

FEDERAL RESERVE SYSTEM

12 CFR Part 229

Regulation CC; Docket No. R-1637

RIN 7100-AF 28

BUREAU OF CONSUMER FINANCIAL PROTECTION

12 CFR Part 1030

Docket No. CFPB-2018-0035

RIN 3170-AA31

Availability of Funds and Collection of Checks (Regulation CC)

AGENCY: Board of Governors of the Federal Reserve System (Board) and Bureau of Consumer Financial Protection (Bureau)

ACTION: Proposed rule and reopening of comment period for existing proposed rule.

SUMMARY: The Board and the Bureau (Agencies) are proposing amendments to Regulation CC, which implements the Expedited Funds Availability Act (EFA Act) (2018 Proposal), and are also providing an additional opportunity for public comment on certain amendments to Regulation CC that the Board proposed in 2011 (2011 Funds Availability Proposal). In the 2018 Proposal, the Agencies are proposing a calculation methodology for implementing a statutory requirement to adjust the dollar amounts in the EFA Act every five years by the aggregate annual percentage increase in the Consumer Price Index for Wage Earners and Clerical Workers (CPI-W) rounded to the nearest multiple of \$25. The 2018 Proposal would also implement the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) amendments to the EFA Act, which include extending coverage to American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam, and would make certain other technical amendments.

With regard to reopening comments on the 2011 Funds Availability Proposal, the Board published proposed amendments to Regulation CC in the *Federal Register* on March 25, 2011. As discussed below, the Board and the Bureau now have joint rulemaking authority with respect to subpart B of Regulation CC, related definitions, and appendices of the amendments that the Board proposed on that date. The Board and the Bureau are reopening the comment period for the 2011 Funds Availability Proposal.

DATES: Comments on the 2018 Proposal and the 2011 Funds Availability Proposal must be received on or before **[INSERT DATE 60 DAYS AFTER PUBLICATION IN THE FEDERAL REGISTER]**.

ADDRESSES: Comments should be directed to:

Board: You may submit comments, identified by Docket No. R-1637; RIN 7100 AF-28, by any of the following methods:

- *Agency Web site:* <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm>.
- *Email:* regs.comments@federalreserve.gov. Include the docket number and RIN in the subject line of the message.
- *Fax:* (202) 452-3819 or (202) 452-3102.
- *Mail:* Ann E. Misback, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW, Washington, DC 20551.

All public comments will be made available on the Board's web site at <http://www.federalreserve.gov/generalinfo/foia/ProposedRegs.cfm> as submitted, unless modified for technical reasons or to remove personally identifiable information at the commenter's request. Accordingly, comments will not be edited to remove any identifying or

contact information. Public comments may also be viewed electronically or in paper in Room 3515, 1801 K Street NW (between 18th and 19th Streets NW), between 9:00 a.m. and 5:00 p.m. on weekdays.

Bureau: You may submit comments, identified by Docket No. CFPB-2018-0035 or RIN 3170-AA31, by any of the following methods:

- *Federal eRulemaking Portal:* <http://www.regulations.gov>. Follow the instructions for submitting comments.
- *Email:* FederalRegisterComments@cfpb.gov. Include Docket No. CFPB-2018-0035 or RIN 3170-AA31 in the subject line of the email.
- *Mail/Hand Delivery/Courier:* Comment Intake, Bureau of Consumer Financial Protection, 1700 G Street, NW, Washington, DC 20552.

Instructions: All submissions should include the agency name and docket number or Regulatory Information Number (RIN) for this rulemaking. Because paper mail in the Washington, DC area and at the Bureau is subject to delay, commenters are encouraged to submit comments electronically. In general, all comments received will be posted without change to <http://www.regulations.gov>. In addition, comments will be available for public inspection and copying at 1700 G Street, NW, Washington, DC 20552, on official business days between the hours of 10 a.m. and 5 p.m. Eastern Time. You can make an appointment to inspect the documents by telephoning (202) 435-7275.

All comments, including attachments and other supporting materials, will become part of the public record and subject to public disclosure. Sensitive personal information, such as account numbers or Social Security numbers, should not be included. Comments will not be edited to remove any identifying or contact information.

FOR FURTHER INFORMATION CONTACT:

Board: Gavin L. Smith, Senior Counsel (202) 452-3474, Legal Division, or Ian C.B. Spear, Manager (202) 452-3959, Division of Reserve Bank Operations and Payment Systems; for users of Telecommunications Device for the Deaf (TDD) only, contact (202) 263-4869.

Bureau: Joseph Baressi and Marta Tanenhaus, Senior Counsels, Office of Regulations, at (202) 435-7700. If you require this document in an alternative electronic format, please contact CFPB_accessibility@cfpb.gov.

SUPPLEMENTARY INFORMATION:

I. 2018 Proposal

A. Background

Regulation CC (12 CFR part 229) implements the Expedited Funds Availability Act (EFA Act) and the Check Clearing for the 21st Century Act (Check 21 Act).¹ Subpart B of Regulation CC implements the requirements set forth in the EFA Act regarding the availability schedules within which banks must make funds available for withdrawal, exceptions to those schedules, disclosure of funds availability policies, and payment of interest. The EFA Act and subpart B of Regulation CC contain specified dollar amounts, including the minimum amount of deposited funds that banks must make available for withdrawal by opening of business on the next day for certain check deposits (“minimum amount”),² the amount a bank must make available when using the EFA Act’s permissive adjustment to the funds-availability rules for withdrawals by cash or other means (“cash withdrawal amount”),³ the amount of funds deposited

¹ Expedited Funds Availability Act, 12 U.S.C. 4001 *et seq.*; Check Clearing for the 21st Century Act, 12 U.S.C. 5001 *et seq.*

² The minimum amount is currently \$200. See section 1086(e) of the Dodd-Frank Act; 12 U.S.C. 4002(a)(2)(D).

³ The cash withdrawal amount is currently \$400. 12 U.S.C. 4002(b)(3)(B).

by certain checks in a new account that are subject to next-day availability (“new-account amount”),⁴ the threshold for using an exception to the funds-availability schedules when the aggregate amount of checks on any one banking day exceed the threshold amount (“large-deposit threshold”),⁵ the threshold for determining whether an account has been repeatedly overdrawn (“repeatedly overdrawn threshold”),⁶ and the civil liability amounts for failing to comply with the EFA Act’s requirements.⁷

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) made certain amendments to the EFA Act, and these amendments were effective on a date designated by the Secretary of the Treasury, July 21, 2011.⁸ Section 609(a) of the EFA Act, as amended by section 1086(d) of the Dodd-Frank Act,⁹ provides that the Board and the Director of the Bureau shall jointly prescribe regulations to carry out the provisions of the EFA Act, to prevent the circumvention or evasion of such provisions, and to facilitate compliance with such provisions.

Additionally, section 1086(f) of the Dodd-Frank Act added section 607(f) of the EFA Act, which provides that the dollar amounts under the EFA Act shall be adjusted every five years

⁴ The new-account amount is currently \$5,000. 12 U.S.C. 4003(a)(3).

⁵ The large-deposit threshold is currently \$5,000. 12 U.S.C. 4003(b)(1).

⁶ The repeatedly overdrawn threshold is currently \$5,000. 12 CFR 229.13(d). This dollar amount is not specified in the EFA Act, but is a result of the authority of the Board and the Bureau under section 604(b)(3) of the EFA Act (12 U.S.C. 4003(b)(3)) to establish reasonable exceptions to time limitations for deposit accounts that have been overdrawn repeatedly. The Board and the Bureau propose to use their authority under section 604(b)(3) and also their authority under section 609(a) (12 U.S.C. 4008(a)), which is discussed below, to index the repeatedly overdrawn threshold in the same manner as the other dollar amounts. The Board and the Bureau believe that indexing the repeatedly overdrawn threshold would be consistent with the need identified by Congress to prevent such dollar amounts from being eroded by inflation.

⁷ The civil liability amounts are currently “not less than \$100 nor greater than \$1,000” for an individual action and “not more than \$500,000 or 1 percent of the net worth” of a depository institution for a class action. 12 U.S.C. 4010(a).

⁸ Public Law 111-203, sections 1062, 1086, 1100H, 124 Stat. 2081 (2010); 75 FR 57252 (Sept. 20, 2010).

⁹ 12 U.S.C. 4008(a).

after December 31, 2011, by the annual percentage increase in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), as published by the Bureau of Labor Statistics, rounded to the nearest multiple of \$25.¹⁰

B. Proposed Effective Dates for Adjustments

The Agencies believe that section 607(f) is reasonably interpreted to provide for five years to elapse between a given set of adjustments and the next set of adjustments, with the first set of adjustments occurring sometime after December 31, 2011. As regulators of financial institutions, the Agencies are familiar with the challenges that institutions can face if changes to regulatory requirements are too frequent or abrupt. The Agencies believe that Congress intended to balance that concern with the need to prevent the EFA Act's dollar amounts from being eroded by inflation. Congress did so by providing that the adjustments would be effective at five-year intervals; by providing that the first set of adjustments would not occur until after December 31, 2011, which ensured that at least a full calendar year would elapse after the Dodd-Frank Act's enactment in mid-2010; and by providing that the adjustments would be rounded to the nearest multiple of \$25. Several years have now elapsed since December 31, 2011, and the Agencies intend to move towards issuing a final rule implementing section 607(f), while providing appropriate time after the issuance of that final rule for implementation by institutions.

The Agencies anticipate publishing the first set of adjustments as a final rule in the first quarter of 2019. They propose that the first set of adjustments have an effective date of April 1, 2020. The Agencies anticipate publishing the second set of adjustments in the first quarter of 2024. They propose that the second set of adjustments have an effective date of April 1, 2025.

¹⁰ 12 U.S.C. 4006(f).

The Agencies propose that each subsequent set of adjustments have an effective date of April 1 of every fifth year after 2025.

The proposed effective dates should provide institutions with sufficient time to make any necessary disclosure and software changes.¹¹ The Agencies request comment on the proposed effective dates for the adjustments. The Agencies request that entities affected by the adjustments provide details of the measures that would be necessary to implement them.

