. West, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 97, Board of Governors of the Federal Reserve System, Washington, DC 20551.

**List of Subjects in 12 CFR Part 230**

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

### **Text of Proposed Revisions**

Certain conventions have been used to highlight proposed changes to Regulation DD. New language is shown inside bold-faced arrows and deletions are shown in 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 is amended by adding a new paragraph (g) to read as follows:

#### **§ 230.3 General disclosure requirements.**

\* \* \* \* \*

<(g) Electronic communication. (1) Definition. Electronic communication means a message transmitted electronically between a consumer and a depository institution in a format that allows visual text to be displayed on equipment such as a personal computer monitor.

(2) Electronic communication between depository institution and consumer. (i) General. Except as provided in paragraph (g)(2)(ii) of this section, a depository institution that has complied with paragraph (g)(3) of this section may provide by electronic communication any information required by this regulation to be in writing.

(ii) In-person exception. When a consumer opens a deposit account or requests a service in person, disclosures required under § 230.4(a)(1) shall be provided in paper form, unless the consumer previously initiated the process of opening the account by electronic communication

and disclosures were provided in compliance with paragraphs (g)(3)(i) and (g)(3)(ii) of this section at or around that time. A depository institution shall also provide account disclosures in paper form to a consumer who makes a request in person pursuant to § 230.4(a)(2).

(3) Disclosure notice. The disclosure notice required by this paragraph shall be provided in a manner substantially similar to the applicable model form set forth in Appendix B of this part (Model Forms B-10 and B-11).

(i) Notice by depository institution. A depository institution shall:

(A) Describe the information to be provided electronically and specify whether the information is also available in paper form or whether the account is offered only with electronic disclosures;

(B) Identify the address or location where the information will be provided electronically; and if it is made available at a location other than the consumer's electronic address, how long the information will be available, and how it can be obtained once that period ends;

(C) Specify any technical requirements for receiving and retaining information sent electronically, and provide a means for the consumer to confirm the availability of equipment meeting those requirements; and

(D) Provide a toll-free telephone number and, at the institution's option, an address for questions about receiving electronic disclosures, for updating consumers' electronic addresses, and for seeking technical or other assistance related to electronic communication.

(ii) Response by consumer. A depository institution shall provide a means for the consumer to accept or reject electronic disclosures.

(iii) Changes. (A) A depository institution shall notify affected consumers of any change to the information provided in the notice required by paragraph (g)(3)(i) of this section. The

notice shall include the effective date of the change and must be provided before that date. The notice shall also include a toll-free telephone number, and, at the institution's option, an address for questions about receiving electronic disclosures.

(B) In addition to the notice under paragraph (g)(3)(iii)(A) of this section, if the change involves providing additional disclosures by electronic communication, a depository institution shall provide the notice in paragraph (g)(3)(i) of this section and obtain the consumer's consent. A notice is not required under paragraph (g)(3)(i) of this section if the institution's initial notice states that additional disclosures may be provided electronically in the future and specifies which disclosures could be provided.

(4) Address or location to receive electronic communication. A depository institution that uses electronic communication to provide information required by this regulation shall:

- (i) Send the information to the consumer's electronic address; or
- (ii) Post the information for at least 90 days at a location such as a website, and send a notice to the consumer when the information becomes available. Thereafter the information shall be available upon request for a period of not less than two years from the date disclosures are required to be made. The notice required by paragraph (g)(4)(ii) shall identify the account involved, shall be sent to an electronic address designated by the consumer (or to a postal address, at the institution's option), and shall be substantially similar to the model form set forth in Appendix B of this part (Model Form B-12).=

3. Section 230.4 is amended by revising paragraph (a)(1) and paragraph (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= [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) Electronic communication. If a consumer is not present at the institution and uses electronic communication to open an account or request a service, the disclosures required under paragraph (a)(1) of this section must be provided before an account is opened or a service is provided.

(2) Requests. (i) A depository institution shall provide account disclosures to a consumer upon request. If the consumer is not present at the institution when a request is made, 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 at the consumer's electronic address. The requirements of § 230.3(g)(3) shall not apply.=

\* \* \* \* \*

4. Appendix B to Part 230 is amended by:

- a. Adding entries for Appendices B-10 through B-14 to the table of contents at the beginning of the appendix; and
- b. Adding new Appendices B-10, B-11, B-12, B-13, and B-14.

