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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: Final rule.

SUMMARY: The Board and the Bureau (Agencies) are amending Regulation CC, which implements the Expedited Funds Availability Act (EFA Act), to implement a statutory requirement in the EFA Act to adjust the dollar amounts under the EFA Act for inflation. The Agencies are also amending Regulation CC to incorporate 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 making certain other technical amendments.

DATES: This rule is effective September 3, 2019, except for the amendments to 12 CFR 229.1, 229.10, 229.11, 229.12(d), 229.21, and appendix E to part 229, which are effective July 1, 2020.

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SUPPLEMENTARY INFORMATION:

I. Background

Regulation CC (12 CFR part 229) implements the 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 banks² 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: (1) 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”);³ (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”);⁴ (3) the amount of funds deposited by certain checks in a new account that are subject to next-day availability (“new-account amount”);⁵ (4) the threshold for using an exception to the funds-availability schedules if the aggregate amount of checks on any one banking day exceed the threshold amount (“large-deposit threshold”);⁶ (5) the threshold for determining whether an account has been repeatedly overdrawn (“repeatedly overdrawn threshold”);⁷

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 Section 229.2(e) of Regulation CC defines “bank” to include banks, savings institutions, and credit unions.

³ The minimum amount is currently \$200. See section 1086(e) of the Dodd-Frank Act; 12 U.S.C. 4002(a)(2)(D).

⁴ The cash withdrawal amount is currently \$400. 12 U.S.C. 4002(b)(3)(B).

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

⁶ The large-deposit threshold is currently \$5,000. 12 U.S.C. 4003(b)(1).

⁷ 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 proposed to

and (6) the civil liability amounts for failing to comply with the EFA Act’s requirements.⁸

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 July 21, 2011.⁹ Section 609(a) of the EFA Act,¹⁰ as amended by section 1086(d) of the Dodd-Frank Act, 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 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 \$25.¹¹

Finally, 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.¹² The effect of these statutory amendments is to subject banks in American Samoa, the

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 stated that they 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. The Board and the Bureau did not receive comments suggesting that they should treat the repeatedly overdrawn threshold differently from the other dollar amounts, and they finalize this aspect of the proposal for the reasons stated in the proposal.

⁸ 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).

⁹ Public Law 111-203, sections 1062, 1086, 1100H, 124 Stat. 2081 (2010); 75 FR 57252 (Sept. 20, 2010).

¹⁰ 12 U.S.C. 4008(a).

¹¹ 12 U.S.C. 4006(f).

¹² Public Law 115-174, section 208 (2018). The amendments that section 208 of the EGRRCPA made to the EFA Act became effective on June 23, 2018. See section 208(b) of the EGRRCPA.

Commonwealth of the Northern Mariana Islands, and Guam to the EFA Act's requirements related to funds availability, payment 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.

II. Summary of Proposed Rule, Comments Received, and Final Rule

On December 10, 2018, the Agencies published a notice of proposed rulemaking (proposal) to implement the statutory requirement in the EFA Act to adjust the dollar amounts under the Act for inflation and to implement the EGRRCPA amendments to the EFA Act.¹³ The Agencies received 32 responses to their proposal from a variety of commenters, including depository institutions, service providers, trade associations, clearinghouses, consumer organizations, and private individuals.¹⁴ Nine commenters explicitly expressed general support for the proposal, two additional trade association commenters specifically supported the proposal's calculation methodology and timeframes, and twelve commenters specifically supported the proposed one-year effective date. As discussed in more detail below, three institutions opposed basic tenets of the statutory requirements based on concerns about loss to institutions due to customer fraud: the first disagreed altogether with need to make inflationary adjustments for purposes of funds availability; the second disagreed with adjusting the statutory dollar amounts every five years; and the third opposed basing the hold amount on the CPI, stating that individual check amounts are not reflective of inflation.¹⁵ Some commenters addressed other specific aspects of the proposal. As discussed in more detail below, the Agencies considered all of the comments received

and are adopting the amendments to Regulation CC described below.

A. Effective Dates for Inflation Adjustments

The Agencies continue to believe, as stated in the proposal, that section 607(f) of the EFA Act 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. The Agencies believe that Congress intended to balance its concern about changes being too frequent or abrupt with the need to prevent the EFA Act's dollar amounts from being eroded by inflation. As regulators of depository institutions, the Agencies are likewise familiar with the challenges that institutions can face if changes to regulatory requirements are too frequent or abrupt. Congress balanced these concerns 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.

In their December 2018 proposal, the Agencies stated they expected to publish the first set of adjustments as a final rule in the first quarter of 2019, with a proposed effective date of April 1, 2020. The Agencies further stated they expected to publish the second set of adjustments in the first quarter of 2024, with an effective date of April 1, 2025. For each subsequent set of adjustment, the Agencies proposed an effective date of April 1 of every fifth year after 2025. The Agencies stated their belief that the proposed effective dates would provide institutions with sufficient time to make any necessary disclosure and software changes and the Agencies requested comment on the proposed effective dates for the adjustments.

Fourteen commenters addressed the amount of time between the Agencies' publication of a final rule setting forth the inflation adjustments and the rule's effective date. Of those, twelve commenters supported the Agencies' proposed one-year interim, one commenter requested 18 months, and another requested two years. Two of the commenters that supported the one-year interim recommended that, if the Agencies do not release the final rule by April 1, 2019, the effective date should be extended such that it is at least one

year after the release date of the final rule.