C. Proposed Methodology for Adjustments

Section 607(f) does not specify which month's CPI-W should be used to measure inflation. The Agencies propose to use the July CPI-W, which is released by the Bureau of Labor Statistics in August. The Agencies propose to use the aggregate percentage change in the CPI-W from July 2011 to July 2018 as the initial inflation measurement period for the first set of adjustments. (As discussed above, the Agencies anticipate that the first set of adjustments would be published as a final rule in the first quarter of 2019 and propose that it have an effective date of April 1, 2020.) The second set of adjustments would be based on the aggregate percentage change in the CPI-W for an inflation measurement period that begins in July 2018 and ends in July 2023. (As discussed above, the Agencies anticipate that the second set of adjustments would be published in the first quarter of 2024 and have a proposed effective date of April 1, 2025.) Each subsequent set of adjustments would be based on the aggregate percentage change in the CPI-W for an inflation measurement period that begins in July of every fifth year after 2018 and ends in July of every fifth year after 2023. This use of July CPI-W, starting with the

¹¹ The proposed effective dates would be consistent with section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Public Law 103-325, 108 Stat. 2160, 12 U.S.C. 4802). That section provides that new regulations and amendments to regulations prescribed by Federal banking agencies, including the Board, that impose additional reporting, disclosures, or other new requirements on insured depository institutions shall take effect on the first day of a calendar quarter which begins on or after the date on which the regulations are published in final form (with certain exceptions).

July 2011 CPI-W, would align with section 607(f)'s effective date of July 21, 2011, and the Agencies expect it to provide a reasonable period of time after the CPI-W data becomes available for the Agencies to publish the requisite adjustments and for financial institutions to implement them. The Agencies request comment on this approach and its interaction with the proposed effective dates discussed above.

If there is an aggregate percentage increase in any inflation measurement period, then the aggregate percentage change would be applied to the dollar amounts in Regulation CC, and those amounts would be rounded to the nearest multiple of \$25 to determine the new adjusted dollar amounts.¹² Section 607(f) of the EFA Act provides that the adjustments are to be based on the “annual percentage increase” in the CPI-W, but does not specify how the adjustment is to be made in the event that the CPI-W is negative for one or more years in the inflation measurement period. The Agencies believe it is a reasonable interpretation of section 607(f) to account for negative movements in the CPI-W on a year-to-year basis and to factor those movements into the calculation. The Agencies believe that the purpose of section 607(f) is to keep the dollar amounts in the EFA Act on a pace with inflation, as represented by the CPI-W. The funds-availability provisions of the EFA Act represent a balancing of interests—the interests of account customers in receiving prompt availability of their deposited funds and the interests of depository institutions in minimizing the risks from making funds available before learning of checks or other items being returned.¹³ Accounting for upward and downward movements in the CPI-W in

¹² For example, if the CPI-W in July of the year the last publication of an adjusted dollar amount occurred and the CPI-W in July of the year that is five years later were 100 and 114.7, respectively, the aggregate percentage change that results from changes in the CPI-W for each year of the period using the CPI-W values in July would be 14.7%. If the applicable dollar amount was \$200 for the prior period, then the adjusted figure would become \$225 as the change of \$29.40 results in rounding to \$25.

¹³ The EFA Act's legislative history shows that one intent of the Act was to “provide a fairer balance between the banks' interest in avoiding fraud and consumers' interests in having speedy access to their funds.” S. Rep. No. 100-

calculating any cumulative increase to the dollar amounts is consistent with the approach Congress took in the EFA Act of balancing the interests of depository institutions and their customers.

Under the proposed calculation methodology, the dollar amount adjustments would always be zero or positive.¹⁴ If there is no aggregate percentage increase during the inflation measurement period (zero increase or net decrease) or if the aggregate percentage change when applied to the dollar amount does not result in a change because of rounding, the Agencies would not adjust that dollar amount. Moreover, in either of those situations, the aggregate percentage change would be calculated either from the CPI-W in July of the year that corresponds with the last publication of an adjusted dollar amount or, if there has never been an adjusted dollar amount, from the CPI-W in July 2011.¹⁵

The Agencies are proposing a new § 229.11 and accompanying commentary to implement the CPI-W index calculation method to be used by the Agencies to adjust the dollar amounts in the EFA Act. The new § 229.11 provides for the CPI-W calculation for the dollar amounts in § 229.10(c)(1)(vii) regarding the minimum amount, § 229.12(d) for the cash withdrawal amount, § 229.13(a) for the new-account amount, § 229.13(b) for the large-deposit

19, at 28 (1987); see also H.R. Rep. No. 100-52, at 14 (1987) (describing the efforts “to protect depository institutions while furthering the original goals of the legislation to provide shorter time periods for funds availability.”)

¹⁴ Since 1939, no aggregate change in the CPI-W across a five-year period has been negative. However, the proposed rule would also cover this potential scenario.

¹⁵ For example, if the aggregate percentage change in the CPI-W for an inflation measurement period was 4.0% and the applicable dollar amount was \$200 from the prior period, then the adjusted figure would remain \$200, as the change of \$8.00 does not result in rounding to \$25. However, if over the next inflation measurement period the aggregate percentage change for the five-year period was again 4.0%, then the adjusted figure would become \$225, as the change of \$16.32 does result in rounding to \$25. The Board and Bureau calculate this adjustment by using the aggregate CPI-W change over two (or more) inflation measurement periods until the cumulative change results in publication of an adjusted dollar amount in the regulation.

threshold, § 229.13(d) for repeatedly overdrawn threshold, and § 229.21(a) for the civil liability amounts.

The Agencies request comment on the proposed calculation methodology to be applied to the dollar amounts in Regulation CC.

D. First Set of Adjustments

As discussed above, for the first set of adjustments, the Agencies propose to use CPI-W data from July 2011 through July 2018.¹⁶ (As discussed above, the Agencies are proposing that this first set of adjustments have an effective date of April 1, 2020). In order to inform this rulemaking more fully, the Agencies have applied the proposed inflation calculation methodology to calculate the adjusted amounts that would result if the methodology is finalized.¹⁷ Specifically, if the proposed adjustment methodology is finalized, the adjusted amounts, based on the change in CPI-W from 222.686 in July 2011 to 246.155 in July 2018, would be as follows:

- The minimum amount in § 229.10(c)(1)(vii) would be adjusted to \$225, as the change of \$21.00 results in a rounding to the nearest multiple of \$25;
- The cash withdrawal amount in § 229.12(d) of \$400 would be adjusted to \$450, as the change of \$42.00 results in a rounding to the nearest multiple of \$25;
- The new-account amount of \$5,000 in § 229.13(a), the large-deposit threshold of \$5,000 in § 229.13(b), and the repeatedly overdrawn threshold of \$5,000 in

¹⁶ As is discussed below, the agencies propose that five years of CPI data be used for all subsequent sets of adjustments.

¹⁷ With respect to subsequent calculations such as the calculations that will be conducted in 2023, the Agencies expect to find that notice and opportunity for public comment for the calculations is impracticable, unnecessary, or contrary to the public interest, because the calculations would be technical and non-discretionary. See 5 U.S.C. 553(b)(B).

§ 229.13(d) would each be adjusted to \$5,525, as the change of \$525 results in a rounding to the nearest multiple of \$25; and

- In § 229.21(a) the civil liability amount of \$100 would remain the same, as the change of \$10.50 does not result in a rounding to \$25, while the other civil liability amounts of \$1,000 and \$500,000 would be adjusted to \$1,100 and \$552,500, as the changes of \$105 and \$52,500, respectively, result in a rounding to the nearest multiple of \$25.

E. Technical Amendments to Regulation CC and EGRRCPA Amendments

The Agencies also propose amending the commentary to each of the sections containing dollar amounts by inserting a cross-reference to the new § 229.11 containing the calculation method for indexing those dollar amounts every five years. In addition, the Agencies are proposing to update the dollar amounts with the adjusted dollar amounts throughout subpart B of Regulation CC, and the commentary thereto, and reflect these updates by the date on which depository institutions must comply with the adjusted dollar amounts.

The Board and Bureau are proposing a technical change to § 229.1(a), which sets forth the authority and purpose of Regulation CC, to explain that the Board and Bureau have joint rulemaking authority under certain provisions of the EFA Act.

In addition, the Economic Growth, Regulatory Relief, and Consumer Protection Act (EGRRCPA) made amendments to the EFA Act to extend its application to American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam.¹⁸ The effect of these statutory amendments is to subject banks in American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam to the EFA Act's requirements related to funds availability, payment

¹⁸ Public Law 115-174, section 208 (2018).

of interest, and disclosures. Banks in those territories would be able to avail themselves of the one-day extension of the availability schedules permitted by the EFA Act and § 229.12(e) of Regulation CC. Accordingly, the Board and the Bureau are proposing to update § 229.2(ff), and (jj) (definitions of “state,” and “United States”), as well as § 229.12(e) and its corresponding commentary, to implement the statutory amendments. Specifically, the Board and the Bureau are proposing to add American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam to the definitions of “state” and “United States” in § 229.2 (ff) & (jj) of Regulation CC, respectively. The Board and the Bureau are also proposing to remove Guam, American Samoa, and the Northern Mariana Islands from the list of territories in its definition of “state” for purposes of subpart D, as those territories are now included in the definition of State for Regulation CC generally. The Board and the Bureau are also proposing to add American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam to the list of States and territories in § 229.12(e), 229.12(e)(1), and its corresponding commentary.

Because American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam are considered to be in the United States under the EGRRCPA amendments, banks located in those territories would be considered “banks” under Regulation CC and checks drawn on those banks would meet the Regulation CC definition of “check.” Thus, the provisions of subpart C of Regulation CC with respect to check collection and return, including warranties and indemnities, would apply with respect to those banks and the checks deposited in and drawn on them. (The provisions of subpart D of Regulation CC with respect to substitute checks already apply to checks drawn on banks in these territories due to the broader definition of “State” in the Check 21 Act.) The Board had promulgated § 229.43 in subpart C to address how Regulation CC applied to checks drawn on banks located in Guam, American Samoa, and the Northern

Mariana Islands when those checks are handled by other U.S. banks.¹⁹ As those territories are now covered by the EFA Act, and subpart C of Regulation CC would apply by its terms to checks drawn on banks in those territories, § 229.43 is no longer necessary. Accordingly, the Board is proposing to delete § 229.43 and its corresponding commentary from subpart C of Regulation CC.

