Rules and Regulations

Federal Register

Vol. 59, No. 223

Monday, November 21, 1994

NATIONAL CREDIT UNION ADMINISTRATION

12 CFR Part 707

Truth in Savings

AGENCY: National Credit Union Administration.

ACTION: Final rule; interpretation.

SUMMARY: The NCUA Board is publishing its official staff commentary to Part 707 of the NCUA Rules and Regulations (Truth in Savings). The commentary applies and interprets the requirements of Part 707 and is a substitute for individual staff interpretations. The commentary incorporates much of the guidance provided when the regulation was adopted, and addresses additional questions that have been raised about the application of its requirements. In addition, the Board is implementing a provision of the Riegle Community Development and Regulatory Improvement Act of 1994, exempting accounts of unincorporated business associations from coverage of Part 707. A minor housekeeping amendment is also made to Part 707.

DATES: This document is effective on January 1, 1995.

Compliance with Appendix C to Part 707 is optional until May 22, 1995.

FOR FURTHER INFORMATION CONTACT: Martin S. Conrey, Staff Attorney, Office of General Counsel, telephone (703) 518–6540; Elizabeth Whitehead, Region I, telephone (518) 464–4180; Gini L. Corso, Region II, telephone (703) 838–0401; Joe W. Ostrowidzki, Region III, telephone (404) 396–4042; Michael J. Schneider, Region IV, telephone (708) 245–1000; Annette K. Moore, Region V, telephone (512) 482–4500; and Bruce Lum, Region VI, telephone (510) 825–6125.

SUPPLEMENTARY INFORMATION:

(1) Background

The purpose of the Truth in Savings Act ("TISA") (12 U.S.C. 4301 et seq.) is to assist members in comparing share and deposit accounts offered by credit unions and other depository institutions. TISA requires credit unions to disclose fees, the dividend or interest rate, the annual percentage yield, and other account terms whenever a member requests the information and before an account is opened. Fees and other information also must be provided on any periodic statement the credit union sends to the member. Rules are set forth for share and deposit account advertisements and advance notices to account holders of adverse changes in terms. TISA restricts how credit unions must determine the account balance on which dividends or interest are calculated. TISA is implemented by part 707 of the NCUA's Rules and Regulations ("part 707") (12 CFR part 707), which becomes effective on January 1, 1995, for most credit unions. TISA authorizes the issuance of official staff interpretations of the regulation.

(2) Rule Amendments

The Riegle Community Development and Regulatory Improvement Act of 1994, included a provision amending TISA. The amendment changes the definition of account:

> (1) Account.—The term "account" means any account intended for use by and generally used by consumers primarily for personal, family, or household purposes that is offered by a depository institution into which a consumer deposits funds, including demand accounts, time accounts, negotiable order of withdrawal accounts, and share draft accounts.

12 U.S.C. 4313(1). The Conference Report to the Act clarifies the intent of this amendment:

> Section 332 defines the term "account" for purposes of [TISA] as an account used by consumers primarily for personal, family, or household use. The Conferees intend this section to provide a business purpose exemption similar to that provided in the Truth in Lending Act. Under this provision, accounts of unincorporated businesses (i.e., generally, non-profit entities) are exempt from coverage under [TISA].

H.R. Conf. Rep. No. 103–652, 103d Cong., 2d Sess. 179 (1994). In order to implement the letter and intent of this new legislation, the Board is amending the definitions of the terms "account" (707.2(a)) and "member" (7072(q)) in Part 707, as well as other relevant references to unincorporated association accounts (Proposed Commentary, comment 2(a)–3 has been removed from the final commentary). The FRB has already adopted similar changes to Regulation DD. 59 FR 52657 (October 19, 1994).

In addition, a typographical error has been removed from section 707.6(b)(3). The redundant phrase "dollar amounts of the" has been removed; so that the sentence now reads: "The fees shall be itemized by type and dollar amounts."

The Board is adopting these rule amendments without notice and comment. The Administrative Procedure Act provides that notice and opportunity for public comment are not required if the Board finds that notice and public comment are unnecessary or would be contrary to the public interest. 5 U.S.C. 553(b)(B). The Board believes such a finding is appropriate in this case. The Congress has eliminated a class of accounts from Truth in Savings coverage, and the amendments merely make that change. In light of the Congress' action, the Board has no discretion with regard to the regulatory change; which is required by law and essentially ministerial. The other amendment removes a confusing redundancy in the rule. These amendments are technical in nature and not subject to interpretation. For these reasons, the Board has determined that publishing a notice of proposed rulemaking and providing opportunity for public comment for the following amendments is unnecessary and would be contrary to the public interest.

(3) Commentary

On August 3, 1994, the Board published for comment a proposed commentary to Part 707 (59 FR 39486). The commentary is designed to provide guidance to credit unions in applying the regulation to specific transactions and is a substitute for, and a supplement to, individual staff interpretations. The Board received 47 comments: 3 from national trade associations; 14 from state credit union leagues; 1 from a state credit union supervisor; 2 from state-chartered credit unions; 21 from federal credit unions; 1 from a credit union data processor; 1 from a credit union consultant; 2 from law firms; 1 from an insurance company; and 1 from a bank holding company. Commenters generally supported the proposal.

The Board contemplates updating the commentary periodically to address significant questions that arise. Due to the special needs of small, nonautomated credit unions, and for the reasons explained by the Board in the Final Rule adopted at the July Board meeting, the Board has decided to extend the compliance date of part 707 until January 1, 1996 for credit unions that are not automated and are under $2 million in assets as of December 31, 1993. 59 Fed. Reg. 39425 (August 3, 1994).

In large measure, the commentary incorporates supplementary information accompanying prior rulemakings, and reflects the views expressed therein without substantive change. (See final rule published on September 27, 1993 (58 FR 50394), and final rule, corrections and correcting amendments, published on March 22, 1994 (59 FR 13435).) The commentary also addresses issues that have arisen since the publication of the regulation and technical suggestions or concerns raised by commenters. NCUA's proposed commentary was published before the publication of the FRB's final commentary to Regulation DD. 59 FR 40217. NCUA's final commentary adopts many of the changes made by the FRB in their final commentary. The commentary also reflects NCUA staff's understanding of the FRB's interpretations which have not been publicly published. The commentary, for the most part, does not repeat information provided in part 707. The Board also notes, in response to seven commenters' requests for a delayed compliance date for all credit unions, that most credit unions have already been granted 14 months by the Board to get ready for TISA and part 707. In addition, credit unions can take advantage of the FRB's Regulation DD, and its compliance by other depository institutions, which was implemented in June of 1993. 58 FR 271 (January 5, 1993). The Board notes that the commentary makes no substantive changes to the actual regulation, but merely provides guidance. Therefore, the Board declines to extend the compliance date of the rule; but, to provide credit unions time to comply with the guidance provided in this commentary, and to provide parity to the compliance period provided by the FRB when it promulgated the final Regulation DD commentary, the Board has made compliance with this commentary optional until a period of six months after publication in the **Federal Register**, at which time compliance with the commentary shall be mandatory.

To avoid unnecessary detail, the discussion accompanying the final commentary does not individually mention technical amendments that clarify the proposed text but make no substantive change in meaning.

On December 6, 1993, the Federal Reserve Board ("FRB") published a proposal to amend the regulation's rules for calculating the annual percentage yield for accounts that send dividends or interest prior to maturity (58 FR 64190). (See also the notice extending the comment period published on January 13, 1994, 59 FR 1921.) This FRB proposed rule was withdrawn on May 11, 1994 (59 FR 24376). In its place, a new FRB proposed rule was published on May 11, 1994 (59 FR 24378), as amended on July 11, 1994 (59 FR 35271). The FRB amendments focus on two issues: a desire for the annual percentage yield to reflect the time value of money, and the concern of compliance costs and the impact on depository institutions if the proposed rule is adopted. The NCUA Board is delaying action regarding any adoption of similar amendments to part 707 until the completion of the FRB's rulemaking.

Section 707.1 Authority, Purpose, Coverage and Effect on State Laws

(b) Purpose

One commenter, a trade association for thrifts, correctly commented that the purpose of TISA was to enhance consumer shopping of depository accounts at all financial institutions—credit unions, thrifts, and banks, and urged the NCUA Board to stress this in the commentary. While the commenter is correct, the NCUA Board notes that the purpose is already correctly stated in § 707.1(c) of the rule, and that the purpose of the commentary is to enhance and explain the rule. Since this matter is already clearly covered in the rule, the Board has decided not to repeat it in the commentary. In this same vein, the commenter requested that the NCUA Board encourage credit unions to institute deposit, as opposed to share, accounts in order to provide uniformity of accounts for consumers. The Board does not agree with this comment for many reasons. First, the FCU Act and many state acts require credit unions to have share accounts instead of deposit accounts, and to change these laws is beyond the authority of the Board. Secondly, the members' equity, expressed in share accounts, is a major defining characteristic of credit unions, and has served the credit union movement well throughout its history. Thirdly, the Board does not believe that credit union uniformity in all respects with other financial institutions has been proven to be a desirable goal. While many other financial institutions have been faltering, credit unions, due to their uniqueness, have been growing better and stronger. The membership structure, represented by share accounts, has kept them close to their members and enabled them to provide services unavailable on the same terms from other entities. "Not for profit, not for charity, but for service" is a motto that characterizes the entire credit union movement. For these reasons, the Board declines the commenter's suggestion.

(c) Coverage

In response to questions raised regarding applicability of the rule to United States-chartered credit unions with overseas branches or offices, the Board would like to clarify that the rule does cover such operations, if accounts at such locations are either insured, or insurable, by the National Credit Union Share Insurance Fund (NCUSIF). In addition, if any foreign-chartered credit unions were to establish and maintain branch operations in the United States under the North American Free Trade Agreement (NAFTA), if accounts at such foreign-chartered branches were insured or insurable by the NCUSIF, those operations would also be subject to the coverage of part 707. For this reason, NCUA deleted a reference to state-chartered and federally-chartered credit unions in comment 1(c)–1.

(d) Effect on State Laws

One national trade association commenter suggested that the Board should adopt an additional appendix to Part 707 similar to Appendix C to Regulation DD, entitled "Effect on State Laws." 12 CFR Part 230, App. C. Regulation DD's Appendix C addresses inconsistent state requirements and provides procedures for institutions seeking preemption determinations from the FRB. After receipt of a preemption request, the FRB generally will issue a **Federal Register** notice of its intent to make a preemption determination, and provide an opportunity for public comment. Notices of final preemption determinations are also to be published in the **Federal Register**. The commenter stated that NCUA had not shown any uniqueness reasons for varying from the FRB in not adopting a similar appendix for Part 707; or at least by adopting more guidance in the commentary as to the preemption standards to be used, and means for providing an opportunity to comment by the affected states and other interested parties. The commenter also pointed out that by allowing affected states and other interested parties to comment, that the impact of any preemption determination could be minimized upon the state. This is in accord with federal policy, as enunciated in Executive Order No. 12612. Therefore, the Board has decided to adopt changes in the commentary to provide preemption standards, and an informal notification process to affected states, allowing sufficient time and opportunity for comment, before issuing any preemption determinations under Part 707. These changes are made in comments 1(d)–1 through 4. Four commenters requested that the requirement for the credit union requesting a preemption determination demonstrate a compliance burden be deleted. One commenter believed that the requirement was reasonable, and should be retained. The Board notes that demonstration of a burden is a caselaw prerequisite for a finding of preemption. Therefore, the Board has not modified comment 1(d)–2.

Section 707.2—Definitions

(a) Account

Comment 2(a)–1 provides examples of accounts subject to the regulation. The FRB, as did NCUA, proposed to narrow the regulation's coverage of trust accounts individual retirement accounts (IRAs) and simplified employee pension (SEP) accounts, to minimize compliance burdens for institutions. Many FRB commenters supported the FRB's general approach, but questioned whether the regulation should exclude accounts held by individuals pursuant to informal trust arrangements such as "Totten" or payable on death (POD) trusts. These commenters noted the purpose of a Totten trust is to avoid probate proceedings to transfer funds remaining in an account upon an accountholder's death. It was also noted that the account's signature card may be the sole evidence of the trust relationship. The FRB commenters suggested, and the FRB agreed, that consumers opening Totten and POD trust accounts be afforded the protections of TISA and Regulation DD. Fourteen NCUA commenters agreed with the FRB's approach. The NCUA Board concurs, and the commentary reflects this approach.

Comment 2(a)–3 in the proposed commentary was removed to reflect the amendments made in Part 707 to implement the Riegle Community Development and Regulatory Improvement Act of 1994. As discussed previously, this change exempts unincorporated association accounts from coverage of TISA and Part 707. As a result, proposed comment 2(a)–3 is not incorporated into the final commentary. This change was also requested by thirteen commenters. Comment 2(a)–2(vii) adds unincorporated nonbusiness association accounts as being exempt from the coverage of part 707, as required by the new legislation.

Fifteen commenters, including two national trade associations, requested guidance regarding permissible synonyms for various types of accounts. For instance, whether credit unions could interchangeably use the term "checking" for "share draft"; or the term "certificate of deposit" for "term share." It is the opinion of the Board that the chief overriding factor to the use of synonyms is whether it is accurate and not misleading. The key consideration is whether a "share account" could be confused with being a "deposit account," or vice versa. Generally, if a disclosure uses the correct legal term of the account once, and the synonym is accurate, the use of the synonym is permissible. For example, a disclosure stating that an account is a "share draft" account, that equates "share draft" with "checking," which has a neutral (neither share not deposit) connotation will be permissible. However, it is never permissible to equate a share account with a deposit account. For example, it is impermissible to call a "share certificate" a "certificate of deposit," though both legally are "term share" accounts for TISA and Part 707 purposes. Similarly, it is impermissible to refer to term share accounts as either "time deposits" or "time accounts," which are terms with inaccurate and misleading meanings in the term share context of part 707. The correct use of synonyms is provided in comment 2(a)–5.

(b) Advertisement

Comment 2(b)–1 illustrates the scope of commercial messages considered to be advertisements. The FRB, as did NCUA, proposed that advertisements would not include direct oral discussions conducted in person regarding a specific account. Many FRB commenters urged the FRB to expand the interpretation to include telephone conversations, but the FRB declined. The FRB believes face-to-face discussions allow prospective customers to learn easily and quickly about basic terms of the account (thus, fulfilling the purpose of the advertising disclosures). Also, the FRB stated that at any time during a face-to-face conversation, consumers may request and receive written disclosures at that time. Thus, the FRB commentary clarifies that except for information about an existing account, commercial messages delivered via telephone or voice response machines are advertisements.

NCUA proposed that telephone conversations initiated by a member or potential member about an account would not be considered an advertisement. Proposed comment 2(b)–1. Two commenters, including a national trade association comments, requested that NCUA maintain this comment in its final commentary. NCUA has kept this provision in the final commentary, though it seems at variance with the FRB. The Board is mindful that NCUA's rule must be "substantially similar" to the FRB, except where modifications are supported by credit union uniqueness reasons or the limitations upon which dividends are paid. Unlike other financial institutions, many credit unions rely upon volunteer staffs who have careers outisde of the financial institutions area. To expect volunteers to follow the technical, complex advertising requirements while on the telephone to their colleagues, friends and neighbors, constituting their fellow members, is unreasonable. Furthermore, it places an additional burden upon the volunteers for oral disclosures, which generally will already have been made, or will be made, in written disclosures. Therefore, after careful review and application of NCUA's TISA authority, and finding that sufficient uniqueness grounds exist for the NCUA Board to grant a variance from the FRB's position, the NCUA Board adopts the position taken in the proposed commentary as comment 2(b)–2(ii). Of course, telephone conversations remain subject to the requirements for oral responses to inquiries. 12 CFR 707.3(e).

One commenter inquired as to what requirements telephone response machines must follow. Telephone response machines are subject to the electronic media exemption of § 707.8(e)(1), and NCUA's treatment of such machines is identical to that of the FRB in Regulation DD. See comment 8(e)(1)(iii)–1. Another commenter requested guidance regarding whether messages on ATM or other computer screens were subject to the electronic media exemption. They are. The coverage of the electronic media exemption is discussed at comment 8(e)(2)(i)–1.

(f) Bonus

Five commenters criticized the example of $25 being offered to a parent or custodian to open an account for a minor in proposed comment 2(f)–2. The commenters stated that under state laws the parent or custodian will often be a joint accountholder on the minor's account. The Board, wishing to accurately reflect state laws, has deleted this example from the commentary.

Two commenters requested a clarification regarding whether payment of an annual membership fee or dues (e.g., such as payment of a membership fee to the National Association of Retired Credit Union Persons (NARCUP) for senior credit union members) would be considered a bonus. A sufficient showing was made that such membership dues payments are not made to open, renew, or maintain an account in the credit union, but instead are payments made to a third party (e.g., NARCUP) as a benevolent gesture to a certain group of credit union members (e.g., seniors, with regard to NARCUP). For these reasons, the NCUA Board finds that such payments of an annual membership fee are not bonuses; and a clarification has been made to comment 2(f)–3(v).

Like the FRB, the NCUA has clarified comment 2(f)–4 discussing the exclusion from bonuses of items of *de minimis value* ($10 or less). (See 26 CFR 1.6049–5(a)(2) published by the Internal Revenue Service (IRS), which discusses the fair market value of property received.) One law firm commenter noted that the IRS citation provided by the FRB may not provide a complete picture of the tax consequences of bonuses. The NCUA Board agrees and has deleted the IRS citation from the final comment. Credit unions are strongly advised to consult their own tax attorneys, accountants, or consultants regarding the tax consequences of the accounts they offer, as such matters are outside of the jurisdiction of NCUA.

Eleven NCUA commenters, including a national trade association commenter, like many FRB commenters, expressed concern about potential violations for failing to disclose as a bonus early in the year an individual item of de minimis value deemed to be a bonus when aggregated with another de minimis item given in a separate promotional program involving the same account later in the year. Comment 2(f)–5 provides guidance about aggregating only the market value of items offered for the same promotional program.

Seven commenters, including a national trade association commenter, inquired whether the provision of free share drafts or checks would be considered a bonus. After consultation with the FRB, NCUA has clarified that provision of free share drafts or checks, whether provided to all members, or only to certain groups, such as minors or seniors, would be considered the waiver of a fee and not a bonus. This is reflected in comment 2(f)–6(ii). Another commenter requested that free meals given to the membership at an annual meeting be included as an example of a bonus, however, under § 707.2(r), such items are considered "non-dividend membership benefits."

One commenter asked that the Board clarify whether the granting of a higher dividend rate on an account if the member elects or uses certain services offered by the credit union (i.e., ATM card, direct deposit, other packaged or linked account terms) would not be considered a bonus, based on the exclusion of dividends from the definition of bonus. The Board confirms this in comment 2(f)–6(vii). Nor, based on definitional reasons, would such higher dividends be considered an extraordinary dividend; this is confirmed in comment 2(m)–1.

(i) Dividend and Dividends

The Board has clarified in comment 2(i)–1, that state law determines the nature of an account for state-chartered credit unions. This was generated in response to two commenters requesting clarification regarding whether federal or state law determined the nature (share or deposit) of accounts offered by state-chartered credit unions. The Board stresses that this is solely a matter of state law, as expressed in state statutes, regulations, interpretive orders, or by any other official means. NCUA will not involve itself in determinations of whether an account offered by a state-chartered credit union is a share or deposit account, but will rely upon applicable state law and the opinion of the relevant state supervisory authority. Similar changes were made in comments 2(p)–1 and 2, concerning the definition of interest.

Ten commenters, including one national trade association, lamented that FCUs would not be able to offer fixed-rate accounts, due to the dividend rate setting process described in comment 2(i)–1 through 3. The NCUA Board wishes to stress that part 707 does not require FCUs to offer only variable-rate accounts. FCUs may offer fixed-rate accounts as long as the FCU, by contract, agrees to give at least 30 days advance written notice of decreases in the initially disclosed dividend rate. However, like a prospective rate set on a variable-rate account, if FCUs offer a fixed-rate account, the NCUA Board believes that, as discussed in comment 2(i)–3, every effort should be made in order to pay the prospective fixed-rate disclosed. The fact that a prospective rate is disclosed on a fixed-rate account, instead of a variable-rate account, does not change the nature of the dividend setting process for share accounts. To clarify this point, language has been added to comment 2(i)–1. Nor does NCUA believe that it is appropriate to counsel credit unions to make their accounts variable-rate, as opposed to fixed-rate accounts, as requested by a few commenters. The NCUA Board has no intention of limiting flexibility available under TISA and Part 707; the number, type, and terms of accounts are decisions within the proper province of each credit union's board of directors and not the federal government.