For the reasons set forth in the proposal and above, the Agencies are finalizing as proposed the one-year interim between publication of the first set of adjustments and the adjustments' effective date. Because the Agencies are releasing this final rule in June 2019, the effective date for the final rule is July 1, 2020. Further, the Agencies anticipate carrying this one-year interim forward for future adjustments. Specifically, § 229.11(a) of the final rule states that the relevant EFA Act dollar amounts, as reflected in Regulation CC, shall be adjusted effective on July 1, 2020, on July 1, 2025, and on July 1 of every fifth year after 2025. The Agencies anticipate issuing a rule in the **Federal Register** setting forth the inflation adjustments at least one year before the effective date of each ensuing adjustment. For example, the Agencies anticipate publishing in the first half of 2024 the second set of inflation adjustments, which will become effective July 1, 2025.¹⁶

In addition to expressing general support for the timeframes in the proposal, one commenter specifically stated that the industry will benefit from having a predetermined schedule for making future updates to the EFA Act dollar amounts. Two commenters additionally requested that the Agencies tie the inflation adjustment effective dates to the effective dates of any other disclosure changes so depository institutions would not have to make other changes to disclosures in the interim years.

The Agencies believe that institutions will benefit from having their implementation of the statutorily-required inflation adjustments occur on a predetermined five-year cycle and, as noted above, that section 607(f) of the EFA Act is reasonably interpreted to provide for five years to elapse between a given set of adjustments and the next set of adjustments. Thus, the Agencies are finalizing the rule as proposed with the five-year cycle between inflation adjustments. Nonetheless, as stated above, the Agencies are cognizant of the potential burden on institutions if

¹³ 83 FR 63431, Dec. 10, 2018. In their December 2018 **Federal Register** notice, the Agencies also provided an additional opportunity for public comment on certain amendments to the funds-availability provisions in Regulation CC that the Board proposed in 2011. The Agencies are not herein addressing the Board's 2011 proposal or the comments received thereon.

¹⁴ The Board received 18 comments and the Bureau received 23. Of the 41 total comments received, nine commenters submitted identical comment letters to both Agencies.

¹⁵ Because the statute is clear in its directives to make inflationary adjustments to dollar amounts under the EFA Act every five years based on the CPI-W, the Agencies are finalizing the rule as proposed with regard to these fundamental statutory requirements.

¹⁶ The effective dates are consistent with section 302 of the Riegle Community Development and Regulatory Improvement Act of 1994 (Pub. L. 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 (but not the Bureau), 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).

regulatory changes are too frequent or abrupt. Accordingly, the Agencies recognize the benefit of making efforts, if appropriate and feasible, to coordinate the effective dates of future rulemakings effecting changes to disclosures required by the funds-availability provisions in Regulation CC subpart B with the predetermined effective dates for the inflation adjustments to the dollar amounts in Regulation CC subpart B that are set forth herein.

B. Methodology for Inflation Adjustments

1. Measurement of Underlying Inflation

EFA Act section 607(f) does not specify which month's CPI-W should be used to measure inflation. The Agencies proposed to use the July CPI-W, which is released by the Bureau of Labor Statistics in August. The Agencies proposed 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. The Agencies proposed that 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. And, the Agencies proposed that 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. The Agencies stated in their proposal that this use of July CPI-W, starting with the July 2011 CPI-W, aligns with section 607(f)'s effective date of July 21, 2011. The Agencies specifically requested comment on this approach.

Most commenters that addressed the issue supported the Agencies' proposed inflation calculation methodology. However, one commenter recommended that the Agencies base the calculation of inflation on the change in the CPI-W from July 2013 to July 2018 on the grounds that it would result in a lower aggregate percentage change for the first set of adjustments. The Agencies are finalizing the rule as proposed with the first set of inflation adjustments—published herein and effective July 1, 2020—based on inflation, as measured by the CPI-W, from July 2011 to July 2018. As discussed in the proposal, the Agencies continue to believe it is appropriate for the inflation adjustments to be based on underlying inflation since the effective date of the relevant Dodd-Frank Act provisions, which is July 21, 2011. The Agencies do not

believe that the need identified by Congress to prevent the relevant dollar amounts from being eroded by inflation would be served by omitting the period of July 2011 to July 2013 from the Agencies' calculation, as the commenter advocated. The second set of inflation adjustments—which the Agencies anticipate publishing in the first half of 2024 and which will be effective July 1, 2025—will be based on underlying inflation from July 2018 through July 2023. The third set of adjustments—which the Agencies anticipate publishing in the first half of 2029 and which will be effective July 1, 2030—will be based on inflation from July 2023 through July 2028.

2. Aggregate Percentage Increase

Section 607(f) of the EFA Act provides that the adjustments must be based on the “annual percentage increase” in the CPI-W, but does not specify how the adjustment must be made in the event that the CPI-W is negative for one or more years in the inflation measurement period. The Agencies maintain their position from the proposal¹⁷ that 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 include those movements when measuring the underlying inflation that is the basis for calculating adjustments to the dollar amounts in subpart B of Regulation CC. Of the few commenters that addressed this issue, most supported the Agencies' proposed approach, and the Agencies are adopting it in the final rule.

Further, the Agencies proposed an approach under which the five-year adjustments to the dollar amounts in Regulation CC subpart B would always be zero or upward, never downward. Specifically, the Agencies proposed that if there is no aggregate percentage increase (zero increase) in the CPI-W or an aggregate percentage decrease (negative increase) in the CPI-W during the five-year inflation measurement period, then there would be no downward adjustments to the dollar amounts in Regulation CC subpart B.