The EGRRCPA also amended the EFA Act's definition of "receiving depository institution" by adding "located in the United States" after "proprietary ATM."²⁰ Regulation CC uses the term "depository bank" instead of "receiving depository institution," contains a separate definition of "ATM," and establishes rules for determining when deposits at ATMs are received by the depository bank.²¹ To implement the EGRRCPA provision, the Board and the Bureau are proposing to insert "located in the United States" in the definition of "ATM" in § 229.2(c) and its corresponding commentary.

F. Technical Amendments to the Bureau's Regulation DD

The Bureau is proposing a technical, non-substantive amendment to its Regulation DD, 12 CFR part 1030, to add a new paragraph (e) to § 1030.1 that would cross-reference the Bureau's joint authority with the Board to issue regulations under certain provisions of the EFA Act that are codified within Regulation CC. The Bureau is also proposing related technical, non-substantive amendments to § 1030.7(c), and the commentary thereto, which states that interest shall begin to accrue not later than the business day specified for interest-bearing accounts in the EFA Act and Regulation CC. In addition, the Bureau is proposing to fix technical errors in

¹⁹ See 62 FR 13808, 13807 (March 24, 1997).

²⁰ The definition of "receiving depository institution" in the EFA Act now reads "the branch of a depository institution or the proprietary ATM located in the United States in which a check is first deposited." 12 USC 4001(20).

²¹ See 12 CFR 229.2(o), 229.2(b), and 229.19(a), respectively, and associated commentary.

Appendix A to Regulation DD within the formulas that demonstrate how to calculate annual percentage yield (APY) and annual percentage yield earned (APYE). Specifically, certain terms within the formulas should be shown as exponents but currently are erroneously not shown as exponents. These typographical errors were inadvertently introduced into the APY and APYE formulas in Appendix A when the Bureau issued its restatement of Regulation DD in December 2011.²² As the preamble to the restated Regulation DD explained, it was intended to substantially duplicate the prior Regulation DD. The Bureau considers these typographical errors in the restated Regulation DD to be scrivener's errors that should be read as exponents. In now proposing to correct these typographical errors, the Bureau intends no change to how institutions should comply with Regulation DD. These technical, non-substantive amendments to Regulation DD would be effective thirty days after publication of a final rule.

G. Bureau's Dodd-Frank Act Section 1022(b)(2)(A) Analysis

1. Overview

Section 1022(b)(2)(A) of the Dodd-Frank Act provides that in prescribing a rule under the Federal consumer financial laws, the Bureau shall consider the potential benefits and costs to consumers and covered persons, including the potential reduction of access by consumers to consumer financial products or services resulting from such rule; the impact on depository institutions and credit unions with \$10 billion or less in total assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.²³

²² 76 FR 79276 (Dec. 21, 2011).

²³ 12 U.S.C. 5512(b)(2)(A). Although the manner and extent to which section 1022(b)(2)(A) applies to a rulemaking of this kind is unclear, in order to inform this rulemaking more fully the Bureau performed the described analysis.

This analysis focuses on the benefits, costs, and impacts of the 2018 Proposal. The Bureau is using a pre-statutory baseline to assess the impact of the 2018 Proposal. That is, the Bureau's analysis below considers the benefits, costs, and impacts of the relevant provisions of the EGRRCPA combined with the 2018 Proposal relative to the regulatory regime that pre-dates the EGRRCPA.²⁴

2. Potential Benefits and Costs to Consumers and Covered Persons

This proposed rule, if implemented, adjusts for inflation the funds that must be available as required by the EFA Act and Regulation CC. Moreover, depository institutions located in American Samoa, the Northern Mariana Islands, and Guam will now be required to comply with the provisions in the EFA Act and subpart B of Regulation CC related to funds availability, payment of interest, and disclosures to their customers. The Board and the Bureau are proposing to hold the real expected losses to depository institutions fixed by adjusting for inflation the funds that must be available. Thus, the Bureau does not expect any potential benefits, costs, or impacts to consumers or covered persons as a result of the adjustment methodology, other than the paperwork costs discussed below. The adjustments and methodology in this proposed rule are technical, and they merely apply the statutory method for adjusting amounts that must be available to consumers.

The Bureau estimates that covered persons will face an average paperwork cost of \$398.04 every five years to update notices already sent to consumers. The Bureau believes that

²⁴ The Bureau has discretion in future rulemakings to choose the most appropriate baseline for that particular rulemaking. Also note that the Bureau's analysis excludes the Board's proposed amendments to subpart C of Regulation CC.

the average depository institution will use 12 hours of compliance officer time at a mean hourly rate of \$33.17.²⁵

Additionally, the EGRRCPA made amendments to the EFA Act to extend its application to American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam.²⁶ The 2018 Proposal implements the EGRRCPA by extending the application of Regulation CC's requirements related to funds availability, payment of interest, and disclosures to institutions in American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam. Consumers of depository institutions in American Samoa, Guam, and the Northern Mariana Islands will generally receive the same benefits of consumers of institutions already complying with subpart B of Regulation CC. This includes policy and other disclosures regarding funds availability and timely access to their funds. Consumers will generally not experience any costs associated with receiving these disclosures.

The Bureau has identified five institutions located in American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam that are newly subject to Regulation CC as a result of the amendments made to the EFA Act by the EGRRCPA, and that will therefore face compliance costs associated with the 2018 Proposal should it be finalized. Although these institutions will incur costs to comply with the requirements of Regulation CC, the Bureau does not have data on the impact of the requirements of the 2018 Proposal on these institutions. The Bureau specifically requests information from commenters on the costs of complying with Regulation CC for institutions in American Samoa, the Commonwealth of the

²⁵ Bureau of Labor Statistics, *National Occupational Employment and Wage Estimates* (May 2016), available at https://www.bls.gov/oes/current/oes_nat.htm.

²⁶ Public Law 115-174, section 208 (2018).

Northern Mariana Islands, and Guam and on those institutions' pre-statutory practices regarding funds availability.

The Bureau requests comment on the analysis above and requests any relevant data.

3. Impact on Depository Institutions With No More Than \$10 Billion in Assets

The proposed rule will impact all depository institutions, including those with no more than \$10 billion in assets. The Bureau expects that all depository institutions will experience an average cost of \$398.04 to update quinquennial notices.

The EGRRCPA amended the EFA Act to extend its application to institutions in American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam. The Bureau identified five institutions that are now required to comply with Regulation CC, and all have no more than \$10 billion in assets. The Bureau requests information from commenters on the total cost experienced by these depository institutions to comply with Regulation CC.

4. Impact on Access to Credit

The Bureau does not expect this proposed rule, if implemented, to affect consumers' access to credit. The scope of this rulemaking is limited to funds available in depository accounts and is not directly related to credit access.

5. Impact on Rural Areas

The Bureau does not believe that this proposed rule, if implemented, will have a unique impact on consumers in rural areas.

H. Interagency Consultations

The Board and the Bureau have performed interagency consultations regarding this proposed rule consistent with section 609(e) of the EFA Act and section 1022(b)(2)(B) of the Dodd-Frank Act. Section 609(e) of the EFA Act provides that in prescribing regulations under

section 609(a), the Board and the Director of the Bureau shall consult with the Comptroller of the Currency, the Board of Directors of the Federal Deposit Insurance Corporation, and the National Credit Union Administration Board.²⁷ Section 1022(b)(2)(B) of the Dodd-Frank Act provides that in prescribing a rule under the Federal consumer financial laws, the Bureau shall consult with the appropriate prudential regulators or other Federal agencies prior to proposing a rule and during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies.²⁸

I. Regulatory Flexibility Act

Board: The Regulatory Flexibility Act (RFA) requires an agency to publish an initial regulatory flexibility analysis with a proposed rule or certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis, and for the reasons stated below, the Board believes that the proposed rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing an initial regulatory flexibility analysis and requests comment on all aspects of its analysis. The Board will, if necessary, conduct a final regulatory flexibility analysis after considering the comments received during the public comment period.

1. *Statement of the need for, and objectives of, the proposed rule.* The proposed rule would memorialize the calculation method used to adjust the EFA Act dollar amounts every five years in accordance with section 607(f) of the EFA Act, as amended by section 1086(f) of the Dodd-Frank Act. The proposed rule would also implement statutory amendments to the EFA

²⁷ 12 U.S.C. 4008(a).

²⁸ 12 U.S.C. 5512(b)(2)(B). Although the manner and extent to which section 1022(b)(2)(B) applies to a rulemaking of this kind is unclear, in order to inform this rulemaking more fully the Bureau performed the described consultations.

Act to extend its application to American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam.

2. *Small entities affected by the proposed rule.* The proposed rule would apply to all depository institutions regardless of their size. Pursuant to regulations issued by the Small Business Administration (13 CFR 121.201), a “small banking organization” includes a depository institution with \$550 million or less in total assets. Based on call report data, there are approximately 9,631 depository institutions that have total domestic assets of \$550 million or less and thus are considered small entities for purposes of the RFA. All institutions will be required to update existing disclosures to their customers with any adjustments in the dollar amounts and update their software to adjust the availability amounts where necessary. The Board does not believe the proposed rule will have a significant economic impact on the entities that it affects. Nevertheless, the Board invites comment on the effect of the proposed rule on small entities. Specifically, the extent of impact on small entities may depend on the contents of the institution’s funds availability policy and the frequency of the institution’s regularly scheduled re-prints of its availability policy disclosures. Small depository institutions that already make funds available the next day and do not utilize the exceptions for new accounts, large deposits, or repeated overdrafts may be less affected by the proposed rule. The economic impact on small entities from the proposed rule may include technology, labor, and other associated costs incurred to update their disclosures with the adjusted dollar amounts, if those cannot be accomplished within the institution’s regular cycle. Moreover, depository institutions located in American Samoa, the Northern Mariana Islands, and Guam will now be required to comply with the provisions in the EFA Act and Regulation CC related to funds availability, payment of interest, and disclosures to their customers.

