

FEDERAL RESERVE SYSTEM

12 CFR 230

Regulation DD; Docket No. R-1171

Truth in Savings

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Proposed Rule.

SUMMARY: The Board is proposing to amend Regulation DD, which implements the Truth in Savings Act, and the staff commentary to the regulation. Regulation DD would be revised to define more specifically the standard for providing “clear and conspicuous” disclosures, and to provide a more uniform standard among the Board’s regulations. The staff commentary would be revised to include examples of how to meet this standard. Similar proposed revisions to Regulations B, E, M, and Z appear elsewhere in today’s Federal Register. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

DATES: Comments must be received on or before January 30, 2004.

ADDRESSES: Comments should refer to Docket No. R-1171 and should be mailed to Jennifer J. Johnson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, N.W., Washington, D.C. 20551. However, because paper mail in the Washington area and at the Board of Governors is subject to delay, please consider submitting your comments by e-mail to regs.comments@federalreserve.gov, or faxing them to the Office of the Secretary at (202) 452-3819 or 452-3102. Members of the public may inspect comments in Room MP-500 of the Martin Building between 9:00 a.m. and 5:00 p.m. on weekdays pursuant to § 261.12, except as provided in § 261.14, of the Board’s Rules Regarding Availability of Information, 12 CFR 261.12 and 261.14.

FOR FURTHER INFORMATION CONTACT: Krista P. DeLargy and Elizabeth A. Eurgubian, Attorneys, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, at (202) 452-3667 or 452-2412; for users of Telecommunications Device for the Deaf (“TDD”) only, contact (202) 263-4869.

SUPPLEMENTARY INFORMATION:

I. Background

The purpose of the Truth in Savings Act (TISA), 12 U.S.C. 4301 *et seq.*, is to assist consumers in comparing deposit accounts offered by depository institutions, principally through the disclosure of fees, the annual percentage yield (APY), the interest rate, and other account terms. The act and regulation require depository institutions to provide a consumer with disclosures upon request and before an account is opened. Institutions are not required to provide periodic statements; but if they do, the act and regulation require that fees, yields, and other information be provided on the statements. Notice must be given to accountholders before an adverse change in account terms occurs and prior to the renewal of certificates of deposit (time accounts). The TISA is implemented by the Board's Regulation DD (12 CFR part 230). An official staff commentary interprets the requirements of Regulation DD (12 CFR part 230 (Supp. I)).

II. Proposed Revisions

Section 230.2—Definitions

2(w) Clear and Conspicuous

Section 264(e) of TISA requires disclosures to be made in clear and plain language and presented in a format designed to allow consumers to readily understand the terms of the accounts offered. *See* 12 U.S.C. 4303(e). This standard is implemented in Regulation DD. *See* §§ 230.3(a) and 230.8(c). Guidance on how depository institutions may comply with the clear and conspicuous standard is contained in the staff commentary. *See* comment 3(a)-1. The commentary states that under this standard, disclosures must be in a readily understandable form.

Consumer financial services and fair lending laws and the Board regulations that implement them contain similar but not identical standards for providing disclosures that consumers will notice and understand. Generally, disclosures must be “clear and conspicuous” under Regulations B (Equal Credit Opportunity), M (Consumer Leasing), Regulation P (Privacy of Consumer Financial Information), Z (Truth in Lending) and DD (Truth in Savings), and “clear and readily understandable” under Regulation E (Electronic Fund Transfers). In interpreting the “clear and conspicuous” standard, the staff commentaries to Regulations B, M and Z provide that disclosures must be “in a reasonably understandable” form; similarly, under Regulation DD disclosures must be in a format that allows consumers “to readily understand the terms of their account.” For purposes of the disclosures provided with credit card solicitations and applications, the commentary to Regulation Z provides more specifically that those disclosures must also be “readily noticeable to the consumer.” In contrast, the Board's Regulation P (Privacy of Consumer Financial Information) defines the “clear and conspicuous” standard to mean that a disclosure is “reasonably understandable and designed to call attention to the nature and significance of the information” in the disclosure. 12 CFR § 216.3(b)(1).