One depository institution commented that the proposed approach could cause funds-availability risks to institutions under certain economic scenarios of sustained deflation (negative inflation). Another institution characterized the Agencies' proposed approach as being somewhat arbitrary but generally agreed that the aggregate change would most likely be zero or positive. Conversely, a consumer

organization explicitly agreed with the proposed approach and stated that negative inflation should not result in decreased funds availability to consumers.

Under the Agencies' final rule, as proposed, the adjustments to the dollar amounts in Regulation CC subpart B will always be zero or upward, never downward. The Agencies continue to believe this approach is a reasonable interpretation of the phrase “annual percentage increase” in EFA Act section 607(f), in that reading out the word “increase” from the statute would not be consistent with the statutory scheme. Further, as noted in their proposal,¹⁸ the Agencies reiterate that, since 1939, no aggregate change in the CPI-W across a five-year period has been negative. Nonetheless, if it were to become necessary and appropriate in the future, the Agencies could consider steps to address the funds-availability risks to institutions that could be associated with a sustained—*i.e.*, more-than-five-year—period of deflation, if any such period of deflation were ever to actually occur.

3. Rounding to the Nearest Multiple of \$25

EFA Act section 607(f) states that the dollar amounts under the Act shall be adjusted every five years for inflation, as measured by the CPI-W, “rounded to the nearest multiple of \$25.” In keeping with that statutory directive, the Agencies proposed that, if there is an aggregate percentage increase in any five-year 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 that appear in the regulation.¹⁹

Two depository institutions and two trade associations recommended rounding to a different value than \$25, including rounding to the nearest \$100 or to the nearest place value or setting the minimum amount at \$300, on the grounds of reducing institutions' costs by reducing the frequency of the inflation adjustments and reducing consumer confusion. The Agencies

¹⁸ See 83 FR 63431 at 63433 footnote 14, Dec. 10, 2018.

¹⁹ For example, if the CPI-W in July of Year X and in July of Year X + 5 were 100 and 114.7, respectively, the aggregate percentage change that results from the change in the CPI-W would be 14.7%. If the applicable dollar amount in the regulation was \$200 for the prior period, then the adjusted figure in the regulation would become \$225, because the calculated change of 14.7 percent of \$200, which is \$29.40, results in rounding to \$225 as that would be the nearest multiple of \$25.

¹⁷ See 83 FR 63431 at 63433, Dec. 10, 2018.

believe that this suggested approach would be inconsistent with the language of section 607(f) of the EFA Act that expressly refers to “rounded to the nearest multiple of \$25.” Accordingly, the Agencies are adopting a final rule under which the adjusted dollar amounts in the regulation are rounded to the nearest multiple of \$25.

4. Notice and Comment

One depository institution suggested that the Agencies allow for public comment each time the Agencies adjust the dollar amounts in the regulation for inflation. The commenter stated that this approach would allow institutions and the Agencies to consider whether the adjustments continue to be cost effective and to ensure that the adjustments benefit consumers enough to justify the additional costs to institutions.

Congress has required the Agencies to adjust dollar amounts under the EFA Act for inflation. If, as the commenter suggests, the Agencies were to obtain public comment in advance of future five-year inflation adjustments, those comments could not serve as a legal basis for the Agencies to override the fundamental statutory requirement to effectuate inflation adjustments. In addition, the Agencies are herein adopting the methodology for the calculations underlying the statutorily-required inflation adjustments, including future five-year adjustments, and the Agencies have adopted that methodology through notice-and-comment rulemaking. Accordingly, and as stated in the Agencies’ proposal,²⁰ with respect to future inflation adjustments for subsequent five-year periods, the Agencies continue to expect to find that notice and opportunity for public comment for the adjustments is impracticable, unnecessary, or contrary to the public interest, because the calculation methodology for the adjustments is set forth herein and future execution of the adjustments will be technical and non-discretionary. *See* 5 U.S.C. 553(b)(B). For example, the Agencies have determined in the final rule set forth herein that the second set of inflation adjustments to the dollar amounts in Regulation CC will be based on inflation as measured by the CPI-W from July 2018 through July 2023. As noted above, the Agencies anticipate publishing those adjustments in the **Federal Register** in the first half of 2024, to be effective July 1, 2025, so that institutions will have sufficient time to implement the inflation adjustments.

²⁰ *See* 83 FR 63431 at 63433 footnote 17, Dec. 10, 2018.

Further, the Agencies are always open to feedback about how their rules could be improved, and they take appropriate steps in response to such feedback.

C. Burden on Institutions From Implementing the Inflation Adjustments

Many commenters, including credit unions and credit union trade associations, expressed concern regarding the burden imposed on institutions to implement the inflation adjustments. Several credit union commenters stated that the cost burden imposed on institutions to implement the inflation indexing could exceed the Agencies’ estimate in the proposal, noting in particular the printing and distribution costs associated with sending notices to customers of the changes in the institutions’ funds-availability policies (commonly referred to as “change-in-terms” notices).²¹ One credit union commenter summarized this position by stating that the Agencies’ cost estimate constitutes a “basic approximation” that left out other potential costs, including communication with members before each change. This section discusses commenter concerns and suggestions regarding the burden imposed by the inflation indexing. Those concerns are also discussed below in the Agencies’ analyses pursuant to the Regulatory Flexibility Act, the Board’s analysis pursuant to the Paperwork Reduction Act, and the Bureau’s analysis pursuant to section 1022 of the Dodd-Frank Act.