3. *Recordkeeping, reporting, and compliance requirements.* The proposed rule would require institutions to update their existing EFA Act disclosures to their customers with the adjusted dollar amount as well as update software that determines availability, as applicable. No other additional recordkeeping, reporting, or compliance requirements would be required by the proposed rule.

4. *Other Federal rules.* The Board has not identified any likely duplication, overlap and/or potential conflict between the proposed rule and any Federal rule.

5. *Significant alternatives to the proposed revisions.* The Board solicits comment on any significant alternatives that would reduce the regulatory burden of this proposed rule on small entities.

Bureau: The Regulatory Flexibility Act (RFA) generally requires an agency to conduct an initial regulatory flexibility analysis (IRFA) and a final regulatory flexibility analysis (FRFA) of any rule subject to notice-and-comment rulemaking requirements.²⁹ These analyses must “describe the impact of the proposed rule on small entities.”³⁰ Neither an IRFA nor FRFA is required if the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.³¹ The Bureau also is subject to certain additional procedures under the RFA involving the convening of a panel to consult with small business representatives prior to proposing a rule for which an IRFA is required.

²⁹ 5 U.S.C. 601 et seq.

³⁰ Id. at 603(a). For purposes of assessing the impacts of the proposed rule on small entities, “small entities” is defined in the RFA to include small businesses, small not-for-profit organizations, and small government jurisdictions. Id. at 601(6). A “small business” is determined by application of Small Business Administration regulations and reference to the North American Industry Classification System (NAICS) classifications and size standards. Id. at 601(3). A “small organization” is any “not-for-profit enterprise which is independently owned and operated and is not dominant in its field.” Id. at 601(4). A “small governmental jurisdiction” is the government of a city, county, town, township, village, school district, or special district with a population of less than 50,000. Id. at 601(5).

³¹ Id. at 605(b).

An IRFA is not required for this proposal because, if adopted, it would not have a significant economic impact on a substantial number of small entities. As discussed in the Bureau's section 1022(b)(2) Analysis above, the Bureau believes the proposed rule's inflation adjustments hold real expected losses fixed by adjusting for inflation the amount of funds that must be made available for withdrawal in accordance with the EFA Act and Regulation CC. Accordingly, these adjustments for inflation do not introduce costs for entities, including small entities. In addition, the proposed rule would implement in Regulation CC the EGRRCPA extension of the EFA Act's requirements to institutions in American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam. The Bureau identified five institutions that will be required to comply with Regulation CC due to the EGRRCPA amendments to the EFA Act. Thus, the Bureau concludes that a substantial number of small entities is not impacted by the proposal to implement in Regulation CC the EGRRCPA amendments to the EFA Act.

The Bureau recognizes that the proposed rule will have some impact on some entities, including those that are small. The Small Business Administration (SBA) defines small depository institutions as those with less than \$550 million in assets.³² Following guidance from the Small Business Administration, the Bureau averaged the total assets reported in quarterly call reports during quarters 1 through 4 of 2017. The Bureau identified 9,631 entities that had average total assets less than \$550 million. These are considered small for the purposes of the RFA. Using the methodology outlined in the Board's Paperwork Reduction Act analysis, the Bureau estimates that the quinquennial adjustments will have an average quinquennial cost of

³² Small Business Administration, *Table of Small Business Standards* (2016), available at <https://www.sba.gov/contracting/getting-started-contractor/make-sure-you-meet-sba-size-standards/table-small-business-size-standards>

\$398.04 for depository institutions. The Bureau estimates that about 1% of small entities face a significant economic impact from the quinquennial proposed information collection.

In addition, the Bureau estimates the impact of all subpart B provisions for those covered persons required to comply with subpart B of Regulation CC as a result of the amendments the EGRRCPA made to the EFA Act. The EGRRCPA amended the EFA Act to extend its application to institutions in American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam. The Bureau identified five institutions that will be required to comply with Regulation CC due to the EGRRCPA amendments to the EFA Act. Thus, the Bureau concludes that a substantial number of small entities is not impacted by the proposal to implement the EGRRCPA amendments to the EFA Act in Regulation CC.

Accordingly, the Bureau Director, by signing below, certifies that this proposal, if adopted, would not have a significant economic impact on a substantial number of small entities.

The Bureau requests comment on the analysis above and requests any relevant data.

J. Paperwork Reduction Act

Board: Certain provisions of the proposed rule contain “collection of information” requirements within the meaning of the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the Board may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently-valid Office of Management and Budget (OMB) control number. The OMB control number for the Board is 7100–0235 and will be extended, with revision. The Board reviewed the proposed rule under the authority delegated to the Board by OMB. Comments are invited on: (a) Whether the collections of information are necessary for the proper performance of the Board’s functions, including whether the information has practical utility; (b) The accuracy of the estimates of the

burden of the information collections, including the validity of the methodology and assumptions used; (c) Ways to enhance the quality, utility, and clarity of the information to be collected; (d) Ways to minimize the burden of the information collections on respondents, including through the use of automated collection techniques or other forms of information technology; and (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information. All comments will become a matter of public record.

Comments on aspects of this notice that may affect reporting, recordkeeping, or disclosure requirements and burden estimates should be sent to the addresses listed in the ADDRESSES section of this document. A copy of the comments may also be submitted to the OMB desk officer for the Board by mail to U.S. Office of Management and Budget, 725 17th Street NW, # 10235, Washington, DC 20503; by facsimile to (202) 395-5806; or by email to: oira_submission@omb.eop.gov, Attention, Federal Banking Agency Desk Officer.

Proposed Information Collection

Title of Information Collection: Disclosure Requirements Associated with Availability of Funds and Collection of Checks (Regulation CC).

Frequency of Response: Quinquennial.

Affected Public: Businesses or other for-profit.

Respondents:

State member banks and uninsured state branches and agencies of foreign banks.

Abstract: Regulation CC (12 CFR part 229) implements the Expedited Funds Availability Act of 1987 (EFA Act) and the Check Clearing for the 21st Century Act of 2003 (Check 21 Act).

The EFA Act was enacted to provide depositors of checks with prompt funds availability and to foster improvements in the check collection and return processes. Subpart B of

Regulation CC implements the EFA Act's funds-availability provisions and specifies availability schedules within which banks must make funds available for withdrawal. Subpart B also implements the EFA Act's rules regarding exceptions to the schedules, disclosure of funds-availability policies, and payment of interest.

Current Action: The Agencies are adding section 229.11 to provide the CPI-W calculation methodology, which includes an explanation of how annual and cumulative changes (positive or negative) in the CPI-W will be taken into account, for the dollar amounts in section 229.10(c)(1)(vii) regarding the minimum amount, section 229.12(d) for the cash withdrawal amount, section 229.13(a) for the new-account amount, section 229.13(b) for the large-deposit threshold, section 229.13(d) for repeatedly overdrawn threshold, and section 229.21(a) for the civil liability amounts.

PRA Burden Estimates

Number of respondents: 959 respondents (100 respondents for changes in policy).

Estimated average hours per response: Specific availability policy disclosure and initial disclosures, .02 hours; Notice in specific policy disclosure, .05 hours; Notice of exceptions, .05 hours; Locations where employees accept consumer deposits, .25 hours; Quinquennial inflation adjustments for disclosures (annualized), 8 hours; Annual notice of new ATMs, 5 hours; Changes in policy, 20 hours; Notification of quinquennial inflation adjustments, 4 hours; Notice of nonpayment on paying bank, .02 hours; Notification to customer, .02 hours; Expedited recredit for consumers, .25 hours; Expedited recredit for banks, .25 hours; Consumer awareness, .02 hours; and Expedited recredit claim notice, .25 hours.

Estimated annual burden hours: Specific availability policy disclosure and initial disclosures, 9,590 hours; Notice in specific policy disclosure, 33,565 hours; Notice of exceptions, 95,900

hours; Locations where employees accept consumer deposits, 240 hours; Quinquennial inflation adjustments for disclosures (annualized), 7,672 hours; Annual notice of new ATMs, 4,795 hours; Changes in policy, 4,000 hours; Notification of quinquennial inflation adjustments, 3,836 hours; Notice of nonpayment on paying bank, 671 hours; Notification to customer, 7,097 hours; Expedited recredit for consumers, 8,391 hours; Expedited recredit for banks, 3,596 hours; Consumer awareness, 5,754 hours; and Expedited recredit claim notice, 5,994 hours.

Current Total Estimated Annual Burden: 179,593 hours.

Proposed Total Estimated Annual Burden: 191,101 hours.

Bureau: The Bureau is not seeking OMB approval for the information collection requirements already accounted for by the Board above, or for which other agencies are responsible. Moreover, the Bureau's technical, non-substantive amendments to Regulation DD do not impose any new or additional information collection requirements that would require OMB approval.

K. Solicitation of Comments on Use of Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Public Law 106-102, 113 Stat. 1338, 1471, 12 U.S.C. 4809) requires the Federal banking agencies to use plain language in all proposed and final rules published after January 1, 2000. The Board has sought to present the proposed rule in a simple and straightforward manner, and invites comment on the use of plain language and whether any part of the proposed rule could be more clearly stated.