The additions read as follows:

**APPENDIX B TO PART 230 -- MODEL DISCLOSURE CLAUSES AND SAMPLE FORMS**

\* \* \* \* \*

<B-10--Model Disclosures for Electronic Communication (§ 230.3(g)(3)) (Disclosures Available in Paper Form or Electronically)

B-11--Model Disclosures for Electronic Communication (§ 230.3(g)(3)) (Disclosures Available Only Electronically)

B-12--Model Notice for Delivery of Information Posted at Certain Locations (§ 230.3(g)(4))

B-13--Sample Form for Electronic Communication (§ 230.3(g)(3)) (Disclosures Available in Paper Form or Electronically)

B-14--Sample Form for Electronic Communication (§ 230.3(g)(3)) (Disclosures Available Only Electronically) =

**<B-10 MODEL DISCLOSURES FOR ELECTRONIC COMMUNICATION (§ 230.3(g)(3))**  
(Disclosures Available in Paper or Electronically)

**You can choose to receive important information required by the Truth in Savings Act in paper or electronically.**

**Read this notice carefully and keep a copy for your records.**

C You can choose to receive the following information in paper form or electronically:  
(description of specific disclosures to be provided electronically).

C How would you like to receive this information

I want paper disclosures.

I want electronic disclosures.

C [We may provide the following additional disclosures electronically in the future:  
(description of specific disclosures).]

C [If you choose electronic disclosures, this information will be available at: (specify location) for \_\_\_\_ days. After that, the information will be available upon request (State how the consumer can obtain the information). When the information is posted, we will send you a message at the electronic mail address you designate here: (consumer's electronic mail address).]

[If you choose electronic disclosures this information will be sent to the electronic mail address that you designate here: (consumer's electronic mail address).]

C To receive this information you will need: (list hardware and software requirements). Do you have access to a computer that satisfies these requirements?

Yes

No

C Do you have access to a printer, or the ability to download information, in order to keep copies for your records?

Yes

No

C To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, contact us at (telephone number).

**B-11 MODEL DISCLOSURES FOR ELECTRONIC COMMUNICATION (§ 230.3(g)(3))**  
(Disclosures Available Only Electronically)

**You will receive important information required by the  
Truth in Savings Act electronically.**

**Read this notice carefully and keep a copy for your records.**

C The following information will be provided electronically: (description of specific disclosures to be provided electronically).

- C This deposit account is not available unless you accept electronic disclosures.
- C [We may provide the following additional disclosures electronically in the future:  
(description of specific disclosures).]
- C [If you choose electronic disclosures, this information will be available at: (specify  
location) for \_\_\_\_ days. After that, the information will be available upon request (state  
how the consumer can obtain the information). When the information is posted, we will  
send you a message at the electronic mail address you designate here: (consumer's  
electronic mail address).]
- [If you choose electronic disclosures this information will be sent to the electronic mail  
address that you designate here: (consumer's electronic mail address).]
- C To receive this information you will need: (list hardware and software requirements).  
Do you have access to a computer that satisfies these requirements?  
 Yes  No
- C Do you have access to a printer, or the ability to download information, in order to keep  
copies for your records?  
 Yes  No
- Do you want this deposit account with electronic disclosures?  
 Yes  No
- C To update your electronic address, if you have questions about receiving disclosures, or  
need technical or other assistance concerning these disclosures, contact us at (telephone  
number).

**B-12 MODEL NOTICE FOR DELIVERY OF INFORMATION POSTED AT CERTAIN  
LOCATIONS (§ 230.3(g)(4))**

Information about your (identify account) is now available at [website address or other location]. The information discusses (describe the disclosure). It will be available for \_\_\_ days.

**B-13 SAMPLE FORM FOR ELECTRONIC COMMUNICATION (§ 230.3(g)(3))**  
(Disclosures Available in Paper or Electronically)

**You will receive important information required by the  
Truth in Savings Act electronically.**

**Read this notice carefully and keep a copy for your records.**

- C You can choose to receive the following information in paper form or electronically: Annual percentage yields, fees and other terms of our deposit accounts; monthly statements; and change-in-terms.
- C Please indicate how you would like to receive this information:
- I want paper disclosures                       I want electronic disclosures
- C Information about your account will be available at our Internet website: *http://www.\_\_\_\_\_*  
*.com* for 90 days After that, the information will be available upon request by contacting us at *1-800-xxx-xxxx*. When the information is posted on our website, we will send you a message at your e-mail address:

insert address

- C To receive this information electronically, you will need: a minimum web browser version of (Browser name). Do you have access to a computer that satisfies these requirements?
- Yes                       No
- C Do you have access to a printer, or the ability to download information, in order to keep copies for your records?
- Yes                       No
- C Do you want this electronic fund transfer service with electronic disclosures?
- Yes                       No
- C To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, you may contact us by telephone at *1-800-xxx-xxxx* or by electronic mail at *\_\_\_\_\_help@isp.com*.