1. Notices to Customers of Changes to Institutions’ Funds-Availability Policies

As noted above, commenters expressed concern regarding the burden associated with the requirement to send customers a change-in-terms notice reflecting the inflation-adjusted Regulation CC funds-availability amounts. One commenter specifically voiced concern about the disproportionate cost impact on smaller credit unions for printing and mailing notices in general and, in specific, the change-in-terms notice. To reduce that burden, the commenter also urged the Agencies to reduce the length of the required funds-availability disclosures or permit them to accompany monthly account statements. Another commenter suggested reducing burden by establishing an exception within the

²¹ Regulation CC § 229.18(e) requires a depository institution to send customers a written notice regarding a change to the bank’s funds-availability policy. The changes to the availability policies to reflect the statutorily-required inflation adjustments, as implemented by this final rule, would trigger the requirement to send a change-in-terms notice.

Regulation CC provision, § 229.18(e), that requires the change-in-terms notice. Specifically, the commenter suggested that an institution not be required to provide a change-in-terms notice when its funds-availability policy changes due to the periodic inflation adjustments to the Regulation CC funds-availability dollar amounts that are mandated by section 607(f) of the EFA Act.

The Regulation CC change-in-terms provision (§ 229.18(e)) mirrors the statutory change-in-terms provision, which is set forth in EFA Act section 605(c)(2). That statutory provision requires an institution to send a written notice to consumer account holders at least 30 days before implementing a change to the institution’s funds-availability policy and further states that “any change which expedites the availability of such funds shall be disclosed not later than 30 days after implementation.” *See* EFA Act section 605(c)(2) (12 U.S.C. 4004(c)(2)).

In their final rule, the Agencies decline to establish in Regulation CC an exception to the requirement to send a change-in-terms notice, as this requirement is established by statute. However, the Agencies note several ways that depository institutions may lower their costs under the rule, including providing the required notice electronically and sending it with the monthly account statement, as follows.

Electronic delivery is permitted where the institution has complied with the requirements of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 *et seq.* (“E-Sign Act”)). *See* comment 229.15(a)–1. Further, the regulation already permits an institution to send a required change-in-terms notice on or with a monthly account statement, and this is so irrespective of whether the institution sends the notice and statement electronically or in paper form. *See* comment 229.18(e)–1 (stating that the change-in-terms notice required by § 229.18(e) “may be given in any form as long as it is clear and conspicuous”). In addition, an institution need not set forth the entirety of its revised funds-availability policy in its change-in-terms notice. If an institution chooses to provide the notice by sending a complete new availability disclosure, the institution must direct the customer to the changed terms in the disclosure by use of a letter or insert, or by highlighting the changed terms in the disclosure. *See* comment 229.18(e)–1. And finally, as discussed above, the Agencies anticipate providing one year between the date of publication in the **Federal Register** of the inflation-adjusted amounts and the

date on which the adjusted amounts become effective. The Agencies believe that this one-year timeframe provides institutions with a sufficient interim in which to plan to send their change-in-terms notices in a way that minimizes the burden associated with doing so. In light of all of these factors, and given that the inflation adjustments are statutorily required and will occur only once every five years, the Agencies do not believe that the burden concerns raised warrant any modification to the requirement to send change-in-terms notices.

2. Minimum Availability Amounts Required by the Regulation

To obviate the need to send a change-in-terms notice to consumers every five years when the dollar amounts in Regulation CC are adjusted for inflation, one depository institution commented that the regulation should permit institutions to provide to customers a funds-availability policy disclosure that includes a phrase such as “minimum amount required by regulation,” rather than setting forth an actual dollar figure that potentially (if inflation is sufficient) must be updated every five years. The Agencies decline to adopt this approach because they believe it would result in consumer confusion. Specifically, the Agencies believe that one of the purposes of the statute, that consumers be informed of the specific amount of deposits available to them under an institution’s funds-availability policy, would be foreclosed under the commenter’s suggested approach.

3. Overall Opposition to the Inflation Adjustments

Three commenters opposed making inflation adjustments altogether. One commenter disagreed with adjusting the statutory dollar amounts every five years, because it opens institutions up to increased losses from fraud. Another stated that it does not make sense to base the funds-availability hold amounts on the CPI-W, because individual check amounts are not reflective of inflation. And, another stated that making higher dollar amounts available would end up imposing costs on consumers, because institutions would inevitably pass on to consumers their higher costs from fraud losses that would result from the higher funds-availability amounts.

While the Agencies are cognizant of the burden regulations place on institutions, the inflation adjustments to the dollar amounts under the EFA Act are required by statute. The Agencies understand that Congress, in providing for a five-year cycle between inflation

adjustments, intended to balance concerns regarding burden with the need to prevent the EFA Act’s dollar amounts from being eroded by inflation.²² Congress also specified that the CPI-W should be used.

D. Regulation CC Changes To Implement the EGRRCPA Amendments to the EFA Act

Two commenters supported the Agencies’ proposed changes to Regulation CC to implement the EGRRCPA amendments to the EFA Act that extended its application to American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam. The proposed changes included updating the definitions of “state” and “United States” in Regulation CC to include these territories as well as other conforming amendments. No commenters opposed the proposed changes. In their final rule, the Agencies adopt these changes as proposed.

E. Technical Amendments to Appendix A of Regulation DD

The Bureau proposed 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 also proposed 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 proposed to fix technical errors in 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 2011.²³

²² Consistent with this view, 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. 100–19, 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.”)

²³ 76 FR 79276 (Dec. 21, 2011).