Ten commenters believed that proposed comment 2(i)–2 promulgated a substantive federal dividend-setting process methodology for all credit unions. The comment is set forth as guidance only, and was not meant to substantively alter any contrary state laws. Therefore, the Board has modified the final comment to use nondirective language. In addition, sample dividend-setting resolutions are also provided in comment 2(i)–4, to provide guidance to the boards' of directors of credit unions. The resolution provided in comment 2(i)–4(i) may be used when the dividend rate is declared after the close of a dividend period. The resolution provided in comment 2(i)–4(ii) may be used when the dividend rate is prospectively set before the close of the dividend period in question, but will be ratified upon the occurrence of certain conditions at the close of the dividend period. Both resolutions contemplate that a list or table of accounts followed by corresponding dividend rates will be attached to the resolution. This will prevent credit unions from having to adopt a separate resolution for each account type. These resolutions are not required, but are provided as guidance of the proper corporate form to be used in declaring dividends.

Nine commenters, including a national trade association commenter, questioned the guidance provided by proposed comment 2(i)–3, which stated that prospective rates may be altered "if sufficient funds are not available, or in the event of a superseding event, such as a significant fluctuation in market rates, natural disaster or emergency that alters the assumptions under which the 'prospective rates' were made." The commenters questioned the legality and prudence of the proposed comment.

Two commenters supported the comment. Basically, NCUA proposed the comment in reference to natural disasters, such as the recent California earthquake that destroyed several credit union offices, resulting in extraordinary expenditures that reduced current and undivided earnings, therefore lessening the amount of funds from which dividends are properly payable. To provide general guidance to credit unions affected by disasters and similar situations, in order to reflect the unique nature of the dividend setting process, and to provide commentary protection in the rare event that a credit union may need to lower a dividend in response to a natural or man-made disaster, NCUA has retained the comment, as revised. It is the intention of the Board that credit unions make every effort to meet the disclosed prospective rates on accounts when such rates are properly declarable, available, and payable, and this guidance has also been added to comment 2(i)–3. However, the NCUA Board disagrees with the position taken by the commenters that NCUA could alter applicable legal principles and agency interpretations on the proper payment of dividends. The questioned statement reflects long-standing NCUA interpretations of section 117 of the FCU Act for federal credit unions, and is supported by well-grounded general corporate law in regards to dividends, as expressed in legal encyclopedias, hornbooks and other sources. Although NCUA believes that the statement would also be applicable for many state-chartered credit unions, since applicable state law controls the dividend process for state-chartered credit unions, this clarification has also been added to the comment. For further information on dividends, and when they are properly payable, NCUA refers state-chartered credit unions and their members to relevant state law.

(j) Dividend Declaration Date

Four commenters requested a clarification as to whether the "dividend declaration date" was the date of the actual board meeting on which a credit union's board of directors declares the dividend, or the actual effective date of the dividend declaration. The importance of the dividend declaration date is to give members and potential members an idea of the timing of the last paid, declared dividend. The NCUA Board never intended for the dividend declaration date to be determined by use of a technical, complex formula. In order to reflect the intent of the use of dividend declaration date, the Board has provided several examples of the types of statements indicating time periods that would comply with the definition. The commenter also requested a clarification on whether "prospective rates" must be properly declared by a credit union's board of directors. Because the declaration of a prospective rate is tantamount to the declaration of an actual rate on an account (since only under rare circumstances would the board not adopt or ratify a prospective rate), the declaration of a prospective rate should be approached by a credit union's board of directors with the same responsibility as a formal declaration of an actual dividend rate. Further discussion of the dividend rate setting process is contained in comments 2(i)–2 and 3 and an example of a resolution to declare prospective dividend rates is provided in comment 2(i)–4(ii).

(m) Extraordinary Dividends

A national trade association commenter, as well as a few other commenters, suggested that this comment be expanded to discuss whether loan interest is considered an extraordinary dividend (no, as arises from the loan relationship and not the share account relationship, FCUs must follow 12 CFR 701.24 in order to make a refund of interest on a loan); the relationship of extraordinary dividends to the APYE (none, extraordinary dividends are excluded from the definition of "dividends" and "interest," and therefore do not enter into the APYE calculation); and the proper methods for calculating extraordinary dividends (by any means determined by the board of directors of the credit union). These changes have been incorporated into comment 2(m)–1. After study, staff advised the Board that extraordinary dividends are often paid on bases not related to the amount of dividends in the account, such as evenly dividing the amount to be distributed by the number of members, or through a formula tied to the number of credit union loan and share account products used by the member. Since extraordinary dividends are not a component of the dividend rate, annual percentage yield, or annual percentage yield earned, and are a unique practice of credit unions, the Board has determined that any procedure devised by a board of directors may be used to figure extraordinary dividends. Of course, it is acceptable if a board were to use either the daily balance method or average daily balance method to compute extraordinary dividends, even though those methods are not required.

Twelve commenters, including a national trade association, requested that credit unions be allowed to use the more common term "bonus dividends" to describe "extraordinary dividends." Originally, the NCUA Board has declined to use the term "bonus dividends" for fears that members would confuse it with "bonuses," as defined by part 707. Final Rule, 58 FR 50394 at 50402 (September 27, 1993). However, after further reflection, given members' familiarity with the distinctions between the two terms, and the long-standing credit union tradition of calling such irregular dividends "bonus dividends," the Board has revised its position. NCUA has no objection to the use of the term "bonus dividends" as a synonym for "extraordinary dividends," as has revised comment 2(m)–2 accordingly.

(q) Member

An example relating to a landlord-tenant relationship in proposed comment 2(q)–2 was deleted as unnecessary by the FRB. A few commenters agreed with the deletion. NCUA has followed the FRB and deleted the example.

The Board also reminds readers that unincorporated association accounts have been deleted from TISA and part 707 coverage by new legislation discussed previously in this supplementary information.

(s) Passbook Account

NCUA, like the FRB, has clarified comment 2(s)–1 that institutions may consider accounts as passbook accounts even when direct deposits are made to the account electronically. The comment tracks the requirements of Regulation E (12 CFR 205.9). But accounts that permit other electronic fund transfers—and thus trigger Regulation E's requirement to send statements at least quarterly—are not passbook savings accounts, and institutions must comply with the statement disclosures in § 707.6 of this part. Accounts that send statements are not passbook accounts for purposes of Part 707, even if members are provided passbooks for their records.

(t) Periodic Statement

One national trade association stated that NCUA should clarify that periodic statements are not required on accounts. This is clarified on comment 2(t)–1. In order to provide more uniformity with the Regulation DD format, proposed comment 2(t)–3, Regulation E interplay, has been moved to comment 6(a)–2; proposed comment 2(t)–4, account status information, has been moved to comment 6(a)–3; and proposed comment 2(t)–5, use of ledger and collected balance to calculate annual percentage yield, has been moved to comment 6(b)(1)–1.

(u) Potential Member

One commenter requested that NCUA clarify that credit unions must provide disclosures to potential members upon request. This is already required in § 707.4(a)(2)(i) of the rule. The purpose of the commentary is to expound upon, but not to repeat, the rule requirements. However, because the Board believes that it may assist credit unions in complying with the rule, the regulatory requirement has been repeated in comment 2(u)–2.

Three commenters suggested that NCUA note that proposed comment 2(u)–2, suggesting that credit unions have sound written procedures in place to identify those for membership, be modified to note its discretionary, rather than mandatory, character. The NCUA Board agrees and has so modified comment 2(u)–2. In the case of a credit union having a permissible indirect lending arrangement with a third party, such as an automobile dealer, credit union's may invoke member verification procedures before providing account disclosures when the potential member is not present at the credit union.

(x) Term Share Account

Proposed comment 2(x)–2 distinguishing between regular share club accounts and term share club accounts has been revised extensively based on comments received and consultation with FRB staff. Basically, although club accounts typically have one feature of a term share account (a maturity date), club accounts are not term share accounts unless they also require a penalty of at least seven days' dividends for a withdrawal of funds during the first six days after the account is opened—subject to exceptions permitted in Regulation D. 12 CFR part 204. As requested by many commenters, the final comment 2(x)–2 explains distinctions between term share club accounts and regular share club accounts. One national trade association commenter requested that NCUA provide the same club account commentary as did the FRB. The Board agrees with, and has adopted, this approach. One national trade association suggested that all club accounts should be treated as regular share accounts by NCUA. Since this position was not taken by the FRB in Regulation DD, and no uniqueness reasons have been proffered to NCUA to differentiate credit union club accounts from club accounts offered by other depository institutions subject to Regulation DD, this position has not been adopted by the NCUA Board.

(y) Tiered-Rate Account

One national trade association commenter requested clarification regarding whether tiered-rate accounts could have minimum balance requirements, and whether a zero rate (0%) could constitute a tier. NCUA has carefully reviewed comment 2(y)–1, and finds no reason to change the guidance provided.

(z) Variable-Rate Account

Comment 2(z)–1 clarifies that a share certificate permitting one or more rate adjustments prior to maturity at the member's option is a variable-rate account. NCUA, like the FRB, believes it is important for members to receive disclosures describing when their dividend rate and APY could change, such as any time limitations on when the option may be exercised.

In response to a commenter, the Board has clarified comment 2(z)–2. In the proposed commentary NCUA summarized that rate decreases and other term changes members' accounts required 30-day changes-in-terms notices to take effect. The final comment clarifies that changes-in-terms notices are required for changes in terms adversely affecting the member. The effective date of other, beneficial term changes would depend upon the account agreement and applicable state law.

Section 707.3—General Disclosure Requirements

(a) Form

Four commenters criticized proposed comment 3(a)–3, which stated that "if a credit union provides one document for several types of accounts, members must be able to understand clearly which disclosures apply to their account." The pertinent regulation states: "Disclosures * * * may be combined with disclosures for the credit union's other accounts, as long as it is clear which disclosures are applicable to the member's accounts." 12 CFR 707.3(a). Since the Board did not mean to place an additional burden upon credit unions, but merely to paraphrase the rule, to eliminate any potential confusion the Board has revised the comment to more closely pattern after the regulation.

(b) General

Comment 3(b)–2 provides guidance on the specificity required when time periods are disclosed. For example, the FRB believes slight variations in compounding cycles are consistent with the notion of "monthly" cycles, which are often not based on an actual calendar month. Many FRB commenters generally supported the FRB's approach, but expressed concern about the proposal's limitation of 28–33 days to describe a month. The FRB decided to adopt a standard of roughly equivalent intervals occurring during a calendar year. The FRB believes this standard is consistent with TISA, provides flexibility, and eases compliance. For the reasons provided by the FRB, the NCUA Board also adopts this approach.

(d) Multiple Members

Proposed comment 3(d)–1 permitted credit unions to give a disclosure to a nonmember joint accountholder. Four commenters, including national trade association commenter, noted that the proposed interpretation was incorrect. Under § 707.2(q)(2), nonmember joint accountholders are deemed to be members for purposes of part 707. Therefore, the distinction made was an invalid one, and has been deleted from the commentary.

(e) Oral Responses to Inquiries

Comment 3(e)–1 reflects that disclosures need only be made as appropriate. Therefore, if a member telephones a credit union for information, the credit union need not disclose a telephone number to call, as the member would obviously already have that information. This clarification, requested by seven commenters, is added to comment 3(e)–1. Another commenter requested that the Board clarify that this requirement applies only to employees and volunteers acting in the course of credit union business. This change has also been adopted by the Board in comment 3(e)–1, to reflect the unique nature and position of volunteers in credit unions.

Seven commenters requested that the oral response to inquires disclosures be simplified, such as by eliminating any reference to past or prospective rates. To do so would require a change in § 707.3(e) of the regulation and is beyond the scope of this rulemaking. Also, NCUA must stress that the need to disclose that rates are either past or prospective is important to provide accurate, nonmisleading information to credit union members to reflect the facts concerning share accounts. A national trade association commenter noted that proposed comment 3(e)–3 did not closely parallel the language of § 707.3(e). The Board agrees with the commenter, and, on further reflection and to eliminate confusion, has deleted references in comment 3(e)–3 repetitive of § 707.3(e).

Comment 3(e)–3 has been added to conform to a change made in Regulation DD, as requested by five commenters, including a national trade association commenter. It clarifies that this paragraph does not apply to responses to requests for rate information on an existing term share account or on an account not currently offered to members and potential members, such as obsolete accounts.

(f) Rounding and Accuracy Rules for Rates and Yields

(f)(1) Rounding

In response to a national trade association commenter, comment 3(f)(1)–1 has been amended to reflect that account disclosures, unlike advertising and other disclosures, may show the dividend rate to more than two decimal places.

Section 707.4—Account Disclosures

(a) Delivery of Account Disclosures

(a)(1) Account Opening

Comment 4(a)(1)–1 provides examples of events that trigger the delivery of new account disclosures. The final comment differs from the proposal in several respects. Proposed comment 4(a)(1)–1 discussed the effect of a member-initiated change in the term for an automatically renewable term share account. In response to FRB commenters' requests on the Regulation DD proposed comment counterpart to 4(a)(1)–1, the FRB commentary clarifies that new account disclosures are required when the member changes any account term required to be disclosed (and not merely the duration of a time account). The clarification provides consistency with comment 5(b)–5, and has been adopted as comment 4(a)(1)–1(ii).

FRB commenters expressed concern about having to give new account disclosures when funds are transferred from one account to another, such as when funds in a money market deposit account (MMDA) are transferred to a NOW account because the consumer exceeded transaction limitations on the MMDA. Some requested clarification that disclosures at the time of transfer are not required if disclosures (including change-in-terms notices, if appropriate) for both accounts had previously been given. To minimize possible burdens the FRB adopted that standard in the FRB commentary. For similar reasons, the NCUA Board adopts this position in comment 4(a)(1)–1(iii).

The FRB also received many comments regarding the proposed guidance for "closed accounts." New account disclosures would have been required if institutions deemed an account closed and then accepted a deposit from the consumer. FRB commenters noted that consumers with accounts meeting an institution's criteria for a closed account—such as an account having a $0 balance—do not necessarily intend to close the account. FRB commenters believed consumers would be confused if new account disclosures were sent when a deposit is subsequently made. FRB commenters also expressed concerns about the burden of monitoring accounts to ensure compliance.

TISA allows institutions not to pay accrued but uncredited interest when a consumer closes an account. (See 12 U.S.C. 4303(c)(9).) Based on comments received by the FRB and upon further analysis, the FRB believes that if an institution deems an account closed and treats accrued, but uncredited, interest as forfeited by the consumer, the institution must deem a new account to be opened when a deposit is subsequently accepted. This approach provides flexibility for institutions and consistent treatment for consumers regarding "closed" accounts. Five NCUA commenters agreed with the Regulation DD approach. Five NCUA commenters, including a national trade association, disagreed with the FRB's approach, on grounds that account terms may not have changed between an account's closing and its reopening; that some credit union's data processing systems automatically opened the account with the former account's number; and to modify systems would be a costly, unnecessary expense. While sympathetic to credit union's facing this predicament, because these reasons do not reflect any credit union uniqueness points. NCUA is bound to follow the FRB's rationale, and the NCUA Board adopts the FRB's approach. However, it is the belief of the Board that a credit union is not required to grant a new account number to the holder of a reopened "closed account"; all that is required by this rule is the distribution of a new set of account disclosures. No data processing changes are contemplated by this commentary, and this is reflected in a revision to comment 4(a)(1)–1. The Board hopes that this revision will reduce the compliance burden on credit unions.

The Board does note that account closure for credit unions does not necessarily occur in the same manner as for other depository institutions. A member may voluntarily close an account by actively terminating membership in a credit union. For instance, under the Standard FCU Bylaws, Art. II, § 4, a member who withdraws all of his shareholdings ceases to be a member. The membership of a member may also be terminated by action of the credit union. For instance, a member may be expelled by majority vote of the membership under Standard FCU Bylaws, Art. XVI (and 12 U.S.C. 1764(a)); or an FCU may terminate a member's membership if the board of directors has adopted a nonparticipation policy, which has been publicized to the membership (12 U.S.C. 1764(b)); or if a member falls outside of the credit union's field of membership (e.g., the member moves out of the geographical coverage of a community-based credit union), unless the credit union has adopted a "once a member, always a member" policy under Standard FCU Bylaws, Art. II, § 5. If a member merely lets the membership share account drop below the stated par value, neither the membership nor the account of the member are terminated. Standard FCU Bylaws, Art. III, § 3; NCUA Letter to Credit Unions No. 70 (November 29, 1982). Under the Standard FCU Bylaws, once an account is closed, and the membership terminated, both the membership and the account must be reestablished. Therefore, the "closed account" guidance adopted by the NCUA Board conforming to that of the FRB applies only to accounts closed by the member or the credit union in conformance with applicable federal or state law. This clarification is made in comment 4(a)(1)–1. This clarification agrees with guidance provided in the preamble to the final part 707. 58 FR 50394 at 50414 (September 27, 1994).

Comment 4(a)(1)–2 clarifies that an institution acquiring accounts through a merger or acquisition is not required to provide new account disclosures. However, such accounts are required to calculate dividends by either the daily or average daily balance method; comply with § 707.5(a)(1) if it chooses to change terms of the acquired account; and follow the periodic statement requirements, if applicable. As the accounts are no longer offered, no advertising rules should ever be triggered. NCUA does note that certain term share accounts no longer currently offered may require new account disclosures if they are nonrollover or if new account disclosures would be required under § 707.5. Private merger and purchase of asset and shares transactions are distinguishable, however, from acquisitions or mergers involving the National Credit Union Share Insurance Fund (NCUSIF). In a government-assisted acquisition, the acquiring institution receives only the member's funds on account. The account contract or other legal obligation—the terms and conditions of the account such as fees—stays (and ultimately terminates) with the failed credit union. Thus, new account disclosures must be provided if the member chooses to open an account with the new institution. Also, if fees are imposed before the new account relationship is established, the fee must be disclosed prior to imposition.

Two national trade association commenters, as well as fourteen other commenters, requested that a clarification be issued regarding guidance in proposed comment 4(a)(1)–1. Two commenters requested that the provision be deleted as unnecessary and confusing. NCUA had proposed that if a member were to open separate subaccounts from a main account and if the terms were identical to that of the main account, that new disclosures would not have to be provided to the member. The commenters noted that the terms of an account will rarely be "identical" to those of a subaccount. The Board agrees with the commenters, therefore the proposed comment (now comment 4(a)(1)–3) has been amended to reflect that new disclosures need not be provided if the credit union has already provided combined disclosures for the main and subaccount within a reasonable time of when the subaccount is opened and the applicable disclosures are still accurate when the subaccount is opened.

(a)(2) Requests

(a)(2)(i)

As requested by a national trade association commenter, comment 4(a)(2)(i)–1 clarifies that institutions are not required to send new account disclosures for accounts no longer offered to the public.

A national trade association requested that NCUA offer credit unions the choice of offering members and potential members either account disclosures or rate sheets in responses to requests for disclosures under § 707.4(a)(2). Since the rule only permits account disclosures to be provided upon request, and the proposed rulemaking concerned only Appendix C, the commentary to part 707, the commenter's request is beyond the scope of this rulemaking. The Board would violate the requirements of the Administrative Procedure Act to consider such an amendment in this final rule. Also, as no credit union uniqueness arguments were presented, the NCUA Board does not believe that even if such request were within the scope of this rulemaking, that it would adopt such an amendment.

(a)(2)(ii)(A)

Comment 4(a)(2)(ii)(A)(2)–1 clarifies that when responding to a request for disclosures by giving rates "accurate within the most recent seven calendar days," institutions should calculate the time period from the date the institution sends the disclosure. This clarification is based upon a similar change made in the final Regulation DD commentary.

(b) Content of Account Disclosures

(b)(1) Rate Information

(b)(1)(ii) Variable Rates

Comments 4(b)(1)(ii)(B)–1 and 4(b)(1)(ii)(C)–1, dealing with rate changes within the institution's discretion, have been modified. FRB commenters believed rates derived from formulas based on an institution's cost of funds, for example, are not "solely" in the institution's discretion. In response to FRB commenters' requests, both comments were revised in Regulation DD for clarity and consistency. A national trade association commenter has also made the request that NCUA conform to the Regulation DD commentary. For the reasons stated by the FRB, and for uniformity, the NCUA Board has done so.