II. Reopening of the Comment Period for the 2011 Funds Availability Proposal

On March 25, 2011, the Board proposed amendments to Regulation CC (76 FR 16862). Pursuant to sections 1086 and 1100H of the Dodd-Frank Act, effective July 21, 2011, the Board and the Bureau assumed joint rulemaking authority with respect to some of those proposed

amendments, including the proposed amendments to the funds availability provisions of subpart B of Regulation CC and the definitions and appendices applicable to subpart B.³³ This *Federal Register* document refers to the portion of the proposed amendments published on March 25, 2011, that are now subject to the joint rulemaking authority of the Board and the Bureau as the 2011 Funds Availability Proposal. The Board has conducted a separate rulemaking process to address other proposed amendments published on that date that remain within its sole rulemaking authority, principally the proposed amendments to the check collection provisions of subpart C of Regulation CC.³⁴

The Agencies recognize there may have been important changes in markets, technology, or industry practice since the public submitted comments seven years ago in response to the Board's 2011 Funds Availability Proposal. The Board and the Bureau therefore are now reopening the comment period in order to provide an opportunity for the public to provide comments with new, additional, or different views on the 2011 Funds Availability Proposal. In taking this step, the Agencies have not made any decision on whether to pursue any particular course with regard to the 2011 Funds Availability Proposal, including whether to make it or any aspects of it final. Instead, reopening the comment period will provide the Agencies with up-to-date public input to consider in deciding on a future course with regard to the 2011 Funds Availability Proposal. Comments on the 2011 Funds Availability Proposal that were previously submitted during the initial comment period, which ended on June 3, 2011, remain part of the rulemaking docket. To assist with reconciling comments from parties who submitted comments in 2011 and who again submit comments in 2018 that reflect changes to their previous

³³ Public Law 111-203, 124 Stat. 2085-86, 2113 (2010); 75 FR 57252 (Sep. 20, 2010).

³⁴ The Board requested comment a second time on the subpart C amendments (79 FR 6673 (Feb. 4, 2014)) and adopted final amendments in June 2017 (82 FR 27552 (June 15, 2017)). The Board also requested comment on additional amendments to subpart C in June 2017 (82 FR 25539 (June 2, 2017)).

viewpoints, the Agencies request that such commenters clarify the relationship between their two comments. Specifically, the Agencies request that the commenters clarify whether their 2018 comments in part or in whole supersede their previously submitted comments.

The Board and the Bureau are aware of various issues that were not raised by the 2011 Funds Availability Proposal. For example, some members of the public have suggested that the Agencies clarify how the funds availability provisions in subpart B of Regulation CC apply to prepaid accounts and to checks deposited electronically through a process known as “remote deposit capture.” In addition, the Agencies have received requests to clarify the relationship between Regulation CC availability requirements and banks’ responsibilities related to deposit reconciliation. At this time, the Agencies are requesting comment only on the issues raised by the 2011 Funds Availability Proposal and the 2018 Proposal. The Agencies will consider whether further action is appropriate with respect to new topics in the future.

List of Subjects in

12 CFR Part 229

Banks, Banking, Federal Reserve System, Reporting and recordkeeping requirements.

12 CFR Part 1030

Advertising, Banks, Banking, Consumer protection, National banks, Reporting and recordkeeping requirements, Savings associations.

Board of Governors of the Federal Reserve System

Authority and Issuance

For the reasons set forth in the preamble, the Board of Governors of the Federal Reserve System proposes to amend Regulation CC, 12 CFR part 229, as set forth below:

PART 229—AVAILABILITY OF FUNDS AND COLLECTIONS OF CHECKS

(REGULATION CC)

1. The authority citation for part 229 continues to read as follows:

Authority: 12 U.S.C. 4001-4010, 12 U.S.C. 5001-5018

Subpart A—General

* * * * *

1. Section 229.1(a) is revised to read as follows:

§ 229.1 Authority and purpose; organization

(a) *Authority and purpose.*(1) *In general.* This part is issued by the Board of Governors of the Federal Reserve System (Board) to implement the Expedited Funds Availability Act (12 U.S.C. 4001-4010) (EFA Act) and the Check Clearing for the 21st Century Act (12 U.S.C. 5001-5018) (Check 21 Act).

(2) *Joint authority of the Bureau.* The Board issues regulations under Sections 603(d)(1), 604, 605, and 609(a) of the EFA Act (12 U.S.C. 4002(d)(1), 4003, 4004, 4008(a)) jointly with the Director of the Bureau of Consumer Financial Protection (Bureau).

* * * * *

2. In § 229.2, revise paragraphs (c), (ff), and (jj) to read as follows:

§ 229.2 Definitions

* * * * *

(c) *Automated teller machine* or *ATM* means an electronic device located in the United States at which a natural person may make deposits to an account by cash or check and perform other account transactions.

* * * * *

(ff) *State* means a state, the District of Columbia, Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, or the U.S. Virgin Islands. For purposes of subpart D of this part and, in connection therewith, this subpart A, *state* also means the Trust Territory of the Pacific Islands and any other territory of the United States.

* * * * *

(jj) *United States* means the states, including the District of Columbia, the U.S. Virgin Islands, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and Puerto Rico.

* * * * *

Subpart B—Availability of Funds and Disclosure of Funds Availability Policies

§§ 229.10, 229.12, 229.13, and 229.21 [Amended]

3. In § 229.10, 229.12, 229.13, and the commentary thereto, remove “\$100” wherever it appears and replace with “\$225.” In addition, for each section, and corresponding commentary thereto in Appendix E to Part 229, remove the following dollar amounts from wherever they appear in the section and corresponding commentary, and replace them as indicated in the table below:

Section	Remove	Add
229.10(c)	\$5,000	\$5,525
229.12(d)	\$400	\$450
229.13(a)	\$5,000	\$5,525
229.13(b)	\$5,000	\$5,525
229.13(d)	\$5,000	\$5,525
229.21(a)	\$1,000 \$500,000	\$1,100 \$552,500

* * * * *

4. Section 229.11 is added to read as follows:

§ 229.11 Adjustment of dollar amounts [Amended]

(a) *Dollar amounts indexed.* The dollar amounts specified in §§ 229.10(c)(1)(vii), 229.12(d), 229.13(a), 229.13(b), 229.13(d), and 229.21(a) shall be adjusted effective on April 1, 2020, on April 1, 2025, and on April 1 of every fifth year after 2025, in accordance with the procedure set forth in § 229.11(b) using the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W), as published by the Bureau of Labor Statistics.

(b) *Indexing procedure.*

1. Inflation measurement periods. For dollar amount adjustments that are effective on April 1, 2020, the inflation measurement period begins in July 2011 and ends in July 2018. For dollar amount adjustments that are effective on April 1, 2025, the inflation measurement period begins in July 2018 and ends in July 2023. For dollar amount adjustments that are effective on April 1 of every fifth year after 2025, the inflation measurement period begins in July of every fifth year after 2018 and ends in July of every fifth year after 2023.
2. Percentage change. Any dollar amount adjustment under this section shall be calculated across an inflation measurement period by the aggregate percentage change in the CPI-W, including both positive and negative percentage changes. The aggregate percentage change over the inflation measurement period will be rounded to one decimal place, using the CPI-W value for July (which is generally released by the Bureau of Labor Statistics in August).

3. Adjustment amount. The adjustment amount for each dollar amount listed in § 229.11(a) shall be equal to the aggregate percentage change multiplied by the existing dollar amount listed in § 229.11(c) and rounded to the nearest multiple of \$25. The adjusted dollar amount will be equal to the sum of the existing dollar amount and the adjustment amount. No dollar adjustment will be made when the aggregate percentage change is zero or a negative percentage change, or when the aggregate percentage change multiplied by the existing dollar amount listed in § 229.11(c) and rounded to the nearest multiple of \$25 results in no change.
4. Carry-forward. When there is an aggregate negative percentage change over an inflation measurement period, or when an aggregate positive percentage change over an inflation measurement period multiplied by the existing dollar amount listed in § 229.11(c) and rounded to the nearest multiple of \$25 results in no change, the aggregate percentage change over the inflation measurement period will be included in the calculation to determine the percentage change at the end of the subsequent inflation measurement period. That is, the cumulative change in the CPI-W over the two (or more) inflation measurement periods will be used in the calculation until the cumulative change results in publication of an adjusted dollar amount in the regulation.

(c) *Amounts.*

1. For purposes of § 229.10(c)(1)(vii), the dollar amount in effect during a particular period is the amount stated below for that period.
 - i. Prior to July 21, 2011, the amount is \$100.

- ii. From July 21, 2011, through March 31, 2020, by operation of section 603(a)(2)(D) of the EFA Act (12 U.S.C. 4002(a)(2)(D)) the amount is \$200.
 - iii. Effective April 1, 2020, the amount is \$225.
- 2. For purposes of § 229.12(d), the dollar amount in effect during a particular period is the amount stated below for that period.
 - i. Prior to April 1, 2020, the amount is \$400.
 - ii. Effective April 1, 2020, the amount is \$450.
- 3. For purposes of §§ 229.13(a), 229.13(b), and 229.13(d), the dollar amount in effect during a particular period is the amount stated below for that period.
 - i. Prior to April 1, 2020, the amount is \$5,000.
 - ii. Effective April 1, 2020, the amount is \$5,525.
- 4. For purposes of § 229.21(a), the dollar amounts in effect during a particular period are the amounts stated below for the period.
 - i. Prior to April 1, 2020, the amounts are \$100, \$1,000, and \$500,000 respectively.
 - ii. Effective April 1, 2020, the amounts are \$100, \$1,100, and \$552,500 respectively.
- 5. In § 229.12, remove “\$100” wherever it appears and replace with “\$225” and revise paragraph (e) as follows:

§ 229.12 Availability Schedule

* * * * *

(e) *Extension of schedule for certain deposits in Alaska, Hawaii, Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S. Virgin Islands.* The depository bank may extend the time periods set forth in this section by one business day in the case of any deposit, other than a deposit described in §229.10, that is—

- (1) Deposited in an account at a branch of a depository bank if the branch is located in Alaska, Hawaii, Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, or the U.S. Virgin Islands; and

* * * * *

§ 229.13 Exceptions

- 6. In §229.13, remove “\$100” wherever it appears and replace with “\$225”.

§ 229.21 Civil Liability

- 7. In §229.21, remove “\$100” wherever it appears and replace with “\$225.”

Appendix E to Part 229—Commentary

* * * * *

- 8. Amend Appendix E to Part 229 as follows:
 - A. In Section II.D, revise paragraph 1.
 - B. In Section IV.D, revise paragraph 5 and add paragraph 7.
 - C. Section IV.E is revised.
 - D. Section V is revised.
 - E. In Section VI.B, paragraph 4 is added.
 - F. Section VII.C, paragraph 2 is revised and paragraph 4 is added.
 - G. In Section VII.E, paragraph 5 is added.
 - H. In Section VII.H, paragraph 2(b) is revised.