**B-14 SAMPLE FORM FOR ELECTRONIC COMMUNICATION (§ 230.3(g)(3))**  
(Disclosures Available Only Electronically)

**You will receive important information required by the  
Truth in Savings Act electronically.**

**Read this notice carefully and keep a copy for your records.**

- C The following account information is available electronically: Annual Percentage Yields, fees and other terms of our deposit accounts; monthly statements; and change-in-terms notices.
- C This account is available only if you accept these disclosures electronically.
- C Information about your account will be available at our Internet website: *http://www.\_\_\_\_\_*  
*.com* for 90 days After that, the information will be available upon request by contacting us at *1-800-xxx-xxxx*. When the information is posted on our website, we will send you a message at your e-mail address:

insert address

- C To receive this information electronically, you will need: a minimum web browser version of (Browser name). Do you have access to a computer that satisfies these requirements?  

9 Yes                      9 No
- C Do you have access to a printer, or the ability to download information, in order to keep copies for your records?  

9 Yes                      9 No
- C Do you want this electronic fund transfer service with electronic disclosures?  

9 Yes                      9 No
- C To update your electronic address, if you have questions about receiving disclosures, or need technical or other assistance concerning these disclosures, you may contact us by telephone at *1-800-xxx-xxxx* or by electronic mail at *\_\_\_\_\_help@isp.com*.

5. In Supplement I to Part 230 in Section 230.2--Definitions, under (q) Periodic Statement, paragraph 1.ii. is removed and paragraph 1.iii. is redesignated as paragraph 1.ii.

6. In Supplement I to Part 230, under Section 230.3-- General disclosure requirements, a new paragraph (g) Electronic communication, is added to read as follows:

\* \* \* \* \*

#### SUPPLEMENT I TO PART 230--OFFICIAL STAFF INTERPRETATIONS

\* \* \* \* \*

#### SECTION 230.3 General Disclosure Requirements

\* \* \* \* \*

##### <(g) Electronic communication

##### (g)(1) Definition

1. Coverage. Information transmitted by facsimile may be received in paper form or electronically, although the party initiating the transmission may not know at the time the disclosures are sent which form will be used. A depository institution that provides disclosures by facsimile should comply with the requirements for electronic communication unless the depository institution knows that the disclosures will be received in paper form.

##### (g)(2) Electronic Communication between Depository Institution and Consumer

1. Disclosures provided on institution's equipment. Institutions that control equipment providing electronic disclosures to consumers (for example, computer terminals in an institution's lobby or kiosks located in public places) must ensure that the equipment satisfies the regulation's requirements to provide disclosures in a clear and conspicuous format and in a form the consumer may retain. A depository institution that controls the equipment may provide a printer for the

consumers' use in lieu of sending the information to the consumer's electronic mail address or posting the information at another location such as the institution's website.

2. Retainability. Institutions must provide electronic disclosures in a retainable format (for example, they can be printed or downloaded). Consumers may communicate electronically with depository institutions through a variety of means and from various locations. Depending on the location (at home, at work, in a public place such as a library), a consumer may not have the ability at a given time to preserve TISA disclosures presented on-screen. To ensure that consumers have an adequate opportunity to retain the disclosures, the institution also must send them to the consumer's designated electronic mail address or to another location, for example, on the institution's website, where the information may be retrieved at a later date.

3. Timing and delivery. When a consumer opens an account on the Internet or by other electronic means, in order to meet the timing and delivery requirements, institutions must ensure that disclosures applicable at that time appear on the screen and are in a retainable format. The delivery requirements would not be met if disclosures do not either appear on the screen or if the consumer is allowed to open an account before receiving the disclosures. For example, an institution can provide a link to electronic disclosures appearing on a separate page as long as consumers cannot bypass the link and they are required to access the disclosures before completing the opening of the account.

(g)(2)(ii) In-person Exception

1. Account-opening disclosures in paper form. If a consumer opens a deposit account in person, the depository institution generally must provide account-opening disclosures in paper

form. For example, if a consumer visits a depository institution's branch office to open a deposit account, account-opening disclosures are required before the consumer opens an account or a service is provided and they must be provided in paper form; directing the consumer to disclosures posted on the institution's website would not be sufficient. If, however, a consumer makes a request on the Internet to open an account, a depository institution may send disclosures electronically at or around that time even though the depository institution's procedures require the consumer to visit a branch office at a later time to complete the agreement (for example, to execute a signature card).