(b)(2) Compounding and Crediting

(b)(2)(i) Frequency

Three commenters believed that proposed comment 4(b)(2)(i)–2 was confusing in that readers might be misled to not disclose dividend periods for dividend-bearing accounts. To allay such fears, the comment has been revised to clarify that a dividend period should be disclosed on all dividend-bearing accounts.

(b)(2)(ii) Effect of Closing an Account

As requested by one commenter, comment 4(b)(2)(ii)–1 is modified from the proposal to reflect that state or other law may affect an institution's ability to include in its contract specific member actions considered by the institution to be a request to close the account.

Five commenters failed to understand the necessity of mentioning the FCU bylaw restrictions on closing member's accounts in proposed comment 4(b)(2)(ii)–1. Unlike banks and thrifts which can contractually close accounts for non activity, an FCU cannot close a member's account when it drops below the par value of one share. Instead, the FCU must give the member at least six months to bring the account back up to par value. To highlight this very important membership distinction, the bylaw requirement is mentioned in the comment. The NCUA believes that it is a critical distinction of the member of FCUs, and some state-chartered credit unions, and declines to remove the comment from the final commentary.

(b)(3) Balance Information

(b)(3)(i) Minimum Balance Requirements

Three commenters requested that the Board not require the par value of a share to be disclosed, arguing that it is a membership, not a minimum balance, requirement. The NCUA Board disagrees with this approach. A member is generally not entitled to membership rights, including transacting on accounts, until the par value of a membership share is fully paid-in. Therefore, the payment of a full par value share is a minimum balance requirement, as is stated in comment 4(b)(3)(i)–1.

(b)(3)(iii) When Dividends Begin to Accrue

One national trade association commenter requested that the NCUA delete proposed comment 4(b)(3)(iii)–1, as in the commenter's opinion, such disclosures are not necessary for credit unions that begin accruing dividends for all deposits on the day of deposit. Even if all credit unions did begin to accrue dividends for all deposits on the day of deposit, which even the commenter admits is not the case, the Board believes that its commentary should remain substantially similar to that of the FRB. Therefore, the Board has left the proposed comment unchanged in the final commentary.

(b)(4) Fees

The FRB provided additional guidance in comment 4(b)(4)–1 for fees imposed for sending to consumers checks that otherwise would be held by the institution. Comment 4(b)(4)–2 clarifies that photocopying fees are incidental fees not required to be disclosed. NCUA has adopted both of these changes to conform to Regulation DD. In response to a national trade association commenter, other clarifications have also been made by the NCUA Board: (1) That "fees related to the routine use of an account must be disclosed;" and (2) that fees for statements returned to the credit union because of a wrong address need not be disclosed. However, the Board disagrees with the commenter, and believes that it is necessary, in order to conform with the final Regulation DD commentary, that dormant account fees and inactivity fees be disclosed. This clarification is also made in the final commentary.

Other commenters requested that the Board classify fee types not discussed in the proposed commentary: dormant account fees, locator fees, overdraft line of credit access fees, wire transfers, and automated clearing house (ACH) transfers. These fees have been classified in comment 4(b)(4)–1. In response to another commenter, the Board has added a reference that merely providing fee information to members in an account disclosure may not be enough to gain the legal right to impose the fees involved under applicable state law.

(b)(5) Transaction Limitations

Eleven commenters, including two national trade associations, requested that NCUA not require disclosures based upon a credit union's bylaws that could be imposed and act as transaction limitations upon an account. The commenters stated that it would place credit unions at an unfair competitive advantage with banks. One national trade association argued that since the bylaw requirements were rarely invoked, that they should not be disclosed unless they were to be invoked, in which case members would be notified through a change-in-terms notice. After consultation with FRB staff, NCUA learned that the FRB does not require disclosure of notice of withdrawal, and other unusual, rarely invoked, requirements under state and local law under Regulation DD. For reasons of parity, uniformity, and conformity, NCUA also adopts this approach, reflected in comment 4(b)(5)–1(iii).

However, the Board does encourage credit unions to publicize bylaw limitations, and other policies, that could potentially affect a member's ability to use his account. Credit unions are different from other financial institutions in that the bylaws form a contract between the members and the credit union. Any restrictions upon a member's account arising from the bylaws is as real as a restriction arising from the account contract. In fact, many members are unfamiliar with their bylaws. There are presently no federal requirements for a credit union to publicize its bylaws among its members, even though it has long been NCUA policy to encourage credit unions to educate their members regarding the content of their credit union's bylaws. The Standard FCU Bylaws only require that FCUs make their bylaws "available for inspection by any member." Standard FCU Bylaws, Art. XIX, § 6. In state-chartered credit unions a member's right to view the bylaws is dependent upon state law, which laws sometimes require a proper business purpose. If credit unions believe the transaction limitations in the Standard FCU Bylaws to be too restrictive, it is suggested that they consider petitioning the appropriate NCUA Region for a nonstandard bylaw amendment. However, FCUs are cautioned that NCUA will not entertain petitions to change either Art. III, § 3 (allowing members at least 6 months to increase a membership share to par in order to retain membership) or Art. III, § 5 (reserving the right to require 60 days' notice on withdrawals, historically to be sued in the event of an emergency). Seven commenters agree with this approach.

One national trade association commented that credit unions should not have to disclose suspension of services policies, because such policies are not a common practice. For the reasons stated in the preceding paragraph, NCUA agrees with this approach. While not encouraging their use, NCUA has opined that an FCU may suspend services to members who have caused a loss to the FCU if a proper suspension of services policy is adopted by the FCU's board of directors. A proper suspension of services policy should state: (1) When the services will be suspended; (2) which services are suspended (e.g., ATM services, credit cards, loans, share draft privileges, preauthorized transfers, etc.); (3) note that the member has a fundamental right to maintain a share account and vote in annual and special meetings; and (4) provide for methods of reinstatement of services by the member. In addition, the suspension of services policy should be publicized to members, and not operated discriminatorily, in violation of the Equal Credit Opportunity Act, Regulation B (12 CFR part 202), the Bankruptcy Code, or any other applicable law. Due to the consequences deriving from a suspension of services policy, NCUA believes that those credit unions having such policies should publicize them in detail to their membership.

(b)(6) Features of Term Share Accounts

(b)(6)(ii) Early Withdrawal Penalties

For uniformity and parity reasons, the NCUA Board has adopted comment 4(b)(6)(ii)–4. The comment was added to Regulation DD in response to FRB commenters requesting guidance for disclosing early withdrawal penalties.

(b)(6)(iv) Renewal Policies

At the request of a national trade association commenter, the last sentence of proposed comment 4(b)(6)(iv)–2 regarding club accounts has been removed as being unnecessary, especially in light of the revised comment on club accounts. Comment 2(x)–2.

(b)(8) Nature of Dividends

A national trade association commenter requested a revision of proposed comment 4(b)(8)–2, to reflect that if a member already had a share account at a state-chartered credit union offering deposit accounts in accordance with state law, share account disclosures would not be required. The commenter's position is unfounded. Since the share account is a currently offered account, there are no grounds under either TISA or Part 707 to exempt it from the disclosure requirements. Therefore, the final comment is unchanged. Similarly, two other commenters from Georgia requested that the comment reflect certain unique provisions of Georgia law. NCUA believes that state law determines whether an account is a deposit account or a share account for accounts in state-chartered credit unions. However, to revise the comment to reflect one state's laws, to the exclusion of other states, would not be useful. Therefore, the NCUA Board has modified comment 4(b)(8)–2 to reflect that state law controls the nature of accounts for accounts in state-chartered credit unions. The Board believes that this action will enable state credit union supervisors to provide proper guidance to state-chartered credit unions by interpreting various state laws without federal interference.

(c) Notice to Existing Accountholders

A national trade association commenter requested that NCUA delete a statement in proposed comment 4(c)–4, which stated that credit unions complying with part 707 in advance of the compliance date would need to comply with all aspects of part 707. NCUA staff has verified the position in the proposed comment with FRB staff, and since NCUA must maintain substantial similarity with the FRB, and no uniqueness grounds were presented in order that an exemption could be justified, NCUA has not changed the proposed comment.

Four commenters requested that NCUA clarify that credit unions that have complied with TISA and part 707 requirements before the compliance date, need not send second disclosures.

The NCUA Board has clarified this in comment 4(c)–4. The Board also wishes to clarify, in response to a question raised by a commenter, that NCUA does not require any credit union to issue new accounts, including new certificates, on the mandatory compliance date of part 707. All that part 707 requires is that credit unions send a notice to certain members of the availability of disclosures, or the disclosures themselves, by, on or soon after the compliance date, to have disclosures reflecting the terms of accounts offered available, to make certain periodic statement and advertising disclosures, and to pay dividends on the full balance in the account using the daily balance or average daily balance method. Basically, no new accounts need be issued; only accurate disclosures conforming to part 707 reflecting accounts need be available.

Section 707.5—Subsequent Disclosures

(a) Change in Terms

(a)(1) Advance Notice Required

In response to the comments of eleven commenters, including a national trade association commenter, comment 5(a)(1)–1 has been amended to clarify that unless credit unions have reserved the right to change terms in the account agreement or disclosures, they cannot change terms by simply providing a change-in-terms notice, and to clarify that change-in-terms notices can be included as a highlighted portion of a credit union's newsletter provided to all affected members. Another commenter requested that guidance in the final NCUA Truth in Savings rule allowing notice by means of mail, newsletters, and statement stuffers, be provided in the commentary. Final Rule, 58 FR 50394 at 50422. The Board has added this information to the final commentary.

Comment 5(a)(1)–3 provides guidance on an institution's responsibility to provide change-in-term notices when account disclosures reflect a term that will change upon the occurrence of an event. The comment has been revised to conform with the final Regulation DD commentary.

One commenter requested guidance on which terms needed change-in-terms notices in order to be changed. Section 707.5(a) refers to those terms required to be disclosed under § 707.4(b), if the change may decrease the APY or adversely affect the member. The NCUA Board believes the spirit and intent of TISA is that most changes in the required account disclosures should be disclosed to members to enhance the ability of members to comparison shop for accounts.

(a)(2)(ii) Share Draft and Check Printing Fees

In response to FRB comments received, comment 5(a)(2)(ii)–1 has been expanded to exclude increases in fees for printing deposit and withdrawal slips from change-in-term notice requirements, although NCUA, like the FRB, believes that separate charges for deposit and withdrawal slips, which are typically provided along with checks, are seldom imposed. Many FRB commenters stated that, like check printing fees, fees for printing deposit and withdrawal slips are not within the institution's control, since the consumer determines the quantity ordered.

(c) Notice for Term Share Accounts One Month or Less That Renew Automatically

NCUA believes that 20 days is a reasonable amount of time to provide these disclosures, particularly in light of small credit unions, some only open one day each week, which would be subject to this requirement.

Section 707.6—Statement Disclosures

(a) Rule When Statement and Crediting Periods Vary

Four commenters, including a national trade association, stated that proposed comment 6(a)–3 implied that periodic statements were required for credit union accounts. The NCUA has revised comment 6(a)–1 to reflect that periodic statements are not required on credit union accounts. However, any statement setting forth information about an account (other than a term share or passbook account) that is provided to a member on a regular basis four or more times a year, is a periodic statement subject to § 707.6. NCUA cautions credit unions that if transaction information is provided on a periodic statement on a passbook account, that the credit union runs the risk of having the account deemed a statement savings account subject to full periodic statement requirements. This position has been taken after consultation with FRB staff.

Comment 6(a)–1 clarifies that if zero interest is earned during the period, institutions may disclose $0 for interest earned (and the annual percentage yield earned) or omit the disclosure, at their option. This change was made to conform to Regulation DD, and in response to one commenter's request.

Seventeen commenters, including a national trade association commenter, requested that the issue of account status information in proposed comment 2(t)–4 be addressed. Commenters questioned whether accounts not expressly covered by the periodic statement requirement, such as term share and passbook accounts: (1) Were limited to account status information; or (2) were subject to full application of the advertising regulation (12 CFR 707.8); or (3) whether they could disclose any information on such accounts, including rate and APY information, as long as such information was accurate and not misleading. After consultation with the FRB, the proposed comment was moved to comment 6(a)–3 and clarified to indicate that a credit union may provide any information regarding passbook (unless the provision of transaction information on the account turns the passbook account into a statement share account covered by § 707.6) and term share accounts on a periodic statement, as long as the information is accurate and not misleading. For definitional reasons, the periodic statement requirements do not apply. Also, since the information is provided on an existing account, and not as an inducement to open, maintain or renew an account, the advertising disclosures do not apply.

One commenter also asked whether account status information on covered accounts could include joint accountholders' names, year-to-date earned dividends, transaction dates, and social security or tax identification numbers. These issues are addressed in comments 6(a)–3 and 4.

(b) Statement Disclosures

(b)(1) Annual Percentage Yield Earned

A national trade association commenter requested a clarification that the ledger balance and collected balance are not methods to calculate the APYE, but rather methods to determine the balance upon which to pay dividends. This clarification has been made in comment 6(b)(1)–1. To provide more flexibility, and to conform to provisions in Regulation DD, the Board has deleted statements in comment 6(b)(1)–1 indicating that credit unions must use the same balance (collected or ledger) to accrue and pay dividends and to determine the annual percentage yield earned.

(b)(2) Amount of Dividends

To provide uniformity and parity with provisions of Regulation DD, the Board has adopted comment 6(b)(2)–2, but has limited its application to interest-bearing deposit accounts. It would be difficult and burdensome, if not impossible, for a credit union to state the amount of accrued dividends on a statement, since as discussed in comment 2(i)–3, such dividends are not generally properly declarable until the close of the dividend period.

Comment 6(b)(2)–3 clarifies that institutions may use a variety of terms to disclose dividends earned, and that the regulation does not mandate use of the examples. In response to a national trade association commenter, NCUA has conformed comment 6(b)(2)–4 to the final Regulation DD commentary, and credit unions are permitted, but not required, to show the APYE and dividends as zero, on a closed account on the periodic statement. In response to two commenters, NCUA has revised comment 6(b)(2)–5 to reflect that information, other than the dollar amount, regarding extraordinary dividends may be disclosed on the periodic statement as long as it is not inaccurate or misleading. The Board believes that information regarding the calculation of the extraordinary dividend, and additional APYE and dividend rate figures taking into account the extraordinary dividend, would not be inaccurate or misleading and might offer the member additional useful information on the accounts held by the member.

(b)(3) Fees Imposed

This comment has been changed to reflect the final amendment to § 707.6(b)(3) of part 707 made in this rulemaking to correct a redundant typographical error. In response to three commenters, including a national trade association commenter, various clarifications are made to enhance understanding without substantively changing the meaning of proposed comment 6(b)(3)–2.

(b)(4) Length of Period

One national trade association requested that NCUA clarify proposed comment 6(b)(4)–2, opening or closing an account midcycle. The commenter stated that when a member opens an account in the middle of a statement period the credit union should be required to use the actual number of days the account has been opened, as opposed to the number of days in the statement period. Comment 6(b)(4)–2 has not been changed, as it is in conformance with Regulation DD. However, the NCUA Board believes that the commenter's concern should be addressed, and has plans to address it in the *NCUA Accounting Manual for FCUs*.

Section 707.7—Payment of Dividends

(a) Permissible Methods

(a)(1) Balance on Which Dividends Are Calculated

Comment 7(a)(1)–1 has been expanded to reflect TISA's legislative history, which cites the "low balance" method as an example of a prohibited dividend calculation method.

Proposed comment 7(a)(1)–6 addressed "dormant" accounts. The FRB solicited and received numerous comment on whether an institution should be permitted to withhold the payment of dividends for dormant accounts. Some FRB commenters believed institutions should be permitted to withhold the payment of interest for dormant accounts, if authorized by state or other law and the deposit contract. Other FRB commenters noted that what constitutes a "dormant" account varies widely among the states and institutions. These FRB commenters expressed concern about the impact of the rule if any period of inactivity—however brief—could transform an account to dormant status. Still others raised concerns whether TISA, which requires that interest be paid on the full amount of principal in the account each day, permitted such an interpretation. (12 U.S.C. 4306(a).) Based on the comments received and further analysis, the FRB believes that account inactivity does not affect an institution's duty to pay interest. (See comment 7(c)–3, which provides that institutions must accrue interest on funds until the funds are withdrawn from the account.) The FRB believes this position—reflected in comment 7(a)(1)–6—is consistent with the purposes of TISA and the rule that interest must be calculated for funds in accounts meeting minimum balance requirements for as along as funds remain in the account. For the reasons stated by the FRB, the NCUA Board has revised its comment accordingly. Although two commenters, including a national trade association commenter, requested that the Board revise this comment to also include sample contract language, the Board notes that the FRB did not provide such language, and since the language must be in accord with state law, any attempt to provide uniform national language might result in a disclosure that would not accomplish its objectives in some states. Therefore, the Board declines to provide such sample contract language. Another commenter insisted that NCUA meant "inactive account," which could be defined by the credit union by contract, rather than "dormant account," which is defined by the state. However, NCUA has copied this section from the FRB's Regulation DD, which concerns "dormant accounts." Therefore, NCUA declines to make the nomenclature change to "inactive accounts," which might create a substantive variance from the FRB.

Several commenters criticized proposed comment 7(a)(1)–7, insufficient funds, which states that credit unions are not required to pay dividends on deposits returned for insufficient funds. After consultation with FRB staff, the NCUA Board, for reasons of parity, uniformity and conformity, declines to change the substance of the comment. However, the comment has been reworded, as suggested by a commenter, to clarify its meaning.

Three commenters requested clarification on the time of day to determine the day's balance. As long as the time of day used does not reflect the low balance for the day (such as after debits are taken and before credits are added), any uniform time of day may be used. The time of day so chosen is not a required disclosure. The guidance was provided in the proposed commentary and is in this final commentary as comment App. A, Part II, § 1–1.

(a)(2) Determination of Minimum Balance to Earn Dividends

Two commenters, including a national trade association commenter, noted that proposed comment 7(a)(2)–4, regarding beneficial method, did not conform to the position taken by the FRB in the final Regulation DD commentary. Since no uniqueness reasons exist, NCUA has revised the proposed commentary to conform to Regulation DD in this final commentary. The national trade association commenter also requested a definition of "periodic rate" in lieu of proposed comment 7(a)(2)–2. However, for reasons of uniformity, conformity, and parity, the NCUA Board declines to so modify this commentary. However, more clarification regarding periodic rates will be provided in a revision to the *NCUA Accounting Manual for FCUs*.

Comment 7(a)(2)–7 clarifies limitations on minimum balance requirements to earn interest for club accounts—such as "holiday" or "vacation" club. The rule does not apply to a club account's minimum balance requirements for earning bonuses. This position, taken by the FRB in the final Regulation DD commentary, is also adopted by the NCUA Board.

(b) Compounding and Crediting Policies

Comment 7(b)–3 has been revised to clarify that the circumstances under which an institution may deem an account closed, and that accrued, but uncredited interest may be deemed forfeited, are subject to state or other law, if any (such as limitations in the Standard FCU Bylaws).

Proposed comment 7(b)–4, dealing with the forfeiture of accrued, but uncredited interest for dormant accounts, has been withdrawn for the reasons discussed in 7(a)(1)–6. This change is also in conformance with the final Regulation DD commentary.

Section 707.8—Advertising

(a) Misleading or Inaccurate Advertisements

Proposed comment 8(a)–2 would have required institutions using indoor signs advertising APY's for tiered-rate accounts to state both the lower and higher dollar amount for the tier corresponding to the advertised APY. Many FRB commenters convinced the FRB that stating both dollar amounts is unnecessary. Therefore, for reasons of uniformity and parity, NCUA has adopted the Regulation DD change and the comment provides that a sign is not misleading or inaccurate if it states the lower dollar amount of the tier corresponding to the advertised annual percentage yield.

Institutions cannot advertise accounts as "free" or "no cost" (or terms of similar meaning) if maintenance and activity fees can be imposed. Comment 8(a)–3 address the scope of "maintenance and activity" fees and addresses advertisements for "free" accounts with optional electronic services. FRB commenters were divided on whether fees for electronic services such as ATM access should preclude institutions from advertising accounts as free. Based on the comments received and further analysis, the FRB believes that ATM services are not different from other optional services such as home banking. Fourteen NCUA commenters, including two national trade associations, agreed with the FRB's reasoning and position. For the reasons stated by the FRB, NCUA follows the FRB and has revised comment 8(a)–4(vi) accordingly. One commenter requested a cross-reference to comment 4(b)(4)–1 and 2 regarding fee disclosures, which cross-reference has been added.

