

FEDERAL RESERVE SYSTEM

12 CFR Part 230

[Regulation DD; Docket No. R-1003]

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule.

SUMMARY: The Board is publishing an interim rule amending Regulation DD, which implements the Truth in Savings Act. The interim rule allows depository institutions to deliver Regulation DD disclosures on periodic statements in electronic form if the consumer agrees. This interim rule is adopted in response to comments received on a proposed rule issued in March 1998, allowing depository institutions to provide all disclosures under Regulation DD in electronic form. Elsewhere in today's Federal Register, the Board is publishing, for further comment, a modified proposal covering all Regulation DD disclosures.

EFFECTIVE DATE: September 1, 1999.

FOR FURTHER INFORMATION CONTACT: Jane Ahrens, Senior Counsel, or Michael Hentrel, Staff Attorney, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551, at (202) 452-3667 or 452-2412. 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 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 proposed to amend Regulation E (Electronic Fund Transfers) to permit disclosures to be provided electronically (61 FR 19696, May 2, 1996). Based on the comments received on that proposal and further analysis, in March 1998 the Board proposed to amend four of its other regulations to allow institutions to provide disclosures electronically: Regulation DD (63 FR 14533, March 25, 1998), Regulation B (Equal Credit Opportunity; 63 FR 14552), Regulation M (Consumer Leasing; 63 FR 14538), and Regulation Z (Truth in Lending; 63 FR 14548) (collectively, the "March 1998 proposed rules"). In March 1998 the Board also issued an interim rule under Regulation E so that financial institutions could implement systems, such as home-banking programs, to provide account information electronically (63 FR 14528, March 25, 1998).

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 the 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 the proposed rules. Without additional safeguards, they believed, consumers may not be provided with adequate information about electronic communication 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 financial 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.

After careful consideration of the comments and further analysis, the Board is requesting comment on a modified rule under Regulation DD as well as the other four regulations (including Regulation E). The proposed amendments to Regulation DD and the other four regulations are published elsewhere in today’s Federal Register.

The Board is also issuing this interim rule under Regulation DD, pursuant to its authority under section 269 of the TISA, permitting depository institutions to deliver Regulation DD disclosures on periodic statements in electronic form, as discussed below.

II. Regulatory Revisions

Some depository institutions are prepared to offer on-line banking programs that would include the electronic delivery of periodic statements and other material now provided in paper form. These institutions have urged the Board to move forward with the electronic communication rulemakings, to facilitate the development of electronic commerce and enable them to realize cost savings by reducing or eliminating paper disclosures. Institutions have also requested that, pending the issuance of final rules, the Board adopt interim rules.

Based on the comments received and further analysis, the Board is issuing an interim rule allowing the issuance of periodic statements under Regulation DD. The electronic delivery of periodic statements for consumer asset accounts is already permissible under the Regulation E interim rule issued in March 1998. Institutions commonly provide a single periodic statement that complies with Regulation E and Regulation DD; thus, the issuance of a comparable interim rule for periodic statements under Regulation DD should allow institutions to implement electronic delivery of deposit account statements with a single set of procedures, and avoid the cost of printing and mailing the information in paper form. In addition to reducing paperwork and costs for institutions, the interim rule may benefit many consumers by allowing them to receive their periodic account statements, including required disclosures, more quickly and in a more convenient form. In addition to reducing paperwork and costs for institutions, the interim rule may benefit many consumers by allowing them to receive their periodic account statements, including required disclosures, more quickly and in a more convenient form. The Regulation DD interim rule follows the approach of the Regulation E interim rule.

Electronic delivery of periodic statements for open-end consumer credit accounts is currently permitted under the Board's Official Staff Commentary to Regulation Z, comment

5(b)(2)(ii)-3. Thus, an institution that issues combined periodic statements, covering deposit accounts along with open-end credit accounts (such as for overdrafts), can use electronic delivery for the combined statements and be in compliance with Regulations E, DD, and Z.

The interim rule under Regulation DD is limited to the electronic delivery of periodic statements. Other disclosures required by Regulation DD, such as account-opening disclosures and change-in-terms notices, are addressed in the modified proposals being published for comment. Additional public comment would be useful before a rule is issued permitting electronic delivery more generally. Institutions that opt to deliver periodic statements electronically are encouraged to test the approach outlined in the modified proposals; this may be helpful in assessing how well the modified proposals will work in practice.

The interim rule for Regulation DD incorporates various requirements set forth in the March 1998 proposed rule and in the Regulation E interim rule. For example, the periodic statement must be provided in a form that can be displayed as visual text, and must be clear and conspicuous and in a form that the consumer can retain. With regard to the rule that the consumer must agree to electronic delivery, the reference to state law is not intended to require a formal contract. The Board believes, however, that consumers should be clearly informed when they are consenting to the electronic delivery of Regulation DD periodic statements.

Comment 2(q)-1(ii) in the Regulation DD Official Staff Commentary states that a periodic statement does not include “information provided by computer through home banking services.” Prior to the adoption of this interim rule, if a depository institution provided account information electronically that might be deemed to constitute a periodic statement as defined in Regulation DD, the institution could not comply with the regulation by including the disclosures required by § 230.6 in the information provided electronically; rather, it would have to send paper periodic

statements including the required disclosures. The comment was intended to avoid this result.

Because electronic delivery of statements, including the required disclosures, will now be permissible, the comment appears to be unnecessary. In the modified proposal under Regulation DD, published elsewhere in today's Federal Register, the Board proposes to delete the comment.

III. Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the interim rule to Regulation DD. Overall, the 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 rule will relieve compliance burden by giving depository institutions flexibility in providing disclosures.

IV. 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 interim 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 for this interim rule is 7100-0271.

The collection of information requirements that are relevant to this interim rule are found in 12 CFR part 230. This information is mandatory (15 U.S.C. 4301 et seq.) 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. (12 CFR 230.6). Institutions are also required to retain records for 24 months. The respondents/recordkeepers are for-profit depository institutions, including small businesses. 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 imposed by this regulation.

Since the interim amendments provide an alternative method for delivering periodic statements, it is anticipated that the requirements will not be burdensome. The use of electronic communication will likely reduce the paperwork burden of depository institutions. Institutions will be able to use electronic communication to provide periodic statements rather than having to print and mail the information in paper form. There is estimated to be no additional annual cost burden and no capital or start-up cost.

With respect to the existing requirements of Regulation DD as they apply to state member banks, it is estimated that there are 988 respondents/recordkeepers and an average frequency of about 87,100 responses per respondent each year, and the current amount of annual burden is estimated to be roughly 1,464,000 hours.

Because the information is not provided to the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises; however, the information 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 are confidential between institutions and the customer.

The Board has a continuing interest in the public's opinions of the Federal Reserve's collections of information. At any time, comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden, may 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 Revisions

For the reasons set forth in the preamble, the Board amends 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. Under § 230.6, a new paragraph (c) is added to read as follows:

§ 230.6 Periodic statement disclosures.

* * * * *

(c) Electronic communication. (1) Definition. The term 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. A depository institution and a consumer may agree that the institution will send by electronic communication periodic-statement disclosures required by § 230.6. Periodic-statement disclosures sent by electronic communication to a consumer must comply with § 230.3 and any applicable timing requirements contained in this part.

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

Jennifer J. Johnson,
Secretary of the Board.
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