The Bureau received one comment regarding its proposed correction of technical errors in Appendix A to Regulation DD, recommending that the Bureau consult with the National Credit Union Association (NCUA) to determine whether it is necessary to amend Appendix A within credit unions’ equivalent regulation under the Truth in Savings Act (TISA), specifically, Appendix A to 12 CFR part 707. The technical errors that are present in Appendix A to Regulation DD are not present in Appendix A to 12 CFR part 707. Thus, the Bureau has no reason to believe it is necessary for the NCUA to amend Appendix A to 12 CFR part 707. In addition, as described below, the Bureau has performed interagency consultations regarding this final rule, including with the NCUA.

The Bureau is adopting as proposed the above-described technical, non-substantive amendments to Regulation DD and Appendix A thereto.

III. Legal Authority

In issuing the final rule, the Agencies are exercising their authority under section 609(a) of the EFA Act (12 U.S.C. 4008(a)) to amend subpart B and, in connection therewith, subpart A, of Regulation CC to 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.²⁴ Additionally, with respect to the technical amendments to Regulation DD, the Bureau is exercising its authority under section 269(a) of TISA (12 U.S.C. 4308(a)) to prescribe regulations to carry out the purpose and provisions of TISA.

IV. Administrative Law Matters

A. 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

²⁴ Additionally, section 604(b)(3) of the EFA Act (12 U.S.C. 4003(b)(3)) authorizes the Agencies to establish reasonable exceptions to time limitations for deposit accounts that have been overdrawn repeatedly. As noted above, the Agencies also rely on this authority in adjusting the repeatedly overdrawn threshold in 12 CFR 229.13(d).

assets as described in section 1026 of the Dodd-Frank Act; and the impact on consumers in rural areas.²⁵ The Bureau requested comment on the preliminary analysis as well as the submission of additional data that could inform the Bureau's analysis of the benefits, costs, and impacts of the rule. The Bureau received four comments on the preliminary analysis, which it has considered in developing this final analysis.

This analysis considers the benefits, costs, and impacts of this final rule using a pre-statutory baseline. That is, the Bureau's analysis below considers the benefits, costs, and impacts of the relevant provisions of the EGRRCPA combined with this final rule relative to the regulatory regime that pre-dates the EGRRCPA.²⁶

2. Potential Benefits and Costs to Consumers and Covered Persons

This final rule 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 final rule keeps the expected losses to depository institutions constant in real terms 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 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 approximately \$2,241 every five years to update notices already sent to consumers.²⁷ Specifically, the Bureau

²⁵ 12 U.S.C. 5512(b)(2)(A). Although the manner and extent to which section 1022(b)(2)(A) applies to a joint Bureau and Board rulemaking under the EFA Act is unclear, to inform this rulemaking more fully the Bureau performed the described analysis.

²⁶ 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 final amendments to subpart C of Regulation CC. Additionally, the Bureau's amendments to Regulation DD are technical and non-substantive and so do not affect the benefits, costs, or impacts of the final rule.

²⁷ In the proposed 1022(b)(2) analysis, the Bureau stated that covered persons would face an average paperwork cost of \$398.04 every five years. The

estimates that compliance will require 60 hours every five years. The Bureau further assumes an average hourly wage of \$37.35, as explained below.

In the proposed 1022(b)(2) analysis, the Bureau used the average hourly wage rate for compliance officers of \$33.17. The revised average hourly wage rate reflects two adjustments. First, the Bureau is using figures reported in the Occupational Employment Statistics for May 2018 instead of May 2016. Second, two commenters observed that implementation requires staff besides compliance officers to make system updates and that technical staff might have a higher average hourly wage. The Bureau does not have representative data on the combinations of staff that would be used in recurring system changes of the type required by this rule. The Bureau agrees, however, that the prior estimate likely underestimated the average hourly cost. The second adjustment takes some account of differences in staff and costs to mitigate any underestimation.²⁸

Two commenters stated that the rule would trigger the regulation's requirement to provide a change-in-terms notice and that this would create costs for printing and mailing. However, the change-in-terms notice can be provided on the monthly account statement (the notice can also be provided electronically if the institution has the consumer's E-Sign consent). The Bureau therefore does not agree that the rule would necessitate an increase in printing and mailing costs.

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.²⁹ The final rule 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

Bureau received comments that the total and the assumed number of hours were too low. To be consistent with the PRA analysis, the Bureau should have stated that covered persons would face an average paperwork cost of \$398.04 every year, which would be \$1,990.20 every five years.

²⁸ See Bureau of Labor Statistics, *National Occupational Employment and Wage Estimates* (May 2018), available at https://www.bls.gov/oes/current/oes_nat.htm. The average hourly wage is a weighted average of 40% of the average annual wage for compliance officers (\$34.86), 40% for operations staff (\$36.98), and 20% for computer programmers (\$43.07). In addition, one commenter said that the wage should take into account benefits as well as salary. Given that the required changes occur just once every five years, the Bureau expects that there would be large differences across institutions in use of contractors and salaried employees. The Bureau does not have the data required to take these differences into account.

²⁹ Public Law 115-174, section 208 (2018).

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 policies and other disclosures regarding funds availability and timely access to their funds. Consumers will generally not experience any costs associated with changes to existing policies or with receiving these disclosures.

Based on regulatory filings, the Bureau has identified five institutions headquartered 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 may therefore face compliance costs associated with this final rule. 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 this final rule on these institutions. The Bureau specifically requested information from commenters on the costs of complying with Regulation CC for institutions in American Samoa, the Commonwealth of the Northern Mariana Islands, and Guam and on those institutions' pre-statutory practices regarding funds availability. No comments provided data or other information in response to this request.