The FRB received numerous comments on its proposal to consider the term "fees waived" as similar to the terms "free" or "no cost." Many FRB commenters opposed the proposed comment. They stated that the term "fees waived" necessarily implies the existence of charges, and thus is distinguishable from the terms "free" or "no cost." These FRB commenters believed consumers would be unnecessarily disadvantaged if advertising fee waivers were restricted as proposed. Others believed most consumers would not distinguish between the terms and that advertising accounts with "waived fees" raised the concerns of Congress had in mind when prohibiting the advertisement of accounts as free or no-cost or "words of similar meaning." The FRB believes that "fees waived" is a term similar to "free" or "no cost;" thus, comment 8(a)–5 has been retained as proposed. For reasons of uniformity and parity, NCUA has followed the FRB's position.

(b) Permissible Rates

Comment 8(b)–3 provides guidance on advertising account for which institutions offer a number of versions (certificate accounts, for example). The FRB revised its comment for clarity without any intended change in meaning, and the NCUA Board has conformed the comment to do likewise.

(c) When Additional Disclosures are Required

The regulation requires institutions to disclose additional information when the APY is advertised. Comment 8(c)–1 provides examples of account descriptions that do not trigger the additional disclosures. The FRB has eliminated the reference to a bonus of 1% over an institution's current rate for one-year certificates as an example of a trigger term. Based on comments it received and upon further analysis, the FRB believes a reference to an institution's own rates (to which a "bonus" rate or margin will be applied) is not a trigger term if those rates are not readily determinable from the advertisement itself. This position is consistent with the rules regarding trigger terms in advertisements under the FRB's Regulation Z (12 CFR part 226). For these reasons, NCUA has conformed comment 8(c)–1 in this regard. This clarification was also made in response to four commenters' requests.

(c)(2) Time Annual Percentage Yield is offered

Comment 8(c)(2)–2 has been added in to conform to the final Regulation DD commentary. It specifies that an advertisement may refer to the APY as being accurate as of the date of publication, if the date is on the publication itself.

(e) Exemption for Certain Advertisements

(e)(1) Certain Media

One commenter requested clarification regarding whether messages on ATM and computer screens would be entitled to this advertising exemption. The regulation states that this exemption is available for broadcast and electronic media, such as radio and television, outdoor media, such as billboards, and telephone response machines. The Board believes that ATM and computer screens are similar to these types of media in many respects. First, ATMs are part of an electronic network, such as radio and television. Second, most ATMs are at locations outside of a credit union branch. Third, only a limited amount of space is available to make a message available to a member. With this reasoning, the Board has determined that ATM screens are subject to the electronic media exemption, and has clarified this in comment 8(e)(1)(i)–1.

(e)(3) Newsletters

A national trade association commenter noted that neither the letter, spirit, nor intent of TISA and part 707 would be violated if credit unions were permitted to make newsletters available to potential members. Since potential members must receive all required account disclosures upon becoming a member and opening an account, potential members could not be harmed by receipt of a member newsletter containing accurate information, but not conforming in every regard to the advertising requirements of part 707. It was also pointed out by the commenter that newsletters have traditionally been used by credit unions as a tool to increase membership, and that it would be difficult, if not impossible, for credit unions to prevent members from sharing newsletters with potential members sharing a common bond. The NCUA Board, which created the newsletter exemption based upon credit union uniqueness, is sympathetic to these additional reasons to expand availability of the newsletters to potential members. however, to do so at this time would require a rule amendment to § 707.8(e)(3)(i), which would be beyond the scope of the initial, proposed rulemaking, and therefore, impermissible under the Administrative Procedures Act. This being the case, the Board has not made any changes to comments 8(e)(3)–1 and 2. The Board will continue to monitor this situation, and if additional Truth in Savings rulemakings are necessary in the future, will consider requesting comments on a proposed amendment to expand the newsletter exemption to cover potential member distribution. Similarly, another commenter asked that the Board include information provided on an ATM screen under the newsletter exemption. As the FRB has clearly included ATM screen messages as covered advertisements in the definition of "advertisement," and NCUA must be substantially similar to the FRB, NCUA declines to make this change, which also is outside of the scope of this rulemaking. However, the Board has stated that ATM and computer screen messages may use the electronic media exemption. Comment (e)(1)(i)–1.

Appendix A—Annual Percentage Yield Calculation

Part I. Annual Percentage Yield for Account Disclosures and Advertising Purposes

In response to commenters, NCUA has revised comments app.A.I.–2 and 3. Comment app.A.I.–2 adds that, for leap year annual percentage yield calculations, the "days in term" figure used in the denominator should be consistent with the length of term used in the dividends calculation. Comment app.A.I.–3 clarifies that the guidance on the first tier of a tiered-rate account only applies when such information is provided in a rate table format, and not in the written format of sample clauses provided at Appendix B, § B–1(a)(iv).

In response to another commenter, NCUA added comment app.A.I.–4, which provides that term share club accounts may calculate the annual percentage yield based on the maximum number of days in the term, not to exceed the number of days in the year.

Part II. Annual Percentage Yield Earned for Statements

Comment app.A.II.–1 has been clarified without any change in meaning. Proposed comment app.A.II.–2, requiring the provision of certain collected balance information on the periodic statement, has been deleted since it is not in conformity with the FRB's position in Regulation DD and no uniqueness reasons exist for its existence. As a result, proposed comment app.A.II.–3 has been renumbered comment app.A.II.–2.

A. General formula. Comment app.A.II.A.–1 provides guidance about the treatment of accrued, but uncredited, interest in the balances used to calculate the APYE. The FRB believes an inaccurate APYE would result if institutions include accrued interest in the balance figure when statements are sent less frequently than interest is credited. But when periodic statements are issued more frequently than interest is credited, accrued interest must be included in the balance figure for APYE computation purposes. The NCUA adopts the Regulation DD position.

B. Special formula for use where periodic statements are sent more often than the period for which dividends are compounded. Comment app.A.II.B.–1 has been adopted as proposed. Credit unions may use the special formula to calculate an APYE on a quarterly statement whether or not a monthly statement is triggered by Regulation E during the quarter. FRB commenters supported this rule as significantly reducing compliance burdens for institutions. For the same reasons, NCUA adopts the Regulation DD position.

Comment app.A.II.B.–2 clarifies that the special formula requires institutions to use the actual number of days in the compounding period in calculating the APYE. The FRB believes using the actual number of days in a compounding period is necessary to produce an accurate APYE for a specific consumer's account. For reasons of conformity and parity, NCUA has also adopted the Regulation DD position.

Appendix B—Model Clauses and Sample Forms

Comments to Appendix B have been adopted as proposed. Several commenters requested changes in the Appendix B forms and sample clauses. However, as these changes were beyond the scope of this rulemaking, the Board could not consider them at this time. The Board will consider inviting comment upon the Appendix B forms and clauses at some future date.

Paperwork Reduction Act

Office of Management and Budget approval under the Paperwork Reduction Act for part 707 was received on September 29, 1994 as OMB No. 3133–0134.

List of Subjects in 12 CFR Part 707

Advertising, Credit unions, Consumer protection, Deposit accounts, Interest, Interest rates, Truth in savings.

For the reasons set forth in the preamble, the Board proposes to amend 12 CFR part 707 as follows:

PART 707—TRUTH IN SAVINGS

1. The authority citation for part 707 would continue to read as follows:

Authority: 12 U.S.C. 4311.

2. Section 707.2 is amended by revising paragraphs (a) and (q) to read as follows:

§ 707.2 Definitions.

* * * * *

(a) *Account* means a share or deposit account at a credit union held by or offered to a member or potential member. It includes, but is not limited to, accounts such as share, share draft, checking and term share accounts. For purposes of the advertising regulations in § 707.8, the term also includes an account at a credit union that is held by or offered by a share or deposit broker.

* * * * *

(q) *Member* means:

(1) A natural person member of the credit union who holds an account primarily for personal, family, or household purposes;

(2) A natural person nonmember who holds an account primarily for personal, family, or household purposes, either jointly with a natural person member or in a credit union designated as a low-income credit union, or to whom such an account is offered; and

(3) A natural person nonmember who holds a deposit account in a state-chartered credit union pursuant to state law, or to whom such deposit account is offered.

The term does not include a natural person who holds an account for another in a professional capacity or an unincorporated nonbusiness association of natural person members.

* * * * *

3. Section 707.6 is amended by revising paragraph (b)(3) to read as follows:

§ 707.6 Statement disclosures.

* * * * *

(b) * * *

(3) Fees imposed. Fees required to be disclosed under § 707.4(b)(4) of this part and imposed on the account during the statement period. The fees shall be itemized by type and dollar amounts.

* * * * *

4. Part 707 is amended by adding a new Appendix C to Part 707 to read as follows:

Appendix C to Part 707—Official Staff Interpretations

Introduction

1. *Official status.* This commentary is the means by which the staff of the Office of General Counsel of the National Credit Union Administration issues official staff interpretations of Part 707 of the NCUA Rules and Regulations. Good faith compliance with this commentary affords protection from liability under section 271(f) of the Truth in Savings Act (TISA), 12 U.S.C. 4311.

Section 707.1—Authority, Purpose, Coverage, and Effect on State Laws

(c) Coverage

1. *Foreign applicability.* Part 707 applies to all credit unions that offer share and deposit accounts to residents (including resident aliens) of any state as defined in § 707.2(v) and that offer accounts insurable by the National Credit Union Share Insurance Fund (NCUSIF) whether or not such accounts are insured by the NCUSIF. Corporate credit unions designated as such by NCUA under 12 CFR 704.2 (definition of "corporate credit union") are exempt from part 707.

2. *Persons who advertise accounts.* Persons who advertise accounts are subject to the advertising rules. This includes agent and agented accounts, such as a member who subdivides interests in a jumbo term share certificate account for sale to other parties or among members who form a certificate account investment club. For example, if an agent places an advertisement that offers members an interest in an account at a credit union, the advertising rules apply to the advertisement, whether the account is held by the agent or directly by the member.

(d) Effect on State Laws

1. *Preemption of state laws/Inconsistent requirements.* State law requirements that are inconsistent with the requirements of TISA and part 707 are preempted to the extent of the inconsistency. A state law is inconsistent if it requires a credit union to make disclosures or take actions that contradict the requirements of the federal law. A state law is also contradictory if it requires the use of the same term to represent a different amount or a different meaning than the federal law, requires the use of a term different from that required in the federal law to describe the same item, or permits a method of calculating dividends or interest on an account different from that required in the federal law.

2. *Preemption determinations.* A credit union, state, or other interested party may request the Board to determine whether a state law requirement is inconsistent with the federal requirements. A request for a determination should be addressed to NCUA's Office of General Counsel, 1775 Duke Street, Alexandria, VA 22314. Written preemption requests should cite (or include a copy of) the allegedly inconsistent state law, demonstrate the inconsistency with TISA and part 707 and the burden on credit unions, and formally request a preemption determination. The Office of General Counsel may provide other interested parties, particularly affected states, an informal opportunity to comment on any request for a preemption determination, unless it finds that such notice and opportunity for comment would be impracticable, unnecessary, or contrary to the public interest. NCUA will publicize any preemption determinations using any means readily at its disposal.

3. *Effect of preemption determinations.* After the Board, through its Office of General Counsel, determines that a state law is inconsistent, a credit union may not make disclosures using the inconsistent term or take actions relying on the inconsistent law.

4. *Reversal of determination.* The Board reserves the right to reverse a determination for any reason bearing on the coverage or effect of state or federal law.

Section 707.2—Definitions

(a) Account

1. *Covered accounts.* Examples of accounts subject to the regulation are:

i. Dividend-bearing and interest-bearing accounts.

ii. Non-dividend-bearing and non-interest-bearing accounts.

iii. Accounts opened as a condition of obtaining a credit card.

iv. Escrow accounts with a consumer purpose, such as an account established by a member to escrow rental payments, pending resolution of a dispute with the member's landlord.

v. Accounts held by a parent or custodian for a minor under a state's Uniform Gift to Minors Act (or Uniform Transfers to Minors Act).

vi. Individual retirement accounts (IRAs) and simplified employee pension (SEP) accounts.

vii. Payable-on-Death (POD) or "Totten trust" accounts.

2. *Other accounts.* Examples of accounts *not* subject to the regulation are:

i. Mortgage escrow accounts for collecting taxes and property insurance premiums.

ii. Accounts established to make periodic disbursements on construction loans.

iii. Trust accounts opened by a trustee pursuant to a formal written trust agreement (not merely declarations of trust on a signature card such as a "Totten trust," or an IRA or SEP account).

iv. Accounts opened by an executor in the name of decedent's estate.

v. Accounts of individuals operating businesses as sole proprietors.

vi. Certificates of indebtedness. Some credit unions borrow funds from their members through a certificate of indebtedness that sets forth the terms and conditions of the repayment of the borrowing, such as federal credit unions do through 12 CFR 701.38. Such an account does not represent an account in a credit union and is not covered by part 707.

vii. Unincorporated nonbusiness association accounts.

3. *Other investments.* The term "account" does not apply to these products. Examples of products not covered are:

i. Government securities.

ii. Mutual funds.

iii. Annuities.

iv. Securities or obligations of a credit union.

v. Contractual arrangements such as repurchase agreements, interest rate swaps, and bankers acceptances.

vi. Purchases of U.S. Savings Bonds through a credit union.

vii. Services offered through a group purchasing plan or a credit union service organization (CUSO).

4. *Options.* All dividend-bearing and interest-bearing accounts are either fixed-rate or variable-rate accounts.

5. *Use of synonyms.* Generally, it is not the purpose of part 707 to prohibit specific descriptive terms for accounts. For example, credit unions can use adjectives and trade names to describe accounts such as "Best Share Draft Account," or "Ultra Money Market Share Account." Synonyms for share, share draft, money market share, and term share accounts may be used to describe various types of credit union share and deposit accounts as long as the synonym is accurate and not misleading. For example, the following synonyms may be used:

i. The term "checking account" may be used to describe share draft accounts.

ii. The term "money market account" may be used to describe money market share accounts.

iii. The term "savings account" may be used to describe regular share and share accounts.

iv. The terms "share certificate," "certificate account," or "certificate" may be used to describe share certificates and other dividend-bearing term share accounts.

v. However, under no circumstances may a credit union describe a share account as a deposit account, or vice versa. For example, the term "certificate of deposit" or "CD" may not be used to describe share certificates and other dividend-bearing term share accounts. Similarly, the terms "time account" (used in Regulation DD, 12 CFR 230.2(u)) and "time deposit" (used in Regulation D, 12 CFR 204.2(c)) may not be used to describe term share accounts.

(b) Advertisement

1. *Covered messages.* Advertisements include commercial messages in visual, oral, or print media that invite, offer, or otherwise announce generally to members and potential members the availability of member accounts such as:

i. Telephone solicitations.

ii. Messages on automated teller machine (ATM) screens (including any printout).

iii. Messages on a computer screen in a credit union's lobby (including any printout) other than a screen viewed solely by the credit union's employee.

iv. Messages in a newspaper, magazine, or promotional flyer or on radio or television.

v. Messages promoting an account that are provided along with information about the member's existing account at a credit union and that promote another account at the credit union (such as account promotional messages on the periodic statement).

2. *Other messages.* Examples of messages that are *not* advertisements are:

i. Rate sheets published in newspapers, periodicals, or trade journals (unless the credit union or share and deposit broker that offers accounts at the credit union pays a fee to have the information included or otherwise controls publication).

ii. Telephone conversations initiated by a member or potential member about an account.

iii. An in-person discussion with a member about the terms for a specific account.

iv. Information provided to members about their existing accounts, such as on IRA disbursements, notices for automatically renewable term share accounts sent before renewal, or current rates recorded on a voice response machine.

(c) Annual Percentage Yield.

1. *General.* The annual percentage yield (APY) is required for disclosures for new accounts, oral responses to inquiries about rates; disclosures provided upon request; initial disclosures (if the credit union chooses to provide full disclosures instead of the abbreviated notice); notices prior to the renewal of a term share account, if known at the time the notice is sent, and in advertising. The annual percentage yield shows the total amount of dividends for a 365 day period (or a 366 day period for a leap year) on an assumed principal amount based on the dividend rate and frequency of compounding as a percentage of the assumed principal (for accounts such as share or share draft accounts) or for the total amount of dividends over the term of the account for term share accounts. The annual percentage yield assumes the principal amount remains in the account for 365 days (366 days for leap year) or for the term of the account.

2. *How Annual Percentage Yield Differs from Annual Percentage Yield Earned.* The annual percentage yield (APY) differs from the annual percentage yield earned (APYE). The annual percentage yield earned is required for periodic statements only. The annual percentage yield earned shows the total amount of dividends earned for the dividend or statement period as a percent of the actual average daily balance in the member's account. Unlike the annual percentage yield, the annual percentage yield earned is affected by additions and withdrawals during the period. The annual percentage yield and the annual percentage yield earned must be calculated according to the formulas provided in Appendix A to this rule.

(d) Average Daily Balance Method

1. *General.* One of the two required methods (the daily balance is the other) of determining the balance upon which dividends must be accrued and paid. The average daily balance method requires the application of a periodic rate to the average daily balance in the account for the average daily balance calculation period. The average daily balance is determined by adding the full amount of principal in the account for each day of the period and dividing that figure by the number of days in the period.

(e) Board.

1. *General.* The NCUA Board.

(f) Bonus

1. *General.* Bonuses include items of value offered as incentives to members, such as an offer to pay the final installment deposit for a holiday club account if the final installment is over $10. Bonuses do not include the payment of dividends (including extraordinary dividends), the waiver or reduction of a fee, the absorption of expenses, non-dividend membership benefits, or other consideration aggregating $10 or less per year.

2. *Examples.* The following are examples of bonuses.

i. A credit union offers $25 to potential members for becoming a member and opening an account. The $25 could be provided by check, cash, or direct deposit.

ii. A credit union offers $25 to a member with only a regular share account to open a share draft account. The $25 could be provided by check, cash, or direct deposit.

iii. A credit union offers a portable radio with a value of $20 to members and potential members for opening a share draft account.

iv. A credit union pays the final installment deposit for a holiday club account if over $10.

3. *Examples not comprising bonuses.* The following are examples of items that are *not* bonuses:

i. Discount coupons distributed by credit unions for use at restaurants or stores.

ii. A credit union offers $20 to any member if the member is responsible for encouraging a potential member to open an account. The $20 is not a bonus because the $20 is not paid to the individual opening the account. Any item, including cash, given or offered to a third party (that is not a joint member or joint owner in an account being opened) in exchange for a member or potential member opening (or a member renewing or adding to) an account is not a bonus.

iii. A credit union offers $25 to a member if the member can locate his name in the body of a newsletter.

iv. Life savings benefits. Many credit unions offer life savings benefits to beneficiaries of deceased members. Because the benefit accrues to a third party, such life savings plans offered are not bonuses.

v. A credit union offers to pay annual membership dues in a benevolent organization for a class of members.

4. *De minimis rule.* Items with a *de minimis* value of $10 or less are not bonuses. Credit unions may rely on the valuation standard used by the Internal Revenue Service (IRS) to determine if the value of the item is *de minimis*. Items required to be reported by the credit union under IRS rules are bonuses under this regulation. Examples of items of *de minimis* values are:

i. Disability insurance premiums on a share account valued at an amount of $10 or less per year.

ii. Coffee mugs, T-shirts or other merchandise with a market value of $10 or less per year.

5. *Aggregation.* In determining if an item valued at $10 or less is a bonus, credit unions must aggregate per account per calendar year items that may be given to members. In making this determination, credit unions aggregate per account only the market value of items that may be given for a specific promotion. To illustrate, assume a credit union offers in January to give members an item valued at $7 for each calendar quarter during the year that the average account balance in a share draft account exceeds $10,000. The bonus rules are triggered, since members are eligible under the promotion to receive up to $28 during the year. However, the bonus rules are not triggered if an item valued at $7 is offered to members opening a share draft account during the month of January, even though in November the credit union introduces a new promotion that includes, for example, an offer to existing share draft accountholders for an item valued at $8 for maintaining an average balance of $5,000 for the month.