- I. In Section XIV.C, paragraph 2 is revised.
- J. In Section XV.A, paragraph 2 is added.
- K. Section XXIX is removed and reserved. The additions and revisions read as follows:

APPENDIX E TO PART 229 – COMMENTARY

II. Section 229.2 Definitions

* * * * *

D. 229.2(c) Automated Teller Machine (ATM)

1. ATM is not defined in the EFA Act. The regulation defines an ATM as an electronic device located in the United States at which a natural person may make deposits to an account by cash or check and perform other account transactions. Point-of-sale terminals, machines that only dispense cash, night depositories, and lobby deposit boxes are not ATMs within the meaning of the definition, either because they do not accept deposits of cash or checks (e.g., point-of-sale terminals and cash dispensers) or because they only accept deposits (e.g., night depositories and lobby boxes) and cannot perform other transactions. A lobby deposit box or similar receptacle in which written payment orders or deposits may be placed is not an ATM.

* * * * *

IV. Section 229.10 Next-Day Availability

* * * * *

D. 229.10(c) Certain Check Deposits [Amended]

* * * * *

5. First \$225

- a. The EFA Act and regulation also require that up to \$225 of the aggregate deposit by check or checks not subject to next-day availability on any one banking day be made available on the next business day. For example, if \$70 were deposited in an account by check(s) on a Monday, the entire \$70 must be available for withdrawal at the start of business on Tuesday. If \$400 were deposited by check(s) on a Monday, this section requires that \$225 of the funds be available for withdrawal at the start of business on Tuesday. The portion of the customer's deposit to which the \$225 must be applied is at the discretion of the depository bank, as long as it is not applied to any checks subject to next-day availability. The \$225 next-day availability rule does not apply to deposits at nonproprietary ATMs.
- b. The \$225 that must be made available under this rule is in addition to the amount that must be made available for withdrawal on the business day after deposit under other provisions of this section. For example, if a customer deposits a \$1,000 Treasury check and a \$1,000 local check in its account on Monday, \$1,225 must be made available for withdrawal on Tuesday—the proceeds of the \$1,000 Treasury check, as well as the first \$225 of the local check.
- c. A depository bank may aggregate all local and nonlocal check deposits made by a customer on a given banking day for the purposes of the \$225 next-day availability rule. Thus, if a customer has two accounts at the depository bank, and on a particular banking day makes deposits to each account, \$225 of the total deposited to the two accounts must be made available on the business day after

deposit. Banks may aggregate deposits to individual and joint accounts for the purposes of this provision.

- d. If the customer deposits a \$500 local check and gets \$225 cash back at the time of deposit, the bank need not make an additional \$225 available for withdrawal on the following day. Similarly, if the customer depositing the local check has a negative book balance, or negative available balance in its account at the time of deposit, the \$225 that must be available on the next business day may be made available by applying the \$225 to the negative balance, rather than making the \$225 available for withdrawal by cash or check on the following day.

* * * * *

7. Dollar Amount Adjustment– See section 229.11 for the rules regarding adjustments for inflation every five years to the dollar amounts used in this section.

* * * * *

V. Section 229.11 Adjustment of dollar amounts

1. Example of a positive adjustment. If the CPI-W for July (and released in August) of the base year and the adjustment year were 100 and 114.7, respectively, the aggregate percentage change for the period would be 14.7%. If the applicable dollar amount was \$200 for the prior period, then the adjusted figure would become \$225, as the change of \$29.40 results in rounding to \$25.
2. Example of no adjustment. If the CPI-W for July (and released in August) of the base year and the adjustment year were 100 and 104, respectively, the aggregate percentage change would be 4.0%. If the applicable dollar amount was \$200 for the prior period,

then the adjusted figure would remain \$200, as the change of \$8.00 does not result in rounding to \$25.

3. Example of accounting for aggregate decrease in subsequent period. If the CPI-W for July (and released in August) of the base year and the adjustment year were 100 and 95, respectively, the aggregate percentage change would be -5%, and no adjustment to the dollar amounts would occur. The CPI-W for July (and released in August) of the base year would be the starting point for calculating any CPI-W increase across subsequent five-year periods. Therefore, if the CPI-W in July (and released in August) of the base year and the CPI-W in July (and released in August) of the years at the end of the next two five-year periods were 100, 95, and 109, respectively, the aggregate percentage change for the entire period would be 9.0%. If the applicable dollar amount was \$5,000 for the prior period, then the adjusted figure would become \$5,450 as the change of \$450 does not require rounding because it is a multiple of \$25.
4. Example of accounting for aggregate lack of dollar amount change in subsequent period. If the CPI-W for July (and released in August) of the base year and the year at the end of the subsequent five-year period were 100 and 105, respectively, the aggregate change over the five-year period would be 5%, and no adjustment to the \$200 amount would occur, as the change of \$10 does not result in rounding to \$225. Nonetheless, the CPI-W for July (and released in August) of the base year would be the starting point for calculating any CPI-W percentage increase across the subsequent five-year period. Therefore, if the CPI-W in July (and released in August) of the base year and the CPI-W in July (and released in August) of the years at the end of the next two five-year periods were 100, 105, and 112.6, respectively, the aggregate percentage change for the entire

period would be 12.6 %. If the applicable dollar amount was \$200 for the prior period, then the adjusted figure would become \$225 as the change of \$25.20 results in rounding to \$225, the nearest multiple of \$25.

* * * * *

VI. Section 229.12 Availability Schedule

A. 229.12(a) Effective Date

* * * * *

B. 229.12(d) Time Period Adjustment for Withdrawal by Cash or Similar Means

* * * * *

4. Dollar Amount Adjustment – See section 229.11 for the rules regarding adjustments for inflation every five years to the dollar amounts in this section.

* * * * *

E. 229.12(e) Extension of Schedule for Certain Deposits in Alaska, Hawaii, Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, and the U.S.

Virgin Islands

1. The EFA Act and regulation provide an extension of the availability schedules for check deposits at a branch of a bank if the branch is located in Alaska, Hawaii, Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, or the U.S. Virgin Islands. The schedules for local checks, nonlocal checks (including nonlocal checks subject to the reduced schedules of appendix B), and deposits at nonproprietary ATMs are extended by one business day for checks deposited to accounts in banks located in these jurisdictions that are drawn on or payable at or through a paying bank not located in the same jurisdiction as the depository bank. For example, a check deposited in a bank in Hawaii and drawn on a San

San Francisco paying bank must be made available for withdrawal not later than the third business day following deposit. This extension does not apply to deposits that must be made available for withdrawal on the next business day.

2. The Congress did not provide this extension of the schedules to checks drawn on a paying bank located in Alaska, Hawaii, Puerto Rico, American Samoa, the Commonwealth of the Northern Mariana Islands, Guam, or the U.S. Virgin Islands and deposited in an account at a depository bank in the 48 contiguous states. Therefore, a check deposited in a San Francisco bank drawn on a Hawaii paying bank must be made available for withdrawal not later than the second rather than the third business day following deposit.

VII. Section 229.13 Exceptions

B. 229.13(a) New Accounts

* * * * *

4. Dollar Amount Adjustment – See section 229.11 for the rules regarding adjustments for inflation every five years to the dollar amounts in this section.

* * * * *

C. 229.13(b) Large Deposits

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2. The following example illustrates the operation of the large-deposit exception. If a customer deposits \$2,000 in cash and a \$9,000 local check on a Monday, \$2,225 (the proceeds of the cash deposit and \$225 from the local-check deposit) must be made available for withdrawal on Tuesday. An additional \$5,300 of the proceeds of the local check must be available for

withdrawal on Wednesday in accordance with the local schedule, and the remaining \$3,475 may be held for an additional period of time under the large-deposit exception.

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- 4. Dollar Amount Adjustment – See section 229.11 for the rules regarding adjustments for inflation every five years to the dollar amounts in this section.

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E. 229.13(d) Repeated Overdrafts

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- 5. Dollar Amount Adjustment – See section 229.11 for the calculation method used to adjust the dollar amounts in this section every five years.

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H. 229.13(g) Notice of Exception

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2. One-Time Exception Notice

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b. In the case of a deposit of multiple checks, the depositary bank has the discretion to place an exception hold on any combination of checks in excess of \$5,525. The notice should enable a customer to determine the availability of the deposit in the case of a deposit of multiple checks. For example, if a customer deposits a \$5,525 local check and a \$5,525 nonlocal check, under the large-deposit exception, the depositary bank may make funds available in the amount of (1) \$225 on the first business day after deposit, \$5,300 on the second business day after deposit (local check), and \$5,525 on the eleventh business day after deposit (nonlocal check with six-day exception hold), or (2) \$225 on the first business day after deposit, \$5,300 on the fifth

business day after deposit (nonlocal check), and \$5,525 on the seventh business day after deposit (local check with five-day exception hold). The notice should reflect the bank's priorities in placing exception holds on next-day (or second-day), local, and nonlocal checks.

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XIV. Section 229.20 Relation to state Law

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C. 229.20(c) Standards for Preemption

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2. Under a state law, some categories of deposits could be available for withdrawal sooner or later than the time required by this subpart, depending on the composition of the deposit. For example, the EFA Act and this regulation (§ 229.10(c)(1)(vii)) require next-day availability for the first \$225 of the aggregate deposit of local or nonlocal checks on any day, and a state law could require next-day availability for any check of \$200 or less that is deposited. Under the EFA Act and this regulation, if either one \$300 check or three \$100 checks are deposited on a given day, \$225 must be made available for withdrawal on the next business day, and \$75 must be made available in accordance with the local or nonlocal schedule. Under the state law, however, the two deposits would be subject to different availability rules. In the first case, none of the proceeds of the deposit would be subject to next-day availability; in the second case, the entire proceeds of the deposit would be subject to next-day availability. In this example, because the state law would, in some situations, permit a hold longer than the maximum permitted by the EFA Act, this provision of state law is inconsistent and preempted in its entirety.