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

The final rule's inflation adjustments and changes to disclosures 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 approximately \$2,241 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 requested information from commenters on the total cost that would be experienced by these depository institutions to comply with Regulation CC. No comments provided data or other information in response to this request.

4. Impact on Access to Credit

The Bureau does not expect the final rule to affect consumers' access to credit. The scope of this rulemaking is limited to funds availability in depository accounts and is not directly related to credit access.

5. Impact on Rural Areas

The Bureau does not believe that the final rule will have a unique impact on consumers in rural areas.

B. Regulatory Flexibility Act

Board: The Regulatory Flexibility Act (RFA) requires an agency to publish a final regulatory flexibility analysis with a final rule or certify that the rule will not have a significant economic impact on a substantial number of small entities. Based on its analysis, and for the reasons stated below, the Board believes that the rule will not have a significant economic impact on a substantial number of small entities. Nevertheless, the Board is publishing a final regulatory flexibility analysis.

1. *Statement of the need for, and objectives of, the proposed rule.* The final rule memorializes 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 final rule also implements the statutory amendments to the EFA 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 final rule applies 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 9,460 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. As discussed above, while some commenters suggested the cost burden on institutions implementing the inflation indexing could be greater than the proposal estimated, the Board does not believe the final rule will have a significant economic impact on the entities that it affects. 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 final rule. The economic impact on small entities from the final 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. However, as noted above, the Agencies anticipate providing one year between the date of publication in the **Federal Register** of the inflation-adjusted amounts and the date on which the adjusted amounts become effective. The Agencies believe that this one-year timeframe provides institutions with a sufficient interim in which to plan to send their change-in-terms notices in a way that minimizes the burden associated with doing so. In addition, 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 final rule requires 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 final rule and any other Federal rule.

5. *Significant alternatives to the proposed revisions.* As discussed above and after reviewing the comments submitted, the Board has not identified any significant alternatives that would reduce the regulatory burden of this 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.³⁰ These analyses must "describe the impact of

the proposed rule on small entities."³¹ 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.³² 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.

At the proposed rule stage, the Bureau determined that an IRFA was not required because the proposal, if adopted, would not have a significant economic impact on a substantial number of small entities. For this final rule, the Bureau continues to believe that that determination is accurate. As discussed in the Bureau's section 1022(b)(2) analysis above, the Bureau believes the final 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, other than the paperwork costs discussed below. In addition, the final 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 final 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

³¹ Id. at 603(a). For purposes of assessing the impacts of the final 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).

³² Id. at 605(b).

³⁰ 5 U.S.C. 601 *et seq.*

million in assets.³³ Following guidance from the Small Business Administration, the Bureau averaged the total assets reported in quarterly call reports during quarters 1 through 4 of 2018. The Bureau identified 9,460 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 approximately \$2,241 for depository institutions. The Bureau estimates that about 3% of small entities face a significant economic impact from the quinquennial 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 rule will not have a significant economic impact on a substantial number of small entities.

C. Paperwork Reduction Act

Board: Certain provisions of the final 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 final rule under the authority delegated to the Board by OMB. The Board invited comments 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.

Eight commenters, including credit unions and credit union trade associations, expressed concern regarding the burden imposed on institutions to implement the inflation adjustments. Several credit union commenters stated that the cost burden imposed on institutions to implement the inflation indexing could exceed the Agencies' estimate in the proposal, noting in particular the printing and distribution costs associated with sending notices to customers of the changes in the institutions' funds-availability policies (commonly referred to as "change-in-terms" notices). One commenter specifically voiced concern about the disproportionate cost impact on smaller credit unions for printing and mailing notices in general and, in specific, the change-in-terms notice. To reduce that burden, the commenter also urged the Agencies to reduce the length of the required funds-availability disclosures or permit them to accompany monthly account statements. Another commenter suggested reducing burden by establishing an exception within the Regulation CC provision, § 229.18(e), that requires the change-in-terms notice. Specifically, the commenter suggested that an institution not be required to provide a change-in-terms notice when its funds-availability policy changes due to the periodic inflation adjustments to the Regulation CC funds-availability dollar amounts that are mandated by section 607(f) of the EFA Act.

In their final rule, the Agencies decline to establish in Regulation CC an exception to the requirement to send a change-in-terms notice, as this requirement is established by statute. However, the Agencies note several ways that depository institutions may lower their costs under the rule, including providing the required notice electronically and sending it with the monthly account statement, as follows.

Electronic delivery is permitted where the institution has complied with the requirements of the Electronic Signatures in Global and National Commerce Act (15 U.S.C. 7001 *et seq.* ("E-Sign Act")). See comment 229.15(a)–1. Further, the regulation already permits an institution to send a required change-in-terms notice on or with a monthly account statement, and this is so irrespective of whether the institution sends the notice and statement electronically or in paper form. See comment 229.18(e)–1 (stating that the change-in-terms notice required by § 229.18(e) "may be given in any form as long as it is clear and conspicuous"). In addition, an institution need not set forth the entirety of its revised funds-availability policy in its change-in-terms notice. If an institution chooses to provide the notice by sending a complete new availability disclosure, the institution must direct the customer to the changed terms in the disclosure by use of a letter or insert, or by highlighting the changed terms in the disclosure. See comment 229.18(e)–1. And finally, as discussed above, the Agencies anticipate providing one year between the date of publication in the **Federal Register** of the inflation-adjusted amounts and the date on which the adjusted amounts become effective. The Agencies believe that this one-year timeframe provides institutions with a sufficient interim in which to plan to send their change-in-terms notices in a way that minimizes the burden associated with doing so. In light of all of these factors, and given that the inflation adjustments are statutorily required and will occur only once every five years, the Agencies believe that the burden on institutions to send change-in-terms notices reflecting the inflation-adjusted amounts is reasonable.