6. *Waiver or reduction of a fee or absorption of expenses.* Bonuses do not include value received by members through the waiver or reduction of fees for credit union-related services (even if the fees waived exceed $10), such as the following:

i. Waiving a safe deposit box rental fee for one year for members who open a new account.

ii. Waiving fees for travelers checks for members, and waiving check and share draft printing fees.

iii. Nondiscriminatorily waiving all fees for a particular class of members, such as seniors or minors.

iv. Discounts on interest rates charged for loans at the credit union.

v. Rebates of loan interest already paid by a member.

vi. Discounts on application fees charged for loans at the credit union.

vii. Packaged, linked, or tied-account services.

7. *Non-dividend membership benefits.* Such benefits are not bonuses because they are sporadic in nature, often difficult to value, and providing non-dividend membership benefits is a long-standing unique credit union practice. (See commentary to § 707.2(r) for examples of such benefits.)

(g) Credit Union

1. *General.* Includes credit unions in the United States, Puerto Rico, Guam, U.S. Virgin Islands, and U.S. territories. Applies to credit unions whether or not the accounts in the credit union are federally, state, privately insured, or uninsured.

(h) Daily Balance Method

1. *General.* One of the two required methods (the average daily balance is the other) of determining the balance upon which dividends must be accrued and paid. The daily balance method requires the application of a daily periodic rate to the full amount of principal in the account each day.

(i) Dividend and Dividends

1. *General.* Member savings placed in share accounts are equity investments, and the returns earned on these accounts are dividends. Federal credit unions may only offer dividend-bearing and non-dividend-bearing share accounts. State-chartered credit unions may offer both share and deposit accounts if permitted by state law. State law, including without limitation regulations and official interpretations, will determine if returns earned in accounts in state-chartered credit unions are dividends. Dividends exclude the payment of a bonus or other consideration worth $10 or less given during a year, the waiver or reduction of a fee, the absorption of expenses, non-dividend membership benefits and extraordinary dividends. Dividend-bearing accounts must be either fixed-rate or variable-rate accounts.

2. *Procedure.* Credit unions must follow appropriate law (state law for state-chartered credit unions and federal law for federal credit unions) in determining dividend policies and declaring dividends. Generally, dividends may be viewed as a portion of the available account and undivided earnings of the credit union which is set apart, after

required transfer to reserves, by valid act of the board of directors, for distribution among the members. As a matter of legal procedure, members are usually not entitled to dividends until the following steps are completed: (1) The board of the credit union develops a nondiscriminatory dividend policy, by establishing dividend periods, dividend credit determination dates dividend distribution dates, any associated penalties (if applicable), and the method of dividend computation for each type of share account; (2) the provisions for required transfers to reserves are made; (3) sufficient and available prior and/or current earnings are available at the end of the dividend period; (4) the board formally makes a dividend declaration in accordance with the credit union's dividend policy; and (5) dividends must be paid to members by a credit to the appropriate share account, payment by check or share draft, or by a combination of the two methods.

3. *When available.* Credit unions must follow the law of their primary chartering authority to determine when dividends are available. Generally, it is the declaration of the dividend itself which creates the dividend and the member has no right to receive a dividend until it is so declared. The decision of when to declare dividends lies within the official discretion of each credit union's board of directors and cannot be abrogated by contract. An agreement to pay dividends on a share account is generally interpreted not as an obligation to pay the stipulated dividends absolutely and unconditionally, but as an undertaking to pay them out of the earnings when sufficiently accumulated from which dividends in general are properly payable. Generally, "prospective rates" are rates set in good faith in advance of the close of a dividend period, that may be altered if sufficient funds are not available, or in the event of a superseding event, such as a strike, plant closure, significant fluctuation in market rates and/or a significant change in financial structure, natural disaster or emergency that alters the assumptions under which the "prospective rates" were made. It is the intent of TISA that all disclosure be accurate when made, and credit unions are urged to make every effort to ratify disclosed "prospective rates." "Prospective rates" may also be referred to as "projected rates" or similar wording, but not as "estimated rates." (See comment 3(b)–2, prohibiting use of estimates).

4. *Sample dividend resolutions.* (i) The following resolution may be used where the dividend rates are set after the close of a dividend period.

Resolution of Board of Directors for the Declaration of Dividends

A. I, ______________, certify that I am Secretary of ______________ Credit Union Board of Directors, and that the following is a correct copy of the resolution for declaring dividend adopted by the ______________ Credit Union at a meeting of the Board of Directors duly and properly held on __________, 19_____. This resolution appears in the minutes of this meeting and has not been rescinded or modified.

B. Resolved, that

(1) The Board of Directors has developed a nondiscriminatory dividend policy, by establishing dividend periods, dividend credit determination dates, dividend distribution dates, any associated penalties (if applicable), and the method of dividend computation for each type of share account;

(2) The required transfers to reserves have been made; and

(3) Sufficient and available prior and/or current earnings are available at the end of this dividend period.

C. Resolved, further, that the Board of Directors now formally makes a dividend declaration in accordance with the Credit Union's dividend policy and authorizes that on __________, 19_____, dividends must be paid to members by a credit to the appropriate share account, payment by share draft or by a combination of the two methods.

D. I further certify that the Board of Directors of this Credit Union has, and the time of adoption of this resolution had, full power and lawful authority to adopt the foregoing resolutions and that this resolution revokes any prior resolution.

In witness whereof, this is my signature and the date on which I signed this Resolution.

____
Signature

____
Date

[Attach list of accounts with dividend rates for each type of account.]

(ii) The following resolution may be used where the dividend rates are set before the close of a dividend period.

Resolution of Board of Directors for the Declaration of Dividends

A. I, ______________, certify that I am the Secretary of ______________ Credit Union, and that the following is a correct copy of the resolution for declaring dividends adopted by the ______________ Credit Union at a meeting of the Board of Directors duly and properly held on ______________, 19____________. This resolution appears in the minutes of that meeting and has not been rescinded or modified.

B. Resolved, that the Board of Directors has adopted a nondiscriminatory dividend policy, by establishing dividend periods, dividend credit determination dates, dividend distribution dates, any associated penalties (if applicable) and the method of dividend computation for each type of share account.

C. Resolved, that it is the policy and practice of the Board of Directors to meet periodically to establish prospective dividend rates for each type of dividend-bearing share account.

D. Resolved, that if the required transfers to reserves have been made and there are sufficient and available prior and/or current earnings available at the end of a dividend period, the officers of the Credit Union are authorized to pay dividends at the rate prospectively established by the Board of Directors for each account for the dividend period. The officers may pay the dividends without any further action of the Board of Directors. The act of paying the dividends shall constitute the declaration of the dividends and shall be a ratification of the prospective dividend rate.

In witness whereof, this is my signature and the date on which I signed this Resolution.

____
Signature

____
Date

[Attach list of accounts with prospective dividend rates for each type of account.]

5. *Referencing.* Except where specifically stated otherwise, use of the term "share" in part 707, as in "share account," also refers to "deposit," as in "deposit account," where appropriate (for interest-bearing or non-interest-bearing deposit accounts at some state-chartered credit unions).

(j) Dividend Declaration Date

1. *General.* The importance of the dividend declaration date is to tie the last paid dividend to a certain period of time to place members and potential members on notice that the last paid dividend is different from the next dividend to be paid. In order to achieve this purpose, a credit union may use any of the following methods:

i. "As of 3/15/95" (the date the board of directors last met and declared the last paid dividend).

ii. "As of 3/31/95" (the last day of the last dividend period upon which a dividend has been paid).

iii. "For the period 1/1/95 to 3/31/95" (the last dividend period upon which a dividend has been paid).

iv. "For the first quarter of 1995" (the last dividend period upon which a dividend has been paid).

v. "For April 1995" (the last dividend period upon which a dividend has been paid).

(k) Dividend Period

1. *General.* The dividend period is to be set by a credit union's board of directors for each account type, e.g., regular share, share draft, money market share, and term share. The most common dividend periods are weekly, monthly, quarterly, semi-annually, and annually. Dividend periods need not agree with calendar months, e.g., a monthly dividend period could begin March 15 and end April 14.

(l) Dividend Rate

1. *General.* The dividend rate does not reflect compounding. Compounding is reflected in the "annual percentage yield" definition.

2. *Referencing.* Except where specifically stated otherwise, use of the term "dividend rate" in part 707 also refers to "interest rate," where appropriate (for interest-bearing and non-interest-bearing deposit accounts at some state-chartered credit unions).

(m) Extraordinary Dividends

1. *General.* The definition encompasses all irregularly scheduled and declared dividends, and as dividends, extraordinary dividends are exempt from the "bonus" disclosure requirements. Extraordinary dividends do not have to be disclosed on account disclosures, but the dollar amount of an extraordinary dividend credited to the account during the statement period does

have to be separately disclosed on the periodic statement for the dividend period during which the extraordinary dividends are earned. Extraordinary dividends, like ordinary dividends, do not include the payment of a bonus or other consideration worth $10 or less given during a year, the waiver or reduction of a fee, the absorption of expenses or non-dividend membership benefits. See comments 2(f) 1 through 7 and 2(i) 1 through 4. Extraordinary dividends may be calculated by any means determined by the board of directors of a credit union and may not be used in the annual percentage yield earned calculation.

2. *Use of synonym.* Extraordinary dividends may be described as "bonus dividends."

(n) Fixed-Rate Account

1. *General.* Includes all accounts in which the credit union, by contract, agrees to give at least 30 days advance written notice of decreases in the dividend rate. Thus, credit unions can decrease rates only after providing advance written notice of rate decreases, *e.g.*, a "change-in-terms notice."

(o) Grace Period

1. *General.* A period after maturity of an automatically renewing term share account during which the member may withdraw funds without being assessed a penalty. Use of a "grace period" is discretionary, not mandatory. This definition does not refer to the "grace period" account, which is a synonym for "federal rollback method" or "in by the 10th" accounts, which are prohibited by TISA and part 707.

(p) Interest

1. *General.* Member savings placed in deposit accounts are debt investments, and the return earned on these accounts is interest. Federal credit unions are not authorized to offer any interest-bearing deposit accounts. State-chartered credit unions may offer both share and deposit accounts if permitted by state law. State law, including without limitation regulations and official interpretations, will determine if returns earned in accounts in state-chartered credit unions are interest. Interest excludes the payment of a bonus or other consideration worth $10 or less given during a year, the waiver of reduction of a fee, the absorption of expenses, non-dividend membership benefits, and extraordinary dividends.

2. *Differences between dividends and interest.* Generally, dividends are returns on an equity investment (shares); interest is return on a debt investment (deposits). Dividends, in general, are not properly payable until declared at the close of a dividend period; interest, in general, is properly payable daily according to the deposit contract. Dividend rates are prospective until actually declared; interest rates are set according to contract in advance and are earned on that basis. Share accounts establish a member (owner)/credit union (cooperative) relationship; deposit accounts establish a depositor (creditor)/depository (debtor) relationship.

3. *Referencing.* Except where specifically stated otherwise, use of the terms "dividend" or "dividends" in part 707 also refers to "interest" where appropriate (for interest-bearing and non-interest-bearing deposit accounts at some state-chartered credit unions).

(q) Member

1. *Professional capacity.* Examples of accounts held by a natural person in a professional capacity for another are:

i. Attorney-client trust accounts.

ii. Trust, estate and court-ordered accounts.

iii. Landlord-tenant security accounts.

2. *Other accounts.* Examples of accounts *not* held in a professional capacity include accounts held by parents for a child under the Uniform Gifts to Minors Act (or Uniform Transfers to Minors Act.

3. *Retirement plans.* IRAs and SEP accounts are member accounts to the extent that funds are invested in accounts subject to the regulation. Keogh accounts, like sole proprietor accounts, are not subject to the regulation.

(r) Non-Dividend Membership Benefits

1. *General.* Term reflects unique credit union practices that are difficult to value, encourage community spirit, and are not granted in such quantity as to be includable as calculable dividends.

2. *Examples.* Examples include:

i Food, refreshments, and drawings and raffles at annual meetings, member functions, and branch openings.

ii. Travel club benefits.

iii. Prizes offered at annual meetings, such as U.S. Savings Bonds, a deposit of funds into the winner's account, trips, and other gifts. Such prizes are not bonuses because they are offered as an incentive to increase attendance at the annual meeting, and not to entice members to open, maintain, or renew accounts or increase an account balance.

iv. Life savings benefits.

(s) Passbook Account

1. *Relation to Regulation E.* Passbook accounts include accounts accessed by preauthorized electronic fund transfers to the account (as defined in 12 CFR § 205.2(j)), such as an account credited by direct share and deposit of social security payments. Accounts that permit access by other electronic means are not "passbook accounts," and any statements that are sent four or more times a year must comply with the requirements of § 707.6.

(t) Periodic Statement

1. *General.* Periodic statements are not required by part 707. Passbook and term share accounts are exempt from periodic statement requirements.

2. *Examples.* Periodic statements do not include:

i. Additional statements provided solely upon request.

ii. Information provided by computer through home electronic credit union account services.

iii. General service information such as a quarterly newsletter or other correspondence that describes available services and products.

(u) Potential Member

1. *General.* A potential member is a natural person eligible for membership in a credit union, who has not yet taken the steps necessary to become a member. The term also includes natural person nonmembers eligible to hold accounts in a credit union pursuant to relevant federal or state law.

2. *Verification of eligibility.* It is recommended that credit unions have sound written procedures in place to identify those eligible for membership. If these procedures include verification measures, such as an application process, verification telephone call or letter to an employer or association within the field of membership, witnessing by an existing member, or similar procedure, then the credit union may first verify the membership eligibility of a potential member before providing account disclosures or other information to the potential member. This process of verifying a member's eligibility status, making a recommendation for membership, and providing account disclosures should be completed within 20 calendar days. This period also applies when potential members not on credit union premises request disclosures.

3. *Nonmembers.* Within its sole discretion, the board of directors of a credit union may provide TISA disclosures to nonmembers who are ineligible for membership or to hold an account at the credit union. If disclosures are made to such nonmembers, it is the position of the Board that no civil liability can accrue to the credit union for any errors in such disclosures. (See commentary to § 707.3(d)).

(v) State

1. *General.* Territories and possessions include American Samoa, Guam, the Mariana Islands, and the Marshall Islands.

(w) Stepped-Rate Account

1. *General.* Stepped-rate accounts are those accounts in which two or more dividend rates (known at the time the account is opened) will take effect in succeeding periods.

2. *Example.* An example of a stepped-rate account is a one-year term share certificate account in which a 5.00% dividend rate is paid for the first six months, and 5.50% for the second six months.

(x) Term Share Account

1. *Relation to Regulation D.* Regulation D permits, in limited circumstances, the withdrawal of funds without penalty during the first six days after a "time deposit" is opened. (See 12 CFR 204.2(c)(1)(i).) But the fact that a member makes a withdrawal as permitted by Regulation D does not disqualify the account from being a term share account for purposes of this regulation (such as withdrawals upon the death of the member, or within a "grace period" for automatically renewable term share accounts).

2. *Club accounts.* Club accounts, including Christmas club, holiday club, and vacation club accounts may be either term share or regular share accounts, depending on the terms of the account. Although club accounts typically have a maturity date, they are not

term share accounts unless they also require a penalty of at least seven days' dividends for withdrawals during the first six days after the account is opened.

(v) Tiered-Rate Account

1. *General.* Tiered-rate accounts are those accounts in which two or more dividend rates are paid on the account and are determined by reference to a specified balance level. Tiered-rate accounts are of two types: Tiering Method A and Tiering Method B. In Tiering Method A accounts, the credit union pays the applicable tiered dividends rate on the entire amount in the account. This method is also known as the "hybrid" or "plateau" tiered-rate account. In Tiering Method B accounts, the credit union does not pay the applicable tiered dividends rate on the entire amount in the account, but only on the portion of the share account balance that falls within each specified tier. This method is also known as the "pure" or "split-rate" tiered-rate account. (See commentary to Appendix A, § I, D.)

2. *Example.* An example of a tiered-rate account is one in which a credit union pays a 5.00% dividend rate on balances below $1,000, and 5.50% on balances $1,000 and above.

3. *Term share accounts.* Term share accounts that pay different rates based solely on the amount of the initial share and deposit are not tiered-rate accounts.

4. *Minimum balance accounts.* A requirement to maintain a minimum balance to earn dividends does not make an account a tiered-rate account. If dividends are not paid on amounts below a specified balance level, then the account has a minimum balance requirement (required to be disclosed under § 707.4(b)(3)(i)), but the account does not constitute a tiered-rate account. A zero rate (0%) cannot constitute a tier. Minimum balance accounts are single rate accounts with a minimum balance requirement.

(z) Variable-Rate Account

1. *General.* Includes accounts in which the credit union does not contract to give at least 30 days advance written notice of decreases in the dividend rate. An account meets this definition whether the rate change is determined by reference to an index, by use of a formula, or merely at the discretion of the credit union's board of directors. An account that permits one or more rate adjustments prior to maturity at the member's option, such as a rate relock option, is a variable-rate account.

2. *Differences between fixed-rate and variable-rate accounts.* All ccounts must either be fixed-rate or variable-rate accounts. Classifying an account as variable-rate affects credit unions three ways:

i. Additional account disclosures are required (§ 707.4(b)(1)(ii));

ii. Rate decreases are exempted from change-in-terms requirements (§ 707.5(a)(2)(i)); and

iii. Advertising notice required (§ 707.8(c)(1)).

Fixed-rate accounts require a contract term obligating the credit union to a 30-day advance, written notice to members before decreasing the dividend rate on the account. Term changes adversely affecting the member and rate decreases cannot take effect until 30 days after such fixed-rate change-in-terms notices are mailed or delivered to members (§ 707.5(a)).

Section 707.3—General Disclosure Requirements

(a) Form

1. *General.* Alal required disclosures (e.g., account disclosures, change-in-terms notices, term share renewal/maturity notices, statement disclosures and advertising disclosures) must be made clearly and conspicuously, in a form the member may retain. Disclosures need be made only as applicable (e.g., disclosures for a non-dividend-bearing account would not include disclosure of annual percentage yield, dividend rate, or other disclosures pertaining to dividend calculations).

2. *Design requirements.* Disclosures must be presented in a format that allows members and potential members to readily understand the terms of their account. Credit unions are not required to use a particular type size or typeface, nor are credit unions required to state any term more conspicuously than any other term. Disclosures may be made:

i. In any order.

ii. In combination with other disclosures or account terms.

iii. In combination with disclosures for other types of accounts, as long as it is clear to members and potential members which disclosures apply to their account.

iv. On more than one page and on the front and reverse sides.

v. By using inserts to a document or filling in blanks.

vi. On more than one document, as long as the documents are provided at the same time.

3. *Consistent terminology.* A credit union must use the same terminology to describe terms or features that are required to be disclosed. For example, if a credit union describes a monthly fee (regardless of account activity), as a "monthly service fee" in account opening disclosures, the periodic statements and change-in-terms notices must use the same terminology so that members and potential members can readily identify the fee.

(b) General

1. *Terms and conditions.* Credit unions are required to have disclosures reflect the terms of the legal obligation between the credit union and a member at the time the member opens the account. This provision does not impose any contract terms or supersede state or other laws that define how the legal obligations between a credit union and its membership are determined.

2. *Specificity of legal obligation.* Credit unions may refer to the calendar month or to roughly equivalent intervals during a calendar year as a "month." Use of estimates is prohibited in TISA disclosures.

3. *Foreign language.* Disclosures may be made in any foreign language, if desired by the board of directors of a credit union. However, disclosures must also be provided in English, upon request.

(c) Relation to Regulation E

1. *General rule.* Compliance with Regulation E (12 CFR part 205) is deemed to satisfy the disclosure requirements of this regulation, such as when:

i. A credit union changes a term that triggers a notice under Regulation E, and the timing and disclosure rules of Regulation E for sending change-in-terms notices.

ii. A member adds an ATM access feature to an account, and the credit union provides disclosures pursuant to Regulation E, including disclosure of fees before the member receives ATM access. (See 12 CFR 205.7.)

iii. A credit union complying with the timing rules of Regulation E discloses at the same time fees for electronic services (such as balance inquiry fees imposed if the inquiry is made at an ATM) that are required to be disclosed by this regulation, but not by Regulation E.

iv. A credit union relies on Regulation E's rules regarding disclosures of limitations on the frequency and amount of electronic fund transfers, including security-related exceptions. But any limitation on the number of "intra-institutional transfers" to or from the member's other accounts at the credit union during a given time period must be disclosed, even though intra-institutional transfers are exempt from Regulation E.