Regulation P also provides examples of how to satisfy the standard. 12 CFR § 216.3(b)(2).

The Board believes that the recently implemented standard in Regulation P (65 FR 35162, June 1, 2000), articulates with greater precision than the other regulations the concepts underlying the duty to provide disclosures that consumers will notice and understand. Therefore, to provide consistent guidance on the clear and conspicuous standard among its regulations, the Board is proposing to amend Regulation DD by adding a definition of clear and conspicuous in § 230.2(w), consistent with the “clear and conspicuous” definition in Regulation P. The staff commentary to Regulation DD also would be revised to add comments 2(w)-1 and -2, consistent with Regulation P’s examples of how to meet the clear and conspicuous standard. Similar proposed revisions to Regulations B, E, M and Z appear elsewhere in today’s Federal Register. These revisions are intended to help ensure that consumers receive noticeable and understandable information that is required by law in connection with obtaining consumer financial products and services. In addition, consistency among the regulations should facilitate compliance by institutions.

Additional information may accompany disclosures required under Regulation DD. See § 230.3(a), comment 6(a)-4. Proposed comment 2(w)-3 further clarifies that the “clear and conspicuous” standard generally does not prohibit adding other terms to the federally required disclosures (such as contractual provisions or state-required disclosures); nor does it prohibit sending promotional material with the disclosures. Proposed comment 2(w)-3 would clarify, however, that the presence of other information may be a factor in determining whether the “clear and conspicuous” standard is met. Generally, segregating federally mandated disclosures from other information is more likely to satisfy the clear and conspicuous standard.

The Board also proposes to adopt for Regulations B, E, M, Z and DD, guidance concerning type-sizes that are deemed to meet the “clear and conspicuous” standard and those that would likely be too small (this guidance currently applies only to credit card solicitations and applications under Regulation Z). See proposed comment 2(w)-2(ii).

The proposal does not add special format requirements to the regulation where none currently exist. Accordingly, even though the revisions clarify that type size can be one factor to consider in determining whether a disclosure is conspicuous, the proposal would not add a specific type-size requirement.

The Board also proposes to delete as unnecessary the guidance in comment 3(a)-1 and replace it with a cross-reference to § 230.2(w) and accompanying comments. Guidance regarding the “clear and conspicuous” standard for disclosures transmitted by electronic communication will be considered in the context of rulemakings dealing specifically with electronic delivery of disclosures.

III. Form of Comment Letters

Comment letters should refer to Docket No. R-1171 and, when possible, should use a standard typeface with a font size of 10 or 12; this will enable the Board to convert text submitted in paper form to machine-readable form through electronic scanning, and will facilitate automated retrieval of comments for review. Comments may be mailed electronically to regs.comments@federalreserve.gov.

IV. Solicitation of Comments Regarding the Use of “Plain Language”

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

V. Initial Regulatory Flexibility Analysis

In accordance with section 3(a) of the Regulatory Flexibility Act, the Board has reviewed the proposed amendments to Regulation DD. The proposed amendments are not expected to have any significant impact on small entities. A final regulatory flexibility analysis will be prepared and will consider comments received during the public comment period.

VI. Paperwork Reduction Act

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

The collection of information that is revised by this rulemaking is found in 12 CFR part 230. This collection is mandatory (15 U.S.C. 4301 *et seq.*) to evidence compliance with the requirements of Regulation DD and the Truth in Savings Act (TISA). The respondents and recordkeepers are for-profit depository institutions, including small businesses. Institutions are required to retain records for twenty-four months. This regulation applies to all types of depository institutions, not just state member banks; however, under Paperwork Reduction Act regulations, the Federal Reserve accounts for the burden of the paperwork associated with the regulation only for state member banks. Other agencies account for the paperwork burden on their respective constituencies under this regulation.