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

³³ 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>.

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 § 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 § 229.10(c)(1)(vii) regarding the minimum amount, § 229.12(d) for the cash withdrawal amount, section 229.13(a) for the new-account amount, § 229.13(b) for the large-deposit threshold, § 229.13(d) for repeatedly overdrawn threshold, and § 229.21(a) for the civil liability amounts.

PRA Burden Estimates

Number of respondents: 940 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, 9,400 hours; Notice in specific policy disclosure, 32,900 hours; Notice of exceptions, 94,000 hours; Locations where employees accept consumer deposits, 235 hours; Quinquennial inflation adjustments for disclosures (annualized), 7,520 hours; Annual notice of new ATMs, 4,700 hours; Changes in policy, 4,000 hours; Notification of quinquennial inflation adjustments, 3,760 hours; Notice of nonpayment on paying bank, 658 hours; Notification to customer, 6,956 hours; Expedited recredit for consumers, 8,225 hours; Expedited recredit for banks, 3,525 hours; Consumer awareness, 5,640

hours; and Expedited recredit claim notice, 5,875 hours.

Current Total Estimated Annual Burden: 176,114 hours.

Proposed Total Estimated Annual Burden: 187,394 hours.

Bureau: As noted in the proposal, the Bureau was not required to seek 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 as discussed above in Section II.E do not impose any new or additional information collection requirements that would require OMB approval.³⁴

D. Plain Language Used

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 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 sought to present the proposed rule in a simple and straightforward manner, and invited comment on the use of plain language and whether any part of the rule could be more clearly stated. No commenters commented on use of plain language in the proposed rule, and the Board has adopted proposed plain language in the final rule.

E. Interagency Consultations

The Board and the Bureau have performed interagency consultations regarding this final rule consistent with section 609(e) of the EFA Act, section 269(a)(1) of TISA, 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.³⁵ Section 269(a)(1) of TISA provides that in prescribing regulations under section 269(a)(1), the Bureau shall consult with each agency referred to in TISA section 270(a) (12 U.S.C. 4309(a)).³⁶ 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

³⁴ The OMB control number for the information collection requirements contained in Regulation DD is 3170–0004.

³⁵ 12 U.S.C. 4008(a).

³⁶ 12 U.S.C. 4308(a)(1).

during the comment process regarding consistency with prudential, market, or systemic objectives administered by such agencies.³⁷

F. Bureau Congressional Review Act Statement

Pursuant to the Congressional Review Act (5 U.S.C. 801 *et seq.*), the Bureau will submit a report containing this rule and other required information to the U.S. Senate, the U.S. House of Representatives, and the Comptroller General of the United States prior to the rule taking effect. The Office of Information and Regulatory Affairs (OIRA) has designated this rule as not a “major rule” as defined by 5 U.S.C. 804(2).

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 amends 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

* * * * *

■ 2. In § 229.1, paragraph (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

³⁷ 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.

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).

* * * * *

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

§ 229.2 September 1, 2019 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 [Amended]

■ 4. In § 229.10, remove “\$100” and add in its place “\$225” in paragraph (c)(1)(vii)(A).

■ 5. Add § 229.11 to read as follows:

§ 229.11 Adjustment of dollar amounts.

(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 July 1, 2020, on July 1, 2025, and on July 1 of every fifth year after 2025, in accordance with the procedure set forth in paragraph (b) of this section 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 July 1, 2020, the inflation measurement

period begins in July 2011 and ends in July 2018. For dollar amount adjustments that are effective on July 1, 2025, the inflation measurement period begins in July 2018 and ends in July 2023. For dollar amount adjustments that are effective on July 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. Following each inflation measurement period, the dollar amount adjustments will be published in the **Federal Register**.

(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 paragraph (a) of this section shall be equal to the aggregate percentage change multiplied by the existing dollar amount listed in paragraph (c) of this section 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 paragraph (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 paragraph (c) of this section 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 in this paragraph (c)(1) for that period.

(i) Prior to July 21, 2011, the amount is \$100.

(ii) From July 21, 2011, through June 30, 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 July 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 in this paragraph (c)(2) for that period.

(i) Prior to July 1, 2020, the amount is \$400.

(ii) Effective July 1, 2020, the amount is \$450.

(3) For purposes of § 229.13(a), (b), and (d), the dollar amount in effect during a particular period is the amount stated in this paragraph (c)(3) for that period.

(i) Prior to July 1, 2020, the amount is \$5,000.

(ii) Effective July 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 in this paragraph (c)(4) for the period.

(i) Prior to July 1, 2020, the amounts are \$100, \$1,000, and \$500,000 respectively.

(ii) Effective July 1, 2020, the amounts are \$100, \$1,100, and \$552,500 respectively.

■ 6. In § 229.12:

■ a. Remove “\$100” and add in its place “\$225” in paragraph (d); and

■ b. Revise paragraphs (e) introductory text and (e)(1).

The revisions read 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

* * * * *

§ 229.21 [Amended]

■ 7. In § 229.21, remove “\$100” and add in its place “\$225” in paragraph (a)(2)(i).

§ 229.43 [Removed and Reserved]

■ 8. Section 229.43 is removed and reserved.