(d) Multiple Members

1. *General.* When an account has multiple natural person member accountholders, delivery of disclosures to any member accountholder or agent authorized by the accountholder satisfies the disclosure requirements of part 707.

(e) Oral Response to Inquiries

1. *Application of rule.* Credit unions need not provide rate information orally. Disclosures need be made only as appropriate. For example, the requirement to give a telephone number for a member to call about rates for interest-bearing accounts and dividend-bearing term share accounts, would not be necessary for members calling the credit union for information. Also, the disclosure reqirements are applicable only to credit union employees and volunteers acting the in ordinary course of credit union business.

2. *Relation to advertising.* The advertising rules do not cover an oral response to a question about rates.

3. *Existing accounts.* This paragraph does not apply to oral responses about rate information for existing term share accounts or accounts not currently offered. For example, if a member holding a one-year term share account requests dividend rate information about the account during the term, the credit union need not disclose the annual percentage yield, unless the member is calling for rate information under a maturity notice.

(f) Rounding and Accuracy Rules for Rates and Yields

(f)(1) Rounding

1. *Permissible rounding.* The annual percentage yield, annual percentage yield earned and dividend rate must be rounded to

the nearest one-hundredth of one percentage point (.01%) when disclosed. Examples of permissible rounding are an annual percentage yield calculated to be 5.644%, rounded down and shown as 5.64%; 5.645% would be rounded up and disclosed as 5.65%. For account disclosures, the dividend rate may be expressed to more than two decimal places.

(f)(2) Accuracy

1. *Annual percentage yield and annual percentage yield earned.* The tolerance for annual percentage yield and annual percentage yield earned calculations is designed to accommodate inadvertent errors. Credit unions may not purposely incorporate the one-twentieth of one percentage point (.05%) tolerance into their calculation of yields.

2. *Dividend rate.* There is no tolerance for an inaccuracy in the dividend rate.

Section 707.4—Account Disclosures

(a) Delivery of Account Disclosures

(a)(1) Account Opening

1. *New accounts.* New account disclosures must be provided when:

i. A term share account that does not automatically rollover is renewed by a member.

ii. A member changes the term for a renewable term share account (from a one-year term share account to a six-month term share account, for instance) (see comment 5(b)–5 regarding disclosure alternatives).

iii. A credit union transfers funds from an account to open a new account not at the member's request, unless the credit union previously gave account disclosures and any change-in-terms notices for the new account (e.g., funds in a money market share account are transferred by a credit union to open a new account for the member, such as a share draft account, because the member exceeded transaction limitations on the money market share account).

iv. A credit union accepts a deposit from a member to an account that the credit union had previously deemed to be "closed," under applicable federal or state law, for the purpose of treating accrued, but uncredited, dividends as forfeited dividends. New account numbers are not required by this requirement.

2. *Acquired accounts.* New account disclosures need not be given when a credit union acquires an account through an acquisition of, or merger with, another credit union (but see § 707.5(a) regarding advance notice requirements if terms are changed).

3. *Combination disclosures.* New account disclosures need not be given when a member has already received disclosures covering several accounts, and opens a new account properly disclosed by the already received combination disclosures, if the new account is opened within a reasonable amount of time after receipt of the combination disclosures and if the received disclosures and terms are accurate at the time the new account is opened.

(a)(2) Requests

(a)(2)(i)

1. *Inquiries versus requests.* A response to an oral inquiry (by telephone or in person) about rates and yields or fees does not trigger the duty to provide account disclosures. But, when a member asks for written information about an account (whether by telephone, in person, or by other means), the credit union must provide disclosures unless the account is no longer offered to the public.

2. *General requests.* When member's or potential member's request disclosures about a type of account (a share draft account, for example), a credit union that offers several variations may provide disclosures for any one of them. No disclosures need be made to nonmembers, though a credit union may provide disclosures to nonmembers within its sole discretion.

3. *Timing for response.* Twenty calendar days is a reasonable time for responding to a request for account information that a member does not make in person.

(a)(2)(ii)(A)(2)

1. *Recent rates.* Credit unions comply with this paragraph if they disclose an interest rate (or dividend rate on a dividend-bearing term share account) and annual percentage yield accurate within the seven calendar days preceding the date they send the disclosures.

(a)(2)(ii)(B)

1. *Term.* Describing the maturity of a term share account as "1 year" or "6 months," for example, illustrates a response stating the maturity of a term share account as a term rather than a date (e.g., "June 1, 1995").

(b) Content of Account Disclosures

(b)(1) Rate Information

(b)(1)(i) Annual Percentage Yield and Dividend Rate

1. *Rate disclosures.* In addition to the dividend rate and annual percentage yield, credit unions may disclose a periodic rate corresponding to the dividend rate. No other rate or yield (such as "tax effective yield") is permitted. If the annual percentage yield is the same as the dividend rate, credit unions may disclose a single figure but must use both terms.

2. *Fixed-rate accounts.* For fixed-rate term share accounts paying the opening rate until maturity, credit unions may disclose the period of time the dividend rate will be in effect by stating, or cross-referencing, the maturity date. For other fixed-rate accounts, credit unions may use a date (such as "This rate will be in effect through June 30, 1995") or a period (such as "This rate will be in effect for at least 30 days").

3. *Tiered-rate accounts.* Each dividend rate, along with the corresponding annual percentage yield for each specified balance level (or range of annual percentage yields, if appropriate), must be disclosed for tiered-rate accounts. (See Appendix A, Part I, Paragraph D.)

4. *Stepped-rate accounts.* A single composite annual percentage yield must be disclosed for stepped-rate accounts. (See Appendix A, Part I, Paragraph B.) The dividend rates and the period of time each will be in effect also must be provided. When the initial rate offered for a specified time on a variable-rate account is higher or lower than the rate that would otherwise be paid on the account, the calculation of the annual percentage yield must be made as if for a stepped-rate account. (See Appendix A, Part I, Paragraph C.)

5. *Minimum balance accounts.* If a credit union sets a minimum balance to earn dividends, the credit union may, but need not, state that the annual percentage yield is 0% for those days the balance in the account drops below the minimum balance level when using the daily balance method. Nor is a disclosure of 0% required for credit unions using the average daily balance method, if the member fails to meet the minimum balance required for the average daily balance period.

(b)(1)(ii) Variable Rates

(b)(1)(ii)(B)

1. *Determining dividend rates.* To disclose how the dividend rate is determined, credit unions must:

i. Identify the index and specific margin, if the dividend rate is tied to an index.

ii. State that rate changes are within the credit union's discretion, if the credit union does not tie changes to an index.

(b)(1)(ii)(C)

1. *Frequency of rate changes.* A credit union reserving the right to change rates at its discretion must state the fact that rates may change at any time.

(b)(1)(ii)(D)

1. *Limitations.* A floor or ceiling on rates or on the amount the rate may decrease or increase during any time period must be disclosed. Credit unions need not disclose the absence of limitations on rate changes.

(b)(2) Compounding and Crediting

(b)(2)(i) Frequency

1. *General.* Descriptions such as "quarterly" or "monthly" are sufficient. Irregular crediting and compounding periods, such as if a cycle is out short at year end for tax reporting purposes, need not be disclosed.

2. *Dividend period.* For dividend-bearing accounts, the dividend period must be disclosed. (A specific example must also be given, see Appendix B, § B–1(c).) The dividend period for term share accounts generally may be disclosed as the account's term (e.g., two years).

(b)(2)(ii) Effect of Closing an Account

1. *Deeming an account closed.* A credit union may, subject to state or other law, provide in account contracts the actions by members that will be treated as closing the account and that will result in the forfeiture of accrued but uncredited dividends. An example is the withdrawal of all funds from the account prior to the date dividends are credited. Credit unions are cautioned that bylaw requirements may prevent a credit union from deeming a member's account closed until certain time periods are extinguished if funds remain in a member's account. *NCUA Standard FCU Bylaws*, Art.

III, § 3 (members have at least 6 months to replenish membership share before membership terminates and account is deemed closed). Such bylaw requirements may not be overridden without proper agency approval.

(b)(3) Balance Information

(b)(3)(i) Minimum Balance Requirements

1. *Par value.* Credit unions must disclose any minimum balance required to open the account, to avoid the imposition of a fee, or to obtain the annual percentage yield. Since members cannot generally maintain any accounts until the par value of the membership share is paid in full, this section requires that credit unions disclose the par value of a share necessary to become a member and maintain accounts at the credit union. The par value of a share and the minimum balance requirement do not have to be the same amount (e.g., a credit union may have a $5 par value for a membership share, in order for accounts to be opened and maintained, and a $100 minimum balance requirement, in order for the account to earn dividends).

2. *Disclosures.* The explanation of minimum balance computation methods may be combined with the balance computation method disclosures (§ 707.4(b)(3)(ii)) if they are the same. If a credit union uses different cycles for determining minimum balance requirements for purposes of assessing fees and for paying dividends, the credit union must disclose the specific cycle or time period used for each purpose (e.g., use of a midmonth statement cycle for determining dividends, and use of a calendar month cycle for determining fees). Credit unions may assess fees by using any method. If fees on one account are tied to the balance in another account, such provision must be explained (e.g., if share draft fees are tied to a minimum balance in the regular share account (or a combination of the share draft and regular share accounts), the share draft account must explain that fact and how the balance in the regular share account (or both accounts) is determined). The fee need not be disclosed in the account disclosures if the fee is not imposed on that account.

(b)(3)(ii) Balance Computation Method

1. *Methods and periods.* Credit unions may use different methods or periods to calculate minimum balances for purposes of imposing a fee (the daily balance for a calendar month, for example) and accruing dividends (the average daily balance for a statement period, for example). Each method and corresponding period must be disclosed.

(b)(3)(iii) When dividends begin to accrue

1. *Additional information.* Credit unions must include a statement as to when dividends begin to accrue for noncash deposits. Credit unions may disclose additional information such as the time of day after which deposits are treated as having been received the following business day, and may use additional descriptive terms such as "ledger" or "collected" balances to disclose when dividends begin to accrue. Under the ledger balance method, dividends begin to accrue on the day of deposit. Under the collected balance methods, dividends begin to accrue when provisional credit is received for the item deposited.

(b)(4) Fees

1. *Types of fees.* Fees related to the routine use of an account must be disclosed. The following are types of fees that must be disclosed in connection with an account:

i. Maintenance fees, such as monthly service fees.

ii. Fees related to share deposits or withdrawals.

iii. Fees for special services, such as stop payment fees, fees for balance inquiries or verification of share and deposits, fees associated with checks returned unpaid, fees for regularly sending to members share drafts that otherwise would be held by the credit union, and overdraft line of credit access fees (if charged against the share account).

iv. Fees to open or to close an account.

v. Fees imposed upon dormant or inactive accounts.

2. *Other fees.* Credit unions need not disclose fees such as the following:

i. Fees for services offered to members and nonmembers alike, such as fees for certain travelers checks, for wire transfers and automated clearinghouse (ACH) transfers, to process credit card cash advances, or to handle U.S. Savings Bond Redemption (even if different amounts are charged to members and nonmembers).

ii. Incidental fees, such as fees associated with state escheat laws, garnishment or attorneys fees, to change names on an account, to generate a midcycle periodic statement, to wrap loose coins, for photocopying forms, for statements returned to the credit union because of a wrong address, and locator fees.

2. *Amount of fees.* Credit unions are cautioned that merely providing fee information in an account disclosure may not be sufficient to gain the legal right to impose the fee involved under applicable law. Credit unions must state the amount and conditions under which a fee may be imposed. Naming and describing the fee typically satisfies this requirement. Some examples are:

i. "$4.00 monthly service fee".

ii. $7.00 and up" or "fee depends on style of checks ordered" for check printing fees.

3. *Tied-accounts.* Credit unions must state if fees that may be assessed against an account are tied to other accounts at the credit union. For example, if a credit union ties the fees payable on a share draft account to balances held in the share draft account and in a regular share account, the share draft account disclosures must state that fact and explain how the fee is determined.

4. *Regulation E statements.* Some fees are required to be disclosed under both Regulation E (12 CFR 205.7) and part 707. If such fees, such as ATM transaction fees, are disclosed on a Regulation E statement, they need not be disclosed again on a periodic statement required under part 707.

(b)(5) Transaction Limitations

1. *General rule.* Examples limitations on the number of dollar amount of share deposits or withdrawals that credit unions must disclose are:

i. Limits on the number of share drafts or checks that may be written on an account for a given time period.

ii. Limits on withdrawals or share deposits during the term of a term share account.

iii. Limitations required by Regulation D, such as the number of withdrawals permitted from money market share accounts by check to third parties each month (credit unions need not disclose reservation of right to require a notice for withdrawals from accounts required by federal or state law).

(b)(6) Features of Term Share Accounts

(b)(6)(i) Time Requirements

1. *"Callable" term share accounts.* In addition to the maturity date, credit unions must state the date or the circumstances under which the credit union may redeem a term share account at the credit union's option (a "callable" term share account).

(b)(6)(ii) Early Withdrawal Penalties

1. *General.* The term "penalty" may, but need not, be used to describe the loss that may be incurred by members for early withdrawal of funds from term share accounts.

2. *Examples.* Examples of early withdrawal penalties are:

i. Monetary penalties, such a specific dollar amount (e.g., "$10.00") or a specific days' worth of dividends (e.g., "seven days' dividends plus accrued but uncredited dividends, but only if the account is closed").

ii. Adverse changes to terms such as the lowering of the dividend rate, annual percentage yield, or reducing the compounding or crediting frequency for funds remaining in shares or on deposit.

iii. Reclamation of bonuses.

3. *Relation to rules for IRAs or similar plans.* Penalties imposed by the Internal Revenue Code for certain withdrawals from IRAs or similar pension or savings plans are not early withdrawal penalties for purposes of this regulation.

4. *Disclosing penalties.* Penalties may be stated in months, whether credit unions assess the penalty using the actual number of days during the period or using another method such as a number of days that occurs in any actual sequence of the total calendar months involved. For example, stating "one month's dividends" is permissible, whether the credit union assesses 30 days' dividends during the month of April, or selects a time period between 28 and 31 days for calculating the dividends for all early withdrawals regardless of when the penalty is assessed.

(b)(6)(iv) Renewal Policies

1. *Rollover term share accounts.* Credit unions are not required to provide a grace period, to pay dividends during the grace period, or to disclose whether or not dividends will be paid during the grace period. Credit unions offering a grace period on term share accounts must give the length of the grace period. Commentary, Appendix B, Model Clauses, § B–1(i)(iv).

2. *Nonrollover term share accounts.* Credit unions that pay dividends on funds following the maturity of term share accounts that do not renew automatically need not

state the rate (or annual percentage yield) that may be paid.

(b)(7) Bonuses

1. *General.* Credit unions are required to state the amount and type of bonus, and disclose any minimum balance or time requirement to obtain the bonus and when the bonus will be provided. If the minimum balance or time requirement is otherwise required to be disclosed, credit unions need not duplicate the disclosure for purposes of this paragraph.

(b)(8) Nature of Dividends

1. *General.* Dividends are not payable until declared and unless sufficient current and undivided earnings are available after required transfers to reserves at the close of a dividend period. A disclosure explaining dividends educates members and protects credit unions in the event that a prospective dividend cannot be paid, or is not properly payable. This disclosure is required for all dividend-bearing share accounts. Term share accounts need not include a statement regarding the nature of dividends.

2. *State-chartered credit unions with interest-bearing deposit accounts.* State law controls the nature of accounts (i.e., whether an account is a share account or a deposit account). If a member of a state-chartered credit union is opening only an interest-bearing deposit account, or is requesting account disclosures only for an interest-bearing deposit account (if state law requires the depositor to hold a share account), the disclosures must generally include the following information on any dividend-bearing share portion of the account (e.g., membership share): the par value of a share; a statement that the portion of the deposit that represents the par value of the membership share will earn dividends, and that dividends are paid from current income and available earnings after required transfers to reserves. Further additional disclosures, such as a separate dividend rate and annual percentage yield for the membership share, are not required (if the additional disclosures would agree with the remainder of the account which is invested in an interest-bearing deposit).

(c) Notice to Existing Accountholders

1. *General.* Only members who receive periodic statements (provided regularly at least four times per year) and who hold accounts of the type offered by the credit union as of the compliance date of part 707 (generally January 1, 1995) must receive the notice. If following receipt of the notice members request disclosures, credit unions have twenty calendar days from receipt of the request to provide the disclosures. Rate and annual percentage yield information in such disclosures must conform to that required for disclosures upon request. As an alternative to including the notice in or on the periodic statement, the final rule permits credit unions to send the account disclosures themselves, as long as they are sent at the same time as the periodic statement (the disclosures may be mailed either with the periodic statement or separately).

2. *Form of the notice.* The notice may be included on the periodic statement, in a member newsletter, or on a statement stuffer or other insert, if it is clear and conspicuous. The notice cannot be sent in a separate mailing from the periodic statement.

3. *Timing.* The notice may accompany the first periodic statement after the compliance date for part 707, or the periodic statement for the first cycle beginning after that date. For example, a credit union's statement cycle is December 15, 1994-January 14, 1995. The statement is mailed on January 15. The next cycle is January 15, 1995 through February 14, 1995, and the statement for that cycle is mailed on February 15. The credit union may provide the notice either on or with the January 15 statement or on or with the February 15 statement, as it covers the first cycle after January 1, 1995.

4. *Early compliance.* Credit unions that provide the notice to existing members prior to the compliance date of part 707, must be prepared to provide accurate and timely disclosures when, following receipt of the notice, members ask for account disclosures. Such disclosures must be provided even if they are requested before the compliance date of part 707. Credit unions who provide early notice to existing members need to comply with other aspects of part 707, but need not provide disclosures already provided in compliance with part 707.

Section 707.5—Subsequent Disclosures

(a) Change in Terms

(a)(1) Advance Notice required

1. *Form of notice.* Credit unions may provide a change-in-term notice on or with a regular periodic statement or in another mailing (such as a highlighted portion of a newsletter or statement stuffer insert). If a credit union provides notice through revised account disclosures, the changed term must be highlighted in some manner. For example, credit unions may state that a particular fee has been changed (also specifying the new amount) or use an accompanying letter that refers to the changed term. Credit unions are cautioned that unless credit unions have reserved the right to change terms in the account agreement or disclosures, a change-in-terms notice may not be sufficient to amend the terms under applicable law.

2. *Effective date.* An example of a language for disclosing the effective date of a change is: "As of May 11, 1995".

3. *Terms that change upon the occurrence of an event.* A credit union offering terms that will automatically change upon the occurrence of a stated event need not send an advance notice of the change provided the credit union fully describes the conditions of the change in the account opening disclosures (and sends any change-in-term notices regardless of whether the changed term affects that member's account at that time).

4. *Examples.* Examples of changes not requiring an advance change-in-terms notice are:

i. The termination of employment for employee-members for whom account maintenance or activity fees were waived during their employment by the credit union.

ii. The expiration of one year in a promotion described in the account opening disclosures to "waive $4.00 monthly service charges for one year".

(a)(2) No Notice Required

(a)(2)(ii) Check Printing Fees

1. *Increase in fees.* A notice is not required for an increase in fees for printing share drafts (or deposit and withdrawal slips) even if the credit union adds some amount to the price charged by the vendor.

(b) Notice Before Maturity for Term Share Accounts Longer Than One Month That Renew Automatically.

1. *Maturity dates on nonbusiness days.* In determining the term of a term share account, credit unions may disregard the fact that the term will be extended beyond the disclosed number of days if the maturity date falls on a nonbusiness day. For example, a holiday or weekend may cause a "one-year" term share account to extend beyond 365 days (or 366, in a leap year), or a "one-month" term share account to extend beyond 31 days.

2. *Disclosing when rates will be determined.* Ways to disclose when the annual percentage yield will be available include the use of:

i. A specific date, such as "October 28".

ii. A date that is easily discernible, such as "the Tuesday prior to the maturity date stated on the notice" or "as of the maturity date stated on this notice".

3. *Alternative timing rule.* Under the alternative timing rule, a credit union that offers a 10-day grace period would have to provide the disclosures at least 10 calendar days prior to the scheduled maturity date.