The proposed revisions would provide depository institutions with a more uniform definition for “clear and conspicuous” disclosures and provide examples of how to satisfy the clear and conspicuous standard. While the proposal would amend Regulation DD and the staff commentary, it is expected that these revisions would not

increase the paperwork burden of depository institutions. With respect to state member banks, it is estimated that there are 976 respondents and recordkeepers. Current annual burden is estimated to be 146,644 hours.

Because the records would be maintained at state member banks and the notices are not provided to the Federal Reserve, no issue of confidentiality arises under the Freedom of Information Act.

Comments on the collection of information should be sent to the Office of Management and Budget, Paperwork Reduction Project (7100-0271), Washington, DC 20503, with copies of such comments sent to Cynthia Ayouch, Federal Reserve Board Clearance Officer, Division of Research and Statistics, Mail Stop 41, Board of Governors of the Federal Reserve System, Washington, DC 20551.

Text of Proposed Revisions

Certain conventions have been used to highlight the proposed revisions. New language is shown inside bold-faced arrows while language that would be deleted is set off with bold-faced brackets.

List of Subjects in 12 CFR Part 230

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

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

PART 230 — TRUTH IN SAVINGS (REGULATION DD)

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

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

2. Section 230.2 is amended by adding a new paragraph (w) to read as follows:

§ 230.2 Definitions.

For the purposes of this regulation the following definitions apply:

* * * * *

► (w) Clear and conspicuous means that a disclosure is reasonably understandable and designed to call attention to the nature and significance of the information in the disclosure. ◀

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3. In Supplement I to Part 230:

a. Under Section 230.2 Definitions, a new paragraph title (w) Clear and conspicuous is added, and new paragraphs (w) 1. through (w) 3. are added.

b. Under Section 230.3 General disclosure requirements, under (a) Form, paragraph 1. is revised.

SUPPLEMENT I TO PART 230—OFFICIAL STAFF INTERPRETATIONS

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Section 230.2 Definitions

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► (w) Clear and conspicuous

1. Reasonably understandable. Examples of disclosures that are reasonably understandable include disclosures that:

- i. Present the information in the disclosure in clear, concise sentences, paragraphs, and sections;
- ii. Use short explanatory sentences or bullet lists whenever possible;
- iii. Use definite, concrete, everyday words and active voice whenever possible;
- iv. Avoid multiple negatives;
- v. Avoid legal and highly technical business terminology whenever possible; and
- vi. Avoid explanations that are imprecise and readily subject to different interpretations.

2. Designed to call attention. Examples of disclosures that are designed to call attention to the nature and significance of the information include disclosures that:

- i. Use a plain-language heading to call attention to the disclosure;
- ii. Use a typeface and type size that are easy to read. Disclosures in 12-point type generally meet this standard. Disclosures printed in less than 12-point type do not automatically violate the standard; however, disclosures in less than 8-point type would likely be too small to satisfy the standard;
- iii. Provide wide margins and ample line spacing;
- iv. Use boldface or italics for key words; and

v. In a document that combines disclosures with other information, use distinctive type size, style, and graphic devices, such as shading or sidebars, to call attention to the disclosures.

3. Other information. Except as otherwise provided, the clear and conspicuous standard does not prohibit adding to the required disclosures such items as contractual provisions, explanations of contract terms, state disclosures, and translations; or sending promotional material with the required disclosures. However, the presence of this other information may be a factor in determining whether the clear and conspicuous standard is met. ◀

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Section 230.3 General disclosure requirements

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(a) Form

1. ▶ Clear and conspicuous. See § 230.2(w) and accompanying comments. ◀
 [Design Requirements. Disclosures must be presented in a format that allows consumers to readily understand the terms of their account. Institutions are not required to use a particular type size or typeface, nor are institutions required to state any term more conspicuously than any other term. Disclosures may be made:

- i. In any order
- ii. In combination with other disclosures or account terms
- iii. In combination with disclosures for other types of accounts, as long as it is clear to consumers which disclosures apply to their account
- iv. On more than one page and on the front and reverse sides
- v. By using inserts to a document or filling in blanks
- vi. On more than one document, as long as the documents are provided at the same time.]

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By order of the Board of Governors of the Federal Reserve System, November 25, 2003.

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