■ 9. Amend appendix E to part 229 as follows:

■ a. Remove the dollar amounts in the “Remove” column wherever they appear and add in their place the dollar amounts in the “Add” column in the following table:

Section	Remove	Add
229.10(c)	\$5,000	\$5,525
229.12(d)	400	450
229.13(a), (b), and (d)	5,000	5,525

- b. In Section II.D, revise paragraph 1.
- c. In Section IV.D, revise paragraph 5 and add paragraph 7.
- d. Section V is revised.
- e. In Section VI.B, paragraph 4 is added.
- f. In Section VI.E paragraphs 1 and 2 are revised.
- g. Section VII.C, paragraph 2 is revised and paragraph 4 is added.
- h. In Section VII.E, paragraph 5 is added.
- i. In Section VII.H, paragraph 2(b) is revised.
- j. In Section XIV.C, paragraph 2 is revised.
- k. In Section XV.A, paragraph 2 is added.
- l. Section XXIX is removed and reserved.

The revisions and additions read as follows:

Appendix E to Part 229—Commentary

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II. Section 229.2 Definitions

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D. * * *

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. * * *

D. * * *

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. * * *

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 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. * * *

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. * * *

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.

* * * * *

E. * * *

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

* * * * *

H. * * *

2. * * *

b. In the case of a deposit of multiple checks, the depository 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 depository 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.

* * * * *

XIV. Section 229.20 Relation to State Law

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C. * * *

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.

* * * * *

XV. Section 229.21 Civil Liability

A. * * *

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.

* * * * *

Bureau of Consumer Financial Protection

Authority and Issuance

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

PART 1030—TRUTH IN SAVINGS (REGULATION DD)

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

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

■ 11. In § 1030.1, paragraph (e) is added 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).

■ 12. In § 1030.7, paragraph (c) is revised 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.

■ 13. 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):

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

"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. (1) 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%:

$$\text{APY} = 100(53.90/1,000)$$

$$\text{APY} = 5.39\%$$

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:

$$\text{APY} = 100(134.75/2,500)$$

$$\text{APY} = 5.39\%$$

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%:

$$\text{APY} = 100(841.45/15,000)$$

$$\text{APY} = 5.61\%$$

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%:

$$\text{APY} = 100(841.45/15,000)$$

$$\text{APY} = 5.61\%$$

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%.

$$\text{APY} = 100(5,871.79/100,000)$$

$$\text{APY} = 5.87\%$$

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%:

$$\text{APY} = 100(59134.22/1,000,000)$$

$$\text{APY} = 5.91\%$$

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:

- Multiply each interest rate by the number of days it will be in effect;
- Add these figures together; and
- 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

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

"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%:

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

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

(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%:

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

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

(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 Earned=100 [(1+21/2,000)^(365/91) - 1]
APY 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:

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

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%:

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

APY Earned=5.00%

■ 14. 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.

* * * * *

By order of the Board of Governors of the Federal Reserve System, June 20, 2019.

Ann E. Misback,
Secretary of the Board.

Dated: June 10, 2019.

Kathleen L. Kraninger,
Director, Bureau of Consumer Financial Protection.

[FR Doc. 2019–13668 Filed 7–1–19; 4:15 pm]

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FEDERAL RESERVE SYSTEM

12 CFR Part 265

[Docket No. R–1667]

RIN No. 7100–AF 52

Rules Regarding Delegation of Authority: Delegation of Authority to the Secretary of the Board, Director of the Division of Supervision of Regulation, and Federal Reserve Banks

AGENCY: Board of Governors of the Federal Reserve System (Board).

ACTION: Final rule.

SUMMARY: The Board is amending its rules regarding delegation of authority to delegate to Federal Reserve Banks authority to approve certain types of applications, notices, and requests. Under the rule, Federal Reserve Banks are delegated authority to waive a requirement to file certain applications under the Bank Holding Company Act and the Home Owners’ Loan Act; grant or deny requests for modifying certain commitments; authorize a state member bank to make a public welfare investment in accordance with section 9 of the Federal Reserve Act under certain circumstances; and approve certain requests, applications, and notices relating to international banking operations filed pursuant to the Board’s Regulation K. The rule also modifies the delegation rules by authorizing the Federal Reserve Banks to approve applications and notices concerning mergers and acquisitions that do not exceed the Board’s delegation criteria

for competition after including deposits of qualifying credit unions weighted at 50 percent and deposits of “commercially active” thrift institutions weighted in most cases at 100 percent. In a limited number of cases, deposits of all thrifts would be weighted at 100 percent. To ensure the Board’s delegation rules are consistent, the rule also revises or rescinds, as appropriate, certain existing delegations to the Federal Reserve Banks, the Secretary of the Board, and the Director of the Division of Supervision and Regulation.

DATES: Effective July 3, 2019.

FOR FURTHER INFORMATION CONTACT:

Alison Thro, Assistant General Counsel, (202) 452–3236, Scott Tkacz, Senior Counsel, (202) 452–2744, or Jonah Kind, Attorney, (202) 452–2045, Legal Division, Susan Motyka, Deputy Associate Director, (202) 452–5280, Division of Supervision and Regulation, Anthony Iwuji, Manager, (202) 452–3254, Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, 20th Street and C Street NW, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

I. Discussion

Section 11(k) of the Federal Reserve Act provides that the Board, by published order or rule, may delegate any of its functions, other than those related to rulemaking or principally to monetary and credit policies.¹ Pursuant to this authority, the Board is amending its Rules Regarding Delegation of

¹ 12 U.S.C. 248(k).