4. *Club accounts.* If members have agreed to the transfer of payments from another account to a club term share account for the next club period, the credit union must comply with the requirements for automatically renewable term share accounts—even though members may withdraw funds from the club account at the end of the current club period.

5. *Renewal of a term share account.* In the case of a change-in-terms that becomes effective if a rollover term share account is subsequently renewed:

i. If the change is initiated by the credit union, the disclosure requirements of this paragraph. (Section 707.5(a) applies if the change becomes effective prior to the maturity of the existing term share account.)

ii. If the change is initiated by the member, the account opening disclosure requirements of § 707.4(b). (If the notice required by this paragraph has been provided, credit unions may give new account disclosures or disclosures that reflect the new term.)

6. *Example.* If a member receives a notice prior to maturity on a one-year term share account and requests a rollover to a six-month account, the credit union must provide either account opening disclosures including the new maturity date or, if all other terms previously disclosed in the prematurity notice remain the same, only the new maturity date.

(b)(1) Maturities of Longer Than One Year

1. *Highlighting changed terms.* Credit unions need not highlight terms that have changed since the last account disclosures were provided.

(c) Notice for Term Share Accounts One Month or Less That Renew Automatically

1. *Providing disclosures within a reasonable time.* Generally, 20 calendar days after an account renews is a reasonable time for providing disclosures. For term share accounts shorter than 20 days, disclosures should be given prior to the next scheduled renewal date. For example, if a term share account automatically renews every seven days, disclosures about an account that renews on Wednesday, December 6, 1995, should be given prior to Wednesday, December 13, 1995.

(d) Notice Before Maturity for Term Share Accounts Longer Than One Year That Do not Renew Automatically

1. *Subsequent account.* When funds are transferred following maturity of a nonrollover term share account, credit unions need not provide account disclosures unless a new account is established.

Section 707.6—Periodic Statement Disclosures

(a) Rule When Statement and Crediting Periods Vary

1. *General.* Credit unions are not required to provide periodic statements. If they provide periodic statements, disclosures need only be furnished to the extent applicable. For example, if no dividends are earned for a statement period, credit unions need not state that fact. Or, credit unions may disclose "$0" dividends earned and "0%" annual percentage yield earned.

2. *Regulation E interim statements.* When a credit union provides regular quarterly statements, and in addition provides a monthly interim statement to comply with Regulation E, the interim statement need not comply with this section unless it states dividend or rate information. (See 12 CFR 205.9). For credit unions that choose not to treat Regulation E activity statements as part 707 periodic statements, the quarterly periodic statement must reflect the annual percentage yield earned and dividends earned for the full quarter. However, credit unions choosing this option need not redisclose fees already disclosed on an interim Regulation E activity statement on the quarterly periodic statement. For credit unions that choose to treat Regulation E activity statements as part 707 periodic statements, the Regulation E statement must meet all part 707 requirements.

3. *Combined statements.* Credit unions may provide certain information about an account (such as a money market share account or regular share account) on the periodic statement for another account (such as a share draft account) without triggering the disclosures required by this section, as long as:

i. The information is limited to information such as the account number, the type of account, balance information, accountholders' names, and social security or tax identification number; and

ii. The credit union also provides members a periodic statement complying with this section for the account (the money market share account or regular share account, in the example).

4. *Other information.* Additional information that may be given on or with a periodic statement, includes:

i. Dividend rates and corresponding periodic rates to the dividend rate applied to balances during the statement period.

ii. The dollar amount of dividends earned year-to-date.

iii. Bonuses paid (or any *de minimis* consideration of $10 or less).

iv. Fees for other products, such as safe deposit boxes.

v. Accounts not covered by the periodic statement disclosure requirements (passbook and term share accounts) may disclose any information on the statement related to such accounts, so long as such information is accurate and not misleading.

5. *When statement and crediting periods vary.* This rule permits credit unions, on dividend-bearing share accounts, to report the annual percentage yield earned and the amount of dividends earned on a statement other than on each periodic statement when the dividend period does not agree with, varies from, or is different than, the statement period. For dividend-bearing share accounts, credit unions may disclose the required information either upon each periodic statement, or on the statement on which dividends are actually earned (credited or posted) to the member's account. In addition, for accounts using the average daily balance method of calculating dividends, when the average daily balance period and the statement periods do not agree, vary or are different, credit unions may also report annual percentage yield earned and the dollar amount of dividends earned on the periodic statement on which the dividends or interest is earned. For example, if a credit union has quarterly dividend periods, or uses a quarterly average daily balance on an account, the first two monthly statements may not state annual percentage yield earned and dividends earned figures; the third "monthly" statement will reflect the dividends earned and the annual percentage yield earned for the entire quarter. The fees imposed disclosure must be given on the periodic statement on which they are imposed.

6. *Length of the period.* Credit unions must disclose the length of both the dividend period (or average daily balance calculation period) and the statement period. For example, a statement could disclose a statement period of April 16 through May 15 and further state that "the dividends earned and the annual percentage yield earned are based on your dividend period (or average daily balance) for the period April 1 through April 30."

7. *Dividend period more frequent than statement period.* Credit unions that calculate dividends on a monthly basis, but send statements on a quarterly basis, may disclose a single dividend (and annual percentage yield earned) figure. Alternatively, a credit union may disclose three dividends earned and three annual percentage yield earned figures, one of each month in the quarter, as long as the credit union states the number of days (or beginning and ending date) in each dividend period if it varies from the statement period.

8. *Additional voluntary disclosures.* For credit unions not disclosing the annual percentage yield earned and dividends earned on all periodic statements, credit unions may place a notice on statements without dividends and annual percentage yield earned figures, that the annual percentage yield earned and dollar amount of dividends earned will appear on the first statement at the close of the dividend (or average daily balance) period, or similar wording. Credit unions may also choose to include a telephone number to call for interim information, if desired by a member.

(b) Statement Disclosures

(b)(1) Annual Percentage Yield Earned

1. *Ledger and collected balances.* Credit unions that accrue interest using the collected balance method may use either the ledger or collected balance methods to determine the balance used to determine the annual percentage yield earned. Ledger balance means the record of the balance in a member's account, as per the credit union's records. (The ledger balance may reflect additions and deposits for which the credit union has not yet received final payment). Collected balance means the record of balance in a member's account reflecting collected funds, that is, cash or checks deposited in the credit union which have been presented for payment and for which payment has actually been received. (See Regulation CC, 12 CFR 229.14).

(b)(2) Amount of Dividends or Interest

1. *Definition of earned.* The term "earned" is defined to include dividends and interest either "accrued" or "paid and credited." Credit unions may use either the "ledger" or the "collected" balance for either option. (See commentary to § 707.2(t).)

2. *Accrued interest.* Credit unions must state the amount of interest that accrued during the statement period, even if it was not credited.

3. *Terminology.* In disclosing dividends earned for the period, credit unions must use the term "dividends" or terminology such as: "Dividends paid," to describe dividends that have been credited; "Dividends accrued," to indicate that dividends are not yet credited.

4. *Closed accounts.* If a member closes an account between crediting periods and forfeits accrued dividends, the credit union may not show any figures for "dividends earned" or annual percentage yield earned for the period (other than zero, at the credit union's option).

5. *Extraordinary dividends.* Extraordinary dividends are not a component of the annual percentage yield earned or the dividend rate, but are an addition to the member's account. The dollar amount of the extraordinary dividends paid, denoted as a separate, identified figure, must be disclosed on the periodic statement on which the extraordinary dividends are earned. A credit union may also disclose information regarding the calculation of the extraordinary dividends, and additional annual percentage yield earned and dividend rate figures taking into account the extraordinary dividend, so long as such information is accurate and not misleading.

(b)(3) Fees Imposed

1. *General.* Periodic statements must state fees disclosed under § 707.4(b) that were debited to the account during the statement period, even if assessed for an earlier period.

2. *Itemizing fees by type.* In itemizing fees imposed more than once in the period, credit unions may group fees if they are the same type. But, the description must make clear that the dollar figure represents more than a single fee, for example, "total fees for checks written this period."

Examples of fees that may *not* be grouped together are:

i. Monthly maintenance with excess activity fees.

ii. "Transfer" fees, if different dollar amounts are imposed—such as $.50 for share deposits and $1.00 for withdrawals.

iii. Fees for electronic fund transfers with fees for other services, such as balance inquiry or maintenance fees.

3. *Identifying fees.* Statement details must enable the member to identify the specific fee. For example:

i. Credit unions may use a code to identify a particular fee if the code is explained on the periodic statement or in documents accompanying the statement.

ii. Credit unions using debit slips may disclose the date the fee was debited on the periodic statement and show the amount and type of fee on the dated debit slip.

4. *Relation to Regulation E.* Disclosure of fees in compliance with Regulation E complies with this section for fees related to electronic fund transfers (for example, totaling all electronic funds transfer fees in a single figure).

(b)(4) Length of Period

1. *General.* Credit unions providing the beginning and ending dates of the period must make clear whether both dates are included in the period. For example, stating "April 1 through April 30" would clearly indicate that both April 1 and April 30 are included in the period.

2. *Opening or closing an account mid-cycle.* If an account is opened or closed during the period for which a statement is sent, credit unions must calculate the annual percentage yield earned based on account balances for each day the account was open.

Section 707.7—Payment of Dividends

(a) Permissible Methods

1. *Prohibited calculation methods.* Calculation methods that do not comply with the requirement to pay dividends on the full amount of principal in the account each day include:

i. The "rollback" method, also known as the "grace period" or "in by the 10th" method, where credit unions pay dividends on the lowest balance in the account for the period.

ii. The "increments of par value" method, where credit unions only pay dividends on full shares in an account, e.g., a credit union with $5 par value shares pays dividends on $20 of a $24 account balance.

iii. The "ending balance" method, where credit unions pay dividends on the balance in the account at the end of the period.

iv. The "investable balance" method, where credit unions pay dividends on a percentage of the balance, excluding an amount credit unions set aside for reserve requirements.

v. The "low balance" method, where credit unions pay dividends on the lowest balance in the account for any day in that period.

2. *Use of 365-day basis.* Credit unions may apply a daily periodic rate that is greater than 1/365 of the dividend rate—such as 1/360 of the dividend rate—as long as it is applied 365 days a year.

3. *Periodic dividend payments.* A credit union can pay dividends each day on the account and still make uniform dividend payments. For example, for a one-year term share account, a credit union could make monthly dividend payments that are equal to 1/12 of the amount of dividends that will be earned for a 365-day period (or 11 uniform monthly payments—each equal to roughly 1/12 of the total amount of dividends—and one payment that accounts to the remainder of the total amount of dividends earned for the period).

4. *Leap year.* Credit unions may apply a daily rate of 1/366 or 1/365 of the dividend rate for 366 days in a leap year, if the account will earn dividends for February 29.

5. *Maturity of term share accounts.* Credit unions are not required to pay dividends after term share accounts mature. Examples include:

i. During any grace period offered by a credit union for an automatically renewable term share account, if the member decides during that period not to renew the account.

ii. Following the maturity of nonrollover term share accounts.

iii. When the maturity date falls on a holiday, and the member must wait until the next business day to obtain the funds.

6. *Dormant accounts.* Credit unions must pay dividends on funds in an account, even if inactivity or the infrequency of transactions would permit the credit union to consider the account to be "inactive" or "dormant" (or similar status) as defined by state or other law or the account contract.

7. *Insufficient funds.* Credit unions are not required to pay dividends on checks or share drafts deposited to a member's account that are returned for insufficient funds. If a credit union accrues dividends on a check that it later determines is not good, it may deduct from the accrued dividends any dividends attributed to the proceeds of the returned check. If dividends have already been credited before the credit union determines the item has insufficient funds, the credit union may deduct the amount of the check and associated dividends from the account balance. The amount deducted will not be reflected in the dividend amount and annual percentage yield earned reported for the next period.

8. *Account drawn below par value of a share.* If a member draws his or her account below the par value of a share, dividends would continue to accrue on the account so long as any minimum balance requirement is met. However, under the *NCUA Standard FCU Bylaws*, if a member who reduces his or her share balance below the value of a par value share and does not increase the balance within at least six months, the credit union may terminate the member's membership. State-chartered credit unions may have similar termination provisions.

(a)(2) Determination of Minimum Balance to Earn Dividends

1. *General.* Credit unions may set minimum balance requirements that must be met in order to earn dividends. However, credit unions must use the same method to determine a minimum balance required to earn dividends as they use to determine the balance upon which dividends will accrue and pay. For example, a credit union that calculates dividends on the daily balance method must use the daily balance method to determine if the minimum balance to earn dividends has been met. Similarly, a credit union that calculates dividends on the average daily balance method must use the average daily balance method to determine if the minimum to earn dividends has been met. Credit unions may have a par value of a share that is different from the minimum balance requirement to earn dividends. (See commentary to § 707.4(b)(3)(i)).

2. *Daily balance accounts.* Credit unions that require a minimum balance to earn dividends may choose not to pay dividends for days when the balance drops below the required minimum balance if they use the daily balance method to calculate dividends. For example, a credit union could set a minimum daily balance level of $200 and pay dividends only those days the $200 daily balance is maintained.

3. *Average daily balance accounts.* Credit unions that require a minimum balance to earn dividends may choose not to pay dividends for the average daily balance calculation period in which the average daily balance drops below the required minimum, if they use the average daily balance method to calculate dividends. For example, a credit union could set a minimum average daily balance level of $200 and pay dividends only if the $200 average daily balance is met for the calculation period.

4. *Beneficial method.* Credit unions may not require members to maintain both a minimum daily balance and a minimum average daily balance to earn dividends, such as by requiring the member to maintain a $500 daily balance and a prescribed average daily balance (whether higher or lower). But a credit union could offer a minimum balance to earn dividends that includes an additional method that is "unequivocally beneficial" to the member such as the following:

i. A credit union using the daily balance method to calculate dividends and requiring a $500 minimum daily balance could choose to pay dividends on the account (for those days the minimum balance is not met) as long as the member maintained an average daily balance throughout the month of $400.

ii. A credit union using the average daily balance method to calculate dividends and requiring a $400 minimum average daily balance could choose to pay dividends on the account as long as the member maintained a daily balance of $500 for at least half of the days in the period.

iii. A credit union using either the daily balance method or average daily balance method to calculate dividends that requires: (A) a $500 daily balance; or (B) a $400 average daily balance to pay dividends on the account.

5. *Paying on full balance.* Credit unions must pay dividends on the full balance in the account that meets the required minimum balance. For example, if $300 is the minimum daily balance required to earn dividends, and a member deposits $500, the credit union must pay the stated dividend rate on the full $500 and not just on the $200.

6. *Negative balances prohibited.* Credit unions must treat a negative account balance as zero to determine:

i. The daily or average daily balance on which dividends will be paid.

ii. Whether any minimum balance to earn dividends is met. (See commentary to Appendix A, Part II, which prohibits credit unions from using negative balances in calculating the dividends figure for the annual percentage yield earned.)

7. *Club accounts.* Credit unions offering club accounts (such as a "holiday" or "vacation" club accounts) cannot impose a minimum balance requirement for dividends based on the total number or dollar amount of payments required under the club plan. For example, if a plan calls for $10 weekly payments for 50 weeks, the credit union cannot set a $500 minimum balance and then pay only if the member makes all 50 payments.

8. *Minimum balances not affecting dividends.* Credit unions may use the daily balance, average daily balance, or other computation method to calculate minimum balance requirements not involving the payment of dividends—such as to compute minimum balances for assessing fees.

(b) Compounding and Crediting Policies

1. *General.* Credit unions choosing to compound dividends may compound or credit dividends annually, semi-annually, quarterly, monthly, daily, continuously, or on any other basis.

2. *Withdrawals prior to crediting date.* If members withdraw funds (without closing the account), prior to a scheduled crediting date, credit unions may delay paying the accrued dividends on the withdrawn amount until the scheduled crediting date, but may not avoid paying dividends.

3. *Closed accounts.* Subject to state or other law, a credit union may choose not to pay accrued dividends if members close an account prior to the date accrued dividends are credited, as long as the credit union has disclosed that fact. If accrued dividends are paid, accrued dividends must be paid on funds up until the account is closed or the account is deemed closed. For example, if an account is closed on a Tuesday, accrued dividends on the funds through Monday would be paid. Whether (and the conditions under which) credit unions are permitted to deem an account closed by a member is determined by state or other law, if any. Credit unions are cautioned that bylaw requirements may prevent a credit union from deeming a member's account closed until certain time periods are extinguished. (See *NCUA Standard FCU Bylaws,* Art. III, § 3 (members have at least 6 months to replenish membership share before membership can terminate and the account is deemed closed). Such bylaw requirements may not be overridden without proper agency approval.)

(c) Date Dividends Begin to Accrue

1. *Relation to Regulation CC.* Credit unions 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 dividend accrual, or when dividends need not be paid on funds because a deposited check is later returned unpaid.

2. *Ledger and collected balances.* Credit unions may calculate dividends by using a "ledger" balance or "collected" balance method, as long as the crediting requirements of the EFAA are met (12 CFR 229.14).

3. *Withdrawal or principal.* Credit unions must accrue dividends on funds until the funds are withdrawn from the account. For example, if a check is debited to an account on a Tuesday, the credit union must accrue dividends on those funds through Monday.

Section 707.8—Advertising

(a) Misleading or Inaccurate Advertisements

1. *General.* All advertisements are subject to the rule against misleading or inaccurate advertisements, even though the disclosure applicable to various media differ. The word "profit" may be used when referring to dividend-bearing share accounts, as it reflects the nature of dividends. The word "profit" may not be used when referring to interest-bearing deposit accounts.

2. *Indoor signs.* An indoor sign advertising an annual percentage yield is not misleading or inaccurate if:

i. For a tiered-rate account, it also provides the upper and lower dollar amounts of the tier corresponding to the advertised annual percentage yield.

ii. For a term share account, it also provides the term required to obtain the advertised annual percentage yield.

3. *"Free" or "no cost" accounts.* For purposes of determining whether an account can be advertised as "free" or "no cost," maintenance and activity fees include:

i. Any fee imposed if a minimum balance requirement is not met, or if the member exceeds a specified number of transactions.

ii. Transaction and service fees that members reasonably expect to be imposed on an account on a regular basis (see comments 4(b)(4)–1 and 2).

iii. A flat fee, such as a monthly service fee.

iv. Fees imposed to deposit, withdraw or transfer funds, including per-check or per-transaction charges (for example, $.25 for each withdrawal, whether by check, in person).

4. *Other fees.* Examples of fees that are *not* maintenance or activity fees include:

i. Fees that are not required to be disclosed under § 707.4(b)(4).

ii. Check printing fees of any type.

iii. Fees for obtaining copies of checks, whether or not the original checks have been truncated or returned to the member periodically.

iv. Balance inquiry fees.

v. Fees assessed against a dormant account.

vi. Fees for using an ATM.

vii. Fees for electronic transfer services that are not required to obtain an account, such as preauthorized transfers or home electronic credit union services.

viii. Stop payment fees and fees for share drafts or checks returned unpaid.

5. *Similar terms.* An advertisement may not use a term such as "fees waived" if a maintenance or activity fee may be imposed because it is similar to the terms "free" or "no cost."

6. *Specific account services.* Credit unions may advertise a specific account service or feature as free as long as no fee is imposed for that service or feature. For example, credit unions offering an account that is free of deposit or withdrawal fees could advertise that fact, as long as the advertisement does not mislead members by implying that the account is free and that no other fee (a monthly service fee, for example) may be charged.

7. *Free for limited time.* If an account (or a specific account service) is free only for a limited period of time—for example, for one year following the account opening—the account (or service) may be advertised as free as long as the time period is stated.

8. *Conditions not related to share accounts.* Credit unions may advertise accounts as "free" for members that meet conditions not related to share accounts, such as the member's age. For example, credit unions may advertise a share draft account as "free for persons over 65 years old," even though a maintenance or activity fee may be assessed on accounts held by members that are 65 or younger.

(b) Permissible Rates

1. *Tiered-rate accounts.* An advertisement for a tiered-rate account that states an annual percentage yield must also state the annual percentage yield for each tier, along with corresponding minimum balance requirements. Any dividend rates stated must appear in conjunction with the annual percentage yields for each tier.

2. *Stepped-rate accounts.* An advertisement that states a dividend rate for a stepped-rate account must state all the dividend rates and the time period that each rate is in effect.