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XV. Section 229.21 Civil Liability

A. 229.21(a) Civil Liability

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2. Dollar Amount Adjustment – See section 229.11 for the rules regarding adjustments for inflation every five years to the dollar amounts in this section.

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XXIX. Section 229.43 Checks Payable in Guam, American Samoa, and the Northern Mariana

Islands [Removed]

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BUREAU OF CONSUMER FINANCIAL PROTECTION

Authority and Issuance

For the reasons set forth in the preamble, the Bureau of Consumer Financial Protection proposes to amend Regulation DD, 12 CFR part 1030, as follows:

PART 1030 – TRUTH IN SAVINGS (REGULATION DD)

7. The authority citation for part 1030 continues to read as follows:

Authority: 12 U.S.C. 4302-4304, 4308, 5512, 5581.

8. Section 1030.1 is amended by adding paragraph (e) to read as follows:

§ 1030.1 Authority, purpose, coverage, and effect on state laws.

* * * * *

(e) *Relationship to Regulation CC.* The Director of the Bureau and the Board of Governors of the Federal Reserve System jointly issue regulations under sections 603(d)(1), 604, 605, and 609(a) of the Expedited Funds Availability Act (12 U.S.C. 4002(d)(1), 4003, 4004, 4008(a)) that are codified within Regulation CC (12 CFR part 229).

9. Section 1030.7 is amended by revising paragraph (c) to read as follows:

§ 1030.7 Payment of interest.

* * * * *

(c) *Date interest begins to accrue.* Interest shall begin to accrue not later than the business day specified for interest-bearing accounts in section 606 of the Expedited Funds Availability Act (12 U.S.C. 4005) and in § 229.14 of that act's implementing Regulation CC (12 CFR part 229). Interest shall accrue until the day funds are withdrawn.

10. Appendix A to part 1030 is revised to read as follows:

APPENDIX A TO PART 1030—ANNUAL PERCENTAGE YIELD CALCULATION

The annual percentage yield measures the total amount of interest paid on an account based on the interest rate and the frequency of compounding. The annual percentage yield reflects only interest and does not include the value of any bonus (or other consideration worth \$10 or less) that may be provided to the consumer to open, maintain, increase or renew an account. Interest or other earnings are not to be included in the annual percentage yield if such amounts are determined by circumstances that may or may not occur in the future. The annual percentage yield is expressed as an annualized rate, based on a 365-day year. Institutions may calculate the annual percentage yield based on a 365-day or a 366-day year in a leap year. Part I of this appendix discusses the annual percentage yield calculations for account disclosures and advertisements, while Part II discusses annual percentage yield earned calculations for periodic statements.

PART I. ANNUAL PERCENTAGE YIELD FOR ACCOUNT DISCLOSURES AND ADVERTISING

PURPOSES

In general, the annual percentage yield for account disclosures under §§ 1030.4 and 1030.5 and for advertising under § 1030.8 is an annualized rate that reflects the relationship between the amount of interest that would be earned by the consumer for the term of the account and the amount of principal used to calculate that interest. Special rules apply to accounts with tiered and stepped interest rates, and to certain time accounts with a stated maturity greater than one year.

A. General Rules

Except as provided in Part I.E. of this appendix, the annual percentage yield shall be calculated by the formula shown below. Institutions shall calculate the annual percentage yield based on the actual number of days in the term of the account. For accounts without a stated maturity date (such as a typical savings or transaction account), the calculation shall be based on an assumed term of 365 days. In determining the total interest figure to be used in the formula, institutions shall assume that all principal and interest remain on deposit for the entire term and that no other transactions (deposits or withdrawals) occur during the term. This assumption shall not be used if an institution requires, as a condition of the account, that consumers withdraw interest during the term. In such a case, the interest (and annual percentage yield calculation) shall reflect that requirement. For time accounts that are offered in multiples of months, institutions may base the number of days on either the actual number of days during the applicable period, or the number of days that would occur for any actual sequence of that many calendar months. If institutions choose to use the latter rule, they must use the same number of

days to calculate the dollar amount of interest earned on the account that is used in the annual percentage yield formula (where “Interest” is divided by “Principal”).

The annual percentage yield is calculated by use of the following general formula (“APY” is used for convenience in the formulas):

$$APY=100 [(1+Interest/Principal)^{(365/Days\ in\ term)}-1]$$

“Principal” is the amount of funds assumed to have been deposited at the beginning of the account.

“Interest” is the total dollar amount of interest earned on the Principal for the term of the account.

“Days in term” is the actual number of days in the term of the account. When the “days in term” is 365 (that is, where the stated maturity is 365 days or where the account does not have a stated maturity), the annual percentage yield can be calculated by use of the following simple formula:

$$APY=100 (Interest/Principal)$$

Examples

(1) If an institution pays \$61.68 in interest for a 365-day year on \$1,000 deposited into a NOW account, using the general formula above, the annual percentage yield is 6.17%:

$$APY=100[(1+61.68/1,000)^{(365/365)}-1]$$

$$APY=6.17\%$$

Or, using the simple formula above (since, as an account without a stated term, the term is deemed to be 365 days):

$$APY=100(61.68/1,000)$$

$$APY=6.17\%$$

(2) If an institution pays \$30.37 in interest on a \$1,000 six-month certificate of deposit (where the six-month period used by the institution contains 182 days), using the general formula above, the annual percentage yield is 6.18%:

$$APY=100[(1+30.37/1,000)^{(365/182)}-1]$$

$$APY=6.18\%$$

B. Stepped-Rate Accounts (Different Rates Apply in Succeeding Periods)

For accounts with two or more interest rates applied in succeeding periods (where the rates are known at the time the account is opened), an institution shall assume each interest rate is in effect for the length of time provided for in the deposit contract.

Examples

(1) If an institution offers a \$1,000 6-month certificate of deposit on which it pays a 5% interest rate, compounded daily, for the first three months (which contain 91 days), and a 5.5% interest rate, compounded daily, for the next three months (which contain 92 days), the total interest for six months is \$26.68 and, using the general formula above, the annual percentage yield is 5.39%:

$$APY=100[(1+26.68/1,000)^{(365/183)}-1]$$

$$APY=5.39\%$$

(2) If an institution offers a \$1,000 two-year certificate of deposit on which it pays a 6% interest rate, compounded daily, for the first year, and a 6.5% interest rate, compounded daily, for the next year, the total interest for two years is \$133.13, and, using the general formula above, the annual percentage yield is 6.45%:

$$APY=100[(1+133.13/1,000)^{(365/730)}-1]$$

$$APY=6.45\%$$

C. Variable-Rate Accounts

For variable-rate accounts without an introductory premium or discounted rate, an institution must base the calculation only on the initial interest rate in effect when the account is opened (or advertised), and assume that this rate will not change during the year.

Variable-rate accounts with an introductory premium (or discount) rate must be calculated like a stepped-rate account. Thus, an institution shall assume that: (1) The introductory interest rate is in effect for the length of time provided for in the deposit contract; and (2) the variable interest rate that would have been in effect when the account is opened or advertised (but for the introductory rate) is in effect for the remainder of the year. If the variable rate is tied to an index, the index-based rate in effect at the time of disclosure must be used for the remainder of the year. If the rate is not tied to an index, the rate in effect for existing consumers holding the same account (who are not receiving the introductory interest rate) must be used for the remainder of the year.

For example, if an institution offers an account on which it pays a 7% interest rate, compounded daily, for the first three months (which, for example, contain 91 days), while the variable interest rate that would have been in effect when the account was opened was 5%, the total interest for a 365-day year for a \$1,000 deposit is \$56.52 (based on 91 days at 7% followed by 274 days at 5%). Using the simple formula, the annual percentage yield is 5.65%:

$$APY=100(56.52/1,000)$$

$$APY=5.65\%$$

D. Tiered-Rate Accounts (Different Rates Apply to Specified Balance Levels)

For accounts in which two or more interest rates paid on the account are applicable to specified balance levels, the institution must calculate the annual percentage yield in accordance

with the method described below that it uses to calculate interest. In all cases, an annual percentage yield (or a range of annual percentage yields, if appropriate) must be disclosed for each balance tier.

For purposes of the examples discussed below, assume the following:

Interest rate (percent)	Deposit balance required to earn rate
5.25	Up to but not exceeding \$2,500.
5.50	Above \$2,500 but not exceeding \$15,000.
5.75	Above \$15,000.

Tiering Method A. Under this method, an institution pays on the full balance in the account the stated interest rate that corresponds to the applicable deposit tier. For example, if a consumer deposits \$8,000, the institution pays the 5.50% interest rate on the entire \$8,000.

When this method is used to determine interest, only one annual percentage yield will apply to each tier. Within each tier, the annual percentage yield will not vary with the amount of principal assumed to have been deposited.

For the interest rates and deposit balances assumed above, the institution will state three annual percentage yields—one corresponding to each balance tier. Calculation of each annual percentage yield is similar for this type of account as for accounts with a single interest rate. Thus, the calculation is based on the total amount of interest that would be received by the consumer for each tier of the account for a year and the principal assumed to have been deposited to earn that amount of interest.

First tier. Assuming daily compounding, the institution will pay \$53.90 in interest on a \$1,000 deposit. Using the general formula, for the first tier, the annual percentage yield is 5.39%:

$$APY=100[(1+53.90/1,000)^{(365/365)}-1]$$

$$APY=5.39\%$$

Using the simple formula:

$$APY=100(53.90/1,000)$$

$$APY=5.39\%$$

Second tier. The institution will pay \$452.29 in interest on an \$8,000 deposit. Thus, using the simple formula, the annual percentage yield for the second tier is 5.65%:

$$APY=100(452.29/8,000)$$

$$APY=5.65\%$$

Third tier. The institution will pay \$1,183.61 in interest on a \$20,000 deposit. Thus, using the simple formula, the annual percentage yield for the third tier is 5.92%:

$$APY=100(1,183.61/20,000)$$

$$APY=5.92\%$$

Tiering Method B. Under this method, an institution pays the stated interest rate only on that portion of the balance within the specified tier. For example, if a consumer deposits \$8,000, the institution pays 5.25% on \$2,500 and 5.50% on \$5,500 (the difference between \$8,000 and the first tier cut-off of \$2,500).