(g)(3) Disclosure Notice

1. Consumer's affirmative responses. Even though a consumer accepts electronic disclosures in accordance with § 230.3(g)(3)(ii), a depository institution may deliver disclosures by electronic communication only if the consumer provides an electronic address where one is required, and responds affirmatively to questions about technical requirements, access to a printer or the ability to download information; (see sample forms B-13 and B-14 in Appendix B to this part).

(g)(3)(i) Notice by Depository Institution

1. Toll-free telephone number. The number must be toll-free for nonlocal calls made from an area code other than the one used in the institution's dialing area. Alternatively, a depository institution may provide any telephone number that allows a consumer to call for information and reverse the telephone charges.

2. Institution's address. Depository institutions have the option of providing either an electronic or postal address for consumers' use in addition to the toll-free telephone number.

3. Discontinuing electronic disclosures. Consumers may use the toll-free number (or optional address) if they wish to discontinue receiving electronic disclosures. In such cases, the institution must inform consumers whether the account is also available with disclosures in paper form.

(g)(3)(ii) Response by Consumer

1. Nature of consent. Consumers must agree to receive disclosures by electronic communication knowingly and voluntarily. An agreement to receive electronic disclosures is not implied from consumers' use of an account or acceptance of general account terms.

(g)(3)(iii) Changes

1. Examples. Examples of changes include a change in technical requirements, such as upgrades to software packages affecting the institution's disclosures provided on the Internet.

2. Timing for notices. A notice of a change must be sent a reasonable period of time before the effective date of the change. The length of a reasonable notice period may vary, depending on the type of change involved; however fifteen days is a reasonable time for providing notice in all cases.

3. Delivery of notices. An institution meets the delivery requirements if the notice of a change is sent to the address provided by the consumer for receiving other disclosures. For example, if the consumer provides an electronic address to receive notices about periodic statements posted at the institution's website, the same electronic address may be used for the change notice. The consumer's postal address must be used, however, if the consumer consented to additional disclosures by electronic communication when receiving the notice under §230.3(g)(3)(i) but provided a postal address to receive periodic statements in paper form.

4. Toll-free number. See comment 3(g)(3)(i)-1.

5. Institution's address. See comment 3(g)(3)(i)-2

6. Consumer inquiries. Consumers may use the toll-free telephone number (or optional address) for questions or assistance with problems related to a change, such as an upgrade to computer software that is not provided by the institution. Consumers may also use the toll-free number if they wish to discontinue receiving electronic disclosures; in such cases, the institution must inform consumers whether the account is also available with disclosures in paper form.

(g)(4) Address or location to receive electronic communication

(g)(4)(i)

1. Electronic address. A consumer's electronic address is an electronic mail address that may be used by the consumer for receiving communications transmitted by parties other than the depository institution.

(g)(4)(ii)

1. Identifying account involved. A depository institution is not required to identify an account by reference to the account number. For example, where the consumer does not have multiple accounts, and no confusion would result, the institution may refer to "your checking account," or when the consumer has multiple accounts the institution may use a truncated account number.

2. Availability. Information that is not sent to a consumer's electronic mail address must be available for at least 90 days from the date the information becomes available or from the date the notice required by section 230.3(g)(4)(ii) is sent to the consumer, whichever occurs later.=

7. In Supplement I to Part 230, under Section 230.8--Advertising, the following amendments are made:

a. Under (a) Misleading or inaccurate advertisements, a new paragraph 9. is added;

- b. Under (b) Permissible rates, a new paragraph 4. is added; and
- c. Under (e)(1) Certain Media, a new heading (e)(1)(i), and a new paragraph 1. are added.

The additions read as follows:

\* \* \* \* \*

#### Section 230.8 ADVERTISING

##### (a) Misleading or inaccurate advertisements

\* \* \* \* \*

<9. Electronic advertising. A depository institution that provides a multi-page advertisement electronically may display a triggering term (such as a bonus or an annual percentage yield) at one location, as long as the consumer is clearly referred--for example, by clicking an icon that directly connects the consumer--to the location that sets forth clearly and conspicuously the additional disclosures required by the regulation. For example, the icon could instruct the consumer to “click here for additional cost information.”=

\* \* \* \* \*

(b) Permissible rates

\* \* \* \* \*

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

\* \* \* \* \*

(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.=

\* \* \* \* \*

By order of the Board of Governors of the Federal Reserve System, August 31, 1999.

Jennifer J. Johnson,  
Secretary of the Board.  
BILLING CODE 6210-01-P