3. *Representative examples.* An advertisement that states an annual percentage yield for a type of account (such as a term share account for a specified term) need not state the annual percentage yield applicable to every variation offered by the credit union or indicate that other maturity terms are available. In an advertisement stating that rates for an account may vary depending on the amount of the initial deposit or the term of a term share account, credit unions need not list each balance level and term offered. Instead, the advertisement may:

i. Provide a representative example of the annual percentage yields offered, clearly described as such. For example, if a credit union offers a $25 bonus on all term share accounts and the annual percentage yield will vary depending on the term selected, the credit union may provide a disclosure of the annual percentage yield as follows: "For example, our 6-month share certificate currently pays a 3.15% annual percentage yield."

ii. Indicate that various rates are available, such as by stating short-term and longer-term maturities along with the applicable annual percentage yields: "We offer term share certificates of deposit with annual percentage yields that depend on the maturity you choose. For example, our one-month share certificate earns a 2.75% APY. Or, earn a 5.25% APY for three-year share certificate."

(c) When Additional Disclosures are Required

1. *Trigger terms.* The following are examples of information stated in advertisements that are not "trigger" terms:

i. "One, three, and five year share certificates available".

ii. "Bonus rates available".

iii. "1% over our current rate," so long as the rates are not determinable from the advertisement.

(c)(2) Time Annual Percentage Yield is Offered

1. *Specified recent date.* If an advertisement discloses an annual percentage yield as of a specified date, that date must be recent in relation to the publication or broadcast frequency of the media used. For example, the printing date of a brochure printed once for an account promotion that will be in effect for six months would be considered "recent," even though rates change during the six-month period. Dividend rates published in a daily newspaper or on television must be a rate offered shortly before (or on) the date the rates are published or broadcast. Similarly, dividend rates published in a daily newspaper or on television must be a rate reflecting either the preceding dividend period, or a prospective rate, and the option chosen should be noted.

2. *Reference to date of publication.* An advertisement may refer to the annual percentage yield as being accurate as of the date of publication, if the date is on the publication itself. For instance, an advertisement in a periodical may state that a rate is "current through the date of this issue," if the periodical shows the date.

(c)(5) Effect of Fees

1. *Scope.* This requirement applies only to maintenance or activity fees as described in paragraph 8(a).

(c)(6) Features of Term Share Accounts

(c)(6)(i) Time Requirements

1. *Club accounts.* If a club account has a maturity date, but the term may vary depending on when the account is opened, credit unions may use a phrase such as: "The maturity date of this club account is November 15; its term varies depending on when the account is opened."

(c)(6)(ii) Early Withdrawal Penalties

1. *Discretionary penalties.* Credit unions imposing early withdrawal penalties on a case-by-case basis may disclose that they "may" (rather than "will") impose a penalty if that accurately describes the account terms.

(d) Bonuses

1. *General reference to "bonus."* General statements such as "bonus checking" or "get a bonus when you open a checking account" do not trigger the bonus disclosures.

(e) Exemption for Certain Advertisements

(e)(1) Certain Media

(e)(1)(i)

1. *ATM messages.* Messages provided on ATM or computer screens are eligible for this exemption.

(e)(1)(iii)

1. *Tiered-rate accounts.* Solicitations for tiered-rate accounts made through telephone response machines must provide all annual percentage yields and the balance requirements applicable to each tier.

(e)(2) Indoor Signs

(e)(2)(i)

1. *General.* Indoor signs include advertisements displayed on computer screens, banners, preprinted posters, and chalk or peg boards. Any advertisement inside the premises that can be retained by a member (such as a brochure or a printout from a computer) is not an indoor sign.

2. *Members outside the premises.* Advertisements may be "indoor signs" even though they may be viewed by members from outside. An example is a banner in a credit union's glass-enclosed branch office, that is located behind a teller facing members but is readable by passersby.

(e)(3) Newsletters

1. *General.* The partial exemption applies to all credit union newsletters, whether instituted before or after the compliance date of part 707. Nor must a newsletter be of any particular circulation frequency (e.g., weekly, monthly, quarterly, biannually, annually, or irregularly) or of any certain format (e.g. magazine, bulletin, broadside, circular, mimeograph, letter, or pamphlet) in order to be eligible for the partial advertising exemption.

2. *Permissible Distribution.* In order for newsletters to retain the partial advertising exemption, newsletters can be sent to existing credit union members only. Any distribution reasonably calculated to reach only members is also acceptable, such as:

i. Mailing newsletters to existing members.

ii. Distributing newsletters at a function reasonably limited to members, such as an annual meeting or member picnic.

iii. Displaying or offering newsletters at a credit union lobby, branch, or office.

3. *Impermissible Distribution.* Distributing a newsletter in a place open to nonmembers, such as a sponsor's lunch room, is not reasonably calculated to reach only members, and such newsletter would be subject to all applicable advertising rules.

Section 707.9—Enforcement and Record Retention

(c) Record Retention

1. *Evidence of required actions.* Credit unions comply with the regulation by demonstrating they have done the following:

i. Established and maintained procedures for paying dividends and providing timely disclosures as required by the regulation, and

ii. Retained sample disclosures for each type account offered to members, such as account-opening disclosures, copies of advertisements, and change-in-term notices; and information regarding the dividend rates and annual percentage yields offered.

2. *Methods of retaining evidence.* Credit unions must be able to reconstruct the required disclosures or other actions. They need not keep disclosures or other business records in hard copy. Records evidencing compliance may be retained on microfilm, microfiche, or by other methods that reproduce records accurately (including computer files). Credit unions must retain copies of all printed advertisements and the text of all advertisements conveyed by electronic or broadcast media, and newsletters.

3. *Payment of dividends.* Credit unions must retain sufficient rate and balance information to permit the verification of dividends paid on an account, including the payment of dividends on the full principal balance.

Appendix A to Part 707—Annual Percentage Yield Calculation

Part I. Annual Percentage Yield for Account Disclosures and Advertising Purposes

1. *Rounding for calculations.* The following are examples of permissible rounding rules for calculating dividends and the annual percentage yield:

i. The daily rate applied to a balance carried to five or more decimals. For example; .008219178%, 3.00% for a 365 day year, would be rounded to no less than .00822%.

ii. The daily dividends or interest earned carried to five or more decimals. For example; $.08219178082, daily dividends on $1,000 at 3% for a 365 day year, would be rounded to no less than $.08219.

2. *Exponents in a leap year.* The annual percentage yield formula's exponent numerator will remain 365 in leap years. The "days in term" figure used in the denominator should be consistent with the length of term used in the dividends calculation.

3. *First tier of a tiered-rate account.* When credit unions use a rate table, the first tier of a tiered rate account is to be disclosed and advertised; "Up to but not exceeding * * *", "$.01 to * * *", or similar language.

4. *Term Share Accounts Opened in Midterm.* For club accounts that meet the definition of a term share account, the annual percentage yield is based on the maximum number of days in the term not to exceed 365 days (or 366 days in a leap year).

Part II. Annual Percentage Yield Earned for Periodic Statements

1. *Balance method.* The dividend or interest figure used in the calculation of the annual percentage yield earned may be derived from the daily balance method or the average daily balance method. Regardless of the dividend calculation method, the balance used in the annual percentage yield earned

formula is the average daily balance. The average daily balance calculation is the sum of the balances for each day in the period divided by the number of days in the period. The balance for each day is based on a point in time; i.e. beginning of day balance, end of day balance, closing of day balance, etc. Each day's balance, for dividend accrual and payment purposes, must be based on the same point in time and cannot be based on the day's low balance.

2. *Negative balances prohibited.* Credit unions must treat a negative account balance as zero to determine the balance on which the annual percentage yield earned is calculated. (See commentary to § 707.7(a)(2).)

A. General Formula

1. *Accrued but uncredited dividends.* To calculate the annual percentage yield earned, accrued but uncredited dividends:

i. May not be included in the balance for statements that are issued at the same time or less frequently than the account's compounding and crediting frequency. For example, if monthly statements are sent for an account that compounds dividends daily and credits dividends monthly, the balance may not be increased each day to reflect the effect of daily compounding. Assume a credit union will pay $13.70 in dividends on $100,000 for the first day, $6.85 in dividends on $50,013.70 for the second day, and $3.43 in dividends on $25,020.55 for the third day. The sum of each days balance is $175,000 (does not include accrued, but uncredited, dividends amounts $13.70, $6.85, and $3.43), thereby resulting in an average daily balance for the three days of $58,333.33.

ii. Must be included in the balance for succeeding statements if a statement is issued more frequently than compounded dividends is credited on an account. For example, if monthly statements are sent for an account that compounds dividends daily and credits dividends quarterly, the balance for the second monthly statement would include dividends that had accrued for the prior month. Assume a credit union will pay $411.78 in dividends on 30 days of $100,000, $427.28 in dividends on 31 days of $100,411.78, and $415.23 in dividends on 30 days of $100,839.06. The balance (average daily balance in the account for the period) for the second 31 days is $100,411.78.

2. *Rounding.* The dividends earned figure used to calculate the annual percentage yield earned must be rounded to two decimals to reflect the amount actually paid. For example, if the dividends earned for a statement period is $20.074 and the credit union pays the member $20.07, the credit union must use $20.07 (not $20.074) to calculate the annual percentage yield earned. For accounts that pay dividends based on the daily balance method, compound and credit dividends or interest quarterly, and send monthly statements, the credit union may, but need not, round accrued dividends to two decimals for calculating the "projected" or "anticipated" annual percentage yield earned on the first two monthly statements issued during the quarter. However, on the quarterly statement the dividends earned figure must reflect the amount actually paid.

3. *Compounding frequency using the average daily balance method.* Any compounding frequency, including daily compounding, can be used when calculating dividends using the average daily balance method. (See comment 707.7(b), which does not require credit unions to compound or credit dividends at any particular frequency).

B. Special Formula for Use Where Periodic Statement is Sent More Often Than the Period for Which Dividends are Compounded

1. *Statements triggered by Regulation E.* Credit unions may, but need not, use this formula to calculate the annual percentage yield earned for accounts that receive quarterly statements and that are subject to Regulation E's rule calling for monthly statements when an electronic fund transfer has occurred. They may do so even though no monthly statement was issued during a specific quarter. This formula must be used for accounts that compound and credit dividends quarterly and that receive monthly statements, triggered by Regulation E, which comply with the provisions of § 707.6.

2. *Days in compounding period.* Credit unions using the special annual percentage yield earned formula must use the actual number of days in the compounding period.

Appendix B to Part 707—Model Clauses and Sample Forms

1. *Modifications.* Credit unions that modify the model clauses will be deemed in compliance as long as they do not delete information required by TISA or regulation or rearrange the format so as to affect the substance or clarity of the disclosures.

2. *Format.* Credit unions may use inserts to a document (see Sample Form B–11) or fill-in blanks (see Sample Forms B–4 and B–5, which use double underlining to indicate terms that have been filled in) to show current rates, fees or other terms.

3. *Disclosures for opening accounts.* The sample forms illustrate the information that must be provided to a member when an account is opened, as required by § 707.4(a)(1). (See § 707.4(a)(2), which states the requirements for disclosing the annual percentage yield, the dividend rate, and the maturity of a term share account in responding to a member's request.)

4. *Compliance with Regulation E.* Credit unions may satisfy certain requirements under Part 707 with disclosures that meet the requirements of Regulation E. (See § 707.3(c).) The model clauses and sample forms do not give examples of disclosures that would be covered by both this regulation and Regulation E (such as disclosing the amount of a fee for ATM usage). Credit unions should consult appendix A to Regulation E for appropriate model clauses.

5. *Duplicate disclosures.* If a requirement such as a minimum balance applies to more than one account term (to obtain a bonus and determine the annual percentage yield, for example), credit unions need not repeat the requirement for each term, as long as it is clear which terms the requirement applies to.

6. *Guide to model clauses.* In the model clauses, italicized words indicate the type of disclosure a credit union should insert in the space provided (for example, a credit union might insert "March 25, 1995" in the blank for "(date)" disclosure). Brackets and diagonals ("/") indicate a credit union must choose the alternative that describes its practice (for example, [daily balance/average daily balance]).

7. *Sample forms.* The sample forms (B–4 through B–11) serve a purpose different from the model clauses. They illustrate various ways of adapting the model clauses to specific accounts. The clauses shown relate only to the specific transactions described.

By order of the National Credit Union Administration Board on November 10, 1994.

Becky Baker,

Secretary of the Board.

[FR Doc. 94–28364 Filed 11–18–94; 8:45 am]

BILLING CODE 7535–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–210–AD; Amendment 39–9068; AD 94–23–06]

Airworthiness Directives; Airbus Model A320–111, –211, and –231 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320–111, –211, and –231 airplanes, that requires modification of the currently installed one-stage shock absorbers on the main landing gear to two-stage shock absorbers. This amendment is prompted by the results of an evaluation of the air-to-ground sensing logic relative to the operation of other airplane systems during landing in adverse weather conditions. The actions specified by this AD are intended to prevent a delay in sensing by the air-to-ground logic system that the airplane is on the ground, which could prevent the airplane from achieving the landing distances specified in the FAA-approved Airplane Flight Manual (AFM).

DATES: Effective December 21, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 21, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320–111, –211, and –231 airplanes was published in the Federal Register on December 29, 1993 (58 FR 68786). That action proposed to require modification of the currently installed one-stage shock absorbers on the main landing gear (MLG) to two-stage shock absorbers.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

One commenter opposes the proposed requirement to modify the currently installed one-stage shock absorber on the MLG to two-stage shock absorbers. This commenter states that the requirement is unnecessary due to the fact that the one-stage absorbers currently installed on Model A320 series airplanes, when operated within the certification standards of the airplane, do not adversely affect the airworthiness of these airplanes. This commenter contends that the purpose of the two-stage shock absorber is solely to improve passenger comfort. The FAA does not concur that this rulemaking action is unnecessary. The FAA has determined that the installation of the two-stage shock absorber will improve the airplane's ability to achieve the landing distances specified in the FAA-approved Airplane Flight Manual (AFM). Earlier activation of supplemental braking devices, which would be available by installing two-stage shock absorbers, will enhance deceleration of the airplane when necessary to meet the required landing distances. The FAA has re-evaluated the air-to-ground sensing logic, has reviewed all other available data, and has determined that an unsafe condition exists with regard to the airplane failing to achieve the landing distances specified in the FAA-approved AFM. Further, the FAA has determined that this AD action is necessary for airplanes of this type design that are certificated for operation in the United States.

One commenter asserts that the FAA is taking action contrary to the normal course of action by proposing to issue the AD, when the French Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, has not issued a parallel AD. From this comment, the FAA infers that the commenter is requesting that the rule be withdrawn or delayed until the DGAC issues a similar mandatory action. The FAA does not concur. While the United States and France observe the provisions of the bilateral airworthiness agreement, it remains the responsibility of the FAA to monitor and maintain the continuing airworthiness of U.S.-type certificated and registered airplanes. The bilateral airworthiness agreements do not restrict the FAA from issuing AD's based upon its own finding of an unsafe condition, regardless of the decision made by another airworthiness authority relative to the same subject. In that the FAA has determined that an unsafe condition exists, and that action is necessary to correct that condition in the fleet, the issuance of this AD is not only appropriate, but warranted.

One commenter suggests that the issuance of this rule be delayed until such time that a lower cost alternative can be developed by the manufacturer. In the interim, this commenter suggests that the proposal be revised to require a periodic inspection to be performed at 15-month intervals. The FAA does not concur. To delay this action would be inappropriate, since the FAA has determined that an unsafe condition exists, a corrective modification is currently available, and the modification must be accomplished to ensure continued safety. However, paragraph (b) of the final rule does provide affected operators the opportunity to obtain approval from the FAA for alternative methods of compliance by presenting justification for those alternatives.

Two commenters request that the proposed compliance time of 12 months be extended to accomplish the proposed modification of the shock absorbers. One of these commenters requests that the compliance time be extended to 24 months. The other commenter requests that the compliance time be extended to 60 months, in light of the low probability of duplicating the combination of factors that may result in an accident. This commenter notes that, due to the unavailability of manpower and tooling, the proposed modification would result in a minimum of three days of downtime per airplane. Both commenters state that the manufacturer may be unable to provide an adequate number of MLG pistons to accomplish the modification within the proposed 12-month compliance time.

The FAA concurs that the compliance time may be extended somewhat. The FAA acknowledges the low probability of duplicating all of the factors that may result in an accident. However, in the unlikely event that all of the factors should be duplicated, airplanes equipped with dual stage shock absorbers would be able to activate, at an earlier stage of the landing roll, all available braking devices, including the deployment of ground spoilers, application of wheel brakes, and deployment of thrust reversers. Proper activation of braking devices would permit the airplane to land within the distances specified in the FAA-approved AFM. In light of the potential for these airplanes to overrun the end of the runway due to delayed onset of braking, the FAA cannot concur with the one commenter's request to extend the compliance time to 60 months; the FAA considers that such an extension (five times the amount of time proposed) would adversely affect safety. However, it was not the FAA's intent to impose an undue economic burden on operators by requiring them to take airplanes out of service for an extended period of time due to the problem posed by a lack of available parts to accomplish the modification required by this AD. Although the airframe manufacturer has indicated that ample modification parts are currently available, the supplier of those parts has indicated that shipping to operators may take an extended period of time. In light of this, the FAA has determined that an extension of the compliance time to 18 months is appropriate; it will allow sufficient time for operators to obtain the parts necessary to accomplish the modification, while minimizing the economic burden on operators. The FAA finds that this extension of the compliance time will not adversely affect the safety of the fleet. Accordingly, paragraph (a) of the final rule has been revised to extend the compliance time to accomplish the modification of the shock absorber to 18 months.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change previously described. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 35 airplanes of U.S. registry will be affected by this AD, that it will take approximately 58 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $16,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $671,650, or $19,190 per airplane.

The total cost impact figure discussed above is based on assumptions that no operator has yet accomplished any of the requirements of this AD action, and that no operator would accomplish those actions in the future if this AD were not adopted.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends part 39 of the Federal Aviation Regulations (14 CFR part 39) as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

94–23–06 Airbus Industrie: Amendment 39–9068. Docket 93–NM–210–AD.

Applicability: Model A320–111, –211, and –231 airplanes, as listed in Airbus Industrie Service Bulletin A320–32–1058, Revision 2, dated June 16, 1993, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a delay in sensing by the air-to-ground logic system that the airplane is on the ground, which could prevent the airplane from achieving the landing distances specified in the FAA-approved Airplane Flight Manual (AFM), accomplish the following:

(a) Within 18 months after the effective date of this AD, modify the currently installed one-stage shock absorbers to two-stage shock absorbers, in accordance with Airbus Industrie Service Bulletin A320–32–1058, Revision 2, dated June 16, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with §§ 21.197 and 21.199 of the Federal Aviation Regulations (14 CFR 21.197 and 21.199) to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Airbus Industrie Service Bulletin A320–32–1058, Revision 2, dated June 16, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 21, 1994.

Issued in Renton, Washington, on November 4, 1994.

S. R. Miller,

Acting Management, Transport Airplane Directorate Aircraft Certification Service.

[FR Doc. 94–27849 Filed 11–18–94; 8:45 am]

BILLING CODE 4910–13–U

Federal Aviation Administration

14 CFR Part 39

[Docket No. 94–NM–32–AD; Amendment 39–9069; AD 94–23–07]

Airworthiness Directives; Lockheed Model L–1011–385 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Lockheed Model L–1011–385 series airplanes, that requires various modifications and inspections of the flight controls, doors, and horizontal stabilizers. This amendment is prompted by a recommendation by the Systems Review Task Force (SRTF) for accomplishment of certain modifications and inspections that will enhance the controllability of these airplanes in the unlikely event of flight control malfunction or failure. The actions specified by this AD are intended to ensure airplane survivability in the event of damage to fully powered flight control systems.

DATES: Effective December 21, 1994.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 21, 1994.

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Aeronautical Systems Support Company, Field Support Department, Dept. 693, Zone 0755, 2251 Lake Park Drive, Smyrna, Georgia 30080. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas Peters, Aerospace Engineer, Flight Test Branch, ACE–160A, FAA, Small Airplane Directorate, Atlanta Aircraft Certification Office, Suite 210C, 1669 Phoenix Parkway, Atlanta, Georgia 30349; telephone (404) 991–3915; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations (14 CFR part 39) to include an airworthiness directive (AD) that is applicable to certain Lockheed