The institution that computes interest in this manner must provide a range that shows the lowest and the highest annual percentage yields for each tier (other than for the first tier, which, like the tiers in Method A, has the same annual percentage yield throughout). The low figure for

an annual percentage yield range is calculated based on the total amount of interest earned for a year assuming the minimum principal required to earn the interest rate for that tier. The high figure for an annual percentage yield range is based on the amount of interest the institution would pay on the highest principal that could be deposited to earn that same interest rate. If the account does not have a limit on the maximum amount that can be deposited, the institution may assume any amount.

For the tiering structure assumed above, the institution would state a total of five annual percentage yields—one figure for the first tier and two figures stated as a range for the other two tiers.

First tier. Assuming daily compounding, the institution would pay \$53.90 in interest on a \$1,000 deposit. For this first tier, using the simple formula, the annual percentage yield is 5.39%:

$$APY=100(53.90/1,000)$$

$$APY=5.39\%$$

Second tier. For the second tier, the institution would pay between \$134.75 and \$841.45 in interest, based on assumed balances of \$2,500.01 and \$15,000, respectively. For \$2,500.01, interest would be figured on \$2,500 at 5.25% interest rate plus interest on \$.01 at 5.50%. For the low end of the second tier, therefore, the annual percentage yield is 5.39%, using the simple formula:

$$APY=100(134.75/2,500)$$

$$APY=5.39\%$$

For \$15,000, interest is figured on \$2,500 at 5.25% interest rate plus interest on \$12,500 at 5.50% interest rate. For the high end of the second tier, the annual percentage yield, using the simple formula, is 5.61%:

$$APY=100(841.45/15,000)$$

$$APY=5.61\%$$

Thus, the annual percentage yield range for the second tier is 5.39% to 5.61%.

Third tier. For the third tier, the institution would pay \$841.45 in interest on the low end of the third tier (a balance of \$15,000.01). For \$15,000.01, interest would be figured on \$2,500 at 5.25% interest rate, plus interest on \$12,500 at 5.50% interest rate, plus interest on \$.01 at 5.75% interest rate. For the low end of the third tier, therefore, the annual percentage yield (using the simple formula) is 5.61%:

$$APY=100 (841.45/15,000)$$

$$APY=5.61\%$$

Since the institution does not limit the account balance, it may assume any maximum amount for the purposes of computing the annual percentage yield for the high end of the third tier. For an assumed maximum balance amount of \$100,000, interest would be figured on \$2,500 at 5.25% interest rate, plus interest on \$12,500 at 5.50% interest rate, plus interest on \$85,000 at 5.75% interest rate. For the high end of the third tier, therefore, the annual percentage yield, using the simple formula, is 5.87%.

$$APY=100 (5,871.79/100,000)$$

$$APY=5.87\%$$

Thus, the annual percentage yield range that would be stated for the third tier is 5.61% to 5.87%.

If the assumed maximum balance amount is \$1,000,000 instead of \$100,000, the institution would use \$985,000 rather than \$85,000 in the last calculation. In that case, for the high end of the third tier the annual percentage yield, using the simple formula, is 5.91%:

$$APY=100 (59134.22/1,000,000)$$

$$APY=5.91\%$$

Thus, the annual percentage yield range that would be stated for the third tier is 5.61% to 5.91%.

E. Time Accounts with a Stated Maturity Greater than One Year that Pay Interest At Least Annually

1. For time accounts with a stated maturity greater than one year that do not compound interest on an annual or more frequent basis, and that require the consumer to withdraw interest at least annually, the annual percentage yield may be disclosed as equal to the interest rate.

Example

(1) If an institution offers a \$1,000 two-year certificate of deposit that does not compound and that pays out interest semi-annually by check or transfer at a 6.00% interest rate, the annual percentage yield may be disclosed as 6.00%.

(2) For time accounts covered by this paragraph that are also stepped-rate accounts, the annual percentage yield may be disclosed as equal to the composite interest rate.

Example

(1) If an institution offers a \$1,000 three-year certificate of deposit that does not compound and that pays out interest annually by check or transfer at a 5.00% interest rate for the first year, 6.00% interest rate for the second year, and 7.00% interest rate for the third year, the institution may compute the composite interest rate and APY as follows:

- (a) Multiply each interest rate by the number of days it will be in effect;
- (b) Add these figures together; and
- (c) Divide by the total number of days in the term.

(2) Applied to the example, the products of the interest rates and days the rates are in effect are (5.00%×365 days) 1825, (6.00%×365 days) 2190, and (7.00%×365 days) 2555, respectively. The sum of these products, 6570, is divided by 1095, the total number of days in the term. The composite interest rate and APY are both 6.00%.

PART II. ANNUAL PERCENTAGE YIELD EARNED FOR PERIODIC STATEMENTS

The annual percentage yield earned for periodic statements under § 1030.6(a) is an annualized rate that reflects the relationship between the amount of interest actually earned on the consumer’s account during the statement period and the average daily balance in the account for the statement period. Pursuant to § 1030.6(b), however, if an institution uses the average daily balance method and calculates interest for a period other than the statement period, the annual percentage yield earned shall reflect the relationship between the amount of interest earned and the average daily balance in the account for that other period.

The annual percentage yield earned shall be calculated by using the following formulas (“APY Earned” is used for convenience in the formulas):

A. General Formula

$$\text{APY Earned} = 100 [(1 + \text{Interest earned} / \text{Balance})^{(365 / \text{Days in period})} - 1]$$

“Balance” is the average daily balance in the account for the period.

“Interest earned” is the actual amount of interest earned on the account for the period.

“Days in period” is the actual number of days for the period.

Examples

(1) Assume an institution calculates interest for the statement period (and uses either the daily balance or the average daily balance method), and the account has a balance of \$1,500 for 15 days and a balance of \$500 for the remaining 15 days of a 30-day statement period. The average daily balance for the period is \$1,000. The interest earned (under either balance computation method) is \$5.25 during the period. The annual percentage yield earned (using the formula above) is 6.58%:

$$\text{APY Earned} = 100 [(1 + 5.25/1,000)^{(365/30)} - 1]$$

$$\text{APY Earned} = 6.58\%$$

(2) Assume an institution calculates interest on the average daily balance for the calendar month and provides periodic statements that cover the period from the 16th of one month to the 15th of the next month. The account has a balance of \$2,000 September 1 through September 15 and a balance of \$1,000 for the remaining 15 days of September. The average daily balance for the month of September is \$1,500, which results in \$6.50 in interest earned for the month. The annual percentage yield earned for the month of September would be shown on the periodic statement covering September 16 through October 15. The annual percentage yield earned (using the formula above) is 5.40%:

$$\text{APY Earned} = 100 [(6.50/1,500)^{(365/30)} - 1]$$

$$\text{APY Earned} = 5.40\%$$

(3) Assume an institution calculates interest on the average daily balance for a quarter (for example, the calendar months of September through November), and provides monthly periodic statements covering calendar months. The account has a balance of \$1,000 throughout the 30 days of September, a balance of \$2,000 throughout the 31 days of October, and a balance of \$3,000 throughout the 30 days of November. The average daily balance for the quarter is

\$2,000, which results in \$21 in interest earned for the quarter. The annual percentage yield earned would be shown on the periodic statement for November. The annual percentage yield earned (using the formula above) is 4.28%:

$$APY \text{ Earned} = 100 [(1 + 21/2,000)^{(365/91)} - 1]$$

$$APY \text{ Earned} = 4.28\%$$

B. Special Formula for Use Where Periodic Statement Is Sent More Often Than the Period for Which Interest Is Compounded

Institutions that use the daily balance method to accrue interest and that issue periodic statements more often than the period for which interest is compounded shall use the following special formula:

$$APY \text{ Earned} = 100 \left\{ \left[1 + \frac{(\text{Interest earned/Balance}) (\text{Compounding})}{\text{Days in period}} \right]^{(365/\text{Compounding})} - 1 \right\}$$

The following definition applies for use in this formula (all other terms are defined under Part II):

“Compounding” is the number of days in each compounding period.

Assume an institution calculates interest for the statement period using the daily balance method, pays a 5.00% interest rate, compounded annually, and provides periodic statements for each monthly cycle. The account has a daily balance of \$1,000 for a 30-day statement period. The interest earned is \$4.11 for the period, and the annual percentage yield earned (using the special formula above) is 5.00%:

$$APY \text{ Earned} = 100 \left\{ \left[1 + \frac{(4.11/1,000)}{30} (365) \right]^{(365/365)} - 1 \right\}$$

$$APY \text{ Earned} = 5.00\%$$

11. In Supplement I to part 1030, under Section 1030.7—*Payment of Interest*, paragraph 7(c)—*Date interest begins to accrue* is revised to read as follows:

Supplement I to Part 1030—Official Interpretations

* * * * *

Section 1030.7—Payment of Interest

* * * * *

(c) Date interest begins to accrue.

1. *Relation to Regulation CC.* Institutions may rely on the Expedited Funds Availability Act (EFAA) and Regulation CC (12 CFR part 229) to determine, for example, when a deposit is considered made for purposes of interest accrual, or when interest need not be paid on funds because a deposited check is later returned unpaid.

2. *Ledger and collected balances.* Institutions may calculate interest by using a “ledger” or “collected” balance method, as long as the crediting requirements of the EFAA are met (12 CFR 229.14).

3. *Withdrawal of principal.* Institutions must accrue interest on funds until the funds are withdrawn from the account. For example, if a check is debited to an account on a Tuesday, the institution must accrue interest on those funds through Monday.

**[THIS SIGNATURE PAGE PERTAINS TO THE PROPOSED RULE TITLED
“AVAILABILITY OF FUNDS AND COLLECTION OF CHECKS (REGULATION
CC)”]**

By order of the Board of Governors of the Federal Reserve System, November 19, 2018.

Ann E. Misback(signed)

Ann E. Misback,
Secretary of the Board.

